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Dealing with Abusive Monopolies

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There is an ongoing debate in the competition community to curb exclusionary practices by dominant firms, which can retard the development of efficient and innovatory firms and undermine consumer welfare.

Monopoly power need not harm consumer welfare. However, when it is used in an exclusionary manner it can harm short-term consumer welfare, lowering choice and raising prices, and long-term consumer welfare through stifling innovation and hampering the efficient allocation of resources. Exclusionary monopoly can sometimes be bid away by other players in the market and can take a number of forms. Consumers cannot choose effectively, as monopolists are allowed to operate exclusivity deals that are targeted at excluding rivals from the market.

Stopping powerful firms abusing their monopoly or dominant position is a centre piece of modern competition law. Two of the most high profile cases provide clear examples of exclusionary behaviour.

In the Microsoft case, the most basic charge was that the company carried out a range of activities that made it difficult for rivals to enter the market for software products. Charges included the bundling of products with the ubiquitous Windows operating system, such as an internet browser and a media player, and the withholding or delaying of access to operating system code for rivals. In response, Microsoft argued that it had gained its monopoly position through providing products that consumers wanted and that adding increasing functionality to operating systems was in the consumer interest.

Intel was accused of stifling its rival AMD by offering inducements to computer manufacturers not to use AMD microchips in its products. It is also accused of threatening computer makers with the loss of bonus payments if they sold any, or a small number of AMD powered machines. It also stymied AMD product launches through pressure on computer makers. In defence, Intel pointed to the rate of innovation in the market for microchips, the general fall in prices of processors and the existing choice consumers have for machines powered by Intel or AMD chips. It argued that company's behaviour is a robust form of competition and consumer welfare has been enhanced by driving down prices and ensuring innovation.

Innovation springs from competing firms offering consumers choices between technologies or services. If innovation is to be stimulated by abusive market power then there is a need for mechanism that will ensure that innovation benefits consumers. If monopoly drove innovation, as the apologists for exclusionary behaviour infer, then the rise of low-cost airlines or the spread of telephony services could not have occurred. Both happened only because the dead hand of monopoly was broken.

Proponents of the laissez passer view of exclusionary behaviour argue that firms need to make excess profits in order to innovate. However, the critics view regulatory intervention as a necessary tool to correct the market problems.

Extracted from the INCSOC Briefing entitled, 'Consumers Demand Action Against Abusive Monopolies' (http://www.incsoc.net/pdf/Action-on-abuse-of-dominance.pdf)

Brussels Enters Fray over Class Actions

– Nikki Tait

From aggrieved bank customers in the Netherlands to Spanish consumers angered by electricity blackouts, the idea of group damages claims is slowly taking root in Europe.

The latest example came when disgruntled former shareholders in Northern Rock announced they were banding together to challenge the British Government over the way the bank was nationalised.

Already, speculation over how far and how fast this trend might develop – and whether anything resembling US class actions could spring up on European shores – has alarmed business.

Consumer groups, on the other hand, try to play down the more exaggerated fears and argue that more needs to be done so that victims of corporate transgressions can get the legal redress they deserve.

Small wonder, then, that the European Commission (EC) has found itself deluged after entering this already simmering debate to ask for views on principles that could guide the development of a pan-European "collective action" system. More than 80 submissions had rolled in, and more were promised. The closing deadline has been extended to March 31, 2008.

What the Brussels policymakers are ultimately trying to decide is whether an Europen Union (EU)-wide system that allows consumers to bring group claims is necessary or desirable.

In principle, the idea of group litigation makes sense: it is more efficient for numerous individuals who have similar, possibly modest, claims to be grouped together rather than pursue their cases separately. And already, according to European consumer organisation Beuc, 14 of the 27 EU countries have implemented their own domestic "collective redress" arrangements.

The concept of EU-wide collective redress also chimes well with Brussels' desire to demonstrate that EU policies are meaningful at "grassroots" consumer level. Separately, the Commission's powerful antitrust arm is looking at how private actions might be encouraged in the competition area, and is due to issue a White Paper, which will make firm proposals, next month.

One major sticking point is how easy it should be for those bringing collective actions to get to court. For example, a Commission suggests that defendants should not "artificially and unreasonably increase their legal costs" so that claimants are deterred from bringing actions because they may have to pick up their opponent's legal bill if the action fails, has been welcomed by consumer groups but has concerned many corporate advisers.

What the Brussels policymakers are ultimately trying to decide is whether an Europen Union (EU)-wide system that allows consumers to bring group claims is necessary or desirable

Equally contentious is the suggestion that damages should be more than just compensatory. "A preventative effect for future wrongful conduct by traders or service providers is desirable – for instance by skimming off the profit gained from the incriminated conduct" is one of the Commission's proposals.

But that worries business groups, which see it opening a back-door route to punitive damages. Beuc, on the other hand, recommends that the "skimming-off" process be complementary but separate, with the profits going into a "consumer protection fund".

Lurking in the background is the much bigger debate about whether group litigation should work on an "opt-in" basis (where claimants must proactively choose to join the claim) or "opt-out" (where they are included unless they exempt themselves).

Many lawyers believe that the opt-out principle is one of the most serious flaws in the US class action system. There is also understood to be trenchant opposition to going down this route within the Commission, not least in its competition directorate.

But consumer groups, who generally favour the opt-out approach, have also begun to talk about hybrid schemes – where those consumers who made the effort to join an action might get individual redress, but damages could also be claimed generally on behalf of the remaining victims and donated to an appropriate charitable cause or consumer fund.

Deborah Prince, head of legal affairs at Which?, the UK consumer group, says: "We can conceive that opt-out may not be appropriate across the board - but I don't think that means that you say we're not going to have it at all".

Those difficulties notwithstanding, the EU's evolving patchwork of national collective redress systems is untidy and, lawyers warn, could lead to forum-shopping. "You already see plaintiffs going to one country rather than another", says Emmanuel Gybels, at law firm Crowell & Moring in Brussels.

But harmonising litigation frameworks, even in a relatively new area, is a daunting task. "There is a massive argument for seeking to unify the procedures, but that would also be a massive endeavour", says Diana Good, partner at Linklaters.

And she, like others, questions whether, at the end of day, the grassroots interest in pursuing many collective actions really warrants the effort. "Ultimately, people aren't interested in pursuing claims for €2 or even £20", she argues.

– The article appeared in the Financial Times, March 26, 2008.

Antitrust and the 'Good Samaritan' Monopoly Rule

– David Tadmor, Shai Bakal and David Gideoni

www.images.com

In a recent decision published by the Israeli Antitrust Authority (IAA) regarding Israel's leading telecommunications firm, the IAA commissioner ruled that an abuse of dominant position can occur not only when a monopolist actively excludes its competitors, but also when it fails to take diligent measures to prevent possible damage to its competitors.

Introduction

It is a commonly accepted notion that a monopolist bears special duties compared to other competitors in the market. As in other Western nations, Israeli law contains provisions which render illegal certain actions if they are taken by a monopolist, while allowing the same actions to be taken by other competitors in the market.

However, these limitations usually refer to business actions taken by a monopolist. An overwhelming majority of antitrust cases involving monopolies, both in Israel and abroad, refer to active conduct (with the specific and well-established exception of refusal to deal) which can be directly attributed to the dominant firm (i.e., tying and bundling of products and predatory pricing).

Until recently, Israeli law did not address (at least directly) the question of whether and to what extent a monopolist has an obligation to take action to prevent possible damage to competition.

In a recent decision published by the Israeli Antitrust Authority (IAA) regarding Israel's leading telecommunications firm, the IAA commissioner ruled that an abuse of dominant position can occur not only when a monopolist actively excludes its competitors, but also when it fails to take diligent measures to prevent possible damage to its competitors.

Background

Israel's leading telecommunications firm Bezeq was granted a statutory monopoly, which lasted many years, in both domestic and international telecommunications services. In the past decade the Israeli government has gradually introduced competition to different segments of Israel's telecommunications industry, including domestic phone services.

In 2003, Bezeq's first competitor, Hot Telecom (a leading cable company), entered the market and was followed later by several other (smaller) telecommunications firms. All these new competitors relied on Bezeq for interconnection services (i.e., connecting their customers with Bezeq's customers).

In April 2006, Bezeq's employees announced an upcoming strike which was due to begin on May 14, 2006. According to the IAA's decision, a small-scale unofficial strike began at the end of April 2006. On May 14, 2006 the official strike broke and on May 17, 2006 the reciprocal connection between Bezeq and Hot Telecom was disconnected for 34 hours, making it impossible for Hot Telecom's customers to call Bezeq's customers and vice versa.

Since the vast majority of Israeli customers were and still are Bezeq customers, the loss of interconnection services caused exceptionally greater harm to Hot Telecom's customers than to Bezeq's customers. Following these events, the IAA opened an investigation which led to the commissioner's decision that according to Section 29A of the Restrictive Trade Practices Law 1988, these events amounted to an abuse of monopoly power by Bezeq.

Prior to this new ruling, Section 29A was implemented by the IAA and Israeli courts mainly in connection with active actions taken by a monopolist against its rivals. The Bezeq ruling was unique, as the commissioner did not contend that the strike was actually an action taken by Bezeq against its competitors, but merely ruled that Bezeq responded too late to the competitive danger posed by a possible strike of its employees and was incompetent in its efforts to prevent or stop such a strike.

Comment

It follows from the reasoning of the commissioner's decision that a monopolist must not only refrain from actions that may exclude competition, but also take diligent action to preserve competition where it can do so. Doing nothing in the face of possible harm to competitors is simply no longer an option, since antitrust liability can now result from a monopolist's negligent behaviour.

Since Israeli monopoly law applies to any firm holding a market share that exceeds 50 percent in any given relevant market in Israel, regardless of whether the firm possesses market power or not, this new 'good Samaritan' monopoly rule can also have practical implications for certain international firms operating in Israel.

– The authors work with Tadmor & Co. The article appeared in the Mondaq, February 21, 2008.

Fighting International Cartel

South Korea's Fair Trade Commission (KFTC) has opened a new department to fight the rising number of international cartels operating within the country. The Commission will enhance cooperation with foreign countries, including the US and Japan, to crack down on cross-border cartel violations.

"We have faced many challenges in dealing with international cartel cases, due to lack of personnel. This has frequently forced us to put those cases on the back burner, meaning it can take several years to investigate a single incident. With the new department, we expect to step up our efforts in monitoring and analysing the market", one commission official said.

The new unit was formed under the Commission's continuing reorganisation programme. It will be a subsection of the existing cartel bureau, which is to be renamed as the 'cartel regulation policy bureau'. *(GCR, 03.03.08)*

EC to Probe Mortgage Lender

The EC is expected to open a formal investigation into the restructuring aid package devised by the British Government for Northern Rock, the stricken mortgage lender. The UK Treasury submitted an outline business plan for the nationalised bank – once Britain's fifth biggest mortgage lender – setting out how it intends to wean it off more than US$48bn of state support.

Neelie Kroes, the EU Competition Commissioner, is expected to demand that Northern Rock scale back its operations to minimise the impact on competition in the banking sector, including ending its aggressive mortgage-selling strategy.

That could mean the loss of several thousand jobs at the bank, based in England's economically fragile northeast, as it shrinks its business with the aim of repaying the state aid within the next two to three years. Such an investigation would give third parties – including Northern Rock's competitors – an opportunity to submit their views. *(FT, 18.03.08)*

Struggling Commission

The Competition Commission launched by the Caribbean Community is already struggling, according to the Community's Secretary General Edwin Carrington. He said, "Some member-states have not fully met their obligations to contribute to the first year's annual operating costs of the Commission".

Taimoon Stewart, senior research fellow and competition specialist at the University of the West Indies, said "the comments are quite accurate", and that the secretary general was "making these points to encourage those countries that are still lagging behind in payment to meet their obligations". Carrington also mentioned that there are countries that have yet to establish their own competition commissions and laws.

For the community's commission to fully function, member states must enact the relevant competition law. Many member states are still to fulfill this requirement. Of the community's 13 member states, Antigua and Barbuda, Belize, Dominica, Grenada, St Kitts and Nevis, St Lucia, and St Vincent and the Grenadines are yet to fully enact the requirements of the community.

The Caribbean Community's competition commission was launched in Suriname, on January 18, 2008

(GCR, 01.02.08)

US Objects to M&A Regulations

The US has taken a serious objection to India's new competition law that requires foreign companies to seek regulator's approval for mergers and acquisitions (M&As). The US Trade Department has taken up the issue with the Indian Government to change the new regulation governing M&As under the amended Competition Act.

In September 2007, the Indian Government introduced new merger control amendments to its Competition Act. The M&A provisions, once notified, would require foreign companies, including those with a limited access to Indian markets, to seek approvals for M&As made anywhere in the world, even outside India and the company's home country.

Under the new law, the Government would impose a 210-day waiting period before the transaction could take place, even if it would have little or no impact on business within India. If enacted, a broad swath of global mergers and acquisitions will be potentially caught up in this new law. *(ToI, 30.03.08)*

'Open Skies' Regime

The more liberal "open skies" regime agreed in 2007 by the US and the EU came into force on March 30, 2008, ushering in a new era of much tougher competition in transatlantic flights. The most immediate impact will be felt at London Heathrow, the most important European gateway for flights to and from the US, which had been protected from full competition.

Under the "open skies" regime, it will be possible for any EU or US carrier to fly between any two points between the regions. Previously, for European airlines flights to the US were limited to national carriers from each individual state.

Several airlines including British Airways, American, Delta and Continental have taken the opportunity offered by the "open skies" treaty to move some of their London services from Gatwick to Heathrow. *(FT, 31.03.08)*

www.hindubusinessline.com

Five 'Super-Ministries' in China

China has announced five new "super-ministries" as part of an effort to streamline a bloated bureaucracy and clarify conflicting responsibilities that stymie top-level decision making. The plan, submitted to the National People's Congress for formal approval will transform the present administration of construction, transport, IT policy and social security.

The environment agency has been elevated to ministerial status, but plans to create a new energy ministry have been put off because of strong opposition from powerful state companies in the oil and power sectors. A new "energy commission" will be established but it will report through the National Development and Reform Commission (NDRC), the chief economic co-ordination body, which already has overall responsibility for energy issues.

The NDRC, however, which contains the remnants of China's old "planned economy" functions, lost out elsewhere, with local authorities taking some investment approval decisions away from the central agency. The NDRC has been heavily criticised for its failure to foresee China's energy demands, and also for opposing market reforms in many sectors of the economy.

The super-ministries will eventually lay the ground for further reforms to separate policymaking and regulatory functions, and also force government agencies out of business.

(FT, 11.03.08)

Mexican Cartel Bill in Jeopardy

Mexican Government ministers said they are opposing amendments to a bill that promises larger fines for cartelists. If they have their way, maximum fines could even be reduced.

The original bill, proposed by the Democratic Revolution Party recommends increasing fines by up to 15 percent of a company's gross domestic sales. Mexico's Federal Competition Authority is also pushing for higher fines, but opposition parties have said this punishment is too severe and have suggested alternative reforms to the antitrust bill.

Reports suggest that some ministers from the National Action Party, which is currently in power, and the Institutional Revolutionary Party, want to establish more moderate sanctions and limit fines to four percent of a company's annual revenue.

If the amendments are approved, current cartel fines could actually decrease. The Government intends to announce its decision on the amended bill soon. *(GCR, 05.03.08)*

Brazil Presents Leniency Guidelines

Brazil's is Secretariat of Economic Law is releasing guidelines on its leniency policy. According to the Secretariat of Economic Law (SDE), the guidelines provide "more clarity and certainty regarding the conditions and requirements for leniency in Brazil".

"We believe that adding transparency to our programme will result in an increase in leniency applications," said Mariana Tavares, Secretary of Economic Law at the SDE. The SDE will endeavour to make sure that criminal sanctions, in addition to administrative fines, will be applied to those that are not willing to cooperate.

Brazil's leniency policy was introduced in 2000 through an amendment to the Competition Act. Leniency applicants may be granted a reduction in or total immunity from administrative fines and criminal sanctions.

Experts opine that the leniency policy is certainly an important tool for the SDE as it may provide evidence in difficult cases, and act as a deterrent to cartelists. Further, certain improvements could make the leniency policy even more effective.

Another source hopes for further amendments to the Competition Act, including the implementation of a marker system, which would allow whistleblowers to file 'second-in' leniency applications.

(GCR, 18.02.08)

Damages in Airlines Price-fixing Saga

The penalties for the growing number of airlines caught participating in conspiracies to fix prices, either in passenger or cargo operations, are rising rapidly.

The settlement by British Airways and Virgin Atlantic of a class action brought in the US, under which the two airlines could pay out about US$200mn represents only one part of the myriad investigations and claims started against airlines round the world in the past three years. Several leading international carriers have admitted guilt and have been fined. British Airways is the airline most heavily penalised to date.

British Airways has admitted participating in two separate conspiracies, one to fix the level of fuel surcharges on long-haul passenger fares in collusion with Virgin Atlantic, and other to fix surcharges on air cargo.

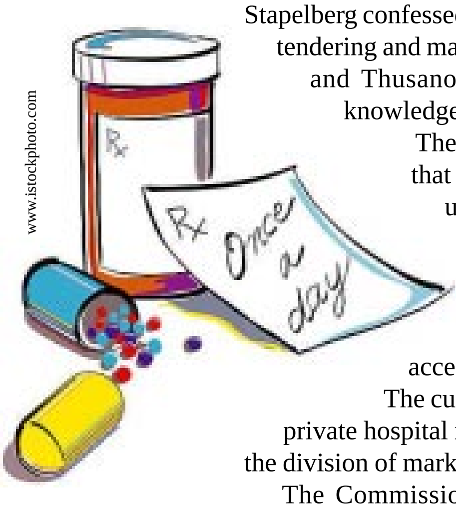
In May 2007, it made a provision of US$692mn to settle eventual fines and claims by competition authorities. It faces government fines relating to the cargo surcharges in the US, Europe, Australia, Canada, New Zealand and South Africa, and in relation to the passenger surcharges in the UK and the US. It also faces civil claims in the US, Canada, and Australia.

In August 2007, British Airways was fined US$300mn by the US Department of Justice (DoJ) when it admitted criminal guilt in both the passenger and cargo conspiracies, and it was also fined a record US$240mn by the UK Office of Fair Trading (OFT) for the passenger conspiracy.

Virgin Atlantic – British Airways co-conspirator in the cartel to fix the prices of fuel surcharges on passenger fares – escaped financial sanction because it reported the wrongdoing early to the US and British authorities. *(BS, 19.02.08)*

Drug Firms Nailed for Collusion

Pharmaceutical firms Adcock Ingram, Dismed Criticare, Thusanong Health, along with Tiger Brands, will be prosecuted by the Competition Tribunal of South Africa for conspiring over seven years to collude in the rigging of government and private hospital supply tenders, carving up the market and inflating prices in the process.



This new price-fixing furor is the latest blow for Tiger Brands, Adcock's parent company, which is still recovering from 2007's bread price-fixing scandal which led to the company paying a Rand99mn (US$129mn) fine.

A fourth pharmaceutical company, Fresenius Kabi South Africa (FKSA), which was also involved in the cartel, has co-operated with the Commission and has been granted immunity from prosecution.

The Commission had started the probe after receiving information from a reliable source. The probe focused only on the large volume of parenterals and irrigation solutions that are used to feed critically injured patients who cannot feed themselves. The accused organisations supplied both the public and private sectors through tender systems.

Thulani Kunene, the manager for enforcement and exemptions at the Commission, said its evidence showed that the companies supplied at least 17 million units a year and had inflated the prices by Rand4 (US$0.51mn) a unit.

In its affidavit, the commission said Wellner and Stapelberg confessed to FKSA's involvement in collusive tendering and market allocation with Adcock, Dismed and Thusanong. Spiers and Kok also admitted knowledge of the cartel activity.

The tenders involved a contract, RT 299 that was issued by the treasury every year until 2003 and thereafter every two years. It invited tenders for the supply of pharmaceutical products, large-volume parenterals, irrigation solutions, administrative sets and accessories to state hospitals.

The customers were all the provinces. In the private hospital market, the alleged conduct involved the division of markets by Adcock and FKSA.

The Commission found that the conduct of these companies was detrimental to consumers, because it resulted in public hospitals paying significantly higher prices for the products that were sold to them.

Evidence showed that the private hospital market sharing arrangement between Adcock and FKSA allowed Adcock an increase of about 10 percent in prices in early 2002 and another 7.25 percent in April 2002.

FKSA and Adcock agreed that FKSA would withdraw from the 3 litre irrigation solutions market and this had enabled Adcock to increase prices for these products by about 33 percent.

The Commission wants the accused companies to be ordered to pay an administrative penalty equal to 10 percent of their annual turnover for the 2007 financial year. Adcock was unbundled from Tiger Brands in 2007.

(BR, 12.02.08)

Turning up the Heat on Pharma

The EC's probe into the pharmaceutical industry, illustrates how regulators are turning up the heat on a sector already suffering from falling productivity, growing competition and public discontent with the rising prices of new – medicines.

Competition lawyers say the inquiry also reflects a new appetite in Brussels for tackling intellectual property issues, driven by its success in cases such as the Microsoft prosecution, its growing experience in the drug industry and parallel moves by US regulators.

European Generic Medicines Association, the trade body, has welcomed the EU probe on condition that it studied issues like "frivolous litigation", by which drug companies seeking to protect patents have succeeded in winning injunctions and authorisation for bailiffs' raids against generic rivals in lower courts across Europe to stall the launch of cheaper medicines.

Another issue of concern was about "ever-greening", by which drug companies win additional patent protection on medicines by filing for minor modifications, such as reformulations to allow a pill to be taken once rather than twice a day.

Nellie Kroes, EU Competition Commissioner, said, "Pharmaceutical markets are not working as well as they might. Patent protection has never been stronger, but the number of patents coming to market has been declining". The EU's probe may not prove entirely comfortable for generic companies.

One practice likely to be scrutinised is when a pharmaceutical company pays a generic rival to drop a legal challenge to patents on its drugs. Another tactic involves signing an exclusive deal with an "authorised" generic manufacturer, and agreeing commercial terms that limit the normal sharp erosion in price of a generic medicine from that of the patented medicine on which it is based.

Nevertheless, the relatively modest discounts that often result in Europe – far less than in the US – are not simply the result of deals between companies. They also reflect national governments' policies on drug reimbursement and protectionism.

(FT, 17.01.08)

South African Competition Commission Cracks Down On Cartels

– Heather Irvine

Shan Ramburuth,
Commissioner, Competition Commission South Africa

In February 2007, the Commission initiated an investigation into price fixing and market division in the bread industry by Pioneer Foods (Sasko and Duens Bakeries), Premier Foods (trading as Blue Ribbon Bakery) and Tiger Brands (Albany Bakeries) after it received telephone complaints from several independent distributors of bread in the Western Cape. The Commission extended its investigation nationwide and also initiated a separate investigation into various practices in the milling industry.

In November 2007, the Tribunal confirmed a settlement agreement in which one of the cartel members, Tiger Brands, agreed to pay an administrative penalty of US$14.1mn, or 5.7 percent of its national turnover for bread operations for 2006 and to implement a compliance programme.

The South African antitrust authorities kept their promise to combat cartel activity in 2007. A number of cases involving price fixing and market division in key sectors of the South African economy were referred by the Competition Commission to the Competition Tribunal for adjudication

The Commission also proceeded with its prosecution of dairy producers Clover, Parmalat, Ladismith Cheese, Woodlands Dairy, Lancewood, Nestle and Milkwood Dairy after its investigations suggested that these firms were involved in fixing the prices of raw and retail milk and in the manipulation of trading conditions in these markets. The Milk Producers' Organisation of South Africa has since lodged a complaint against several major South African supermarket chains, alleging fixing of milk prices and the discounts and promotion fees paid by retailers. This complaint is being investigated by the Commission.

The bread and milk cases indicate that the Commission's Corporate Leniency Policy is starting to yield results. In the milk case, the Commission obtained information from Clover about the co-ordinated removal of surplus milk from the market by Woodlands, Clover and Parmalat (a form of indirect price fixing). The Commission granted Clover immunity from prosecution in terms of the leniency policy. In the bread and milling investigation, the Commission was assisted by Premier Foods (trading as Blue Ribbon Bakery) after it was granted conditional immunity from prosecution.

Although the leniency policy has been in effect since 2004, only 14 applications have been received by the Commission to date. As a result, in 2007 the Commission released a discussion paper setting out proposed amendments to the policy. The proposed amendments are intended to make the policy more user-friendly and effective and include its incorporation into the Competition Act. The discussion paper also suggests the introduction of a 'marker system' to allow leniency applicants to secure a place in the queue on the basis of limited information provided that they submit complete information later, allowing firms which have instigated cartel conduct to qualify for leniency and permitting oral leniency applications.

In August 2007, the Minister of Trade and Industry indicated at a briefing on the Economic, Investment and Employment Cluster's Programme of Action that further amendments to the Competition Act would be presented for consideration by Cabinet in 2008. In particular, there has been speculation that the amendments will introduce criminal liability for directors of companies which participate in cartel conduct. It seems that this proposed amendment might find favour with the Chair of the Competition Tribunal, David Lewis. He commented during the recent Tribunal hearing in the bread investigation that although the South African legislature had cogent reasons for not criminalising individual participation in cartel conduct when the Act was introduced in 1999, it is *"increasingly held in competition law that the only penalty sufficient to deter cartel conduct is prison time… and [that] is a view, quite honestly, that we share."*

The Commission's efforts to expose and penalise firms involved in anti-competitive practices are likely to intensify in 2008. In particular, the Commission has said that it will prioritise investigations into the construction sector ahead of the Soccer World Cup in South Africa in 2010. The Commission will also focus on key industries which impact on the daily lives of South African consumers such as basic foodstuffs, telecommunications and the intermediate goods used in manufacturing like polymers, steel, chemicals and fertilisers. The Commission is also expected to release its report on the banking industry in 2008 end, and this may trigger further investigations in the financial services sector.

These developments highlight the need for companies trading in South Africa to maintain an effective competition law compliance programme which educates employees about the Competition Act and establishes reporting procedures in order to detect possible contraventions and bring them to the attention of in-house legal counsel as soon as possible.

– Director, Deneys Reitz Inc., South Africa. The article appeared in the Mondaq, January 25, 2008.

PRICE FIXING

Europe Fines Rubber Cartel

The EC has fined two synthetic rubber producers €34.2mn (US$54mn) for price-fixing. The Commission found that German pharmaceutical group Bayer and Japan-based chemical company Zeon had colluded to fix the prices of nitrile butadiene rubber, between 2000 and 2002. The product is used in car manufacturing to make fuel and oil handling hoses.

The latest decision represents the fourth cartel fine in the rubber industry since the Commission began investigating the sector in 2003. The fines levied by the Commission's investigations over this period amount to €872mn (US$1,375.2mn).

Both companies received fine reductions for cooperating with the investigation under the Commission's 2002 leniency notice. *(GCR, 24.01.08)*

Watchdog Raids Sharp and Hitachi

Japan's antitrust watchdog raided the offices of Sharp and Hitachi to investigate whether the two colluded to fix prices for display panels used in Nintendo portable game players. The Fair Trade Commission (FTC) was examining whether the companies shared information about bids to supply liquid crystal displays for Nintendo's DS hand-held console to stem a decline in prices.

Sharp and Hitachi are the only makers of the screens. The Commission was likely to take six months to a year to complete its investigation. Falling prices for LCD panels have driven Japanese producers to forge a series of alliances in recent months, shrinking the industry into three main camps.

Sharp and Hitachi belong to ostensibly rival groups. Analysts said competition authorities did not appear to oppose the consolidation as such, which is seen as vital to shoring up industry profit margins as prices continue to fall. *(FT, 29.01.08)*

Visa Europe Under Scanner

Visa Europe, a franchise of the world's biggest credit card network, is under investigation by EU competition authorities over the cross-border fees it sets for transactions.

The probe into Visa Europe will look into interchange fees paid between the banks servicing shops that accept credit and debit cards, and those that service cardholders. Neelie Kroes, EU Competition Commissioner said that such fees act as a tax on consumption for all shoppers and has ordered MasterCard to change its method for setting the charges.

The British Retail Consortium said the fees were much higher than the costs card companies incurred in processing transactions and that there was no transparency over how they were calculated. If Visa Europe were found guilty of using restrictive business practices, it could face similar potential penalties to Mastercard.

(FT, 26.03.08)

Collusion in Bread Industry

South Africa's Competition Commission has received fresh allegations of further collusion among market leaders in the country's bread industry. The new allegations, coupled with sudden, near-simultaneous price hikes among the country's largest bread producers, undermined the watchdog's continuing probe into the bread and milling industries.

www.bafana-republic.blogspot.com

Four companies-Tiger Brands, Premier Food, Pioneer Foods and Foodcorp-were charged with cartel activity in February 2007. Premier Foods applied and received conditional immunity soon after.

Tiger Brands then launched its own investigation and began cooperating with the Commission, leading to a November 2007 settlement agreement. The company received immunity for its role in the milling cartel, but was fined Rand 99mn (US$129mn), or 5.7 percent of its 2006 turnover, for its bread operations.

According to the published reports, Tiger Brands raised the price of a loaf of Albany brand bread by 40 cents. While the other implicated companies have yet to raise their prices, they are expected to follow suit. Tiger Brands cited higher wheat prices as the reason for the price hike. Experts opined that that wheat prices have spiked, but the bread price increases come on top of already artificially inflated prices. *(GCR, 21.01.08)*

FINES & PENALTIES

Korea Fines Motorola

The KFTC has fined Motorola Korea KRW696mn (US$729,000) for helping three companies collude to get orders from government agencies. The three companies, Linos, Signal Information Communication and Hoe-myeong, work as sales agents for Motorola's trunked radio system, which is used by Korea's police service.

Trunked radio is used to maximise capacity in a two-way radio system. The companies were fined KRW282mn (US$295,000) for coordinating their bids for contracts to supply mobile telecommunications devices to security agencies.

Experts opine that the Commission's imposition of fines on Motorola is an interesting one in that the commission imposed fines not only on the companies directly involved in the cartel, but also on the company that made them collude. *(GCR, 11.03.08)*

Lawsuit Against Mitsubishi

Mitsubishi Electric Corp is facing a class action lawsuit in Israel, after being fined in Europe for operating a cartel in the market for electrical network equipment. Mitsubishi and 12 other companies are accused of price-fixing in the market for gas-insulated switchgears, which are used to regulate the flow of electricity in grids and power sub-stations.

In 2007, DG Comp levied a record €751mn (US$1,184.6mn) fine against the defendants, claiming that the cartel had "cheated public utility companies and consumers for more than 16 years". Israeli consumers have now filed an application to recognise a class action against the Israel Electric Company and all defendants in the Commission's decision. The plaintiffs claim that electricity prices were raised by 20 per cent as a result of the companies' anti-competitive behaviour. *(GCR, 13.03.08)*

Cipla To Sell Tarceva

The Delhi High Court has allowed Indian firm Cipla to manufacture and sell a copycat version of the patented drug, Tarceva, in India. The patent holder, Swiss pharma major Hoffmann La Roche, had earlier filed for a temporary injunction to block Cipla from launching the anti-cancer drug erlotinib. Cipla sells a generic version of the lung cancer drug at one-third the price of Roche's patented drug.

Delivering the verdict, Justice S Ravindra Bhatt directed Cipla to keep account of sales for deciding damages if Roche wins the case. Noticing the price differences, Justice Bhatt said Indian cancer patients would be affected if the generic drug is withdrawn from the market.

Treatment with Roche's Tarceva reportedly costs over Rs 1 lakh a month. The once-a-day tablet costs about Rs 4,800, while Cipla's copycat version costs Rs 1,600. In January 2008, Roche filed a patent infringement suit against Cipla in the high court, following Cipla's launch of the generic version of Tarceva. *(FE, 19.03.08)*

CARTELS

Slovakia Fines GIS Cartel

Slovakia's Anti-monopoly Office has fined 16 companies from seven countries a total of SKK 350mn (US$18mn), in the first ever application of the office's leniency programme.

The fines, imposed on January 18, 2008 range from SKK10mn (US$0.50mn) to SKK50mn (US$2.53mn), and are a response to an illegal agreement between suppliers of gas-insulated switchgear that lasted from 1988 to 2004. ABB, a Swiss producer of the gear, escaped a fine after cooperating with the office under the terms of its leniency programme.

Switchgear is used to protect and isolate electrical equipment in power grids. According to officials, the case is important because this is the first time that the leniency programme has really been applied in practice. The decision follows a similar ruling by DG Comp on January 24, 2007 in which fines of over US$1,182.73mn were imposed. The cartel operated on a global scale, fixing bidding prices and coordinating bids according to quotas. *(GCR, 21.01.08)*

Egypt Prosecutes Cement Cartel

Egypt's Attorney General has ordered 20 cement company officials to appear at the criminal court in Nasr City on cartel charges. The decision was taken January 21, 2008 after an investigation into the companies by Egypt's Competition Commission found evidence of price-fixing and colluding to restrict the marketing of certain products.

According to sources, the penalties may be between a minimum of 30,000 and maximum of Egyptian pound ECP10mn (US$1.867mn), and that there can be no custodial sentence.

In November 2007, the Egyptian Trade and Industry Minister Rachid Mohamed Rachid announced plans to amend the country's antitrust law. He said current fines and sanctions were not high enough, and that the country's existing antitrust rules, established in 2005, had become redundant. *(GCR, 22.01.08)*

ABUSE OF DOMINANCE

EU Penalises Microsoft

The EC regulators penalised the Microsoft Corporation with a fine of US$1.35bn for failing to comply with a 2004 antitrust order. Microsoft was the first company in 50 years of EU competition policy that the Commission has had to fine for failure to comply with an antitrust decision.

The latest fine brings the total penalties against Microsoft to US$2.64mn. The company was previously fined US$1,227mn for abusing its dominance in the software market and failing to abide by the antitrust decision.

EC imposed the fine because Microsoft failed to charge "reasonable" royalty fees for patent licenses on operating system software. A European court upheld the Commission's ruling against Microsoft in September 2007, meaning the company was not in compliance for three years. *(ET, 28.02.08)*

Demand for Cut in Cartel Fines

Companies are demanding cuts of at least one-fifth in Europe's mounting cartel fines in return for admitting anti-competitive behaviour and reaching swift settlements with the EC, the region's top competition watchdog.

In submissions just made public, industry bodies from France, Germany, the UK and the US have warned Brussels that reductions will have to be "substantial" and guaranteed if it wants companies to reach voluntary deals. The American Chamber of Commerce said that fine reductions "would need to be in the range of at least 20-30 percent if the process is to prove attractive to companies".

The Brussels regulator put forward a draft package which, for the first time, would allow companies to settle allegations of price-fixing if they agreed to admit liability and follow simplified procedures. This would benefit the Commission, which is facing a heavy antitrust workload, by freeing up resources.

Companies, meanwhile, would be able to put cartel offences behind them, and avoid being embroiled in an increasingly tough competition regime. In 2007, Brussels raised more than US$4.8bn in cartel fines.

(FT, 24.01.08)

Conditions of Hypermarket Merger Preserve Choice of Retailer

– J J Vieira Peres and Alberto Saavedra

Market Definition

In defining the relevant market, the authority followed the EC guidelines and made the necessary adjustments to account for specific features of the Portuguese economy.

After distinguishing between traditional specialised stores and whole-range retail chains (ie, hypermarkets, supermarkets and discount stores), the authority debated whether a narrower market definition would be more appropriate, given that all of the acquired assets were hypermarkets. The authority's preference for defining relevant markets from a demand perspective meant that attention focused on the characteristics that affect demand behaviour, namely:

- the outlet features that drive consumers' decisions on where to shop;
- households' capacity to switch from hypermarkets to supermarkets or discount stores; and
- the capacity of the three formats to meet different household needs (termed 'shopping missions').

Sonae submitted economic evidence and studies to support the view that hypermarkets, supermarkets and discount stores belong to the same product market, notwithstanding certain differences in the range and nature of products supplied by hypermarkets and discount stores. Econometric analysis has shown that firms which carry out retail activity in any of the three distribution formats are competing with each other.

Sonae also demonstrated that a broader market definition was consistent with the views of the EC and other national competition authorities. The authority accepted Sonae´s arguments and defined the relevant product market as the market for daily consumer goods, including hypermarkets, supermarkets and discounters.

On the question of geographic scope, the authority considered that elements of competition exist at national and local levels in the industry. The local scope of the market was defined by large catchment areas within a radius of 30 minutes' travelling time because the transaction mainly involved the acquisition of hypermarkets, which have a high capacity for attracting consumers.


www.images.com

On December 27, 2007 the Competition Authority approved the acquisition of Carrefour Portugal SA by Sonae Distribuição SGPS SA. The acquisition was subject to certain conditions and remedies. The transaction involved the acquisition of 12 Carrefour hypermarkets, 13 licences to open new hypermarkets and eight petrol stations. The transaction involved 16 local retail markets for consumer goods

Furthermore, as the overlapping catchment areas of Carrefour's hypermarket outlets created a chain of substitution, the geographic scope of some of the relevant markets was enlarged in order to group together several local markets.

Remedies

The authority focused on an analysis of six local markets for food retail in which it considered that there was a risk of a dominant position being created or reinforced, resulting in a significant impediment to competition.

In order to address the authority's objections to the proposed transaction, Sonae must:

- sell two previously owned supermarkets (or two Carrefour hypermarkets), as well as one of Carrefour's licences to open a new hypermarket;
- not exceed 50,000 square metres of food-retailing space in one of the relevant markets within three years of the acquisition being authorised;
- not acquire licences to open new retail outlets in some of the analyzed markets for a year after the authority's decision; and
- reduce the food-retailing area of its controlled outlets in several local markets or convert food-retailing areas into non-food retailing outlets (and not reconvert them).

Comment

This is the first time that the authority has imposed structural remedies following a first-phase investigation, which shows its increasing efficiency in dealing with strict timetables when analysing complex cases. The assessment was a challenging procedure in which economic studies were thoroughly discussed and third parties, such as competitors and suppliers, intervened.

The transaction, notified on August 2007, was decided after five months of extensive analysis – an excellent achievement for the authority in terms of the concentration's procedural duration.

The structural and behavioural remedies ultimately imposed as conditions of clearance are designed to ensure that: (i) local dominant positions are not created; and (ii) consumers retain their capacity to choose not only between different retailers, but also between different formats of grocery retailing (i.e. discount stores, supermarkets and hypermarkets).

– The authors work with Morais Leitão Galvão Teles Soares da Silva & Associados. The article appeared in the Mondaq, February 14, 2008.

Delta & Northwest to Merge

Delta Air Lines and Northwest Airlines have agreed to merge, creating the world's largest airline in a deal that's expected to face intense scrutiny before it eventually clears. The deal granted the two airlines tentative antitrust immunity to combining operations and pricing on transatlantic flights between the US and EU member states, along with Air France/KLM, and other members of the SkyTeam alliance.

But the merger will still be subject to antitrust scrutiny, as the airlines compete on several domestic routes. In a joint statement, the airlines said that the Delta-Northwest combination will be pro-competitive.

Adding that there is little overlap in the non-stop routes the two airlines serve, with direct competitive service on only 12 of more than 1,000 non-stop city pair routes currently flown by both airlines. Delta is strongest in the South Eastern domestic routes, as well as New York and on transatlantic flights.

(FT, 06.02.08)

Merging Shipping Operations

Temasek, the sovereign wealth fund, and Germany's Tui are in talks to merge their shipping operations in a deal that could see the Singaporean group take a stake of more than 20 percent in the Hanover-based travel group.

A merger of Tui's Hapag-Lloyd unit and Neptune Orient Lines, 68 percent owned by Temasek, would create a global force in container shipping to rival the likes of Denmark's Maersk Line.

Given current valuations, Singapore could end up with an estimated 23 percent of the enlarged group. Combining Hapag-Lloyd and NOL would bring together the US and African routes of the German group with the Asian routes of its Singaporean rival. *(FT, 05.02.08)*

Mobile Clash in Argentina

Argentine mobile phone operator CTI Móvil has filed an injunction with the country's National Commission for the Defence of Competition in protest over Telefónica's purchase of a controlling stake in Telecom Italia.

The deal, if goes ahead, will affect the position of the other companies operating in Argentina, and will give Spain's Telefónica a monopoly in the local telecommunications market. The Government is currently studying the impact of the operation on the local market.

Telefónica is the largest telecoms operator in Argentina, and the acquisition of Telecom Italia would give it a 50 percent stake in Telecom Argentina, the second-largest player in the market. *(GCR, 19.03.08)*

Russia Clears Gazprom Joint Venture

Russia's Federal Anti-monopoly Service has approved a joint venture between natural gas supplier Gazprom and coal and power company SUEK. The federal body believes that the deal will bring a lot of positive things as such it would now ask Gazprom and SUEK to sell some assets to ensure balanced competition on every regional market.

Market analysts opine that the tie-up will reduce competition in the markets for coal, gas and energy. Further, the deal would strengthen

Gazprom's position on the energy market by adding to its gas and oil assets. Gazprom is likely to re-equip part of its power plants, use coal instead of gas, and chose SUEK as its main coal supplier. This would enable Gazprom to gain more profit by selling more gas abroad as the gas price on the domestic market is lower. According to sources, that the venture is likely to monopolise the power sector, undermining reforms began in 2003 to liberalise the market. *(GCR, 03.03.08)*

D Telekom to Take OTE Stake

Deutsche Telekom hopes to secure management control of Hellenic Telecom after announcing plans to buy a near-20 percent stake in Greece's leading telecoms company for about US$3.9bn.

Deutsche Telekom had reached agreement to buy the 19.99 percent stake in Hellenic, also known as OTE, from Marfin Investment group, a private equity group, at US$41mn a share. However, the German telecoms group's deal with Marfin is conditional on an agreement with the Greek Government that enables Deutsche Telekom to secure management control of OTE.

Deutsche Telekom's Greek plans should be the second significant cross-border European telecoms deal in less than a year. In October 2007, Spain's Telefónica joined a consortium led by Italian financial institutions that bought a controlling stake in Telecom Italia, Italy's leading telecoms company. *(FT, 18.03.08)*

World M&A Activity to Plateau in 2008

Global M&A activity will likely to plateau in 2008 as deals in emerging markets help offset a decline in transactions in Europe and North America. Global forward price/earnings ratios have slipped from 17.1 times to 17 times, declining in Europe and the US but rising in the Asia Pacific region.

Despite a second-half slowdown, overall 2007 was the second consecutive record year for M&A as consolidation in the financial services and natural resources sectors and a flurry of private equity deals boosted volumes. Forward price/earnings in Europe declined to 15.5 times from 16.2 times and slipped to 17.4 times from 17.9 times in North America.

In the Asia Pacific region, they rose to 19 times from 17 times, KPMG's data found. Asia Pacific, along with Africa and the Middle East also showed the strongest balance sheets.

Globally, the ratio for net debt to earnings before interest, tax, depreciation and amortisation stood at 0.81 times. Basic materials, telecoms and industrials are likely to see the most merger and acquisition activity in the world as price/earnings ratios for the sectors all rose, KPMG said. It saw the weakest industries on this basis as consumers' services and healthcare. *(HT, 21.01.08)*

Greater M&As in 2008

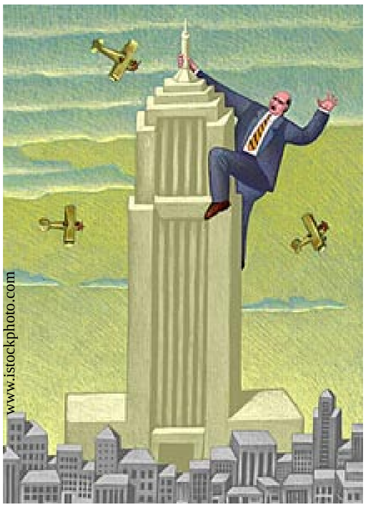
Despite the global slowdown and the fears which lurk among the global business community, CEOs across the world feel that 2008 will see greater M&A activity.

A high 63 percent of Indian CEOs, however, see conflicting regulatory requirements as a major hurdle for M&As, unlike their global counterparts. The Pricewaterhouse Coopers 11th Annual Global CEO Survey showed 24 percent of the CEOs saying their companies had completed at least one cross-border merger or acquisition with the past 12 months.

Among Indian CEOs, this figure was 23 percent. This apart, 31 percent of the global CEOs said they planned to do something within the next 12 months too (27 percent of Indian CEOs). CEOs in Western Europe were most likely to have participated in cross-border M&A. *(FE, 23.01.08)*

Monopoly Fears on British Energy Takeover

Energy companies expressed concern about the prospect of a takeover of British Energy, fearing it could lead to one company having a monopoly over the best UK sites for new nuclear reactors.



UBS had contacted energy companies to gauge interest in buying the UK Government's 35.2 percent stake in British Energy, and was in talks with "interested parties". It said these discussions were in the context of British Energy's "future and its plans to take a pivotal role in any new nuclear programme" and "could lead to a business combination or an offer for the company".

British Energy has been in talks with a number of energy companies since 2007 about potentially forming joint ventures to build new nuclear reactors in the UK. The company owns eight of the UK's 10 functioning nuclear reactors.

The UK Department for Business, Enterprise and Regulatory Reform said: "The Government is monitoring developments closely and will consider its position in relation to any proposal in the public interest, having regard to its objectives in relation to energy policy and its obligations to the taxpayer. *(FT, 18.02.08)*

Reviewing Merger

International Iron and Steel Institute (IISI), the apex body of global steel producers has opposed the proposed merger between major iron ore suppliers: BHP Billiton and Rio Tinto, and called on relevant competition authorities to review the alliance.

IISI said the proposed merger will raise steel prices and would be against public interest. BHP Billiton together with Rio Tinto would similarly control Australian iron ore exports. All Australian iron ore exports go to Japan, China and other Asian countries. So, Australia was the main source of ore for these countries.

Allowing BHP Billiton and Rio Tinto to merge would create a virtual monopoly on Australian ore exports to match that of Brazil's mining giant Companhia Vale do Rio Doce (CVRD) and almost 80 percent of world seaborne iron ore exports would then be controlled by these two suppliers. *(BL, 14.02.08)*

Russia Unwinds Engineering Merger

On January 30, 2008 Aker Kvaerner withdrew an appeal against a decision by Russia's Federal Antimonopoly Service. The Russian regulator has ordered the Norwegian company to reverse its acquisition of a Russian manufacturer. The service said that the two companies must unwind their merger.

The Authority rejected the deal in October 2007, after an investigation into the Russian sector of the Caspian Sea found that Astrakhansky Korabel had a dominant position there, holding over half of the market share for technical devices used to produce oil and gas.

Experts opine that the authority does not reverse deals regularly. There is no political interest in this case at all – the merger was blocked purely on grounds of prohibiting concentration in the market, which shows the authority is working as it should be. *(GCR, 05.02.08)*

Yahoo Rejects Microsoft's Offer

Yahoo! Inc., owner of the second most used Internet search engine, rejected a US$44.6bn takeover offer from Microsoft Corp. as too low, pressuring the world's largest software maker to raise its bid.

After a 10-day review, the board decided the US$31-per-share offer "substantially undervalues'' the company, Sunnyvale, California-based Yahoo said. Yahoo did not said what price it would accept. Early in February 2008, Microsoft has launched a US$44bn takeover of Yahoo in a bid to boost its capabilities in online advertising and search engines. *(ET, 12.02.08)*

Regulators to Scrutinise Break-up

A deal to break up Iberdrola involving EDF would make the French group the biggest retail electricity supplier and second-biggest generator in the UK. Such a bid would be subject to a decision by the EC, which would be likely to focus on its effects on Spain and the UK.

In Spain, a break-up of Iberdrola, one of the two biggest electricity generators, might actually increase competition. In the UK, remedies could probably be found to allow the deal to go ahead. But EDF might be forced to dispose of assets, and the deal would be likely to kick up a political furore.

EDF is said to be keen to hang on to Scottish Power, the UK business that Iberdrola acquired in 2007, which would be added to its own UK subsidiary, EDF Energy. That would turn the UK's "big six" energy suppliers into the big five and give EDF about 14 percent of the country's generating capacity. *(FT, 31.01.08)*

Promises of Greater Disclosure

Singapore's Government Investment Corporation (GIC) has promised greater disclosure about its activities, amid mounting concerns about the secretive fund's influence after high-profile investments in UBS and Citigroup.

Tony Tan, Deputy Chairman of GIC said the fund planned to become more transparent as part of a broader effort by sovereign wealth funds to agree a set of common standards. The greatest danger if this is not addressed directly, then some form of financial protectionism will arise and barriers will be raised to hinder the flow of funds.

GIC manages more than US$100bn but is estimated by analysts to oversee three times that amount, has come under intense scrutiny after injecting US$16bn in UBS and Citigroup.

The investments, a departure from GIC's low-key approach, have prompted politicians to question the fund's influence, while some UBS shareholders have complained the investment dilutes existing investors.

(FT, 27.02.08)

Survey Uncovers Discrepancies

A survey released by the Boston College Centre for Corporate Citizenship (BCCCC) and The Hitachi Foundation shows Chief Executive Officers (CEOs) and other executives support responsible corporate citizenship, at least in principle. The third biennial 2007 State of Corporate Citizenship in the US, "Time to get real: Closing the Gap Between Rhetoric and Reality", studies what CEOs and other business executives say they believe about the importance of corporate citizenship and what policies are actually in place at their businesses.

The BCCCC describes corporate citizenship as the commitment of companies to minimise risks, maximise benefits, and be accountable and responsive to stakeholders, while supporting strong financial results.

Although 73 percent of the 751 top executives surveyed said that corporate citizenship needs to be a priority for businesses, only 39 percent of the businesses include corporate citizenship as part of their business planning. An even smaller percentage of these businesses actually have written corporate citizenship policies or statements.

US companies are behind European and Japanese companies in creating corporate citizenship policies, the report concludes. This could have dire consequences for US companies that have not taken action incorporating social and environmental issues into their businesses.

(SocialFunds.com, 29.01.08)

US$100bn Out of Equity Funds

Investors worldwide pulled close to US$100bn out of equity funds in the first three months of 2008. Equity funds suffered outflows of US$98bn in the quarter ending March 28, 2008.

The funds had inflows of US$19bn during the same period in 2007 and inflows of US$49bn in the same period for 2006. Emerging Portfolio Fund Research (EPFR) said the outflows were because "the credit squeeze linked to the US subprime debt mess weighed on investor confidence and global growth".

The outflows also accelerate a trend for investors to put their money either in ultra-safe cash options such as money market funds, or into riskier markets and high-fee products such as hedge funds.

Funds enjoying inflows were nearly all focused on Taiwan, Russia, the Middle East and Africa. Emerging markets funds as a group had outflows of US$20bn, compared with a small outflow of US$1.6bn in the same period last year.

(FT, 31.03.08)

Settling Misreporting Scandal

Royal Dutch Shell tried to draw a line under one of the darkest chapters in its corporate history by settling the final class-action claim arising from an oil reserves misreporting scandal in 2004.

The Anglo-Dutch oil group shocked investors four years ago when it announced it had overstated its proven oil and gas reserves. The scandal sent shares in Shell plummeting and eventually led to the departure of its three most senior executives, including Sir Philip Watts, the then chairman.

Under the terms of the deal, a group of US shareholders, which bought shares in the company in a period before the reserves restatement, would receive a total of US$89.5m. The deal is subject to the approval of the US District Court for the District of New Jersey.

The offer follows a previously announced proposed settlement reached on behalf of non-US claimants who purchased shares in Shell on stock exchanges outside the US between April 08, 1999 and March 18, 2004.

(FT, 06.03.08)

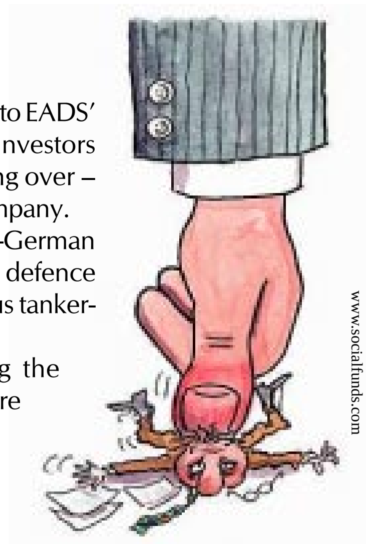
Bid to Restrict Foreign Ownership

France and Germany are finalising changes to EADS' corporate by-laws to prevent foreign investors building significant stakes in – or even taking over – Europe's flagship aerospace and defence company.

The move comes at a time for the Franco-German group, which secured a entry into the US defence market with a US$35bn contract for its Airbus tanker-aircraft.

Some US politicians have said giving the contract to a foreign company could have dire security implications – a frenzy that could mount if EADS' Russian or Middle Eastern shareholders were to increase their holdings.

(FT, 07.03.08)



FDI Hits Record In spite of Turmoil

Worldwide foreign direct investment (FDI) surged to a record US$1,500bn in 2007, surpassing the previous peak of US$1,400bn in 2000. The United Nations Conference on Trade and Development (UNCTAD) said that financial turmoil in the second half of 2007 had not hit overall FDI flows, although the outlook for 2008 was more uncertain.

Dollar weakness may have encouraged inward investment to the US, the largest recipient attracting an estimated US$193bn in FDI, as companies and other investors with funds in appreciating currencies snapped up cheap American assets.

Rich and poor countries saw strong growth in FDI in 2007, with two-thirds going to industrialised nations and the rest to developing and "transition" countries, such as Russia. Foreign investment in Russia, propelled by its booming energy sector, jumped 70 percent in 2007 to nearly US$50bn.

UNCTAD said the growth in FDI reflected a strong economic performance in many parts of the world. *(FT, 09.01.08)*

France to Privatise Freight Handling

The French Government vowed to privatise freight handling services at nine of France's biggest ports in an attempt to triple container traffic by 2015. François Fillon,

Prime Minister, said the reform was needed to improve the lack of competitiveness of France's port facilities stemming from the inability of freight handling companies to run their own dockside operations. The changes will bring France's ports closer to the model in other parts of continental Europe, where publicly owned port authorities own port land and rent it out to privately owned terminal operators, who employ their own staff.

According to analysts the resulting inefficiency has lost French ports cargo, with significant amounts of cargo for northern France heading via ports, such as Zeebrugge and Antwerp in Belgium, and Rotterdam in the Netherlands. *(FT, 16.01.08)*

India Leads in FDI in South Asia

India has emerged as the leading host country for FDI across the South Asia region, with an investment of nearly US$19.4bn in fiscal 2006, or about 79.9 percent of total regional FDI.

According to the Asian Development Bank's (ADB) South Asia Economic Report, India's dominance is largely due to the size of its economy, the largest in the region. India's policy reforms geared toward liberalisation had also played an important role.

FDI inflows in 2006 alone reached a high of US$24.3bn, a 132.9 percent increase from 2005 – the highest FDI growth rate in the region. Other countries in the region that also fared well in attracting more FDI in fiscal 2006 were Pakistan and Sri Lanka, with FDI growth of 136.5 and 92.7 percent, respectively, whereas Nepal suffered net FDI outflows.

(iGovernment.in, 29.02.08)

Garuda Stake Sale on Cards

Indonesia intends to sell up to 40 percent of debt-laden flag-carrier Garuda Indonesia in 2007, if Parliament approves and market conditions are favourable. Said Didu, Senior Official in the state-owned enterprises (SoEs) ministry, said the Government's privatisation committee had recommended the sale after the airline's return to operating profitability and its debt restructuring.

The announcement comes three days after the government said it was indefinitely suspending plans to partially privatise 44 state-owned companies because of market turbulence. The Government was hoping to raise US$150m from the sales to help plug a predicted 2.1 percent budget deficit. *(FT, 28.03.08)*

Easing FDI Norms

The Government would open up more sectors to FDI through the automatic route in an effort to make the procedure for inbound foreign investment less cumbersome. Currently, all FDI investments above Rs 600 crore have to be sent for vetting and clearance by the Cabinet Committee on Economic Affairs.

The Government's wants to make investment in India easier and while the Foreign Investment Promotion Board (FIPB) is mandated with this task. Accordingly, the Department of Industrial Policy and Promotion, the nodal body responsible for policy-making on FDI, is considering these proposals and will prepare a Cabinet note.

Current policy stipulates that no scrutiny of FDI proposals, either by the Government or the Reserve Bank of India (RBI) is required in sectors covered by the automatic route.

(BS, 04.03.08)

Exxon Wins Venezuelan Assets

ExxonMobil has won a court order freezing US$12bn in worldwide assets of Venezuela's state oil firm as part of its battle for compensation over Caracas's nationalisation of key oil fields. The US energy giant said that the High Court in London had granted its request to freeze the assets of Petroleos de Venezuela (PVDSA).

ExxonMobil has requested international arbitration as it seeks compensation from Venezuela after it pulled out of the country when the Orinoco fields were nationalised. In June 2007, the Government passed a law forcing multinationals to give at least 60 percent of the capital in their Venezuelan operations to the PDVSA.

ExxonMobil and Conoco Phillips both refused and withdrew from Venezuela, one of the world's top 10 oil producers and a major supplier to the United States, its biggest customer.

(BL, 08.02.08)

ACCC to Boost Petrol Competition

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Australia's Competition and Consumer Commission (ACCC) is seeking an independent supplier to increase competition in the company's petrol market. Shell, BP, Mobil and Caltex currently control 98 percent of the Australian oil refining market.

The decision follows an ACCC investigation into petrol prices, which concluded that "while the industry is fundamentally competitive ...the major refiners have established a comfortable oligopoly".

According to sources, the move is "politically expedient", but may not have any positive effects on competition. *(GCR, 01.02.08)*

EU to Open Mail Markets

The demise of national postal monopolies across Europe moved a step closer when the European Parliament approved a new postal directive, giving final political approval to the long-sought reform of these markets.

The European mail markets, said to be worth about US$135bn will be opened up to competition from the start of 2011 at the latest. Member states that have opened their markets, however, will be able to refuse authorisation to operators still protected by a national monopoly in other member states.

(FT, 01.02.08)

Italy Breaching EU Law

The European Court of Justice found that Italy's broadcasting system was in breach of EU law in its allocation of television frequencies. It said the system stifled competition by favouring existing broadcasters.

Europe's highest court was ruling in the case of Europa 7, a private broadcaster that won rights to a licence in 1999 but could not obtain frequencies that were already allocated to incumbents. The court found that Italy's system "does not comply with the principle of freedom to provide services and does not meet objective, transparent, non-discriminatory and proportionate selection criteria".

(FT, 01.02.08)

Eon's Break-up Under Pressure

Eon, Germany's largest electricity and gas group, agreed to break itself up under pressure from the EC's competition authorities, in an unexpected boost for Brussels' drive to liberalise energy markets.

Eon is offering to sell its electricity grid and end its current business model of combining power generation and transmission. It is planning to sell about 20 percent of its power plant capacity in Germany.

Germany and France had hoped their opposition would be sufficient to kill the Commission's plans to "unbundle", or break up integrated groups. EDF of France, and RWE and EnBW of Germany said they would continue to oppose plans to force them to sell their grid activities.

The Commission said that these proposals would structurally change the electricity sector in Germany and could spur competition in the sector to the benefit of domestic and industrial customers. *(FT, 29.02.08)*

Cheaper Mobile Bill

Millions of Europeans who use their mobile phones for e-mail and web surfing on holiday are set to enjoy much cheaper bills. Mobile phone operators are braced for a new attack on their revenue after Ofcom, the UK telecoms regulator, urged them to reduce their roaming prices inside the EU for wireless data services or face legislation forcing them to do so.

The move comes after an EU law forced the operators to make cuts in the prices of phone calls made abroad. Ed Richards, Ofcom's chief executive, expressed concern that operators' current data roaming prices hurt business competitiveness as well as mobile consumers.

In 2007, Viviane Reding, EU telecoms commissioner, infuriated the mobile industry by drafting the law that required cuts in operators' prices for voice calls abroad. Operators have been hoping that data services such as e-mail and web surfing will provide them with significant new sources of revenue. *(FT, 30.01.08)*

Israel to Improve Airline Competition

Israel's Antitrust Authority published a draft proposal which would allow it to enforce competition in the country's aviation industry. The draft follows a lengthy evaluation of the sector by the authority, and proposes a block exemption on restrictive arrangements between airlines.

The draft is currently subject to a 60-day public consultation period and, if approved, is expected to reduce prices, facilitate international trade, encourage tourism and contribute to economic growth in the Israeli aviation sector.

If the latest amendments are approved, the authority will have the power to enforce provisions of the antitrust law on agreements, including code-sharing agreements – a system by which airlines agree to use the same designator, or flight number, in order to attract more business by extending their networks through partner carriers – between airlines that fly to and from Israel, and evaluate their effect on competition. *(GCR, 17.03.08)*

Barriers to New Entrants

Tanzania's Competition Commission is reviewing a regulator's report alleging that the country's oil storage market practices could "constitute a barrier, especially to new entrants.

The report, conducted by the country's Energy and Water Utilities Regulatory Authority (Ewura), alleges that the 10 oil firms that own storage facilities in Dar es Salaam harbour may be overcharging smaller producers for storage and services, effectively squeezing them out of the market.

The report was partially based on a previous Competition Commission inquiry into the market, published in 2003, in which local oil marketing companies complained that the 10 dominant oil storage companies charged "unreasonably high hospitality charges" to store oil in their facilities. *(GCR, 07.01.08)*

Oligopoly-type Situation in Food Industry

– Sue Branford

A couple of years ago I visited a small cooperative in the south of Brazil which was rearing chickens for Sadia, Brazil's largest poultry producer. Pointing to the tens of thousands of chicks crowded together in a battery, one of the co-op members, Oney Zamarchi, said they reared the chickens just as the company decreed, even poking the chicks day and night to keep them awake and eating all the time. When the chickens reached 45 days old, they were big enough to be slaughtered – some were so fat they could not stand – and were sent to the slaughterhouse. A colleague visiting a poultry farm in Thailand a few months later described an identical process. But how could this synonymous operation be happening in different parts of the world?

The answer lies in the fact that a handful of poultry breeders now control the chicken industry. They have been instrumental in the creation of a few types of chicken that have the characteristics that global supermarkets require. The breeders supply tens of thousands of poultry companies throughout the world with the genetic material, the DNA, of the animals. One German company, Erich Wesjohann Grupp, supplies the genetic stock for an estimated 68 percent of all the world's white-egg layer hens, and a Dutch company (Hendrix Genetics) provides a similar proportion of the stock for brown-egg layer hens. Poultry companies then furnish this material to "multipliers", who produce tens of thousands of chicks.

This technological revolution in poultry farming has occurred at a time of other far-reaching changes. New intensive methods of agriculture have made it possible for farmers to produce massive soya and maize harvests. This, in turn, has allowed the production of millions of tonnes of concentrated chicken feed, which is needed to rear poultry in confined spaces.

Taken together, these changes have meant that the poultry companies can provide supermarkets throughout the world with huge quantities of cheap chicken. And lower prices and intensive advertising campaigns mean people are eating far more of it.

Developing countries have become the leading worldwide suppliers of this cheap chicken because land and labour cost less. Brazil is the world's leading exporter – the industry, which is still growing, already employs some 4 million people. As the agricultural frontier marches north into the Amazon basin, the poultry industry – with its feed production plants, hatcheries, slaughterhouses and processing plants – is following in its wake.

A handful of companies now dominate world farming

These changes are not only confined to the poultry industry, however. Cattle and pig rearing are also experiencing rapid change - although on a smaller scale. A rapid process of concentration has occurred, with the breeders becoming integrated with the meat processors, creating agro-industial giants.

Gene technology

Agro-giants have realised that the same principles of gene technology can be applied across a broad spectrum of farming, both livestock and arable. So a new form of horizontal concentration is under way. After a series of takeovers, a new gene giant, headed by the UK's Genus plc, has brought together the largest breeding companies in the cattle, pig and aquaculture sectors.

Monsanto, the US company that dominates the genetic modification of seeds, has moved into swine genetics. Within a few years, a tiny group of huge companies will almost certainly control the genetics of all commercial farming, from Argentina's soya plantations to Thailand's poultry farms and Canada's wheat prairies.

Other more significant processes are gaining momentum. The agro-giants that have emerged are confident that, despite current consumer resistance, gene technology will dominate global livestock farming in the near future. A transgenic salmon that takes half the normal time to grow will probably be launched on the US market in 2009.

Does this matter to us, the consumers? Yes, because some of the consequences are serious and unplanned. Local animal breeds throughout the world, which are of no interest to the big companies. Many of these animals are resistant to disease and able to survive on little food and water, characteristics that will be needed as the world moves into an era of unprecedented climatic change.

Disease

Genetic breeds are less hardy and the genetic uniformity of industrial livestock creates the perfect breeding ground for the evolution of highly pathogenic strains of disease. Outbreaks of porcine reproductive and respiratory syndrome in pigs is already occurring, for example, as well as avian flu..

What is particularly scary is the likelihood that one of these diseases will mutate into a deadly human disease. The authorities should be insisting on wholesale changes in the way that industrial farming is organised but, instead, they are taking measures that deepen the structural problems.

– Co-editor of Seedling and manages GRAIN's Publications. The article appeared in The Hindu, February 08, 2008.

Telecoms Liberalisation a Model for Services

– Jonathan Lynn

When talks to open up the telecoms sectors started in 1994, the EU's negotiator did not know what an e-mail was, mobile phones and the Internet were in their infancy, and it was very expensive to call abroad.

But in the 10 years since the Basic Telecommunications Agreement (BTA) came into force in 1998, the sector has seen dramatic and unimagined growth. Billions of people in rich and poor countries are now connected by mobile phone, new companies and jobs have arisen, and new industries and services are opening up on the back of telecoms, from outsourcing to social networking.

By the end of 2006, mobile phone subscribers had increased 20-fold, and now represent 70 percent of all phone subscribers. Mobile growth rates are particularly strong in developing countries, running at over 50 percent a year in Africa, the World Trade Organisation (WTO) said. Trade officials and industry officials say the telecoms deal – which succeeded because trade negotiators and industry regulators worked together – can serve as a model for opening up other services.

One study of six emerging markets by consultants Deloitte for Norwegian telecoms operator Telenor estimated that a 10 percent increase in mobile penetration can boost gross domestic product (GDP) growth rates by 1.2 percentage points.

Rapidly growing mobile phone use fostered by liberalisation as new companies, domestic and foreign, enter the market creates jobs and rising revenues for telecoms companies. That, in turn, provides tax revenues for governments, raises the incomes of other businesses through enhanced productivity and creates yet more jobs and revenues as the telecoms companies and other businesses buy more services.

Recent average annual growth of mobile subscribers in Ukraine of 70 percent has boosted productivity by 9 percent a year, said Telenor's vice-president for government relations, Harriet Berg. The example of Ukraine can be mirrored by dozens of developing and transition economies around the world.

Liberalisation in Mauritius saw the cost of international calls drop 80 percent and of mobile calls fall by more than 50 percent. The Indian Ocean island is now building up an outsourcing industry on the back of telecoms, said Krishan Oolun of the Information and Communication Technology (ICT) Authority of Mauritius.

Access to mobile phones has empowered poor people in developing countries, and boosted their incomes. Farmers can find the best price at different markets before they set off, and are not dependent on middlemen, for example.

Pakistan, which fully liberalised its telecoms market under the BTA, has seen mobile subscribers jump to 79 million from 2.4 million. Telecoms contributed two percent to GDP in 2007, or five percent including indirect effects, compared with almost nothing before the reform, said Zainab Hussain Siddiqui, senior project manager at the Ministry of Information Technology.

Mobile growth rates are particularly strong in developing countries, running at over 50 percent a year in Africa. Access to mobile phones has empowered poor people in developing countries, and boosted their incomes

Of course, the reform has enriched companies, too. Egypt's Orascom Telecom with operations in several emerging markets that have constantly far outstripped growth expectations, will soon have over 80 million subscribers, more than 150 times what it started with in 1998, said Investment and Business Development Officer Michael O'Connor.

India's Tata Communications, which took over an incumbent in 2002, now generates over half its revenues outside India and is active in a range of telecoms services that did not exist six years ago, said Head of Strategy Srinivasa Addepalli.

And yet the market is far from perfect. Companies still face restrictions on access or ownership in many countries. At the same time, operators say existing rules on liberalisation in telecoms need to be enforced and broadened to ensure continuing growth in the sector as it readies for billions of dollars of investment in next-generation networks.

"That transformation will simply not occur without a global move to removing the remaining barriers to foreign investment in trade in telecommunications", said Tony Warren, Head of Regulatory Affairs at Australia's Telstra.

And as telecoms converge ever faster with information technology, media and content, it must wrestle with new issues such as free speech, hate speech, pornography, public safety and national security.

"If we do not, we run the risk that regulators, government officials around the world, will put up their own rules and block connectivity", said Donald Abelson, a Communications and Trade Consultant who was chief US negotiator on the BTA talks.

Operators say the industry's glory years are still to come. Telenor's Berg points to massive growth potential, given that only 12 percent of Asians are on the Internet, which in turn is increasingly accessed via mobile.

And Telstra has drawn up ambitious plans ranging from remote appliance power management to teleworking and high-definition video-conferencing for countries to exploit telecoms to reduce carbon emissions.

– The article appeared in Business Standard, February 24, 2008.

The N-word: The Return of Nationalisation

Nationalised firms in the past were often hurt by the government's refusal to let them take commercially sensible decisions, especially laying off workers

"A Disaster for the taxpayer, a disaster for this government and a disaster for our country." David Cameron, the leader of Britain's opposition Conservative Party, did not mince his words in condemning the decision on February 15 to nationalise Northern Rock, a troubled mortgage bank.

However unfairly, the symbolism of a British Labour Government nationalising a bank is compelling, a gilt-edged excuse for Brown's growing army of critics to pose all sorts of mischievous questions. Does this mark the end of the "new Labour" approach to running the economy introduced under Tony Blair, which explicitly rejected the nationalising tendencies of "Old Labour"? Is it evidence, perhaps, of the true instincts of the newish Prime Minister, Gordon Brown, who as Chancellor of the Exchequer had helped introduce the reforms under Blair? More fundamentally, does it mean that the country that popularised privatisation under another Conservative leader, Margaret Thatcher, in order to undo the previous bout of foolish nationalisation, is returning to bad old habits?

Actually, Brown, aware of the uncomfortable questions nationalisation raises, was probably slower to take over Northern Rock than he should have been. Having decided to bail out the bank to stop it failing at a time when it could have helped tip a dangerously troubled global financial system over the edge, the British Government had already taken on most of the risk in the bank's mortgage portfolio.

None of the bidders for Northern Rock from the private sector appeared to offer one: they were unwilling to take on much of the downside risk, but would have happily reaped any potential benefits. Indeed, Sir Richard Branson, one of the bidders, thought Northern Rock was such a good deal he was willing to be seen flying to China on a flight operated by his rival company, British Airways, just so he could lobby Brown, a fellow passenger, in person. Brown probably deserves credit from taxpayers for his refusal to take what would no doubt have been the easier option in the short run of Sir Richard's helping hand.

In fact, this is not the first "new Labour" nationalisation. In 2001, the Government in effect took over Railtrack, the owner of Britain's railway infrastructure. It claimed to have acted out of necessity, not ideology, though many Labour MPs had long opposed privatising the railways for ideological reasons.

Besides, Goldman Sachs advised him to nationalise, so his decision can hardly be part of a socialist plot (though it may be part of a capitalist plot, if Goldman figures money can be made from reversing all those privatisations that it profited by advising on back in the 1980s and 1990s).

As well as making it clear that this is not old-style nationalisation of the "commanding heights" of the economy, or a scheme to create a new "national champion", Brown appears to have learned from the failings of past nationalisations. Northern Rock will not be absorbed into a government ministry, or run by civil servants, so there is a decent chance it will be managed efficiently.

Brown says it will be run "at arm's length" from government. Its boss will be a private-sector veteran, Ron Sandler, a former chief executive of the Lloyd's insurance market. He may lack Sir Richard's marketing genius, but Sandler certainly has first-hand experience reviving a troubled financial brand. Judging by past privatisations, he also knows he can make a lot of money if he turns the firm around so it can be sold.

Nationalised firms in the past were often hurt by the government's refusal to let them take commercially sensible decisions, especially laying off workers. Should Sandler decide to cut jobs, or force mortgage defaulters from their homes, Brown will certainly face tough questions in the House of Commons, including from many of his own party who will want him to stay Sandler's hand. That would be a serious mistake. Another problem facing nationalised companies in the past has been a lack of resources to invest in future growth, due to other demands on the government's budget.

All over the world, in response to the subprime crisis, governments have been pumping money into the financial services industry. The fear of letting a bank of any significance fail is now so great that these governments seem incapable of letting market forces hold poorly performing bankers to account.

As a result, banks feel free to lend recklessly, knowing the state will limit their downside risk. The result is a tendency to create dangerous credit bubbles and introduce needless fragility into the financial system. By undermining the foundations of the world economy, that massive nationalisation of the downside of extreme financial risk, which de facto is as much a part of policy in America or France as Britain, may potentially prove far more of a disaster than this week's decision to nationalise Northern Rock.

– The article appeared in the Economist, February 19, 2008.

About a Competition Law – Vietnam*

Vietnam, with a population of over 81.3 million occupies an area of 330,991 square kilometres on the Indochina peninsula, bordering China, Laos, Cambodia, the Gulf of Thailand, the Gulf of Tonkin, and the South China Sea.

Economy

Vietnam achieved around eight percent average annual gross domestic product (GDP) growth from 1990 to 1997. The growth rate started to slow down in 1996 and two subsequent years as a consequence of the Asian financial crisis; then peaked again at around seven-eight percent from 2000 to 2004, making Vietnam one of the world's fastest growing economies. Vietnam, however, is still a very poor country, with GDP of around US$38bn in 2004. Industry has been the leading sector of the Vietnam economy in recent times. From 1992 to 1997, growth of this sector was four-five percentage points higher than that of the total GDP.

Competition Evolution and Environment

Prior to 1986, Vietnam had been following a centrally planned, socialist economic system. Its salient feature was the policy of subsidising State-owned enterprises (SOEs), regardless of the cost; with the expectation that those enterprises would play the leading role, helping cater to the demand of the whole nation.

By the late 1970s, Vietnam was facing a major economic crisis, with acute shortages of food, basic consumer goods, and inputs to agriculture and industry; and a growing external debt. Almost all consumer goods were strictly rationed.

Partial reforms, introduced from 1979 to 1982, could not address key issues of pricing; financial discipline; and reform of the bureaucratic administrative structures. Instability reached its peak in 1986, leading to social pressures for comprehensive reforms. Thus, the Doi Moi (reform) process was initiated in 1986.

This reform process has changed the face of the Vietnam economy completely. The role of the private sector in economic development is recognised and government intervention is confined to its regulatory role of the market. A comprehensive legal and regulatory framework for the economy is in the process of being completed, and the approval of the Competition Law by the Vietnam National Assembly in December 2004 is a major step in this direction.

Competition Law and Policy

Passed in December 2004 by the National Assembly of Vietnam, the Competition Law of Vietnam is a result of a four-year drafting process, with reference to the statutes of nine nation-states and territories; and the model laws promoted by international institutions like United Nations Conference on Trade and Development (UNCTAD) and the World Bank; as well as enforcement practices and experiences of other countries. It has been notified on July 01, 2005.

The Law applies to all business enterprises and professional and trade associations in Vietnam; overseas enterprises and associations registered in Vietnam; public utilities and state monopoly enterprises; and State administrative bodies. It has supremacy over all other enacted laws of Vietnam regarding restrictive business practice and unfair trade practices.

The establishment of two State authorities is provided for the law's implementation - the Competition Administration Department (with investigative powers), within the Ministry of Trade of Vietnam, and the Competition Council (with adjudicative powers).

The Law prohibits five broad types of anticompetitive practices: (1) agreements that substantially restrict competition; (2) abuse of dominant or monopoly position; (3) 'concentrations of economic power' that substantially restrict competition; (4) acts of unhealthy competition; and (5) anticompetitive behaviour/decisions by officials or State administrative agencies, taking advantage of their authority.

Anti-competitive agreements include price fixing; market sharing; output restrictions; withholding of investment or technical development; imposition of coercive conditions on other enterprises for entering into contracts; restrictions on market entry by other enterprises; agreements to exclude/foreclose non-members from the market; and collusion to award a tender to a specific party.

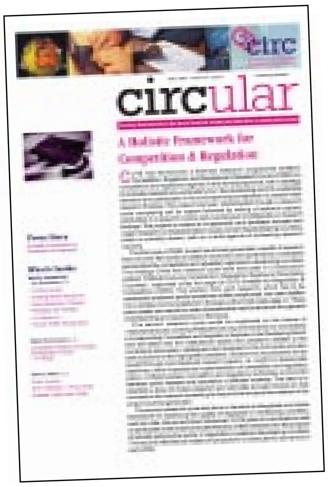
As regard acts of unhealthy competition, the Law prohibits: falsification of commercial instructions; infringement of business secrets; acts of bribery, inducement or coercion; defamation of other enterprises; disrupting the lawful business practices of other firms; advertisements and promotions aimed at unhealthy competition; discrimination within or by an industry association; and illegal multi-level (pyramid) selling of goods.

The Law also stipulates detailed rules and procedures governing complaints, investigations, interim orders by the competition authorities, consideration of alleged abuses, and penalties thereof.

Future Scenario

The recent passage of the Law on Competition, though being a major step, is just a milestone on the long and winding road that Vietnam has to travel to establish and develop effective market institutions serving economic development. There is much scope for further amendment and improvement in the competition law. Moreover, implementation guidelines are to be drafted; the Competition Authority is to be staffed with qualified manpower; relations and collaboration mechanisms with other line ministries need to be defined; State regulators are to be set up, etc, to ensure effective implementation.

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



CIRCular

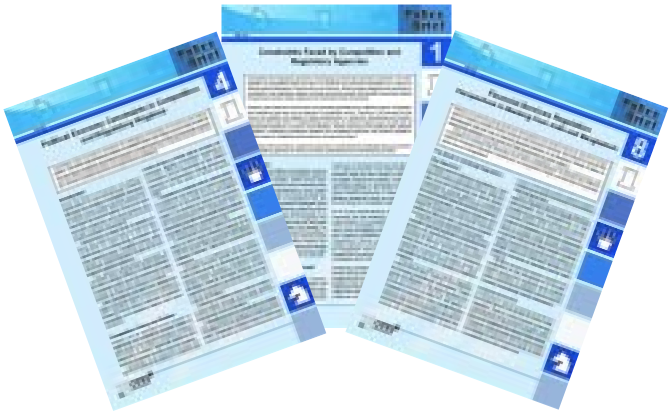
CIRCular a quarterly newsletter of CUTS Institute for Regulation and Competition (CIRC), carries a brief analysis on the Competition, Regulation and Development Research Forum (CDRF) project. The first research cycle has been over and the second research cycle would be organised on the theme of 'Institutional Issues covering Political Economy and Governance Constraints in Implementing Competition and Regulatory Regimes in the Developing World' and will delve into the institutional issues and problems related to the constraints discussed, catalogued and analysed in the first cycle and also seek solutions to the highlighted problems.

Special article by VV Singh entitled, 'Competition Regime and Quality of Regulation in India' Stresses upon the good quality regulation which not only leads to better economic and social outcomes but promotes the credibility of the regulatory agency and the trust of economic agents in it. The section 'News & Views' carries glimpses of the events and activities of CIRC during the period.

This newsletter can be accessed at:
http://www.circ.in/pdf/circular10_jan-mar08.pdf

New Publication - Policy Briefs

The deliberations at the CDRF research symposium facilitated preparation of policy briefs based on the final research papers comprising key implementation issues concerning competition and regulatory regimes and the approaches/recommendations that emerged from the research cycle that would be useful in the context of the developing world. The policy briefs will be used to raise awareness among various stakeholders in the developing world and would be distributed widely using CUTS' networks, its partners' network and at various other forums. There are eight such policy briefs prepared on the basis of eight broad themes.



- Constraints Faced by Competition and Regulatory Agencies
- Competition and Regulatory Regimes in Small & Developing Countries
- Political Economy of Regulation in Electricity Sector in India
- Political Economy Constraints in Competition and Regulatory Regimes
- Efficiency and Effectiveness of Competition and Regulatory Agencies
- Effective Regulatory Regimes – Experiences of India, Kenya and Belgium
- Political Economy of Telecom Regulation in Jamaica
- Financial Services Regulation – Perspectives from Banking in India and Bangladesh

For more, please visit: http://circ.in/PolicyBriefs.htm

Forum

Thanks for the latest edition of ReguLetter, i.e. (October-December 2007). I find it good. I especially like the length of the articles and the depth it provides within that. It is a very rich knowledge source for people who are developing expertise in this field.

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FE:	Financial Express	ToI:	Times of India
FT:	Financial Times		

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