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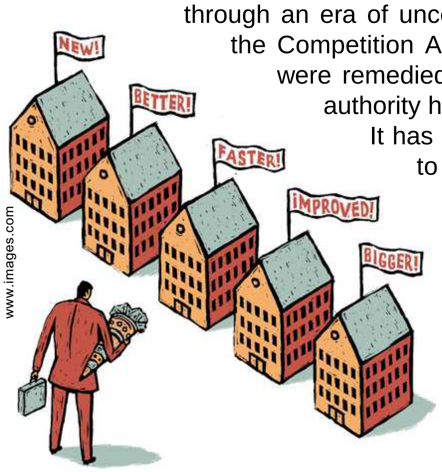
CUTS C-CIER

Rookies in the Competition Circuit...best among equals

It is unfortunate that the Competition Ordinance 2009 of Pakistan was nullified on March 26, 2010 – as it could not be turned into a law by the Pakistani government. Though, efforts are ongoing to re-promulgate it. Many including CUTS have been fascinated by the extent to which the Competition Commission of Pakistan (CCP) has managed to perform effectively *vis-à-vis* enforcement of the law, especially in an environment that is characterised by a large number of unfavourable factors. Let us pray that the Pakistani government realises the value of having an effective competition and quickly re-establishes the institution in the interest of the common citizen.

Earlier on, the Competition Commission of India (CCI) had also passed through an era of uncertainty, due to certain weaknesses in the Competition Act, 2002. However, these weaknesses were remedied by the Parliament, and a full fledged authority has also been put in place in early 2009. It has been there for over one year, but is yet to hit the track on full steam (right now they have around 30 cases, of which 6 are in an advanced stage of dispensation, but there is no order as yet). While, the environment in India is not as difficult as probably in Pakistan, the problem here is more fundamental – shortage of specialised staff, and perhaps a waning political will!



Exactly six months after its establishment, the Competition Commission of Mauritius (CCM) launched its first investigation in December 2009. The Competition Act 2007 was a second attempt by the island state. The agency is on a sound growth trajectory – not only in terms of developing its own fleet of enforcement officials, but also in terms of selecting the right cases, which when decided would provide wide stakeholder support to the authority. Further, while many young competition agencies are often circumspect to present details of their investigative actions, the CCM is an exception.

The Egyptian Competition Agency (ECA) has made its intentions clear to the operators in the markets. Not only has ECA developed a formidable internal team of experts and practitioners to enforce the competition law, but have also established effective lines of communication with big business houses, sensitising them of the value in competition compliance. All of this has also been facilitated by a strong commitment from the highest level within the Egyptian government towards strengthening the agency and evolving a healthy competition culture in the country.

Strong leadership seems to be a common thread among all these 'young' competition agencies. Evidence from across the globe indicates that strong leadership stands out as an essential attribute that has facilitated emergence of effective competition regulators. Early signs are very promising as these young agencies move from strength to strength and take up the challenge to prove themselves as the best among equals in the internal competition circuit!

CCP Ordinance to Repromulgate

The government is expected to re-promulgate the lapsed Competition Commission of Pakistan (CCP) Ordinance that would render the entity toothless. CCP's objective was re-promulgation of the ordinance that would enable it to achieve productive efficiency so that business and enterprise may flourish and consumers effectively protected from anti-competitive behaviour.

The President is legally empowered to retrospectively re-promulgate the Ordinance. However, its timely re-promulgation would avoid legal complications pertaining to the orders and decisions taken by the CCP.

The CCP has stopped all ongoing investigations against cartels and companies involved in anti-competitive activities, deceptive marketing practices and abuse of dominance, etc, as the Competition Ordinance expired on March 26, 2010. *(BR, 28.03.10)*

Law to Stabilise Market Price

The Government of Bangladesh is planning to enact a stringent law entitled 'Competition Law' to stabilise market price curbing monopoly as there is no specific law to take punitive action against the market manipulators. According to sources, the ministry has almost finalised the draft of the law, which might be placed in the Cabinet meeting for approval by April 2010.

After getting approval from the Cabinet, a bill to this effect will be placed in the Parliament to make it law. The law would help control the unusual prices of essential commodities. The government has taken a move to amend the toothless anti-hoarding law in order to control the price-hike of daily essentials. *(UNB, 18.03.10)*

Malaysia Mulls Antitrust Law by 2011

"The Malaysian Competition Act will be in place soon to protect consumers against market abuse from cartel activities and monopolies", said Domestic Trade, Co-operative and Consumerism Minister, Datuk Seri Ismail Sabri Yaakob.

He said it was time for Malaysia to have such a law in place to ensure consumers were protected from the unscrupulous trading practices of cartels and monopoly businesses. The draft of the new legislation had already been submitted to the Attorney-General's Chambers and would be up for its first reading in Parliament in March 2010.

He said the Act was expected to be enforced by the end of 2011, as time was needed to educate the public as well as business operators on the new law. *(TS, 26.01.10)*

Inflation Hit Algeria

Algeria will impose price controls on some consumer goods, in an effort to rein in steep inflation that has been fuelling public unrest. Draft amendments to Algeria's competition law will widen the government's scope for controlling prices and set tougher penalties for traders who charge over the set price.

The law in force now gives the government the right to fix prices on certain strategic items. In the amended draft, the word strategic controls on between 10 and 15 consumer items would be imposed. Retailers who sell items at above the "fair price" set by the state will be liable to have their licence to trade removed or face a fine. The government will help reduce the prices by cutting customs tariffs and value added tax. *(Reuters, 11.02.10)*

NMa Sets out Priorities for 2010

The Netherlands Competition Authority (NMa) presented its 2010-2011 agenda, in which it designated the processing, finance and business, and healthcare industries as priorities. The authority will also closely monitor the construction industry, the textbooks market and the postal industry.

The authority's suspicion of the existence of a large cartel in the flour industry was one reason for prioritising the processing industry in 2010. With regard to finance and business, the authority will focus on cooperation in the banking and insurance sectors. In addition, the authority suspects anti-competitive conduct in the real estate industry. New guidelines on the application of the Competition Act to the healthcare industry are also expected. *(ILO, 11.03.10)*

Competition Commission on the Way!

The much-anticipated Competition Commission of Botswana is to be established by June 2010, paving way for the levelling of the playing field in the local economy. The Competition Act, passed in 2009, establishes the Commission and the Competition Authority, headed by a Chief Executive Officer (CEO) and technical staff charged with ensuring fair play in industry. The Commission will be the Authority's adjudicating body.

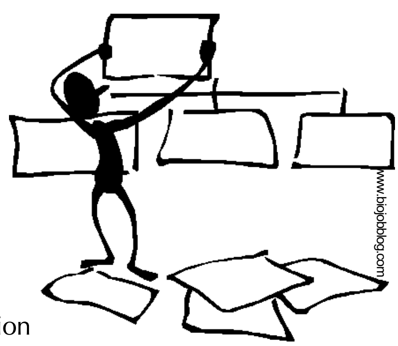
Once the commissioners are in place, they will set the organisation including the employment of the CEO. Once the organisation is up and running, there will be an education process for Botswana to understand what's contained in the law, what they can do if they are disgruntled or when they have not been helped satisfactorily.

The Competition Commission and Authority are expected to root out price-fixing, bid rigging, market division and other corrupt business practices.

(www.mmegi.bw, 19.02.10)

Restructuring of Competition Council

The Latvian Competition Law was amended for the fourth time in the past two years. The three previous amendments changed the merger control thresholds, introduced and shaped the concept of dominant position and its abuse on the retail market and redefined the investigatory powers of the institution.

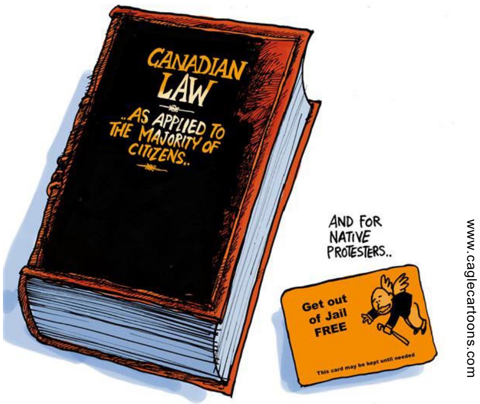


The latest amendments reflect changes to Latvia's budget and that of the Competition Council. Consequently, the latest amendments addressed the number of members that make up the council's decision-making body. The new amendments reduce the size of the decision-making body from five members to three, effective as of March 01, 2010. *(ILO, 14.01.10)*

Canada's New Cartel Law in Force

– Steve Szentesi* & Tom Hakemi**

Effective March 12, 2010, parties that contravene Canada's new criminal cartel rules under the federal Competition Act (the "Act") will potentially be exposed to fines of up to US$25mn and/or imprisonment for up to 14 years. The impending changes to Canada's criminal conspiracy regime are the most significant since Canada introduced competition law in 1889. The upcoming changes will impact organisations and individuals in a variety of business sectors, including trade associations and businesses involved in joint venture, franchise, licensing, research and development and dual distribution agreements, among others.



New Two-Track Criminal Conspiracy Regime

Canada will have a two-track criminal conspiracy regime on March 12, 2010. One track will be criminal and reserved for "hard core" anti-competitive agreements. A second civil track will address non-hard core agreements that prevent or lessen competition substantially, requiring an analysis similar to merger review. In addition, the penalties for contravening the new criminal conspiracy provisions will be substantially increased with fines of up to US$25mn and/or imprisonment for up to 14. Some of the key impacts of the upcoming changes include:

- Increasing the importance for trade associations and companies to review existing or adopt new competition law compliance programmes;
- Substantially increasing the risk associated with "hard core" cartel agreements based on the lower legal burden and increased penalties;
- The introduction of a US-style ancillary restraints defence, relevant for the negotiation, drafting and review of commercial agreements;
- Altering the analysis for the review of common commercial agreements between competitors including franchise, JV, licence and dual distribution agreements; and
- Increasing the importance of reviewing and controlling information exchanges with competitors.

Impacts on Private Civil Actions

The impending changes are also expected to result in an increased number of private civil actions, and potentially competition law class actions, as a result of the lower bar to establish criminal price fixing, market allocation and output restriction agreements.

Other Recent Amendments

The upcoming changes to Canada's criminal conspiracy rules are part of recent sweeping amendments to Canada's competition and foreign investment law including: (i) a new US-style merger notification regime; (ii) increased penalties for failure to comply with the merger notification provisions; (iii) higher fines for misleading advertising; (iv) civil fines for abuse of dominance; (v) amendments to the *Investment Canada Act;* and (vi) a new national security test for foreign investment in Canada.

New Competitor Collaboration Guidelines

The Federal Competition Bureau (the "Bureau") issued its final Competitor Collaboration Guidelines on December 23, 2009. The Guidelines, which were issued to coincide with the coming into force of Canada's new criminal conspiracy rules and replace the Bureau's previous Strategic Alliance Guidelines, set out the Bureau's enforcement approach to Canada's new two-track criminal conspiracy regime.

General Analytical Framework

In general, the Bureau states that mergers will be reviewed under the existing merger provisions of the Act and that most vertical agreements will be analysed under the civil provisions of the Act. Exceptions may include dual distribution agreements in some instances.

Naked Restraints May be Criminal

With respect to determining whether to evaluate agreements under the criminal or civil track, the Bureau indicates that only naked restraints will be reviewed under the new section 45, while other types of agreements, such as joint venture agreements, will potentially be subject to review under the new civil provisions.

With respect to the process for reviewing agreements under Section 45 (hard-core offences), the Bureau indicates that it will take the following approach: (i) determine whether to review the agreement/arrangement under the criminal or civil provisions; (ii) if reviewing an agreement under section 45, determine whether in its view the new ancillary restraints defence applies; and (iii) where it determines that the ancillary restraints defence applies, it may still seek a remedy under the civil section 90.1 or refer the matter to the Director of Public Prosecutions for prosecution.

Given that there will be no existing Canadian jurisprudence to interpret Canada's new ancillary restraints defence when the new criminal cartel provisions come into force, in the first few years American jurisprudence will likely be important to give shape to both this new exception as well as Canada's new cartel rules generally.

The American Experience

In this regard, the US has had a two-track criminal cartel regime for over a century, with hard core agreements reviewed under a *per se* rule, encompassing for the most part bare price fixing agreements, and non-hard core agreements analysed under a second separate "rule of reason" approach that considers the pro- and anti-competitive effects of challenged agreements.

Unlike Canada's new regime, however, which has now expressly codified three forms of hard core cartel offences, the US has over a century of case law that has defined its Section 1 of the Sherman Act which, unlike Canada's new rules, does not explicitly set out the types of agreements that are proscribed.

Establishing an Agreement

With respect to establishing an agreement, the Bureau confirms existing jurisprudence that there must be a "meeting of minds", that informal or covert arrangements may be caught, that a cartel may be established whether or not the arrangement has been implemented and that an agreement may be established only with circumstantial evidence.

Conscious Parallelism

With respect to one of the most challenging and controversial areas of criminal cartels – i.e., "tacit agreements" or "conscious parallelism" – the Bureau takes the position that "parallel conduct coupled with facilitating practices, such as sharing competitively sensitive information … may be sufficient to prove that an agreement was concluded between parties."

With respect to determining whether parties are competitors for the purposes of Section 45, the Bureau confirms that the impugned agreement must be in relation to a product for which the parties compete (or are likely to compete).

Impacts for Trade Associations

With respect to trade associations, the new Guidelines indicate that there may be increased exposure for associations that facilitate anti-competitive agreements. In this regard, the Bureau states that "rules, policies, by-laws or other initiatives enacted and enforced by an association with the approval of members who are competitors, are considered by the Bureau to be agreements between competitors for the purpose of Section 45".

The Bureau's position that trade associations that facilitate anti-competitive agreements may be parties to a cartel agreement is noteworthy for several reasons. First, there is little recent authority for this proposition. Second, it is not clear that many trade associations could be considered to compete or potentially compete with their members in order to fall within the new narrower horizontal prohibition under Section 45. Unlike the previous version of Section 45, which could potentially catch horizontal and vertical agreements, the new Section 45 is structured to only apply to horizontal cartel agreements.

Other Common Commercial Agreements

With respect to dual distribution agreements, the Bureau indicates that it will review such agreements under the new civil provisions and not under the criminal provisions.

Finally, the Bureau indicates that it will generally not review the following types of common commercial ancillary restraints under the criminal provisions, but rather under the civil provisions:

(i) non-compete clauses in employment agreements and asset/share agreements;
(ii) agreements not to make material changes to a business prior to completing a merger; and
(iii) non-compete agreements between joint venture partners where the restraint relates only to the products, services or territories of the JV.

Non-hard Core Agreements

With respect to the application of the new civil provision (Section 90.1) for non-hard-core anti-competitive agreements, the Bureau states that in general agreements that fall within this new provision will be reviewed in a manner consistent with mergers under the Bureau's existing Merger Enforcement Guidelines (MEGs).

For example, the Bureau adopts very similar market share safe harbours to those set out in the MEGs. Moreover, the Bureau sets out a similar analytical framework to that in the MEGs for mergers for considering whether parties possess market power, with factors including market shares, the likelihood of entry, foreign competition, barriers to entry and innovation.

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* *Vancouver Competition Lawyer*

** *Vancouver Commercial Litigator*

Abridged from an article that appeared on http://www.ipvancouverblog.com, January 23, 2010.

CARTELS

South Korea Drops Chip Probe

South Korea's Fair Trade Commission (FTC) has closed an antitrust investigation of the flash memory industry, concluding that there is no evidence of a pricing cartel. The investigation had targeted four major international manufacturers of flash memory, two of them in Korea, one in Japan and one in the US.

Its investigation focused on prices for one type of memory, NAND flash, used in devices such as digital music players and digital cameras and storage media such as memory cards and USB memory sticks. NAND memory is typically cheaper to manufacture than the other main flash technology, NOR, which can transfer data more quickly.

(TMCnet, 03.01.10)

NMa Looks into Flour "Cartel"

The NMa is investigating a number of companies in the flour industry over suspected involvement in a cartel. The agency drew up several reports against a number of companies suspected as having concluded cartel agreements at the end of 2009 after a "thorough" investigation.

Similar investigations have also been carried out in other countries, including Germany. The companies in question still have the opportunity to respond, but if it indeed turned out that they have concluded cartel agreements, the ramifications could be very severe indeed.

Due to the suspicion of the cartel's existence and having received other "concrete" indications, the NMa said it will include the processing industry as one of its focus industries for 2010-2011. *(AFN, 18.01.10)*

Finland Imposes Fines on Timber

The Market Court of Finland ruled that the forestry companies Metsäliitto Cooperative, Stora Enso and UPM-Kymmene were guilty of national price co-operation and exchanging of information regarding the purchase of timber, thus violating the Competition Act.

The court imposed fines totalling US$68mn-US$40mn for Stora Enso and US$28mn for Metsäliitto. The total fine is the same as that proposed by the Competition Authority in 2006. The fines were the highest ever imposed on buyers. UPM-Kymmene was not fined, as in May 2004 it disclosed information on the unlawful conduct and delivered information regarding the cartel to the authority. *(ILO, 07.01.10)*

Paris Court of Appeal Slashes Fines

The Paris Court of Appeal has reduced to US$98mn the record fine of US$769mn that had been imposed by the *Conseil de la Concurrence* in December 2008 on 11 steel trading companies for their participation in a cartel.

The *Conseil de la Concurrence* was at the time France's competition watchdog and has now been replaced by the *Autorité de la Concurrence*. The fine was the largest ever imposed by the French competition authority. The Court's judgement considered that the damage to the economy was proven, but moderate, and took account of the economic crisis as a mitigating factor. The judgement may be subject to a further appeal. *(AFP, 21.01.10)*

FTC Approves Limited Concrete Cartel

South Korea's FTC approved the formation of a limited cartel between small local ready-mix cement companies for the purposes of joint research and development and quality control. The cartel, which will operate for two years, has been allowed to help the industry combat the sluggish economy.

The FTC believes that the cartel will not seriously limit fair competition but will provide large benefits to struggling companies. The FTC disallowed other requests by the companies, such as production of a common brand, joint purchase of raw materials and joint regulation of cement trucks.

(AP, 21.01.10)

ABUSE OF DOMINANCE

German Shipping under Scrutiny

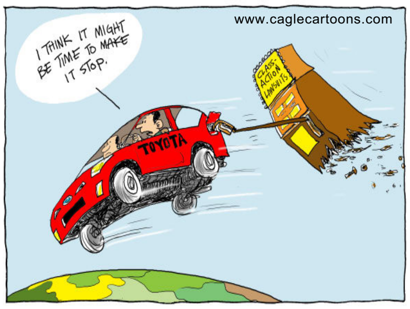
Europe's top antitrust watchdog is to probe a controversial German scheme that aims to remove smaller container ships from service and which could influence charter rates.

Under the scheme, European ship-owners would collectively agree to cover the costs of removing the feeder vessels from service. But it has caused an outcry among other players in the industry and the European Commission (EC) was concerned that it might be aimed at reducing capacity and therefore pushing up charter rates

The EC stressed that the fact that it was opening antitrust proceedings did not mean that it had conclusive proof of an infringement. *(FT, 16.01.10)*

FBI Raids Toyota Suppliers

The US offices of three Japanese automotive parts suppliers to Toyota – Denso, Tokai Rika and Yazaki – were raided by the Detroit office of the Federal Bureau of Investigation (FBI) over allegations of price-fixing



"The antitrust division is investigating the possibility of anti-competitive cartel conduct. We are co-ordinating with the European Commission and other foreign competition authorities", Justice Department spokeswoman, Gina Talamona, said.

Denso confirmed it was inspected by the FBI and said the investigation was based on allegations of violations of antitrust laws. *(ET, 26.02.10)*

Orange/T-Mobile Faces UK Probe

A group of mobile phone operators has called for the proposed merger between Orange and T-Mobile's British operations to be investigated by UK regulators rather than Brussels. France Telecom and Deutsche Telekom are pressing for the EC to scrutinise the deal, because it could be quicker than the UK authorities.

The Commission will have the final say on whether the deal is investigated in Brussels or London. The combined Orange/T-Mobile entity would become the UK's largest mobile operator, with 29.5 million customers. *(FT, 07.02.10)*

Google Faces EU Scrutiny after Complaints

Google Inc. said European antitrust authorities have opened a preliminary inquiry into complaints about its tactics made by three European Internet companies. The inquiry appears to focus largely on complaints that Google unfairly ranks the sites of the Internet competitors, in effect lowering their rank in search results that appear on Google sites.

Would Google consider this for its cute on-line banner what with three of its executives having been convicted for breaking privacy laws ... ?

Google denied violating European law or taking any action to stifle competition. The European antitrust authorities, for the first time, have examined Google's conduct outside of a merger review. Google said the allegations were made by Ciao.de, a German subsidiary of Microsoft Corp., Foundem.co.uk, a UK price comparison site, and EJustice.fr, a French site specialising in legal search inquiries. *(WSJ, 25.02.10)*

Dish TV on First-mover Advantage

The Competition Commission of India (CCI) may soon issue show-cause notices to leading Direct-to-Home (DTH) operators like Tata Sky, Reliance Big TV and ZEE's Dish TV for abusing their dominant market position and not allowing users to change the operator, while retaining the hardware cost at about Rs 4,000.

DTH operators have been found guilty of violating Sections 3 and 4 of the CCI Act. A notice would be issued to them to respond in 15 days. After that the Commission will take decision on what action to take against the operators. *(ET, 17.01.10)*

French Co. Lodges IBM Complaint

A French company has filed a complaint with European competition authorities, accusing IBM of allowing customers to run IBM mainframe operating systems only on IBM computers. Mainframe computers and the associated software and services are still an important source of revenue for IBM.

The complaint by TurboHercules is the latest in a series of similar complaints against IBM under investigation in Europe and the US. The software company is asking European competition authorities to halt IBM's attempts to tie software to hardware and make its programming interfaces and protocols available to third parties.

(www.computerweeekly.com, 24.03.10)

Pharma Firms Under EU Lens

Europe's competition watchdog has stepped up its probe into whether pharmaceutical companies are paying rivals to delay the introduction of generic competition for their medicines.

AstraZeneca, GlaxoSmithKline, Roche and Sanofi-Aventis were among businesses to receive new "information requests" that competition officials at the EC said were sent to companies accounting for more than half the pharmaceutical sector's sales in Europe.

Officials opine that they were particularly interested in scrutinising deals in which companies that had brought a patented drug to market were "paying off" generic rivals, in return for a delay in the launch of cheaper copies. *(FT, 13.01.10)*

KPPU Appeals Against Carrefour Ruling

The Indonesian Competition Authority (KPPU) will appeal a court ruling which cleared French supermarket owner Carrefour from having to sell its stake in local retailer Alfa Retailindo.

The KPPU had, in November 2009, found Carrefour to have breached competition laws by controlling over half the market and ordered it to divest its interests in Alfa Retailindo and pay a US$3mn fine. This decision was overturned by a district court in February, and the KPPU has now filed an appeal to the Supreme Court.

(AFP, 02.03.10)

PRICE FIXING

Germany Investigates Mass Retailers

German antitrust officials are currently probing some of the country's largest supermarkets and retailers over suspected cases of price-fixing on chocolate – both at the production and resale levels. Investigators believe as many as 24 companies set illegal minimum prices on products.

Investigators have evidence that a total of 24 companies may have illegally agreed to price-fixing deals on coffee, sweets and pet food. They believe millions of consumers may have paid more for these goods than they should have. In 2009, the Federal Cartel Office imposed US$233mn in fines against coffee producers Melitta, Dallmayr and Tchibo for entering into a secret agreement to co-ordinate price increases. *(SO, 15.01.10)*

Airlines in 'Price-fixing' Spotlight

Six major airlines are in hot water for allegedly colluding to jack up prices during the 2010 World Cup. The South African Competition Commission confirmed that it is investigating alleged colluding on "prices and pricing strategies" between British Airways/ Comair, South African Airways (SAA), 1time, SA Airlink, Mango and SA Express.

If the commission does find clear evidence of collusion, the case will be transferred to the Competition Tribunal to request an "appropriate penalty". The investigation follows a leniency application by SAA in December 2009, in which it undertakes to "fully co-operate" in exchange for leniency from prosecution under the Competition Act.

SA Express has also denied any wrongdoing, saying it had simply engaged in discussions regarding capacity requirements for 2010 "under the auspices of the Department of Transport". *(TC, 28.01.10)*

Electronic Giants Accused

LG, Sony, Samsung, Toshiba and Hitachi, along with several subsidiaries, have been accused of price fixing in the US optical disc drive market. Consumer electronics store Prisco

Electronic Company alleged that the firms colluded to "fix, raise, maintain and stabilise the price of optical disk drive products sold in the US", according to a filing with the California Northern Federal District Court.

These defendants have a long history of engaging in anti-competitive conduct, such as DRAM, TFT-LCDs and CRTs. When the price of optical disc drives began to dip, the defendants entered into an illegal agreement to prevent competitors from entering into the market and to keep prices at a supra-competitive level.

(uk.news.yahoo.com, 27.02.10)

Cigarette Price Infringes EU Law

The EU Court of Justice has ruled that Irish legislation fixing a minimum retail price for cigarettes infringes EU law. The legislation breaches Directive 95/59 which has rules on excise duty affecting the consumption of tobacco products.

The court says imposing a minimum price on cigarettes can undermine competition by preventing some manufacturers from taking advantage of lower cost manufacturing prices, so as to offer more attractive retail selling prices.

The court says that while the directive [95/59] ensures health protection, it does not prevent member states from combating smoking. However, the Irish Cancer Society is disappointed with the ruling by the EU Court of Justice, which found Irish legislation fixing a minimum retail price for cigarettes infringed EU law.

(www.rte.ie, 04.03.10)

FINES & PENALTIES

Spain Fines Sanitary Management

The Spanish antitrust authority, the *Comisión Nacional de Competencia* (CNC), has fined four firms operating in the management of sanitary residues a total of US$9.57mn. The two sector leaders CONSENUR and CESPA have been fined US$5.9mn and US$2.7mn, respectively. The four firms are accused of market-sharing within calls for public tender organised by health bodies of the regional Spanish governments.

The agreements to share the market took the form of strategic behaviour in the bidding process, such as not making an offer or bidding a non-competitive price. CESPA was also fined for an unlawful non-competition agreement, aimed at excluding a competitor from the market.

(CNC Press Release, 20.01.10)

Huge Fine Imposed on Telefonica

The Argentinean government has fined Telefonica US$27mn for failing to inform antitrust authorities of ownership changes that could have affected the local telecoms market. The Economy Minister, Amado Boudou, claims Telefonica failed to notify Argentine authorities of its investment in the Telco consortium, which owns 23.6 percent of Telecom Italia, which in turn, owns about half of Telecom Argentina.

In Argentina the owner of Telefonica de Argentina is also holder of nearly 50 percent shares in Telecom Argentina. Boudou said this arrangement gives Telefonica a "very strong" market position. Telefonica and Telecom Argentina are the only fixed-line providers and the main mobile operators on the local market. The Minister also said Telefonica ignored an anti-monopoly order to divest holdings that give it market dominance in Argentina. *(TP, 07.01.10)*

Antitrust Fine on French Telecom

France Telecom and its Orange Caraibe subsidiary have been fined US$84mn by the French Competition Authority for anti-competitive practices in the mobile phone and fixed-to-mobile markets in Guadeloupe, Martinique and French Guiana. The case was brought by

The competition authority found that while operating as the dominant operator with over 75 percent of the mobile market in the Antilles-Guiana zone in 2000-2005, Orange Caraibe put in place a number of practices that made it harder for rival operators to develop their operations. These included signing exclusive agreements with independent distributors, exclusivity clauses with the only accredited mobile phone repair company in the Caribbean and unfair pricing differences between on-net and off-net calls. *(ILO, 28.01.10)*

Swiss Announce Fine on Russian Investor

The Swiss authorities announced a record fine of US$16.3mn on Viktor Vekselberg, the Russian oligarch who has invested heavily in Swiss industry, and two Austrian investors for breaching reporting rules in building stakes in the troubled Oerlikon industrial group.

The fine represents about 20 percent of the value of Renova's full stake in Oerlikon, whose shares have plunged in recent months on falling orders, stretched finances and restructuring needs.

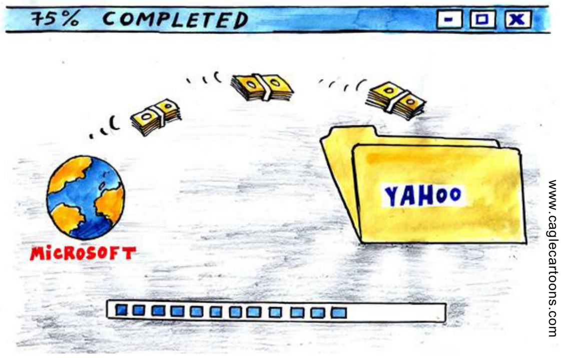
Renova called the fine "unprecedented" and dismissed the Government's claim as "unproven allegations". The proposed fine is unrelated to a separate investigation being conducted into Renova's stake in Sulzer, another big Swiss engineering group, in which the Austrians had also invested. An outcome of that inquiry is not expected for some time.

(FT, 29.01.10)

Micro-Yahoo Alliance Gets Green Light

The Microsoft-Yahoo deal, which will ultimately see Bing's search technology power Yahoo's search results, has been approved by regulators. The US Department of Justice and the EC have given the green light to the alliance.

Yahoo and Microsoft aim to have search integration completed in the US by the end of 2010, though transitioning advertisers "may wait until 2011 if they determine that the transition will be more effective after the holiday season". Globally, the companies expect to have the whole move completed by 2012. In conjunction with the announcement, Microsoft and Yahoo have launched searchalliance.com. *(FT, 19.02.10)*



Nod to Abbott-Wockhardt Deal

US-based drug maker Abbott Laboratories Inc., which in July agreed to purchase the nutrition business of embattled Wockhardt Ltd for Rs 620 crore, has affirmed its commitment to completing the transaction at the earliest.

Abbott's affirmation comes on the heels of a petition filed in the Bombay high court by a group of investors holding 40 percent of Wockhardt's foreign currency convertible bonds (FCCB) to block the Indian drug maker's asset divestment plan.

The Abbott executive, however, did not respond to specific queries on whether the company is facing a delay in closing the deal because of legal issues, and whether it will reconsider the acquisition if the completion of the deal is delayed indefinitely.

(WSJ, 18.01.10)

Novartis to Buy Alcon from Nestle

Novartis AG had planned to take over Alcon Inc. by paying US$38.5bn for the 77 percent stake it does not already own in a deal that would make it one of the biggest players in the global market for eye-care products.

After purchasing a 25 percent stake in April 2008 for US$143 per share or US$10.4bn, Novartis exercises its call option to buy additional 52 percent stake from Nestle for US$180 per share or US$28.1bn. If successful, the takeover will have cost about US$50bn in all, making it the biggest in Swiss corporate history. *(TH, 05.01.10)*

Heineken Seals Femsa Deal

Mexican drinks group Femsa will own 20 percent of Heineken after the Dutch brewer, which remains family-controlled, agreed to buy Femsa's beer business in an all-stock deal worth US$5.5bn.

Heineken struck a deal with Femsa, which becomes the brewer's second-largest shareholder after Heineken Holding, following an auction for the beer business that also attracted London-listed brewer SABMiller. Femsa, whose beer brands include Sol, gave Heineken exclusive rights to the bidding process before Christmas.

The deal will lift the percentage of earnings Heineken derives from emerging markets to 40 percent from 32 percent. Heineken's shares rose 3.3 percent to close at US$46 in Amsterdam while Femsa's shares fell 12 percent to 55.39 pesos in Mexico City. *(FT, 12.01.10)*

US Software Giant Deal Approved

Software major Oracle Corp has completed the takeover of hardware company Sun Microsystems Inc for US$7.4bn. The deal would transform the IT industry. Oracle has more than 25,000 employees in India while Sun Microsystem has 1,200 people.

The Sun Solaris operating system is the leading platform for the Oracle database, Oracle's largest business. With the acquisition of Sun, Oracle can optimise Oracle database for some of the unique, high-end features of Solaris.

The EU's antitrust watchdog has approved the Sun-Oracle transaction by saying the deal would not restrict competition in the database's market. In April 2009, Oracle has agreed to buy Sun Microsystems for US$7.4bn or US$9.50 a share in cash.

(ET, 28.01.10 & FT, 22.01.10)

Pfizer to Outline Ratiopharm Offer

Pfizer Inc, the world's biggest drug maker, is bidding as much as US$4.08bn for German generic-drug maker Ratiopharm GmbH. Acquiring Ratiopharm may expand Pfizer's generic business to about US$11bn, nearing the size of Teva, the world's largest generic drug maker with US$13.9bn in 2009 revenue.

Pfizer has been trying to expand its generic business since 2008 when the company formed a separate business unit focused on products that have lost patent protection. For Pfizer, the acquisition would give the company access to low-cost manufacturing, patent experts, chemists who specialise in generic medicines and technology to copy biologic-based medicines.

(FE, 03.03.10)

Coca-Cola to Buy Bottling Unit

The Coca-Cola Company is in talks to buy most of its largest bottler for roughly US$15bn, including debt, marking a shift in its strategy to keep its bottling operations separate.

If the deal goes through, Coke would buy Coca-Cola Enterprises Inc.'s North American operations. Meanwhile, the rest of the bottling company would remain independent and would acquire some Coca-Cola assets in Scandinavia and Germany, the source said.

Such a deal would represent an about-face for Coca-Cola, which pioneered the model of separating the bottlers from the concentrate company decades ago. It also would follow a similar deal by rival PepsiCo Inc., which is aiming to close on the US$7.8bn acquisition of its two largest bottlers.

(BS & FT, 25.02.10)

Liberty Looks to Sell US Malls

Liberty International, the UK's largest shopping mall owner, is in talks to sell its US$560m US shopping centre business to a Miami-based real estate investment trust as the next step in its planned demerger.

Liberty is in advanced talks with Equity One, a large US retail owner, to sell its property business based in California. Liberty is believed to be structuring the deal to trade the properties in return for equity in the US group, rather than cash, which would give the UK REIT a stake in any growth of the business. Such a deal structure is expected to be more tax efficient for Liberty. *(FT, 26.02.10)*

Sanofi-Merck to Revive Venture

Global pharmaceutical company Sanofi-Aventis has exercised its option to combine Merial with Intervet/Schering-Plough, Merck's Animal Health business, to create a new joint venture.

The new joint venture will be equally-owned by Merck and Sanofi-Aventis. It is expected to offer a broader portfolio of animal health products and services in pharmaceuticals and biologics, as well as the ability to capitalise on growth opportunities in all fields and countries around the world.

The companies said that the formation of this new animal health joint venture is subject to execution of final agreements, antitrust review in the US, Europe and other countries and other customary closing conditions.

(TM, 09.03.10)

Rwenzori Co. to Increase Production

Rwenzori Bottling Company will increase capacity from 137 million litres to 171 million litres in the next six months.

Onapito Ekomoloit, Nile Breweries' Corporate Affairs Director, said the acquisition of Rwenzori Beverages by SABMiller was expected to strengthen their market position, especially in the non-alcoholic beverages market. No doubt this acquisition is certain to entrench SABMiller's position in Uganda.

The firm produces 1.2 million hectolitres per year and exports its bottled water to eastern Democratic Republic of Congo, southern Sudan and Rwanda. *(NV, 11.03.10)*

Essar to Acquire Trinity

Essar Group, one of India's biggest conglomerates, has agreed to buy Trinity Coal of the US for US$550m-US$600m in a deal signalling the return of the country's industrial groups to the global acquisition trail.

Essar will acquire control of Trinity from US-based investment firm Denham Capital Management and plans to use the coal to service its steel plant and iron ore operations in North America.

The transaction is one of a string of overseas acquisitions by Essar, which has interests in telecoms, steel, power, oil refining and outsourcing, in countries from the US to Kenya and parts of Asia. The deal will add to India's already elevated ranking in Asia's mergers and acquisitions league tables in 2010, where it is second only to China. *(FT, 04.03.10)*

AIG Sells Alico to MetLife

AIG took another step away from its troubled past, selling Alico, its non-US life assurance business, to domestic rival MetLife for US$15.5bn in cash and securities in a deal that will enable it to settle part of its debts to US taxpayers.

The acquisition of Alico will transform MetLife from a company largely focused on the US into a group with 90m customers in 64 countries. The long-awaited sale of Alico will give the US government an indirect stake of up to 20 percent in MetLife alongside its 80 percent ownership of AIG.

Under the deal, a special purpose vehicle controlled by the New York Federal Reserve will receive US$6.8bn in cash and US$8.7bn in MetLife shares and other securities.

(FT, 09.03.10)

BA Global Tie-up Takes Step Forward

The planned global tie-up between British Airways, American Airlines and Iberia has moved closer to securing a regulatory green light in Europe. Both BA and the EC confirmed that competition officials had started consulting with rival airlines, such as Virgin Atlantic, about the concessions that the three carriers had offered to address potential anti-competitive implications of the deal.

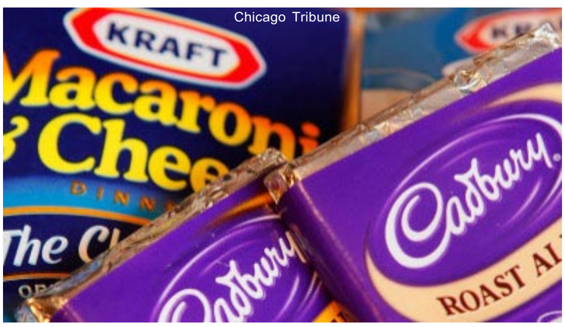
The fact that Brussels has started to consult on the commitments offered is a strong indication that discussions between the three carriers in the proposed alliance and commission officials have been productive in recent months.

However, there is no guarantee that the deal will be cleared as a result of the comments received in the current consultation. Even if the EU regulatory process is advancing, the airlines will still need approval for the tie-up from Washington. *(FT, 01.01.10)*

Kraft Wins Cadbury – At Last

Cadbury PLC shareholders have approved Kraft Foods Inc.'s roughly US$19.5bn offer to acquire the British candy maker – the final step in creating the global food giant. The focus now shifts to how Kraft will combine the companies and prove it was worth the often-bitter fight.

Together, the companies have roughly US$50bn in annual revenue through sales in 160 countries with their product lineup ranging from Kraft Macaroni & Cheese to Cadbury's Creme Eggs.



The deal gives Kraft access to critical growing international markets like India and Latin America where Cadbury thrives and ups its presence in the lucrative candy and gum market.

(AP, 02.02.10)

BP, DuPont Top Climate Change

BP, Caterpillar and ConocoPhillips are to pull out of the membership of the Climate Action Partnership – the group of companies that had been supporting President Obama's climate change legislation agenda. The companies would devote resources to furthering their business interests in other ways.

The move reflected dissatisfaction with the details of proposed climate legislation, which the companies believed had taken a direction that unnecessarily punished their industry. They favoured "friendlier climate legislation", as well as new product development. BP and Caterpillar were the founding members of the Coalition, which enjoyed some success in shaping US policy. *(BR, 17.02.10)*

Tullow Oil Get Licence to Flare Gas

Tullow Oil has reached agreement with the Ugandan government that it will be allowed to flare gas at its operations in the country – a process that would release large quantities of greenhouse gases.

Tullow has said that it is committed to good practices within its Ugandan operations, although which standards apply is by no means clear. The company has also said that it is unable to comment directly on the terms of its agreement with the Ugandan government because it is required to uphold confidentiality under terms of the agreement. *(BR, 17.02.10)*

Glaxo's Low Cost Vaccine for Malaria

GlaxoSmithKline will aim to keep the prices for its planned malaria vaccine low in order to make it available to poor communities where it is needed. The company has also put into the public domain thousands of potential drugs that might help spark future non-profit research into the disease.

GSK would exceed the expectations of society by targeting diseases that otherwise attract little innovation or funding because they mainly impact developing countries. The company has also created a US$8m fund to pay for scientists to explore the newly accessible chemicals or others in an 'open lab' in one of its research centres. *(BR, 21.01.10)*

Walmart Gives Farmers a Market

Walmart has launched a development initiative in Peru which it says will help more than 2000 small-scale farmers in the region. The programme, which will be run in partnership with the CARE poverty charity, will focus on developing more productive vegetables such as artichokes and avocadoes in Peru, and on empowering women to become more involved in farming.

Farmers will also be offered advice on how to expand production and gain better access to local and export markets. Technical assistance will be provided to help growers implement environmental and water resource management practices. *(EP, 17.02.10)*

UK Ethical Sales Up Threefold

A tripling in the level of British 'ethical sales' during the past decade has been announced in research by the Co-operative Bank. The market for ethical goods such as Fairtrade products, eco-travel and ethical finance in the UK was worth US$57.6bn in 2008, compared with US$20.2bn in 1999, showing a 166-percent rise in a period in which overall consumer spending increased by 58 percent.

Fairtrade goods, which were worth around US$33mn in 1999, were worth US$953mn in 2009 and it is expected that during 2010 Fairtrade purchases will break the US$1.5bn barrier for the first time. *(EP, 05.02.10)*

Call to Revamp Alcohol Labelling

The drinks industry may be required to add health warnings to alcoholic drinks, according to proposals published by the UK government, after it was revealed that only a minority of drinks currently carry approved voluntary labelling. These include the number of units of alcohol contained, the guidelines for consumption for men and women and the website address for the DrinkAware site.

The government is now consulting on what it should do next, with one of the options to introduce mandatory labelling – an option supported by a number of campaign groups. It said that assurances of compliance have been received from most of the major manufacturers and retailers. *(BR, 15.02.10)*

China: Will Google Go or Stay?

Google, the world's leading search engine, has thrown down the gauntlet to China by saying it is no longer willing to censor search results on its Chinese service. The internet giant said the decision followed a cyber attack it believes was aimed at gathering information on Chinese human rights activists.

The move follows a clampdown on the internet in China in 2009, which has seen sites and social networking services hosted overseas blocked and the closure of many sites at home. Chinese authorities criticised Google for supplying "vulgar" content in results.

Google acknowledged that the decision "may well mean" the closure of Google.cn and its offices in China. It said the cyber attack originated from China and that its intellectual property was stolen, but that evidence suggested a primary goal was accessing the Gmail accounts of Chinese human rights activists.

(www.guardian.co.uk, 13.01.10)

China Should Respond to US Companies' Bribery

– Xiao Hua*

American telecommunications company UTStarcom has admitted to bribing officials of state-owned telecommunication companies in China and will pay a US$3mn fine, according to an announcement by the US Department of Justice on December 31, 2009. UTStarcom was accused of spending vast amounts of money on trips to the United States for Chinese officials.

This is not the first case of American companies bribing Chinese officials. Lucent Technologies, Avery Dennison, the American leading manufacturer of tapes and Control Components Inc. (CCI), a provider of severe service control valve solutions, had previously been fined by the US law enforcement officials on their schemes of bribery.

A country's neglect to its corporations' bribery to foreign officials or companies would harm its image as a whole and further limit the potential of its enterprises' in exploring the global market. That's why the US government is so strict regarding overseas business bribery. With more and more Chinese enterprises adopting global strategies, China should take a worldwide view on handling business corruption. It should learn from the US and establish a clean image as well as severely punishing commercial bribery home and abroad to win local trust and maximise profits.

Business bribery is the enemy of a fair marketing economy. Foreign bribery may seemingly only damage the interest of the bribed side. However, it can also damage the image of enterprises from the bribing countries. Nowadays, business competition is not only based on operational strength but also image

Japan may be an example to follow. In the 1970s, business corruption prevailed in Japanese market. On February 04, 1976, the US Senate announced that the aerospace company Lockheed Corporation bribed foreign officials in the process of negotiating the sale of aircraft which involved the former Japanese Prime Minister Tanaka Kakuei. Japan set up a special investigation committee for this case. Tanaka was sentenced to four years in jail and fined 500 million yen. After this scandal, the number of business corruption cases distinctly decreased in Japan and its image has improved greatly.

However, we could not eradicate business corruption without a complete legal system. China does not currently have any specific laws which forbid bribing foreign government officials as the Foreign Corrupt Practices Act does in the US. Moreover, there are no laws concerning domestic business corruption and bribery. What we have are only some relative items or regulations in Anti-unfair Competition Law and Criminal Law. They are not sufficient to handle bribery in the form of "training" or other unconventional schemes. Training related bribery refers to companies' offering free training, which would otherwise be very expensive, to officials.

In recent years, American companies have bribed Chinese officials many times. But most of them have been investigated and fined by the US law enforcement department. If China continues to do nothing to enhance its legislation and law enforcement on foreign business corruption and bribery, what image would the Chinese market have? We should observe that the lack of legal restraints on Chinese enterprises' overseas business operations would undermine their competence in overseas market.

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* *The article has been written by Xiao Hua that appeared on China.org on January 06, 2010.*

Mongolia Seeks New Investors

Mongolia is attempting to attract new foreign investors to balance China and Russia, as it embarks on a series of privatisations and initial public offerings of its extensive mineral assets. It has opened itself for large-scale mining and mineral development in recent months after years of debate and in-fighting about the country's investment regime.

Mining companies from China and Russia are among those vying for licences to develop Tavan Tolgoi, a state-owned deposit that contains more than six billion tonnes of coking coal. The Mongolian government will balance the applications of Chinese and Russian companies against those from the US, India, South Korea and elsewhere. *(FT, 02.01.10)*

Africa Recovering from Global Crisis

African business executives are optimistic that the continent will experience an economic turnaround in 2010, according to a survey released by the Kenya Association of Manufacturers (KAM).

The survey, which featured 37 executives drawn from telecoms, beverages, banking, media, private equity and mining businesses, also supports the view that Africa is beginning to heal from the effects of 2009's global financial crisis.

The findings show 95 percent of the respondents expect to expand their businesses over the year, while a further 100 percent said 'they anticipate levels of foreign direct investment (FDI) to rise in 2010, with the majority expected to come from China.' *(AN, 18.01.10)*

China Launches Index Futures

China took a "big step" toward opening its capital markets by approving stock index futures, paving the way for increased investment in the world's fastest-growing major economy. The China Securities Regulatory Commission might take three months to complete preparations for index futures, agreements to buy or sell an index at a preset value on an agreed date. The government also approved margin trading and short selling, when investors seek to profit from declines in shares, according to a commission statement on its Website.

Increased investment in Chinese equities may help narrow the gap between the prices of shares traded in both Hong Kong and the mainland. Companies in China's benchmark Shanghai Composite Index trade at 33.9 times 12-month trailing earnings compared with 20.9 times for the Hang Seng China Enterprise index in Hong Kong. *(BS, 09.01.10)*

Germany's New Investment Rules

Germany is to introduce a number of new laws and regulations affecting the investment industry aimed at streamlining financial market practices. The country is in the process of drafting a law that would provide new security to investors.

The law would create new requirements for financial trading and sanctions that could be levied in cases of market abuse. Under the plans unsecured short selling would be forbidden and clear regulations would be established for covered short selling. In addition, public property funds would face new minimum holding periods as well as liquidity requirements. *(II, 19.03.10)*

Investors to Pour Money in Hedge

Investors expect to pour more money into hedge funds in 2010 than they will withdraw for the first time since 2007, reflecting cautious confidence about the industry and the financial markets more broadly. The majority of respondents expect to see more than US$100bn of net assets flow into hedge funds in 2010. That comes after two years of net outflows, with investors having withdrawn hundreds of billions of dollars more than they put into funds during 2008 and 2009 combined.

Hedge funds as a group were up 20 percent in 2009. Industry assets stood at US$1.6tr at the end of 2009, up from US$1.4tr in 2008, though below the 2007 peak of US$1.9tr. *(II, 17.03.10)*

Doing Business in Zimbabwe

The Zimbabwean government has been working hard to attract international investors to revive the country's failing economy. The proposed privatisation of potentially profitable parastatals, such as Air Zimbabwe, the National Railways of Zimbabwe, Cold Storage Company and Tel One, offers significant investment opportunities.

Reforms in the financial sector, such as the removal of cash movements controls price controls and the introduction of multiple currencies such as the US$ and the South African rand, have seen a number of big international companies committing themselves to doing business in Zimbabwe. *(IPS, 07.01.10)*

India is Back: GDP to Grow

The Indian economy is likely to grow by 8.2 percent in the next fiscal due to rising investment demand and global recovery, according to financial services firm Goldman Sachs.

India registered a growth of 6.1 and 7.9 percent in the first and second quarters of the current fiscal.

It further said the urban organised retail, fiscal reforms, infrastructure and exports would provide good investment opportunities. "As a leveraged play on economic growth and rising consumer demand, we think organised retail in urban India will be a key growth area in 2010", Goldman Sachs said. The disinvestment of government stakes in large state-owned enterprises will be an important theme for Indian equity markets in 2010. *(ET, 15.01.10)*

We Cannot Afford to Spurn the Emerging Investors

– Matthew Slaughter*

During December 2009, China's Geely settled commercial terms to buy the Sweden-based Volvo division from Ford of the US. If this deal receives government approval, it will become the latest in a series of acquisitions reshaping the global automobile industry. Over the past year, Beijing Automotive (BAIC) has bought platforms and technologies from General Motors' Saab unit, Sichuan Tengzhong has proposed a purchase of the GM Hummer division and Ford has sold Jaguar and Land Rover to Tata of India.

Taken together, these transactions demonstrate two significant facts about international investment that carry two cautionary lessons for leaders in business and government. The first fact is the rise of foreign direct investment (FDI) from developing into developed countries. For generations, FDI flowed overwhelmingly between rich countries. But recent years have seen surging FDI outflows from multinationals based in developing countries. FDI arising from the four "Bric" nations (Brazil, Russia, India and China), Indonesia and South Africa averaged about US$10bn a year in the decade to 2003 but had climbed to US$121bn by 2008.

Two forces are driving this secular rise. One is sustained, rapid economic growth in developing countries. This has fostered new world-class companies that are now expanding abroad to serve larger and richer markets. The other force is the continuing pattern of global imbalances. Several developed countries remain in chronic current-account deficit, most notably the US. Offsetting current-account-surplus countries now include several developing countries such as China and oil exporters. Some of the asset purchases of these new surplus countries are taking the form of FDI.

For leaders of companies based in developed countries, the lesson is simple – to beware and prepare

The second fact is that merger and acquisition (M&A) activity, not greenfield investment, is by far the predominant method by which multinationals undertake FDI. In the past decade, M&A transactions have accounted for about 75 percent of global FDI inflows. The share is even higher in many advanced economies. The benefits of FDI via M&A can include quick presence in new markets, immediate cost-reducing synergies and ready access to technologies and managerial talent.

The Geely transaction thus underscores that global FDI arises increasingly from new sources and overwhelmingly via M&A transactions. For leaders of companies based in developed countries, the lesson is simple – to beware and prepare. Strategic planning for engagement with emerging economies can no longer be confined to opportunities for revenue growth or cost reduction. It now must include something far more challenging: greater competition, even at the most basic level of competition for existence.

Geely demonstrates how quickly this competitive threat can arise. Born in 1986 as a refrigerator manufacturer, it began producing cars in 1998 and first appeared at the Detroit auto show in 2006. Its sales have exploded from 200 in 1998 to a projected 250,000 in 2009. Until recently, it was laughable to think that emerging-market companies could challenge world-class businesses in advanced-technology, mature industries such as automobiles. Executives in all sectors should today be asking themselves which companies could be their Geely, BAIC, Sichuan Tengzhong and Tata.

For leaders of advanced countries, the lesson is to prepare to resist protectionist calls against acquisitions of their domestic companies by emerging-market multinationals. Unfortunately, many governments were raising new barriers to foreign acquisitions even before the financial crisis and recession. Calls to further protect domestic companies and jobs have grown only louder amid the slow recovery and rising unemployment.

Politicians need to remember the many well-documented benefits of inward FDI: a stable capital inflow, and new companies that tend to create high-paying jobs that involve lots of research and development, capital investment and exporting. Accordingly, to remain attractive locations for developing-country multinationals, leaders should maintain transparent and fair policies for reviewing foreign acquisitions.

Greater FDI can help repair global capital markets and national economies. Geely's deal with Ford is an example of this, with lessons for many.

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* *Associate Dean and Professor of Management at the Tuck School of Business at Dartmouth, US. The article appeared in the Financial Times, on January 04, 2010.*

Venezuela Starts Energy Rationing

Oil-rich Venezuela ushered in 2010 with new measures rationing electricity use in malls, businesses and billboards, as Hugo Chavez's government aimed to save power amid a crippling drought.

The new regulations came into effect January 01, 2010, with businesses required to comply with reduced consumption limits and authorities warning of forced power cuts and rate hikes if the measures are not followed. Venezuela is flush with oil – the country's primary export – and natural gas, but relies mainly on hydroelectric generation to meet domestic energy demand. *(AFP, 02.01.10)*

NCC to Implement Tariff Cuts Regime

The National Communications Commission (NCC) of Taiwan announced a rate reduction plan to cut nationwide mobile telephone service rates by 5.87 percent from April 01, 2010, while fixed-network communication service fees will drop by 5.69 percent. The new policy will be effective for three years until March 31, 2013.

Consumers in Taiwan will benefit from a reduction in communication charges amounting to US$633mn. The price-cutting plan is not surprising, given that the NCC has enforced a tariff reform policy for three years since 2007. The Telecommunications Industry Development Association estimates that the cuts will cost the industry US$1.16bn in revenue. The NCC has promised to complete research into the possibility of wholesale price regulation by May 2010. *(ILO, 27.01.10)*

Review of Orange-Sunrise Merger

The Swiss Competition Commission has announced its intention to review the planned merger between Orange and Sunrise in Switzerland. According to the commission, Swisscom, Sunrise and Orange are the main players in the mobile telecommunications market; the consolidation between enterprise of Orange and Sunrise would account for a market share of approximately 40 percent, with 60 percent remaining with the former monopolist, Swisscom.

Should the merger go ahead, the number of players in the Swiss mobile market would be reduced to two. Thus, the commission must assess the potential impact of the merger and, in particular, the risks associated with creating a duopoly. *(ILO, 20.01.10)*

Structural Changes in Aviation

In a bid to modernise the country's regulatory infrastructure, the Directorate General of Civil Aviation, India's aviation regulatory body, intends to place a restructuring proposal before the government. At present, the directorate general operates as an instrument of the central government under the Ministry of Civil Aviation.

In 2009, in technical collaboration with the International Civil Aviation Organisation, the directorate general commissioned a feasibility study to be conducted for the establishment of an autonomous regulatory body in India. Based on the result of this study, the directorate general will now propose that it convert into the Civil Aviation Authority of India – a regulatory body that will have greater autonomy and enhanced powers in comparison to those that it presently exercises.

The Civil Aviation Authority will operate in line with other national regulatory bodies such as the US Federal Aviation Authority and the UK Civil Aviation Authority. *(ILO, 03.03.10)*

NCC Introduces Number Portability

The Nigerian Communications Commission (NCC) engaged the services of external consultants to develop the regulatory, legal and technical framework for implementing number portability in Nigeria.

It is expected that number portability will be implemented by all telephone operators; fixed-line number portability will be limited to fixed-line operators and mobile number portability will be limited to mobile operators.

The commission hopes that mobile number portability will remove barriers to consumers' choice of mobile network; increase competition between mobile network operators; ensure that network operators have an incentive to improve their quality of service and consumer satisfaction; and enable new entrants to gain market share. *(ILO, 24.03.10)*

Kenya's Burdensome Tax Regime

Tax experts want Kenya to adopt "smart regulation" techniques that will simplify tax administration and encourage compliance. Kenya is on the right path to reforming the sector, but it still needs to improve on its electronic filing, consolidate related taxes and streamline administration, among other smart regulations techniques.

The report entitled *Paying Taxes 2010* shows that at 49.7 percent, Kenya levies the highest corporate tax in the region. Tanzania follows at 45 percent, Uganda at 32 percent and Rwanda at 31 percent.

The report also notes that multiplicity of taxes has caused businesses to look for ways to evade some taxes in order to reduce the associated administrative costs.

Currently, Kenyan firms have to contend with 41 different levies, cutting across 16 regimes. *(TEA, 03.01.10)*

Regulating Ghana's Oil and Gas Sector

– Stephen Yeboah*

It's a recognisable fact that the oil and gas industry is regulated throughout its entire process through diverse environmental, health and safety laws. The issue of regulating the petroleum industry has precisely been the dilemma of many oil-rich countries especially the developing states. Oil extraction, transport, refining and consumption are regulated to describe and evaluate the impacts on human health and biodiversity.

It is, however, worrying to note that environmental and health regulations in developing countries appear to be weaker in dealing with the oil and gas industry. The US Energy Information Administration has once reported that "Nigeria does not have a pollution control policy and the laws that do exist are not enforced"

Focusing on the Ideal

Ghana is no exception if environmental and health regulations are said to be weaker and unenforceable in developing countries considering the bleak experiences in the mining industry. Oil companies are the most difficult corporate groups to deal with in the extractive industry and it would be disastrous for Ghana if legal framework that is dated, weak and contain gaps is to be used to govern the oil and gas industry.

The regulation of the oil sector is, thus, the most important phase that deserves urgent attention. What the country should know is that oil companies have strong incentives to maximise profits and the availability of weak and unenforceable environmental and health laws could lead to gruesome abuse. The country is advised to strengthen its laws since oil spills are spontaneous and most times deliberate on the part of companies in order to make room for adequate compensation to those who would be affected. Whether or not there would be unlimited controversies in the oil sector would depend on the nature o our legal and regulatory framework.

Setting the Parameters

Any loophole in broad patchwork of regulations would allow companies to skirt the law and operate their plants in a manner dangerous to public health. Having many lessons around the globe, it rests on Ghana to adopt a sound and all-encompassing Environmental Management Framework (EMF) that would provide safety to lives of people and flora and fauna. The EMF should clearly specify the cost of oil spills, gas flaring and venting apart from prohibiting these practices for a safe environment. The EMF should cater for the lives of fishermen, local farmers and people most affected by exploration and production as a strategy of containing and managing grievances. It should be governed by an independent and legal multi-sectoral body comprising of government representatives, NGOs and civil society groups on the environment.

Though it is said that legal and regulatory framework would soon be brought for cabinet review, the question is would it has the capacity to control operations of oil companies especially when it is not a year old? If production should start later in 2010, should we expect anything beneficial especially when the impending legal and regulatory framework has not been tried and tested?

It's not an exaggeration to say that the Environmental Protection Agency (EPA) does not have the capacity to regulate the oil industry. The government should know that weak and inadequate environment and health laws have also incapacitated the abilities of the EPA. Therefore, let environmental and health laws be clear, adequate and strong to contain all anomalies that serve as risk to ensuring sustainable development.

Conclusion

Ghanaians should not be swayed into concentrating largely on revenues that the country would garner from the oil and gas industry. It is important to state that if Ghana does not approach the oil find with sobriety, the country would in no way be different from Nigeria, Gabon, Equatorial Guinea and Angola. The country cannot afford to repeat the same mistakes in the mining industry where laws are weak, inadequate and unenforceable. The government would undertake the right approaches towards regulating the oil and gas sector.

* *Department of Planning, Kwame Nkrumah University of Science and Technology, Kumasi-Ghana.*
Abridged from an article that appeared in the Modern Ghana News, on January 16, 2010.

Round-tripping Check by Mauritius

The Financial Services Commission of Mauritius has imposed a stringent set of conditions on Mauritius-based companies investing in India, in a bid to allay fears about round-tripping of funds.

The Mauritian government has also warned that licences of entities investing in India would be revoked if they source funds from India. The move provides a new turn to the lingering debate over allegations of Indian corporates using the Mauritius route to escape capital gains tax. Mauritius is the top source of foreign direct investment (FDI) flowing into India.

The move is significant since it comes at a time when the government is planning to review all double taxation avoidance treaties to plug loopholes. Also, the direct taxes code proposes a number of changes in the country's tax laws. *(ET, 20.01.10)*

French Bill on G20 Decisions

The French government, following the G20 meeting in Pittsburgh, finalised a bill to implement a number of the G20 decisions on strengthening the international financial regulatory system.

The bill fulfils EU implementation obligations on credit agencies that were adopted on the French presidency's initiative and is expected to be submitted to Parliament by the end of March 2010. The purpose of the bill is to strengthen the regulation of the financial sector and improve the financing of the economy in order to accelerate its recovery. *(ILO, 15.01.10)*

Measures to Reduce Card Fees

The Swiss competition authority, WEKO, has ordered a reduction of interchange fees, which are paid by retailers to credit card issuers for all customer purchases using a credit card. The reduction of the fee from 1.282 to 1.058 percent is a provisional measure by WEKO to bring the interchange fees in line with fees charged in the rest of Europe.

This step is expected to save retailers between US$19mn and US$28.2mn per annum. The measures were introduced as part of WEKO's credit card market investigation that started in summer 2009 and will stay in place until the market investigation is concluded.

(WEKO Press Release, 28.01.10)

Market Functioning and New Rules

The US and EU authorities are expected to hammer out the definite shape of a new regulatory order in 2010 that will fundamentally change how world banks and markets operate. Lenders' power to package and securitise mortgages and other forms of debt will face new limits, while hedge funds will face new scrutiny.

In Europe, EU member states and the European Parliament must still rule on a range of proposed regulations for banks, markets, insurers, hedge funds and private equity groups. But, it all looks to be on track for adoption, barring unforeseen political shocks.

(ET, 07.01.10)

Credit Risk Rating in Israel

The commissioner of banks in Israel issued a directive which demands that commercial banks take into consideration their exposure to environmental risks, particularly when granting credit to clients. The directive also opens up new opportunities for insurers in the environmental field.

Banks are required to acknowledge that the identification and evaluation of environmental risks are part of all necessary risk evaluations, in particular when granting a credit line or in the periodic assessment of the extent of the credit being granted.

By June 30, 2010, banks must establish an environmental risk manager who will ensure that environmental risks are taken into account as part of the risk management process, including procedures to identify substantial environmental risks when providing credit to clients.

(ILO, 22.01.10)

Belgian Banking Still Fragile

Belgium banking sector has stabilised, but remains fragile, the International Monetary Fund (IMF) said. The IMF, which just concluded a so-called Article IV consultation with Belgium, recommended that the Belgian government unwind state support for the financial sector gradually.

The IMF said it expects the Belgian economy to recover gradually in 2010 after shrinking about three percent in 2009. It warned about risks to this outlook, however. The recovery is expected to be gradual and fragile, with unusually high uncertainty. The near term outlook is clouded by a sluggish rebound in both domestic and external demand, rising unemployment, and growing public debt. *(WSJ, 15.03.10)*

Effects of Termination of Credit Facilities

Due to an increased need for liquidity and deteriorating market conditions for the majority of borrowers, banks of Netherlands have become focused on limiting their exposure to badly performing borrowers. As a result, the premature termination of facilities, usually initiated by banks as a last resort, has become a feature of discussions between banks and borrowers.

Generally, credit facilities entered into for limited period of time cannot be terminated prematurely, unless a default event occurs. Thus, it would seem that the bank has sufficient options to end its agreement with a borrower at any point during its relationship where the facility constitutes a credit risk or detrimental events occur. However, the possibility to terminate a relationship prematurely has not proved straightforward. *(ILO, 05.02.10)*

Agribusiness and the Food Crisis: A New Thrust at Anti-trust

– Timothy Wise*

The food crisis has a new villain: agribusiness. A recent report by Olivier De Schutter, the UN Special Rapporteur on the Right to Food, on "Agribusiness and the Right to Food" takes a close look at the contribution of commodity buyers, food processors, and retailers to the food insecurity now plaguing over one billion people in the world

Why agribusiness? Aren't they driving prices down? Well, yes and no, and both are a problem. If they are so big they can exert monopoly control over key markets, they can raise prices for lack of competition, hurting all food consumers. And if they have excessive market power over suppliers – particularly farmers – they can exert monopsony control and force down crop prices. That can benefit food consumers if low prices are passed through to consumers, but monopoly can rear its head again there. In any case, the price squeeze puts smallholder farmers in a precarious position. That contributes to the global food crisis because the majority of the world's hungry are small-scale farmers.

Among De Schutter's recommendations: strengthen anti-trust enforcement nationally and globally with a particular emphasis on "excessive buyer power in the agrifood sector," which he considers more worrisome than seller power.

In March 2010, the US Department of Justice (DoJ) launched an unprecedented process to consider doing just that. In Ankeny, Iowa, 800 farmers jammed a community college auditorium on March 12, 2010 for the first of five public hearings on corporate concentration and anti-competitive practices in US agriculture. Convened jointly by the DoJ and the US Department of Agriculture, the session took on Monsanto and the seed conglomerates, which are among the most concentrated sectors in the industry.

Obama's DoJ has already launched an investigation into Monsanto's practices in licensing its genetically modified seeds. Monsanto presents a classic case of monopoly selling power. Seed prices overall have risen an astounding 146 percent since 1999, and 64 percent in last three years. Monsanto controls an estimated 93 percent of the US soybean seed market. An Iowa grain farmer told the crowd that he had no choice but to buy Monsanto's GM traits and that the prices eroded any gains he got from higher yield. Others told of legal threats from Monsanto for planting its seeds without a license. The hearings may be more significant, though, for their explicit focus on monopsony buyer power.

US anti-trust law has always recognised buyer power as an anti-competitive practice, but authorities have rarely taken the issue seriously when reviewing the agribusiness mergers that in the last two decades have placed the majority of the world's food in the hands of a small number of corporations. At the bottom of this food chain are farmers. It is a race to the bottom that squeezes the life out of farms, particularly the smallest farms. And it contributes to food insecurity not just from unsustainable farm prices but by forcing down wages, for agricultural labourers, packing workers, and other workers in the industry.

The issue is particularly urgent for independent livestock farmers, who have seen the meat conglomerates gobble each other up, with the DoJ blessing the carnage. DoJ did its standard investigation of pork giant Smithfield's 2007 takeover of Premium Standard Farms, a merger that consolidated the largest US hog producer and pork packer with the country's second largest hog producer and sixth largest packer. The concerns about uncompetitive practices and undue buyer power were particularly important in the southeastern part of the country, where the merged company left 2,500 independent hog producers with just one regional buyer for their market-ready animals. Despite USDA studies documenting Smithfield's buyer power in the region even before the merger, Bush's DoJ ruled that "the merged firm is not likely to harm competition, consumers or farmers."

The August DoJ hearing will focus precisely on this kind of buyer power in livestock. Family farmers will be waiting to see if President Obama is all hope and no change when it comes to anti-trust enforcement.

* *Director, Research and Policy Programme, Global Development and Environment Institute. The article appeared in the Global Policy Forum, on March 22, 2010.*

Namibian Banks: Charges Are Highest Worldwide

– Ernst Micheal Gawaseb*

We have stated in the past that there is an urgent need in Namibia to protect Consumers. Consumer protection legislation has been enacted worldwide to protect the interest of a consumer of goods & services. Namibia seemingly is among such countries that prioritise consumer protection, judging by plans for 2010

In Namibia, since 2005 the Namibian Consumers' Association (now known as the Namibia Consumer Trust) has been at the forefront of increasing awareness on consumer issues and to ensure that consumer protection legislation are enacted. There is anecdotal evidence that shows that the Namibian environment surrounding the supply of goods and services is currently characterised by discriminatory and unfair market practices, proliferation of low quality and unsafe products, poor service, lack of awareness of consumer rights, inadequate protection for consumers, limited (or inaccessible) redress, and weak enforcement capacity.

Taking all the above factors into account, there is therefore a need for legislation on consumer protection. The drafting of the consumer legislation is on track and should be realised in 2010. The purpose of the legislation is to protect the interest of common consumers purchasing goods and services. However, it is advisable that the Namibian Competition Commission act be revised to fully encompass the consumer protection function.

The recent launch of the Namibian Competition Commission is a right step to address consumer issues as competition and consumer protection is interrelated. The Commission's role is to enhance the promotion and safeguarding of competition in Namibia to provide *inter alia* consumers with competitive prices and product choices.

Whilst the provisions contained in the Competition act is specifically aimed at consumer protection from a competitive pricing and product point of view, the Competition act in its current form may not address the consumer protection aspect at full scale.

The recent case of the Office of Fair Trading (OFT) in the UK where it lost its legal case for the right to assess bank charges for fairness, is a classic point where OFT simply could not legally win the case due to inadequacies of the law. Such a situation lends credence that there is a need to revise the competition law in 2010 to explicitly take into account consumer protection from a financial, economic and commercial point of view in Namibia.

The practical realisation of this act is even more urgent since Namibia, whose business/commercial and financial interests in terms of trade and economic sectors, is highly linked to that of South Africa. In 2006, the Competition Commission of South Africa did undertake a wide ranging study on the competitive nature of the banking industry and the outcome was that there could be evidence generally of an oligopolistic behaviour among banks for the mere fact that its banking industry is concentrated. It however stops short of concluding that there is evidence of collusion which could have been characterised as an anti-competitive behaviour which could have given rise to the subjection of the Competition Act.

South Africa also recently introduced a comprehensive consumer protection act and most countries around the world have such legislation. It is quite common for countries to have both a competition act and a consumer protection act, as the former enhances economic rivalry between firms which has benefits for consumers. However, given the size of the Namibian economy and the fact that it takes too long to institutionally set up an organisation such as with the recently launched Secretariat of the Competition Commission, only after six years of legislation, it would be proper that the Competition Commission's act be amended to ensure consumer protection.

All acts that aim to protect consumers or regulate goods or services ought to ensure that consumers have a voice through consumer activists being enabled to represent consumers on regulatory, standard setting and decision making bodies. The Namibian Agronomic Board act is a good example of such a provision by law makers. Consumers, as vital stakeholders also need to be involved at important platforms.

* *Executive Director, Namibia Consumer Trust. Abridged from an article that appeared in the Namibia Economist, on January 15, 2010.*

About a Competition Law – Uganda*

Uganda is a landlocked country in Eastern Africa. It has a population estimated at 26 million people, 80 percent of whom are peasants in the rural set-up and 20 percent are scattered in main urban centres. Uganda is a member of several regional and global socio-economic groupings like the COMESA, EAC, Cotonou Agreement (ACP/EU), the UN and the WTO. However, the country's participation in most of the social and trading blocs is limited. Though as an LDC, it has considerable latitude in complying with the rules of the multilateral trading system and the WTO agreements.

Economy

Uganda's economy has continued to register impressive economic growth with an annual average increase of six percent in gross domestic product (GDP). It operates in a free market environment after the pursuance of an economic reform agenda from the late 1980s to date, aimed at boosting the national economy; reducing government involvement in business; and encouraging private sector-led economic development through privatisation, liberalisation, and deregulation amongst others.

With respect to competition, the government has generally eliminated price controls in the domestic market. Basic utility services like water and electricity are still largely available from public enterprises with total monopoly positions. Presently, the government concentrates on policy formulation and monitoring.

Competition Evolution and Environment

Uganda's economy, until very recently, has been highly regulated. While competition was not deliberately and negatively interfered with, it was encouraged rather haphazardly. Competition was dealt usually in the context of other legislation and not directly. The majority of firms in Uganda are small family controlled entities, making the need for an enforceable competition regime perhaps less obvious.

Competition Law and Policy

There is currently no competition law in Uganda. It has drafted the Competition Bill 2004 when finally be enacted and enforced, is expected to foster competition in the Ugandan market; protect consumers' interests, whilst safeguarding the freedom of economic action of various market participants; prevent practices which limit access to markets or otherwise unduly restrain competition, affecting domestic or international trade or economic development; and establish a Competition Commission in Uganda.

The draft Competition Bill is composed of 10 parts and 56 sections entailing: interpretation; establishment of the commission; formation; functions; procedures and jurisdiction of the Commission; anticompetitive practices; offences; obligations; competition advocacy; and funds, amongst others.

Consumer Protection

Currently, neither is there an overall consumer protection policy nor a law to protect consumers in Uganda. A draft proposed bill was produced in 1997 and presented to the Uganda Law Reform Commission (ULRC) during the review of commercial laws. With regard to consumer issues, it is envisaged by the local consumer movement that the National Consumer Policy should promote and protect consumer rights for just, equitable and sustainable economic and social development.

The process of enactment of a consumer protection law has been protracted but with apparently low interest on the part of the government. A proposed draft law was produced by Uganda Consumers Protection Association (UCPA) and handed to government for consideration as part of the organisation's bid to ensure that a law to protect consumers was enacted. Contents of the draft have been considered and are included in the government draft produced by the ULRC. The draft awaits cabinet approval before it goes to the Parliament.

Concluding Observations and Future Scenario

Uganda has no comprehensive law covering competition. The enactment of competition policy, legal and institutional frameworks as well as their operation; with the responsibility to put in place the benchmarks for proper conduct, mechanisms for monitoring, sanctions and redress need to be expedited.

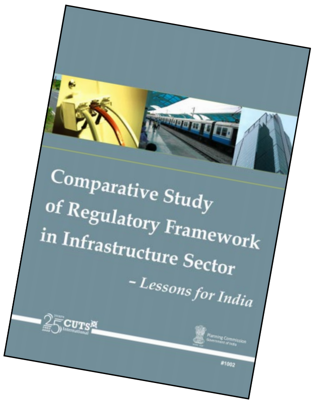
The draft Competition Bill needs to be enriched and made coherent with other existing regulatory regimes. The expected competition policy regime should be coherent with national development strategies for poverty eradication, sustainable socio-economic development, other sectoral regulatory regimes, as well as regional and multilateral initiatives.

Competition and consumer protection regimes are good for the national economy, business and consumers and therefore, should be promoted for efficiency, economic growth, best practice, quality assurance and fair trade.

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

Publications

Comparative Study of Regulatory Framework in Infrastructure Sector – *Lessons for India*



For the Indian economy to achieve and sustain a high growth rate, creation of quality infrastructure is critical. It is estimated that India needs more than a trillion dollars of investment in infrastructure. This Report focuses on how such a regime can be developed by studying international experience in infrastructure regulation. It assumes, as its operating premise, the need for a regulatory framework to be transparent, consistent, effective and independent of the government.

The report analyses and compares the institutional and governance aspects of regulatory frameworks in seven countries: Australia, Brazil, Canada, Philippines, South Africa, Sri Lanka and the UK. On the basis of this comparison, lessons are identified for India.

Research Report
Suggested Contribution: Rs 495/US$60

Dimensions of Competition Policy and Law in Emerging Economies

This paper shows that a happy compromise between competition and industrial policy and efforts to stimulate co-operation is not only desirable but possible. It identifies inadequate awareness and lack of competition culture as stumbling blocks to the successful adoption of competition policy and law by emerging economies.

The paper also goes on to clarify implementation modalities, such as the shaping of the content of competition policy and law and the empowerment of competition authorities needed for effective implementation of the competition law.

This discussion paper can be viewed at:
http://www.cuts-ccier.org/pdf/Dimensions_of_Competition_Policy_and_Law.pdf

Economiquity

The monthly flagship newsletter of CUTS Centre for International Trade, Economics & Environment (CUTS CITEE) encapsulates an article entitled '*Lessons from Copenhagen for Doha*' in its cover story. The Doha Round on trade is suffering from the Copenhagen syndrome and the root cause is the same. 153 members of the World Trade Organisation (WTO) are trying to thrash out a legally binding, multilateral treaty through 'consensus' when their interests are as different as chalk is from cheese.

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

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

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

Sources

AFN: Australian Food News; AFP: Agence France Presse; AN: Africa News; AP: Asia Pulse; AP: Associated Press; BR: Business Recorder BR: Business Respect; BS: Business Standard; DT: Daily Times; EP: Ethical Performance; ET: Economic Times; FE: Financial Express; FT: Financial Times; II: Investment International; ILO: International Law Office; IPS: Inter Press Service; NV: New Vision; SO: Spiegel Online; TC: The Citizen; TEA: The East African; TH: The Hindu; TM: Trading Markets; TP: Telecom Paper; TS: The Star; UNB: United News of Bangladesh; WSJ: Wall Street Journal

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