REGULETTER

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Why World Competition Day?

Although Canada and the US adopted the world's first "modern" competition laws over a century ago, international interest in and awareness of competition laws remains far from satisfactory today. Globalisation and heightened levels of international trade have increased the importance of competition policy and law issues. At the same time, national governments, international agencies, donors and the global policy community are increasingly realising the need for effective implementation of competition policy and law globally, as a means of realising more fully the benefits of economic and trade liberalisation.

To ensure that consumers around the world realise the potential benefits of an effectively implemented competition regime, and also play their role in making competition regimes work worldwide, it is critical that focus on competition policy and law issues at an international level be strengthened. This can be achieved through the adoption of a World Competition Day.

The idea of the need for increased global campaign on competition through such a Day was also adopted by over 50 participants from across Asia, Europe and Pacific, at the 'Asia Pacific Regional Seminar on Competition Law and Policy', organised by United Nations Conference on Trade and Development (UNCTAD) in association with the Monopolies and Restrictive Trade Practices Commission (MRTPC) and CUTS in April 2000 at Jaipur (India), over 50 participants from Asia, Europe and the Pacific agreed that there was a need for an increased global campaign concentrating on competition. The *Jaipur Declaration,* formulated during the course of this seminar, recognised that an International Day of Awareness was a desirable way of promoting competition issues globally.

The idea was echoed by other global agencies. The Fourth United Nations Conference to Review the UN Set, held at the *Palais des Nations*, Geneva, from September 25-29, 2000, resolved that the IGE should "Study the feasibility of establishing a UN World Competition and Consumer Day as a means of publicising benefits to consumers of competition policy and educating the public at large". *(see overleaf)*

Inside this Issue

Special Articles

CUTS Centre for Competition, Investment & Economic Regulation
CUTS C-CIER

A Healthy Debate on Adoption of World Competition Day

The idea of having a World Competition Day (WCD) was circulated by CUTS in April and June, 2009 through its e-group, i.e. CompetitionOnlineForum*.Several endorsements were received in response, which are summarised here. CUTS floated the idea at the 8th annual conference of the International Competition Network (ICN) in Zurich on June 03-05, 2009, but there was little time for prolonged discussion on the matter, and hence it did not attract great attention.

As UNCTAD is a UN body and has done demonstrable work in addressing competition issues in the developing world as part of its work programme, this proposal was again floated at the annual meeting of the UNCTAD Intergovernmental Group of Experts on Competition Policy held at Geneva on July 07-09,, 2009. A Day must be chosen from among the significant days in the history of the development of international competition objectives.

In this respect, 25th October was chosen for its significance as the day on which the ICN was launched. This 2nd Call has identified the day of the adoption of the UN Set on RBPs as an appropriate day for adoption, i.e.December 05, 2009.

Kimera Henry Richard, Consumer Education Trust (Consent), Uganda is of the belief that WCD is a *brilliant idea*. It will raise awareness, capacity building, and promote competition culture and benefits. In particular, with countries like Uganda, where work has been tirelessly done to institutionalise competition seven years down the road, people are still stuck with draft bills, surrounded with uncertainty. A WCD can play an important advocacy role to institutionalise competition policy and legal framework for health and better marketplace for consumers and businesses.

Philip McClauren, Ministry of Commerce, Industry and Consumer Affairs, Saint Lucia, adds his voice to this issue. He considers it a *useful initiative*, which would augur well for building awareness on the work that is going on throughout the world, to develop a competition culture even in countries where it does not exist.

Gebremedhine Birega Dagaga, Ecological Consumers' Association, Ethiopia is happy to join the efforts, as usual, towards *making a difference* on the competition front, mainly because true competition will help consumers and competitiveness. He looks forward to hear more and commit to any national level responsibilities to be fruitfully discharged.

Margaret Bruce, Commonwealth Secretariat, UK commends this *excellent initiative*. She stated that the importance of competition was recognised by Commonwealth countries and this culminated in a model law which was adopted in 2005. She would welcome suggestions from countries on how this day should be celebrated.

Thapelo Dikotla, ICT International Affairs and Trade, South Africa *highly supported and appreciated* the initiative. He says that noting the credit crunch the world has seen, there is a need for efficient regulation and monitoring to allow for countries to realise the benefits of competition.

Venge Nyirongo, UN Coordination Analyst, UN-Malawi fully agrees with all proponents and in support of the WCD. It is certainly *useful for countries* like Malawi with a relatively young Competition Act (1998) and an even younger competition authority to get to speed with the full sensitisation of the issues. Again, as a developing country, the prioritisation of competitive practices and fair trading issues through benchmark activities like the WCD will go a long way in addressing market problems that befall these countries due to pressures brought about by globalisation.

* *A platform to exchange and communicate news and views on Competition & Economic Regulation at national, regional and international level. For subscription, mail at: CompetitionOnlineForum-subscribe@yahoogroups.com*

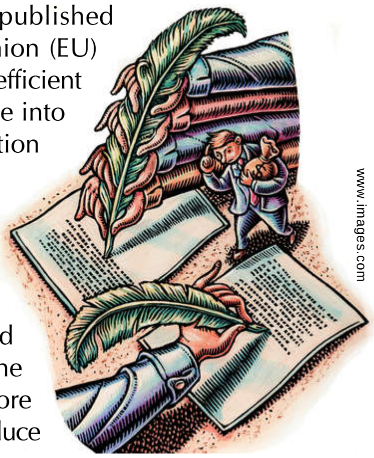
Amendments to Japanese Act

A number of amendments were passed by the National Diet of Japan on June 03, 2009.

The amendments comprise of several changes to the existing Act, including an increase in the number of potential leniency applicants accepted under the existing leniency programme, an extension of the statute of limitation for administrative orders and the introduction of special rules relating to document production orders issued by courts.

Under the Act, the definition of "business combinations" includes share acquisitions, mergers, asset purchases, corporate divisions and joint share transfers. *(A&CP, 04.06.09)*

Report on EU Merger Regulation



The European Commission (EC) has published a report finding that the European Union (EU) Merger Regulation has contributed to more efficient merger control within the EU since it came into force on May 01, 2004, succeeding Regulation 4064/89.

The EC found that turnover thresholds have been effective in distinguishing cases of EU relevance from those with a primarily national focus and that the pre-notification referral mechanisms introduced in 2004 have significantly contributed to the efficient allocation of merger cases to the more appropriately placed authority and helped reduce the number of parallel proceedings.

The report will serve as a basis for the Commission to assess whether it is appropriate to take any further initiatives. *(EC Press Release, 18.06.09)*

Changes to Leniency Regulation

The new Leniency Regulation in Poland, which sets forth procedural rules for the submission of leniency applications, entered into force on February 24, 2009. The new rules are designed to simplify the applicable procedures and bring them closer into line with the European Competition Network Model Leniency Programme.

The adoption of the Leniency Regulation coincides with the issuance of the first-ever Competition Authority leniency guidelines, which are intended to raise awareness of leniency and inform potential candidates of their duties and rights under the programme.

The guidelines provide further insight into the policies that the Competition Authority is likely to apply when evaluating leniency applications. *(ILO, 09.04.09)*

Mexican Federal Law Empowered

Following a forum organised by Congress in connection with the global economic downturn, the public and private sectors have expressed their desire to increase competition in the Mexican economy. In order to do so, the powers of the Federal Competition Commission (FCC) need to be strengthened.

Senator Santiago Creel presented a proposal to amend the Federal Law of Economic Competition on April 21, 2009. Under the proposals, the FCC would be able to impose substantially increased fines in order to bring the available penalties into line with international standards.

The proposed amendments modify the criteria for applying for an expedited review process and provide that the FCC would be able to enforce provisional remedies, and require information for merchandise studies and opinions in specific economic sectors. *(ILO, 21.04.09)*

Best Practices on Merger Control

The Netherlands Competition Authority recently published revised best practices on merger control procedures to incorporate the changes made to the Competition Act in October 2007.

According to the revised practices, the Competition Authority will publish all its informal opinions on merger control issues. The revised best practices incorporate the amendments made in September 2008, extending the scope of the simplified procedure.

It takes account of a Council of State ruling that the Government Information Act applies to the Competition Act, thus making it possible to request access to information on merger control cases. *(ILO, 16.04.09)*

Swiss Competition Act Evaluated

The Swiss Federal Government was presented with a Synthesis Report, issued by the Taskforce Cartel Act, to evaluate the ongoing effects and functioning of the Cartel Act.

The Act was significantly amended in 2003. Among other things, the amendment provided for a system of non-mandatory preliminary notification of potentially unlawful agreements and practices, empowered the commission to impose direct administrative fines on undertakings participating in a hardcore cartel or abusing their dominant position and empowered the commission to reduce or omit fines where co-operation from hardcore cartel members had lead to the cartel's discovery or suppression. *(ILO, 30.04.09)*

Antitrust Laws Toughened In India

The Competition Commission of India (CCI) and the new anti-monopoly laws have finally been introduced in India, following the revised Competition Act, which was first introduced in 2002 and then amended in 2007.

The CCI will replace the Monopolies Commission and will have powers to tackle cartels and abuses of dominant position by local and international companies. The CCI will have the power to conduct dawn raids, levy fines and even fine and imprison individuals involved.

Initially, the CCI will not have powers to control mergers and acquisitions, because the government decided that it lacked staff, although it is set to gain powers in these areas within six months. *(FT, 20.05.09)*

Competition in Canada: The Rules Have Changed

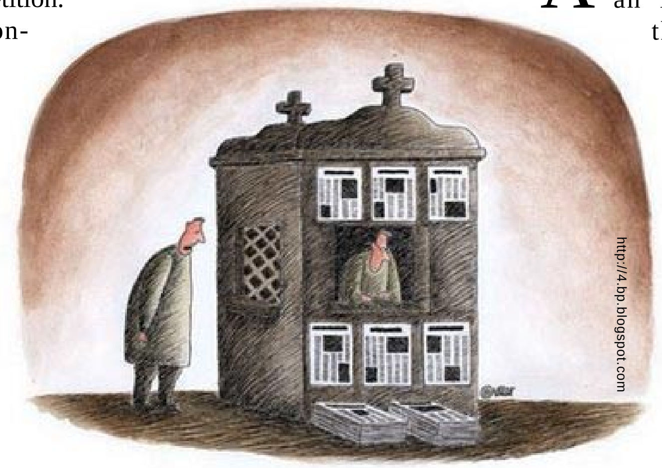
– Stéphanie Ruta*

Certain important amendments were made to the Competition Act of Canada on March 12, 2009. Some of these amendments are deemed to better protect Canadians from the harm caused by anti-competitive products. With these amendments, certain types of agreements with competitors, such as price-fixing, are now against the law even if there is no proof that they create an undue lessening of competition. Existing penalties for non-compliance have been considerably increased and the risk of not conforming to the regulations is much greater than before.

Pursuant to the amendments, a false or misleading representation is now subject to sanctions under the Competition Act even, if it is made to the public outside Canada, or in a non-public setting. Businesses should be cautious in their dealings with competitors and should ensure that their compliance policies and programs are reviewed and acknowledged by all employees.

The amendments to the Competition Act also create a new two-stage merger review and information-gathering process for proposed merger transactions. Under the new system, there will be an initial review period of 30 days, during which the parties cannot complete the transaction, and a new power for the commissioner to require a second period of a further 30 days, if he or she requires more time to study the merger.

The result is an increase from a 42-day merger review to a 60-day merger review, without the need for the commissioner to seek a continuance from the Competition Tribunal. The 30-day clock for the second review period starts ticking once all requested information has been provided to the commissioner. Consequently, parties may be prevented from completing a merger for a period of 60 days or more.



Competition Act in Canada was amended on March 12, 2009. The changes to the Competition Act are substantial and will impact the way that parties conduct business in Canada. Pursuant to the amendments, a false or misleading representation is now subject to sanctions under the Competition Act, even if it is made to the public outside Canada, or in a non-public setting.

A significant proposed amendment is an increase of the financial thresholds for merger pre-notification from 50 to 70 million and the establishment of a formula for automatic annual adjustments of these thresholds. Because of this increase, parties that are under the new thresholds will only be required to give notice of the merger after the transaction is complete. This will save both time and money.

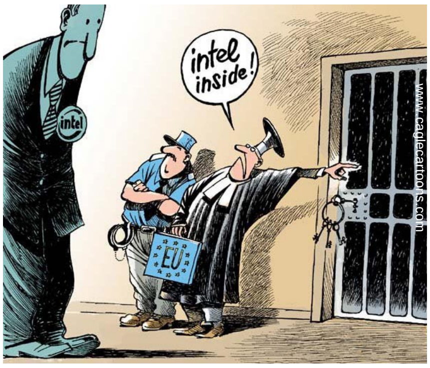
Other notable amendments are the reduction of the time period (from three years to one) within which the Competition Bureau may challenge a merger before the Competition Tribunal and the elimination of the separate "short form" and "long form" notification requirements in favour of a uniform requirement.

The changes to the Competition Act are substantial and will impact the way that parties conduct business in Canada. The Competition Bureau is in the process of establishing guidelines to help businesses adjust to the changes in the legislation and to ensure compliance with the new regulations. Any questions businesses may have regarding the recent amendments to the Competition Act and compliance with these amendments should be discussed with a legal adviser.

* *Member of the Corporate Department of Perley-Robertson, Hill & McDougall LLP, Ottawa.The article appeared in the Ottawa Business Journal, on June 08, 2009.*

EU Slaps Intel with Antitrust Fine

The EU fined Intel Corp a record US$1.45bn, saying the world's biggest chipmaker used illegal sales tactics to shut out smaller rival Advanced Micro Devices Inc (AMD). The fine exceeded a US$1,275mn monopoly-abuse penalty for Microsoft Corp in 2008.



Intel called the decision "wrong" and said it would appeal. Intel has about 80 percent of the world's personal computer microprocessor market and faces just one real rival, AMD.

The EC says Intel paid computer makers Acer, Dell, HP, Lenovo and NEC to postpone or scrap plans to launch products using AMD chips, paid illegal rebates to encourage them to use Intel chips and paid German retailer Media Saturn Holding to stock computers with its chips. The antitrust fine, imposed after an eight-year investigation, is the biggest the EU's executive arm has imposed on an individual company. *(FE, 13.05.09)*

ABUSE OF DOMINANCE

Electricity Markets Scrutinised

The New Zealand Commerce Commission has completed its investigation into whether firms in the wholesale or retail electricity markets in New Zealand had breached the Commerce Act.

The investigation started after various complaints were received about a perceived low level of competitive activity, allegations of anti-competitive behaviour, large company profits and high electricity prices.

The Commission concluded that the firms did not breach the Commerce Act and there was no evidence of collusive activity in the sector, although it did issue Trustpower with a warning regarding a risk of a breach. *(www.scoop.co.nz, 21.05.09)*

Pricing Saga Goes on for Mittal

Steel giant ArcelorMittal's four-year battle with the South African competition authorities over its pricing policies is set to continue with the Competition Appeal Court finding that there was a *prima facie* case that its flat-steel products were overpriced.

Three appeal court judges led by Judge President Dennis Davis set aside the Competition Tribunal's judgment and referred the matter back to the tribunal with guidelines on how to determine if excessive pricing took place.

The judges found the tribunal's approach was "fundamentally flawed". The tribunal simply examined the structure of the market and the way ArcelorMittal set prices by cutting supply locally. *(BD, 01.06.09)*

Lafarge Probed by Bucharest

Lafarge, the world's largest cement maker, is under investigation by Romania's competition authorities, following allegations that the construction group could be abusing its dominant market position.

Romanian investigators raided Lafarge headquarters and its two factories in Hoghiz and Medgidia. The regulator said the "dawn raids" were part of an investigation into the possible violation of Romanian competition law. Documents and declarations seized during the inspections are being analysed.

In its 2008 annual report, Lafarge said: "Romania sales benefited from pricing gains and a very dynamic market". Lafarge is being investigated by the EC, along with other cement makers, under suspicion of illegal cartel activity. *(FT, 26.05.09)*

Swisscom on Abuse of Market

Sunrise – Switzerland's second-largest provider of telecommunications services – has complained to the Competition Commission against Swisscom for abuse of market dominance.

Sunrise complained after Swiss Post awarded the contract for broadband services for its post offices and teller machines to Swisscom. Swisscom's offer of US$19mn was far lower than Sunrise's offer of US$27.4mn.

The question may be asked as to how is it possible for Swisscom to offer broadband services to the Swiss Post at a price substantially lower than that at which it offered only a proportion of those services to Sunrise on a wholesale basis? Sunrise's argument proves that Swisscom is abusing its market dominance in the broadband market. *(ILO, 20.05.09)*

Investigations into Water Cos.

The Estonian Competition Board has initiated investigations into the local water supply and wastewater discharge services market, in order to verify its compliance with competition laws.

The main reason behind the investigations is the dramatic increase in the prices charged for water supply and wastewater discharge services in Estonia over the last three years.

Although the Competition Board is still gathering information and the market investigation is ongoing, on April 09, 2009, the Board reached a decision regarding AS Pärnu Vesi and its abuse of dominant position. *(ILO, 28.04.09)*

EU Probing State Aid for Fortis

The Dutch government's nationalisation of Fortis' Dutch banking unit and its recently acquired ABN AMRO operation may have breached EU state aid rules.

EU Competition Commissioner, Neelie Kroes, announced an in-depth investigation. She said that the Dutch intervention was justified because of the risk of bankruptcy for Fortis Bank Nederland (FBN), but added there were competition concerns.

The Commission said it was concerned about a loan facility granted to FBN, the interest charged by the Dutch state and the price paid for the purchase of ABN activities from FBN and whether they comply with EU state aid rules. *(IT, 08.04.09)*

Microsoft Hit by Record Fine

Microsoft Germany has been hit with a US$13mn fine, after being found guilty of illegal business practices. The fine was imposed by the German competition authority, the Bundeskartellamt, following a ruling that Microsoft had illegally fixed prices with retailers for the Office Home and Student 2007 package.

"The product in question was heavily advertised in the autumn of 2008 in stationery retail outlets. Among others, a nationwide active retailer advertised the product with financial support from Microsoft", said the Bundeskartellamt.

It is not illegal for some contact to take place between the producer and retailer, but it is against German law for the seller to agree on future actions by the retailer. Microsoft has accepted the fine and will pay it shortly.

(www.vnunet.com, 09.04.09)

CARTELS

Brussels to Probe Airline Alliances

European competition authorities launched an investigation into alliances between some of the world's biggest airlines amid fears that some carriers could be planning to operate illegal cartels on transatlantic routes.

The move covers a set of agreements between Air Canada, Continental Airlines, Lufthansa and United Airlines – all members of the Star alliance – and, separately, between American Airlines, British Airways and Iberia, which belong to the Oneworld alliance.

Its inquiry would consider whether there were offsetting consumer benefits generated by the co-operation and stressed that the fact of the probe did not prejudge the conclusion. British Airways said the move was not unexpected. *(FT, 20.04.09)*

Hungary Raids Sugar Companies

The Hungarian Competition Office (GVH) has confirmed that it conducted unannounced inspections at the offices of three sugar companies, specifically Agrana Magyarország Értékesítési, Eastern Sugar Cukoripari and Mátra Cukor Mátravidéki Cukorgyárak, following suspicions that the firms may have been acting collusively, in violation of competition law.

The GVH has 180 days to complete the investigation, though this deadline may be extended, depending on the complexity of the case.

(GVH Press Release, 15.05.09)

Spain Examines Cans Market

The Spanish competition authority, the *Comisión Nacional de la Competencia* (CNC), has opened an investigation into several producers of metallic cans for food, a trade association and the main Spanish iron and steel firm.

The investigation follows a series of raids and concerns possible price-fixing or collective recommendations regarding prices in the market.

(CNC Press Release, 20.05.09)

SC Confirms Chemicals Cartel Fine

The Austrian competition authority, BWB, announced that the country's Supreme Court has confirmed a US$2.7mn fine that was imposed on two subsidiaries of the Donau Chemie Group by the cartel court in October 2008.

The initial antitrust investigation into the case had been launched in December 2006, following a leniency application by subsidiaries of the Brenntag Group which were also involved in the cartel activities comprising price-fixing and the coordinated restriction of supply in the market for industrial chemicals.

(BWB Press Release, 06.05.09)

SA Airways Faces Fine of Millions

South African Airways could be fined millions of rands for its alleged role in an international price-fixing cartel. It is one of several airlines under investigation by authorities in the US, the EU, Australia and Switzerland.

In June 2008, the US Associate Attorney General, Kevin O'Connor, said that the cartel had cost consumers hundreds of millions of dollars between 2001 and 2006. O'Connor said that, in some instances, airlines had raised fuel surcharges by 1000 percent.

According to O'Connor, airline executives met repeatedly in the US, Europe and Asia to arrange a price-fixing scheme that raised cargo rates, fuel surcharges and security costs for businesses. *(ILO, 28.04.09)*

SA Opens Supermarket Probe

The Competition Commission of South Africa has initiated an investigation against major South African supermarket chains Pick 'n Pay, Shoprite/Checkers, Woolworths and Spar, as well as the major wholesaler-retailers Massmart and Metcash, for alleged contraventions of sections 4(1)(a), 5(1) and 8(c) of the Competition Act.

The investigation has been prompted by concerns raised by various stakeholders and the public in general over high food prices. In a preliminary review of industry practices and structural characteristics of the industry, the Commission identified several potential concerns: concentration of buyer power; long-term exclusive lease agreements; category management; and information exchange. *(SACC Press Release, 29.06.09)*

Sweden Slams Down on Asphalt Cartel

The Swedish Marketing Court slams down on the Swedish building companies NCC and Peab after a long-drawn asphalt cartel investigation. NCC, second biggest builder in Sweden, have been ordered to pay a higher competition-impeding fee than previously set by the City court. The fee is to be raised from US$19.12mn to US$25.5mn.

The inquiry in the asphalt cartel was kicked off in 2001, following complaints from the Swedish Competition Authority and former employees at NCC to that there was price cooperation between a group of actors on the asphalt market.

According to NCC, the company has been an active participant in uncovering the facts in the cartel investigation. Not surprisingly they are critical to the raised fee.

(SW, 28.04.09)

FINES & PENALTIES

CNC Fines Fine Wines

The Spanish antitrust authority, the *Comisión Nacional de la Competencia* (CNC), has imposed an US$558,548 fine on the Regulating Council – the *Consejo Regulador de las Denominaciones de Origen* - of the fine wines *Jerez-Xéréx-Sherry* and *Manzanilla-Sanlúcar-De Barrameda.*

The investigation followed a complaint filed by a number of wine shops, and the Council was fined because it imposed thresholds on wine shops in order to limit the number of bottles to be sold, which restricted competition and commercial freedom.

(CNC Press Release, 16.06.09)

Slovak Banks Fined for Collusion

The Slovak Antimonopoly Office has fined three banks – namely, *Slovenska Sporitelna A.S.*, *Ceskoslovenska Obchodna Banka A.S.*, and *Vseobecna Uverova Banka A.S.* – a total of US$14.49 for participating in a cartel.

The firms were found guilty of exchanging sensitive information and cooperatively terminating their individual current account contracts with *Akcenta CZ A.S.*, a competitor in the market for cashless foreign exchange operation services.

The authority found that the conduct of the cartel had served to significantly curtail the accessibility of *Akcenta's* services by consumers. The banks have 15 days to appeal against the decision. *(AMO Press Release, 12.06.09)*

Morgan Stanley Trader Punished

Morgan Stanley has been fined US$2.1mn by the UK's financial regulator after weak control of its credit derivatives desk allowed a rogue trader significantly to overprice his position for six months.

The Financial Services Authority penalised the bank for its failure to prevent the mis-pricing by Matthew Piper, then a trader in complex credit derivative products. The problem came to light in May 2008 and Piper was fired in September, following an internal investigation.

The regulator said it had banned him from the industry and fined him US$173,171. The penalties were the latest in what is expected to be a series of cases involving mis-marked assets as banks' controls were tested by volatile markets. *(FT, 13.04.09)*

EU Charges Visa Europe over Fees

The EU regulators brought antitrust charges against Visa Europe, saying certain fees assessed on some Visa card transactions are too high and violate the 27-nation bloc's competition rules.

The charges against Visa Europe concern interchange fees, which are paid by a merchant's bank to the bank of the cardholder as part of a purchase. Visa Europe sets these fees for all transactions in which the two banks are in different countries, as well as for domestic transactions in nine EU countries. Visa Europe does not receive the fees. *(FT, 07.04.09)*

PRICE FIXING

Germany Fines Propane Cos.

German authorities fined two propane companies a total of US$55mn for price-fixing, saying they colluded to stop customers obtaining cheaper prices. Westfalen AG and Propan Rheingas GmbH & Co KG supply two thirds of the German market for liquefied petroleum gas (LPG).

In 2007 and 2008, the Cartel Office fined nine other LPG companies a total of US$293mn on related charges. Some have appealed.

Investigators believe the companies avoided quoting prices to customers seeking to change supplier or offered exorbitant prices to deliberately put them off. *(M&C, 15.04.09)*

Mexico Fines Rail Cos.

Mexico's anti-monopoly agency, the CFC, has imposed fines totaling US$31mn on railways owned by magnate Carlos Slim and mining giant Grupo Mexico.

The CFC decided to sanction for "monopoly practices" the Ferromex and Ferrosur railways as well as their corporate parents: Slim's Grupo Carso and Sinca Inbursa and miner Grupo Mexico.

The decision brought to a close the CFC investigation begun in August 2007 to determine if the two railroads made agreements about price-fixing. The firms exchanged information with the aim of fixing prices, whereby they are responsible for engaging in monopolistic practices. *(LAHT, 25.06.09)*

Cargo Fined for Price Fixing scam

Three cargo airlines have agreed to pay fines totalling US$214m, for their roles in a global conspiracy to fix prices of air freight.

The penalties are the latest imposed, following one of the biggest cartel probes led by the US Justice Department. It has led to the prosecution of 15 airlines and resulted in total fines of more than US$1.6bn against the aviation industry.

Cargolux, which is based in Luxembourg; Nippon Cargo Airlines of Japan; and Korea's Asiana Airlines have each agreed to plead guilty and pay criminal fines for conspiring to fix prices. Cargolux will pay a fine of US$119mn; Nippon Cargo, US$45mn; and Asiana US$50mn. *(FT, 13.04.09)*

Car Price-fixing Cartel Fined

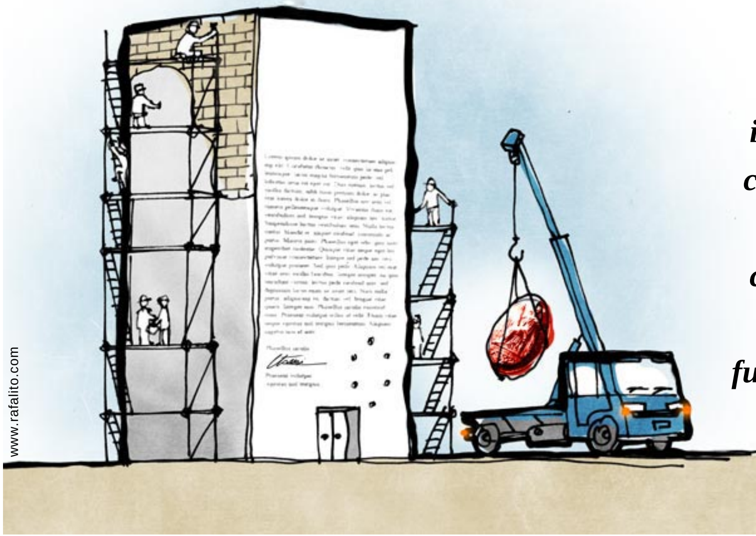
A subsidiary of one of the country's biggest car dealerships and its two former directors will be sentenced for their role in a price-fixing cartel involving Citroen car dealers in Leinster.

The company was a member of the Citroen Dealers Association which forbids members from going below certain prices when selling cars and accessories to customers. They also imposed fines on members who were discovered trying to undercut each other.

Gowan Motors Parkgate Ltd, Parkgate Street, Dublin, pleaded guilty at Dublin Circuit Criminal Court to entering an agreement with others undertaking to attempt to prevent, restrict or distort competition in the motor vehicle trade by directly or indirectly fixing the selling prices of Citroen vehicles between July 1996 and May 2002 within Leinster. *(IE, 30.04.09)*

Construction Cartels – More Punishment in Store?

– Craig Shuttleworth* and Ben Walton**



The Office of Fair Trading's (OFT) upcoming decision on its investigation of 112 construction companies will not necessarily be the end of the matter for the companies concerned or for their directors. Some of the possible further consequences will surprise many.

The Office of Fair Trading (OFT) may fine cartelists up to 10 percent of their worldwide turnover for contravention of Articles 81 and 82 of the European Commission (EC) treaty. However, the OFT and European Consumer Centre (ECC) operate leniency programmes in return for co-operation, with maximum benefits of immunity.

Companies found by the OFT to have been involved in cartels may also face civil actions for damages pursuant to the Competition Act 1998. Damages designed to reflect losses suffered as a result of the cartel behaviour (in this instance, allegedly cover-pricing and bid-rigging) can be very substantial.

There are also serious potential criminal sanctions, both for individuals and, more surprisingly, companies. Individuals can be convicted of the cartel offence under the Enterprise Act 2002 (maximum sentence five years). "No action letters" may be available for whistleblowers and reduction in sentences for full co-operation may be substantial.

In respect of companies, the recent decisions of the House of Lords in R vs. GG and Norris vs. US indicate that a common law conspiracy to defraud can still occur within the cartel context, where there is agreement in respect of "aggravating features".

These include positive misrepresentations. The construction industry may be at particular risk because statements of non-collusion (for example, in the context of a public tender) by parties to a cover-pricing or bid-rigging agreement would constitute positive misrepresentations.

The penalties for conspiracy to defraud can exceed even the regulatory penalties imposed by the OFT, and there is no leniency programme. Parties convicted of a crime may then be subject to further sanctions under the Proceeds of Crime Act 2002.

A party which has obtained a discount or immunity by co-operation with the OFT or ECC may, therefore, remain susceptible to substantial further civil and criminal penalties. A failure by the OFT and SFO to confirm that they do not intend to prosecute cartels as conspiracies may, therefore, endanger the leniency programmes, which are probably the most effective tools for combating anti-competitive behaviour at the disposal of the OFT and ECC.

The OFT's decision is expected in the third-quarter of 2009. Whether that decision marks the end of the matter for all of the companies and individuals involved may not be clear for some time thereafter.

* Litigation partner, Jones Day
** Associate, Jones Day
The article appeared in the cnplus.co.uk on June 03, 2009.

DirecTV to Merge with Liberty

DirecTV Group, the US satellite television provider, will merge with John Malone's Liberty Entertainment to simplify its ownership structure and improve its ability to pursue deals.

The two-step transaction makes the group a more attractive takeover candidate for telecommunications groups AT&T or Verizon. DirecTV will help eliminate US$650mn of near term maturities on Liberty Entertainment's US$2bn of debt. The new company, DirecTV, will have US$2bn of debt and US$30mn of cash.

The transaction will occur in two steps. Liberty Entertainment, which holds Liberty's 54 percent interest in DirecTV Group, will split off from Liberty Media. *(FT, 05.05.09)*

Wipro Acquires Nokia Mobile TV Unit

India's third-largest IT services firm, Wipro Ltd, has acquired the enterprise mobile TV unit owned by Finland-based leading mobile phone manufacturer, Nokia, for an undisclosed sum.

Known as the Mobile Broadcast Solutions division of Nokia, the unit employs around 40 people, who are mainly responsible for developing software and hardware to enable mobile TV technology on the phone.

It is understood that Nokia has decided to sell the unit as the company is planning to focus on the consumer side of the mobile TV business. The mobile television and on-demand video, much touted a few years ago, did not evoke much interest from the public. Wipro is strong in the telecom services business. *(BS, 21.04.09)*

GSK in Talks to Buy Stiefel

British drugs firm GlaxoSmithKline (GSK) will buy Stiefel Laboratories, US maker of anti-itching creams, acne treatments and other skincare products, for as much as US$3.6bn.

The acquisition is the latest in a string of deals in the drugs sector, but is significantly smaller than recent mega-mergers, reflecting the British-based group's declared focus on bolt-on buys to diversify its business.

Glaxo is paying US$2.9bn in cash for Stiefel and expects to assume US$400mn of net debt. It will also make a potential further US$300mn cash payment, depending on future performance. *(BL, 20.04.09 & ET, 21.04.09)*

Dow Announces Divestiture of Morton

Germany's K+S would acquire US-based Morton Salt for US$1.7bn to create the world's biggest salt producer.

The all-cash deal was driven by Dow Chemical's US$16.3bn acquisition of rival Rohm and Haas. Dow said it was selling Morton Salt, a Rohm and Haas subsidiary, as part of its "de-leveraging plan".

The move marks the start of the US chemical group's efforts to sell about US$4bn in assets to help repay a US$9.5bn short-term loan used in its Rohm and Haas acquisition. Dow has been struggling to make up for missing financing since a Kuwaiti partner pulled out of a joint venture. The acquisition of Morton Salt by K+S is the first big takeover by a German industrial group.

(FT, 03.04.09)

PepsiCo's Bid with Bottling Cos.

PepsiCo, the owner of the Gatorade and Tropicana brands, has offered US$6bn to buy its two biggest bottlers, underscoring the urgency for soft drink companies to change their business models, as fizzy drink sales slide and US retailers consolidate.

PepsiCo made an unexpected cash and stock proposal to buy both the Pepsi Bottling Group, in which it owns about a 33-percent stake, valuing it at US$29.50 per share and PepsiAmericas, in which it owns around 43 percent, valuing it at US$23.27 per share.

PepsiCo said buying the bottlers would help it cut costs by about US$200mn annually. PepsiCo said it did not plan to consolidate all its international bottling franchises, although it had plans to "streamline" its European business.

(FT & ET, 21.04.09)

Sterlite Gets a Grupo Mexico Jolt

The takeover battle for US copper miner, Asarco, continues to rage, as its estranged parent, Grupo Mexico, has offered US$1.3bn to counter Sterlite Industries' offer for the second time.

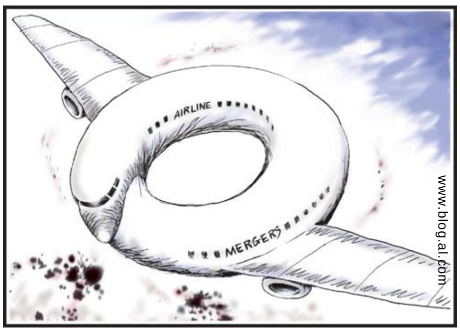
Sterlite, a Vedanta group company, may counter the offer by revising the payment pattern of its US$1.7bn offer, which includes US$1.1bn upfront cash payment and US$600mn staggered over nine years.

Grupo Mexico was willing to pay US$1.3bn in cash to recover the copper miner, which filed for bankruptcy in August 2005. Sterlite is keen on acquiring Asarco. The company has the support of Asarco's workers' unions, authorities and the board. If the bankruptcy court allows Grupo to offer a package, Sterlite may revise its payment pattern.

(BS, 14.04.09 & ET, 15.04.09)

Air France-KLM & Delta Reach Venture Pact

Air France-KLM and Delta Air Lines signed a transatlantic joint venture which will combine almost a fifth of the two groups' operations, making them the most powerful presence in the world's biggest long-haul aviation market across the North Atlantic.



The two airlines have played a leading role in the consolidation of the aviation industry, most recently through Delta's takeover of Northwest Airlines in 2008. The joint venture is the next step in deepening the alliance between the leading European and North American carriers.

The venture represents about 25 percent of total transatlantic capacity and will have revenues of more than US$12bn. The North Atlantic is the biggest inter-regional air travel market, accounting for 27 percent of global long-haul air traffic.

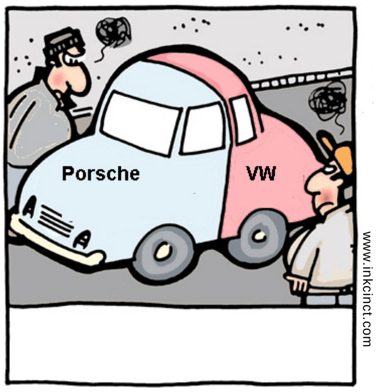
The venture will be governed by a long-term arrangement that can only be cancelled with a three-year notice period after an initial term of 10 years.

(FT, 21.05.09)

VW Proposes Merger Plan with Porsche

Luxury car maker, Porsche, and Europe's biggest auto producer, Volkswagen, agreed to forge a merged German car giant, stepping up the momentous changes shaking the industry worldwide.

VW has the biggest sales of any car firm in Europe – 15 times larger than its smaller German peer, which is US$11bn in debt. The Porsche parent group owns a little more than 50-percent of VW, after boosting its stake in January 2009, and had aimed to raise its stake to 75 percent, until it found itself battered by the global economic slowdown.



Porsche's stake in VW boosted its profits fourfold in the six months from August 2008 to January 2009, though sales were down by a quarter. *(ET, 08.04.09)*

Sun Micro Preparing for Oracle Buyout

Oracle unveiled a surprise US$7.4bn offer for Sun Microsystems that will reorder the ranks of the world's leading technology suppliers and shake up the market for corporate IT systems.

The agreed deal, at US$9.50 a share in cash, comes two weeks after negotiations for an acquisition by IBM at the same price fell apart. It will push Oracle, which is still reliant on its original database software, into a range of other computer hardware and software, transforming its business and making it a more direct competitor of IBM and Hewlett-Packard.

The deal will accelerate Oracle's transformation from a database software company into an all-round IT systems supplier.

(FT, 21.04.09 & BS, 20.04.09)

KKR to Sell Stake in Oriental Brewery

Kohlberg Kravis Roberts (KKR) provided a rare fillip for the private equity industry after confirming its maiden acquisition in South Korea in a deal worth US$1.8bn.

The acquisition of Oriental Brewery from Anheuser-Busch InBev marks the largest leveraged buy-out in Asia for two years. The size and scope of the deal will energise dealmakers depressed by the recent dearth of activity involving private equity firms.

This deal is a positive development for the outlook of additional Asian LBO activity and demonstrates that private equity can play an important role in the region. *(FT, 08.05.09)*

Japan Chipmakers Eye Merger

NEC Electronics and Renesas Technology, two of Japan's "big four" semiconductor companies, are in talks on a merger that would create the world's third-largest chipmaker, by sales, and restart consolidation of the fragmented and loss-making sector.

A combined Renesas and NEC would lead the world market for microcontrollers, with a share of 30 percent, and its sales of US2.4bn would trail only Intel of the US and Samsung of South Korea in the wider semiconductor industry.

If Renesas and NEC were to merge, it would be the first big deal in the Japanese sector and also increase the pressure on Japanese rivals Toshiba and Fujitsu to merge parts of their semiconductor operations. *(FT, 17.04.09)*

MERGERS

27bn Deals in a Day!

The market for mergers and acquisitions (M&As) sprung back to life, after deals totalling more than US$27bn were announced, with more than half of their total value paid in cash. Oracle agreed to buy Sun Microsystems for US$7.4bn; GlaxoSmithKline paid US$3.6bn to buy Stiefel Laboratories; and PepsiCo offered US$6bn in cash and stock to buy out shareholders of its two biggest bottlers. *(FT, 21.04.09)*

Telecom Deal Touches US$49bn

The M&A volume in the telecom space worldwide stood at US$49.2bn so far in 2009, driven by the US-based Frontier Communications' US$8.6bn acquisition of Verizon Communications. As per global deal tracking firm Dealogic, global telecom volumes in 2009 stood at US$49.2bn through 410 deals. In the corresponding period in 2008, there were 549 telecom deals worth US$69.8bn. *(BL, 15.05.09)*

India's M&A Shows Resilience

India Inc continued to show an upsurge in M&A activity in April 2009 and announced as many as 20 deals amounting to US$427.55mn, according to a report from global consultancy firm Grant Thornton. There were 20 M&A transactions in April 2009 worth US$427.55mn. Out of these, 13 were domestic deals, with an announced value of US$351.33mn, and seven cross-border deals, with an announced value of US$76.22mn.

(BL, 15.05.09)

Bankruptcy-related M&As

Bankruptcy-related M&As have hit their highest level globally since August 2004 and are set to keep rising as more companies are forced into distress sales, according to Thomson Reuters data and restructuring practitioners. It identified 34 announced deals in March alone, and 67 so far in 2009, where the target company was in bankruptcy or administration proceedings. The vast majority were in the US or Japan, which allow companies to continue operating while they reorganise. *(FT, 13.04.09)*

Caution Urged Over M&A Deals

Chief executives should exercise caution over M&As in the downturn because buying distressed or bankrupt companies does not guarantee higher returns for shareholders, a study on M&As warns. The findings challenge conventional wisdom, suggesting that economic downturns can be the best time for companies to create value through distressed acquisitions and provide huge opportunities to build market share. *(FT, 15.06.09)*

Impact of Competition Law

– **Lulama Mtanga***

The Impact of Competition Law changes/developments (including the practices and policies of the Commission/Tribunal) on M&A activity – with a specific focus on 2008 and also forward looking taking into account expected legislative changes.

As in previous years, the majority of the cases handled by the Commission in 2008 were merger cases. This may be set to change in 2009, as the Department of Trade and Industry (DTI) is in the process of increasing the asset and turnover thresholds that determine when mergers must be notified.

The Competition Amendment Bill published by the DTI will give the Commission new powers to investigate mergers implemented without competition clearance. The Commission's power will include the power to summon individuals to appear before it and submit documents, as well as conduct dawn raids on implicated firms, tools which are currently available only in the investigation of prohibited practices.

There has been an increased focus on the accuracy of merger submissions, with serious consequences for failure to disclose all relevant information to the competition authorities. In the merger between Vodacom Service Provider Company/ Global Telematics and Glocell Services Provider Company, despite requests by the Commission, Vodacom failed to provide board minutes relating to the acquisition of Glocell. The Tribunal concluded that the minutes had been deliberately withheld. The Commission laid criminal charges against the Vodacom executive who signed the certificate of accuracy that accompanied the merger filing.

The Competition Amendment Bill gives the Commission new powers to investigate mergers implemented without competition clearance. In a nutshell, developments in 2008 signal a more aggressive approach by the competition authorities, including better co-operation across the different divisions of the Commission.

It is also clear that firms that are alleged to have engaged in anti-competitive conduct or who operate in markets where there have been findings of anti-competitive conduct are having a tougher time in securing clearance for mergers. In assessing whether a merger is likely to have anti-competitive effects, the Competition Act specifically mandates the competition authorities to take into account, *inter alia*, the history of collusion in that market.

In Cape Gate/Transvaal Gate, allegations had been made by Barnes Fencing of anti-competitive conduct in the various wire and wire product and fencing product markets. The Commission found that, but for the collusion in the upstream market for galvanized wire, Transvaal Gate would be an effective competitor in the downstream market. The merger was prohibited.

In the acquisition by Aveng of four steel reinforcing firms, the Commission found that the removal of these firms would increase concentration and was likely to make collusion easier to achieve or sustain. Further investigation revealed that there was widespread collusion, specifically in the market for reinforcing steel. This merger was also prohibited.

Mittal Steel faced similar consequences when it was forced to abandon the acquisition of Duferco.

In the Alstom Electrical/Current Electric merger, even though the merger was approved, the commission noted that there was history of collusion in a related market - the switchgear market, a bidding market with few firms with capacity supply switchgear. Previously, the Tribunal held that traditional bidding markets are less likely to result in co-ordinated effects.

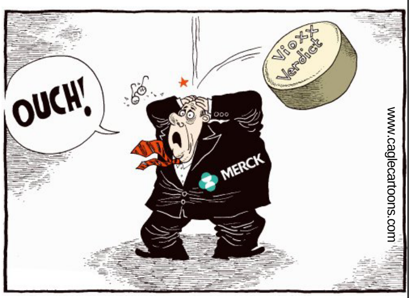
The investigations into the construction, steel and related sectors, which are considered traditional bidding markets, have serious implications for mergers in these sectors and for bidding markets generally.

In a nutshell, developments in 2008 signal a more aggressive approach by the competition authorities, including better co-operation across the different divisions of the Commission. This is a signal for companies to heighten their compliance programmes.

* *Director, Competition Practice Area at Bowman Gilfillan, South Africa. Abridged from an article that appeared in http:// business.iafrica.com on April 28, 2009.*

Merck Created Fake Academic Journals

Merck created fake medical journals with names such as 'The Australasian Journal of Bone and Joint Medicine' to publish favourable reports on its painkiller Vioxx. The court case is a class-action lawsuit brought by nearly a thousand people who said that Vioxx had damaged their health and had been mis-sold.



The journals were produced by publisher Elsevier, which was taken in by the scam. The company attacked the practice and said it was reviewing its entire list of publications to identify if there were other fakes that had made it onto the list.

Doctors who had been listed as board members for the fake journal had not known that their names were connected to the title in any way.

(BR, 14.05.09)

Carbon Taxing Problem in US

US business wants a carbon price, but disagrees on how it should be set. US business is split over plans for an emissions trading scheme to cut greenhouse gas emissions.

A proposed US climate change bill includes plans for a cap-and-trade scheme to cut emissions by about 20 percent by 2020 and 80 percent by 2050 (from 2005 levels).

President Barack Obama would like to auction 100 percent of the allowances and use the proceeds to fund clean energy initiatives, although his administration has indicated it might soften this position. Many companies, even those in favour of cap-and-trade, do not support the auctioning off of allowances.

The climate change bill has split US companies between those that believe the market should set the price and those that believe the government should do so, through taxation.

(EC, 03.06.09)

UK to Ban Anti-union Blacklists

The UK government will introduce new laws to ban companies from using secret blacklists to avoid employing people that have been active with trade unions.

The move follows the case where construction companies Balfour Beatty, Taylor Woodrow and Laing O'Rourke were found to have used search a blacklist held by a firm operating as 'The Consulting Association'.

Previously, there was no evidence that any such blacklists existed, or were being used by companies. The regulations would outlaw every step of the process – putting together such a list, as well as disseminating or using it. Such activity constituted a misuse of private data. *(BR, 11.05.09)*

Nigeria Speaks out on 'CSR Tax'

The Lagos State Chamber of Commerce and Industry has criticised a proposed bill that would require companies to set aside 3.5 percent of gross profit for what are described as 'corporate social responsibility' expenses.

The bill would add to the 32 percent of tax that companies already pay on profit and would undermine those companies that already voluntarily engaged in activities that contributed to local communities. CSR was not an issue for legislation, but for voluntary action by companies.

The move is the latest in several countries where legislatures have defined CSR in terms of charitable giving that companies may undertake and sought to require this component to feed into traditional areas of public expenditure, such as infrastructure renewal and education. *(BR, 29.04.09)*

Shell Settles Air Pollution Case

Oil giant Royal Dutch Shell has settled a claim over air pollution in Houston for US$5.8mn and a promise to reduce emissions by 80 percent over three years.

The suit was brought by environmental groups including the Sierra Club under the Clean Air Act. The groups said that the company had breached the law, with pollution levels over a thousand times over the last previous five years.

The campaign groups promoted the settlement, drawing attention particularly to the commitment to reduce emissions which, they said, would demonstrate to the rest of the industry that such emissions could be controlled more effectively than the current standard. *(BR, 23.04.09)*

India: Satyam Founder Charged

Founder of Satyam Computer Services, B. Ramalinga Raju, has been charged with criminal conspiracy, cheating and forgery, along with eight other executives. The maximum penalty would be life imprisonment.

The move begins the legal stage of the crisis that has gripped India's business community since Raju declared at the beginning of the year that he had systematically overstated profits and defrauded the company. Two PriceWaterhouseCoopers partners are included amongst the charged executives.

The Central Bureau of Investigation has carried out an investigation which it said took evidence from over 400 witnesses in just one-and-a-half months.

(BR, 08.04.09)

Coke Sorry for Misleading Ads

Coca-Cola has been told by the Australian Competition and Consumer Commission (ACCC) that the ads it ran that claimed to dispel myths about the product making them fat and rotting their teeth may have given consumers a misleading impression.

Coca-Cola has said that the ads were not intended to mislead and that its position was that a varied diet based on moderation was the best platform from which to consume its products. It is to issue new ads that make the message clearer.

The new ads are labelled 'Setting the Record Straight' and say that the company now understands that even well-intentioned messages can convey misleading impressions. *(BR, 02.04.09)*

Improving Investment Agreements

Global Development and Environment Institute (GDAE) Senior Researcher, Kevin P. Gallagher, submitted testimony on May 14, 2009 to the House Ways and Means Committee's Trade Sub-committee on the extent to which US trade and investment treaties constrain the ability of poorer nations to deploy effective policies for sustainable development.

Gallagher's testimony shared the Working Group's finding that US Bi-lateral Investment Treaties (BITS) and Preferential Trade Agreements (PTAs) have fallen far short of stimulating broad-based economic growth and environmental protection in Latin America.

Gallagher recommended that future BITS, PTAs and other trade agreements allow developing countries the "policy space" for measures that enable foreign investment to stimulate growth and sustainable development.

http://www.ase.tufts.edu/gdae/Pubs/rp/09MayGallagherTestimony.pdf

MoC Facilitates Outbound Investment

On March 16, 2009, the Chinese Ministry of Commerce (MoC) issued the Measures on Administration of Outbound Investment, which will take effect on May 01, 2009 and supersede the Ministry's existing rules, which were issued in 2004.

The new measures delegate the authority to verify Chinese outbound investment projects within certain thresholds to provincial verification authorities. They also simplify the verification application process and review standards, and are expected to facilitate outbound investment by state-owned and private companies.

(ILO, 29.04.09)

China to Boost Australian Economy

A bilateral trade agreement with China would boost Australia's gross domestic product (GDP) by US$114bn over 20 years, according to a report.

The Australia China Business Council's study was prepared by an independent economic consultancy, and sponsored by Chinalco, the aluminium group trying to execute China's largest foreign investment with a US$19.5bn injection into Rio Tinto, the Anglo-Australian miner.

The report comes as Canberra enters the final weeks of deliberations on whether to approve the Chinalco deal, which has raised concerns that a foreign state-backed enterprise would own a strategic stake in Australia's biggest natural resource assets.

(FT, 21.05.09)

Japanese Economy in Record Slump

Japan suffered its worst ever economic slump during the first quarter of 2009, shrinking at an annual rate of 15.2 percent. The world's second-largest economy contracted by four percent during the three months, as the recession caused a plunge in exports.

Exports plummeted by 26 percent during the quarter, as electronics giants like Sony and Hitachi and car makers, including Nissan and Toyota, sent fewer products overseas.

The second-largest consumer electronics maker in the world reported a loss of US$1.01bn. Hitachi suffered the worst loss ever for a Japanese manufacturer in the year to March, reporting a net loss of US$8.015bn versus a US$59bn deficit a year earlier.

(www.sharecast.com, 20.05.09)

Dollar Tempers Wal-Mart Cheer

Wal-Mart, the US supermarket operator that owns ASDA in the UK, reported flat sales over the first–quarter, as the strong dollar resulted in reduced revenue from international operations.

In the US, Wal-Mart supermarkets saw the turnover rise by 3.8 percent, to US$61.24bn, as Americans continued seeking out bargains in tough times, while its warehouse chain, Sam's Club's, sales slipped 1.4 percent, to US$10.96bn.

Strength in the dollar against currencies such as the pound resulted in international revenues falling 11.1 percent, to US$21.26bn. The firm expects earnings per share of between US$0.83 and US$0.88 in the second-quarter. *(www.sharecast.com, 14.05.09)*

Malaysia to Relax Investment Curbs

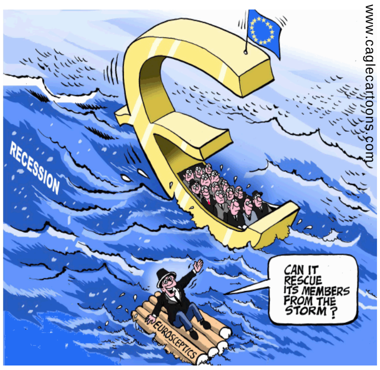
Malaysia unveiled measures to liberalise investment in its financial sector, but stopped short of raising the cap on foreign stakes in existing commercial banks.

Foreign equity limits for insurers and investment banks would be increased to 70 percent from 49 percent. Five operating licences, allowing foreign commercial banks to set up the first wholly-owned local units in more than a decade, would be issued by 2011. However, investment in nine domestic commercial banks would remain capped at 30 percent.

Prior to the global financial crisis, foreign investors, including Australia and New Zealand Banking Group, Hong Kong-based Bank of East Asia and Primus Pacific, acquired minority stakes in several smaller Malaysian banks. *(FT, 28.04.09)*

Europe Hit by Economic Slowdown

Central Europe has been hard hit by the global economic downturn, but the pain has not yet persuaded many investors to close recently built factories that have sprung up across the region in the past decade.



The reason is that factories tend to be more modern than their counterparts in western Europe and central European labour – helped by recent declines in local currencies – is still significantly cheaper than in more developed parts of the continent.

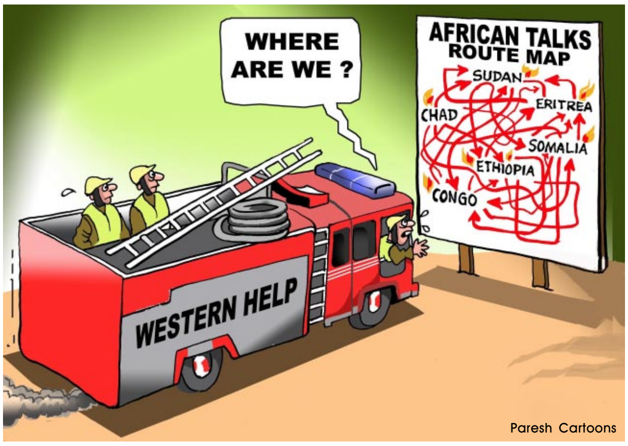
However, investment agencies are reporting new investment is likely to slow significantly in 2009 and there are fears over the region's status as an investment hub.

(FT, 12.05.09)

Foreign Direct Investment: An Alternative for Aid in Ghana

– Ekow Danquah*

A review of Dr. Dambisa Moyo's book, "Dead Aid", convinced that Foreign Direct Investment (FDI) is best investment plan that developed world can give to Africa, rather than concentrating on Foreign Aid only. Ghanaian FDI in the country, together with giving proper incentives and protection to investors. They are considered the backbone of growing economy of the country.



The liberalisation, privatisation and deregulation of the telecom sector by Former President Kufuor's government, which seemed to be continued by the current government, were specially appreciated by foreign investors and considered as rational thinking of the current government. The liberal FDI policy by the Government of Ghana and deregulation and privatisation of the sector has triggered a wave of international acquisitions in the sector.

The government should concentrate seeking more FDI into the country. It seems the government is doing a satisfactory job in strengthening the regulatory bodies that are in charge of the various sectors. Some of the bodies, such as the National Communication Authority (NCA), the Ghana National Petroleum Authority (GNPA) and many more are doing well in attracting FDI into the country. Solid steps of the NCA, as the regulatory body of telecom sector, and the support from the government enhanced the level of confidence of foreign investors and stimulated the investment environment of the country.

Due to the satisfaction of the various investors in Ghana, it has enabled Ghana to be the Gateway to Africa. The NCA has proved to be a conducive in creating a investor-friendly environment in the telecom sector by awarding licences in a fair and transparent manner. The foreign investors have created an environment of competition in the mobile sector and the tariffs have reduced substantially, with improved telecom services.

Ghana, therefore, has really benefited from the FDI policies in the country. There has been job creation, improvement in infrastructure and many more other benefits. That is the reason why we are advocating to the World Financial Bodies to concentrate more on the FDI, rather than give aid to African governments, which many of them misuse and which, in the short run, has resulted in the African Ordinary man on the street becoming poorer.

In conclusion, there are eight recommendations/measures for the government to attract and strengthen FDI into the country:

- Revolutionary reforms and even new tax structure should be introduced in order to save investors from the complexity of tax structure. Tax reforms are very important for attraction and retention of potential investors.
- All measures should also be taken by keeping in view the sovereignty of the country. Encouragement of FDI should not be practised at the cost of supremacy of the home country.
- Absence of long-term government policies prevents the implementation of long-term plans. Gaining the confidence of foreign investors requires for consistent and coherent policies.
- The laws and regulations should be simplified, updated, modernised and transparent etc.
- The availability of better quality and more reliable services in all areas of infrastructure are key ingredients of a business environment conducive to foreign investment. In most infrastructure services, Ghana is highly deficient, as compared with many developing countries that have attracted higher levels of foreign investment. Ghana will have to invest more in the areas of education and physical infrastructure.
- Government should focus on its positive image display all over the world.
- Government should make available statistical data of its citizen who are abroad and provide them incentives plus security and encourage them to invest in their homeland.
- Government should make policies regarding sending its delegation to potential investor nations and make them aware of opportunities available in Ghana.

* *Columnist, Modern Ghana. Abridged from an article that appeared in Modern Ghana, on May 17, 2009*

Anti-piracy Threatens EU Telecom

An effort by the European Parliament to limit the reach of anti-piracy prosecutions is threatening to derail the EU's ambitious plans to revamp telecommunications legislation.

A parliamentary proposal to turn internet access into a fundamental human right is proving unacceptable to member states. The parliamentary proposal would mandate that only a court order could authorise the termination of an internet connection. Opponents say this is an issue of legal enforcement over which Brussels has traditionally had few powers.

Framing internet access as a human right would effectively scupper the entertainment industry's efforts to hamper illegal file sharing by threatening to cut off persistent copyright transgressors' internet connections. *(FT, 28.04.09)*

ACCC to Cease Telecom Regulation

The Australia Consumer and Competition Commission (ACCC) will cease regulation of the digital data access services (DDAS) and integrated services digital network (ISDN) after June 2009.

The ACCC was not satisfied that regulation of these services would be favourable in the long term for end users. The regulator concluded that by eliminating regulated access, it will encourage the movement towards better technologies which will allow businesses to take up new technologies and greater investment in more efficient services.

(ACCC Press Release, 18.06.09)

Spectrum and Dark Fibre Auctions

The Ministry of Communications of Mexico has announced that it has finalised the conditions for the auction of spectrum in the 1.7 gigahertz (GHz) and 1.9 GHz bands for mobile telephony and internet access, mainly for both Global System for Mobile Communications and Code Division Multiplex Access technologies.

The ministry's conditions are being reviewed by the Competition Commission in order to resolve outstanding issues relating to ownership caps and set-aside and build-out requirements. Reports indicate that the Ministry of Finance has approved or will shortly approve the financial aspects of the auction format. *(ILO, 10.06.09)*

Consent for Cargo Trans-shipments

The National Maritime Administration Agency of Brazil has approved a regulation proposal granting authorisation for the construction, exploitation and extension of cargo trans-shipment stations.

Cargo trans-shipment stations will facilitate the circulation of cargoes in the interior of Brazil, allowing interaction between the waterway, railroad and highway networks.

The trans-shipment stations will not be obliged to handle own cargo. The proposal indicates the documents required for a company to be technically and legally qualified to build, exploit and extend a trans-shipment station. *(ILO, 08.04.09)*

Penalty Regime for Misuse of Slots

The Belgium Parliament adopted a new law amending the Air Navigation Act 1937 on December 22, 2008. The main purpose of the reform is to introduce a new infringement regime for misusing slots at Brussels National airport in accordance with Article 14(5). The new rules entered into force on January 08, 2009.

Three different forms of conduct relating to the use of slots are now subject to penalties: taking off or landing without the required slot; taking off or landing without a night slot; and repeatedly taking off or landing 'off-slot'. *(ILO, 06.04.09)*

Accepting Electronic Payments

The Supervisory Council of the Bank of Albania issued Decision 11, approving the new regulation on electronic payment instruments.

The new regulation aims to improve the framework for the issue and use of electronic payment instruments, as part of the bank's implementation of a function to create and supervise the secure and efficient operation of the payments system in Albania.

The regulation defines the types of electronic payment instrument as either instruments of distance payments or instruments of e-money.

(ILO, 09.04.09)

Broadband Backed by Canberra

Australia has replaced a proposal for the private sector to build a US$7bn national broadband network with a government-led initiative to create an US$35bn high-speed network that has been described as the country's most ambitious infrastructure project.

The "fibre-to-the-home" network would take eight years to build, support 25,000 jobs a year during its construction and 37,000 during its peak build period.

It would also provide Australian homes and businesses with download speeds up to 100 times faster than what many currently experience.

(FT, 08.04.09)

Sweden to End Passenger Rail Monopoly

As the Swedish government pushes ahead with market-oriented reform, plans are underway to open up the railways to full competition by 2010. A bill submitted to the Swedish Parliament proposes the gradual deregulation of passenger rail services.

As the first step, weekend services will be opened up to competition in July 2009. International passenger railway services will then be opened up in October 2009, followed by the national network in 2010.

Thus, if the bill passes through Parliament, passenger rail services will be open to full competition from October 2010. *(ILO, 27.05.09)*

The Interface between Regulation and Competition Law

– Neelie Kroes *

Regulation and competition policy are very close relatives. As you probably, all know relationships between close relatives can be quite complicated. That is also the case with regulation and competition. If the current financial and economic crisis has taught us anything, it is that there is a high price to pay when regulation fails and that competition policy is essential for keeping our economy working well. The wider lesson for all policy makers and public authorities is that those who share common goals must work together.

Financial Sector

The current financial crisis is a good illustration of one of the ways regulation and competition law are connected. The crisis in the financial sector was, to a large extent, a product of reckless behaviour by banks, in combination with poor and insufficient regulation, and it has made even the strongest supporters of the free and unregulated markets rethink their position. The first victims are the employees who lose their jobs and taxpayers are now at great risk through the enormous funds committed to the financial institutions. We need to make sure that we do not also lose the level playing field and the future dynamism that comes from competition.

Telecom and Energy

In the fields of telecom and energy, there are many other interesting lessons to draw about the relationship between competition and regulation. While quite different, these two markets have a lot in common. But, just as competition alone will not make liberalisation work – regulation will not automatically generate change or ideal behaviour either. So, it needs to be combined with frequent competition law intervention – at both national and European level.

We Need Both Regulation and Competition Law

Working Together

The telecom sector offers a good illustration of what successful joint work looks like. In the telecom sector, there is intense co-operation between regulators and competition policy enforcers, both at the national level and the European level. This co-operation is of paramount importance. Distribution of work, re-allocation of complaints or cases and mutual consultations take place already, but can always be improved.

Creating Self-sustaining Competition

Liberalising the telecom sector had to go hand in hand with strong regulation. Otherwise, one could never expect the incumbent operators to be subject to competitive pressure. While competition enforcement has contributed to building up the competitive landscape in the first place, it remains in force even as regulation becomes gradually less intrusive. The Framework sets out three criteria which have to be cumulatively met before national regulators can step in and regulate. This approach keeps regulation and the risk of anti-competitive conduct to a minimum. It also means that regulation will be phased out as competition develops – an important principle of the framework.

Telefonica

Ex-ante regulation is, by definition, based on forecasts. As it should have, the Spanish Telecom Regulator (CMT) put in place ex ante regulatory mechanisms on the basis of the market and cost forecasts. But, when examining Telefonica's actual ex-post behaviour on the Spanish broadband markets, the Commission realised there was a big competition problem – and was obliged by the EC Treaty to act. Telefonica misused its margin of manoeuvre to abuse its dominant position.

Energy

Europe's energy sector is essentially made up of fragmented national markets, with dominant incumbents, who often own both supply and transmission businesses. As a result, market entry is low, choice is limited and security and sustainability of supply is lower than it could be. Many of the cases in the energy field are, to some extent, a result of the imperfect regulatory systems or its implementation.

Conclusions

Our experience is that regulation which respects competition principles is the most efficient type of regulation. When that regulation succeeds in enabling a competitive market, there is less to worry about both for the consumers and for the enforcers of competition rules.

But, even the most perfectly designed regulation will not eliminate the risk of abuses, so there will always be a role also for competition enforcement. Getting this balance right requires constant dialogue between regulators and competition enforcers.

It is not easy – the relationships change from sector to sector and the balance between ex ante regulation and ex post enforcement will also depend upon the state of each market. But, the principles remain the same: regulation and competition law only work when they work together.

* *European Commissioner for Competition Policy. Excerpts from the speech at Bundeskartellamt conference on 'Dominant Companies – The Thin Line between Regulation and Competition Law' at Hamburg, on April 28, 2009.*

The Obama Administration and Antitrust

– Bert Foer*

With the Obama Administration now at least partially in place, it is becoming possible to say some things – but not very specific, because there have, as yet, been no cases – about how the new regime will affect antitrust.

www.politicalhumor.about.com

During the campaign, candidate Obama released a statement to the American Antitrust Institute which was highly critical of the Bush Administration's lack of activity outside of the cartel area. The statement gives the impression that President Obama is personally on top of the antitrust laws and of an interventionist persuasion. Whether this is true or a result of good staff work is yet to be established. Rarely in US history has a President involved himself in antitrust issues.

As a law professor at the generally conservative University of Chicago Law School, Obama was primarily concerned with civil rights law. He did not teach antitrust. How deeply he inhaled the Chicago School *laissez faire* oxygen is uncertain, but at least some must have entered his lungs. His close relationship with Professor Cass Sunstein may be an important sign of the future. Sunstein has been appointed to a key position in the Administration with respect to all forms of regulatory intervention.

President Obama has now made three relevant appointments, apart from Sunstein. First, the new Attorney General is Eric Holder. Holder has no known record on antitrust, yet history teaches that aggressive action by an Assistant Attorney General for Antitrust needs the support of the Attorney General.

If Holder is a question mark for antitrust, Obama's selection of Christine Varney for the key position of Assistant Attorney General for Antitrust is not. She has already appointed one deputy, Carl Shapiro, a well-respected and relatively liberal economist from the University of California, to head the economics staff. Other newly appointed deputies are equally well qualified to promote a turn-around in the Department of Justice's (DoJ) antitrust programme. Christine Varney herself is a former Commissioner of the Federal Trade Commission (FTC) and partner at the international law firm of Hogan & Hartson.

At the FTC, the President nominated a sitting Commissioner, Jon Leibowitz, to be Chairman. Leibowitz, like Varney, has a strongly political background, having served on the staff of the current Chairman of the Senate Subcommittee on Courts and Competition and as antitrust counsel to the motion picture industry. There is one open slot at the five-person FTC and another position will open in the fall. The President appears to be in no hurry to fill the open slot, because Leibowitz has a likely majority now and the FTC – unlike the Antitrust Division – does not seem to require substantial reformation.

However, how much activist the new Administration will turn out to be, it will have to deal with one key fact-on-the-ground: the US courts, as a generality, are now quite conservative and hostile to antitrust enforcement, a legacy of the Bush years. They will not suddenly become more favourably disposed toward antitrust, although it is likely that the DoJ's advocacy positions before the courts will be more favourable.

Finally, there is the role of Congress to consider. With anger at corporate America running high and hopes for the courts reversing themselves running low, it is conceivable that this could be a period in which Congress takes positive action on at least a few antitrust issues, such as outlawing reverse payments in the pharmaceutical industry, eliminating an antitrust exemption for railroads, and re-imposing a *per se* test on resale price maintenance. These are not central issues. The key issues in today's economic environment are to assure that consumers do not suffer from the 3 C's of consumer catastrophe: consolidation, cartelisation and constraints on trade.

A huge systemic issue is what to do about companies that are deemed "too big to fail". As Congress and the White House re-invent the relationship between the state and private enterprise, we must assure that competition policy concerns will be well-represented.

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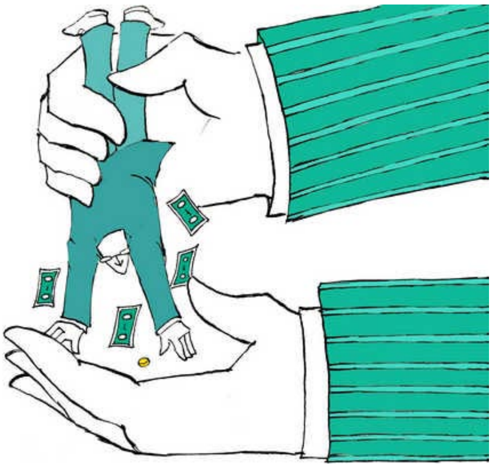
* *President, the American Antitrust Institute. Abridged from an article that appeared on the www.cuts-ccier.org on May 15, 2009.*

Consumers Continue to Suffer 'Empty Pocket Blues'

– Tureen Afroz*

The Consumer Rights Protection Act, 2009 was enacted in the spirit of 'additional crimes, increased punishments'. This has continued the 'criminalisation' process of consumer misconducts. Moreover, the act has successfully ensured a 'dramatic enlargement in governmental authority'.



www.images.com

Consumer disputes are quite common in modern business world. Finding an effective consumer dispute resolution mechanism is, therefore, very much a need of the modern society. The availability of effective dispute resolution and redress mechanisms can increase consumer confidence and trust in the marketplace. They encourage fair business practices, too.

Notionally, 'dispute resolution' refers to the use of mechanisms designed to provide compensations to the consumers who have suffered 'economic harm' resulting from transactions involving goods and services. The underlying principle of consumer redress is that if a consumer actually sustained any loss or damage, he should be entitled to compensation.

The Consumer Rights Protection Act, 2009 is claimed to be very comprehensive 'to take care of the details of the existing laws and its implications with the free market economy'. The Consumer Rights Protection Act, 2009 contains seven chapters and lays out provisions for establishing the National Consumer Right Protection Council (section 5) and the National Consumer Right Protection Directorate (section 8). The act clearly defines consumer offences and sets out the punishments for the same (sections 37-53).

Under the Consumer Rights Protection Act, 2009, the courts of first class magistrates or the metropolitan magistrates are empowered to try consumer offences (section 57). However, an aggrieved consumer cannot go directly to such courts to take action against consumer offences (section 71). would mean 'compensation for economic harm'. If that is so, then I argue that the consumers in Bangladesh, under the formal justice system, have no appropriate or adequate redressal mechanism.

Most of the legislative efforts only tried to 'over-criminalise' the whole spectrum of activities of the consumer rights offenders. Imprisonment or fine, whatever may be the sentence for committing consumer offences, the formal justice system of Bangladesh does not at all come to rescue the consumers who have suffered 'economic harm'. The truth is that at the end of the day, the consumers remain without any compensation and continue to suffer 'empty pocket blues'.

The recent Consumer Rights Protection Act, 2009 was too enacted in the spirit of 'additional crimes, increased punishments'. This too has continued the 'criminalisation' process of consumer misconducts. Moreover, the act has successfully ensured a 'dramatic enlargement in governmental authority'. Therefore, it is claimed that the Consumer Rights Protection Act, 2009, not only maintained the ongoing progressive 'over-criminalisation' process but also legitimised and/or endorsed the 'bureaucratisation' of the entire prodigy of consumer rights protection in Bangladesh.

It is strongly argued that the Consumer Rights Protection Act, 2009 has actually introduced a bureaucratic hurdle over the aggrieved consumers seeking economic redress. Earlier the aggrieved consumers, if desired, could go to small claims courts, where redress may include monetary awards, rescission, restitution, reformation, or specific performance. After the Consumer Rights Protection Act, 2009, the aggrieved consumers would need to wait for the initiation of criminal proceeding by the consumer directorate before taking recourse to the civil court for such monetary compensation.

Furthermore, specific consumer courts for ensuring economic redress to the aggrieved consumers is very important and very much needed in Bangladesh. Therefore, consumer redress mechanism in Bangladesh as established under the new consumer act suffers from unnecessary 'over-criminalisation syndrome', irrational 'bureaucratisation phobia' as well as lack of specialised consumer redress forums. In other words, it criminalises the consumer wrongs and bureaucratises the system but puts no money into consumers' pocket.

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* *Assistant Professor at the BRAC University School of Law and (honorary) Executive Director of LawDev (Bangladesh). Abridged from an article that appeared in the New Age Newspaper, on May 22, 2009.*

About a Competition Law – Tunisia*

Centrally located on the North African coast, on the shores of the Mediterranean Sea, Tunisia is bordered by Algeria on the West and Libya on the Southeast. Following independence from France in 1956, Tunisia became a Republic. With its capital in Tunis, the country is divided into 24 Governorates.

Economy

The country is striving to capitalise on its location, as well as its proximity to Europe, in order to propel itself into the world economy. Tunisia has benefited from many World Bank development programmes and made a concerted effort to privatise many state-run enterprises and attract foreign investment. The Tunisian economy has seen stable growth in recent years, largely due to the expansion of the tourism sector. The launch of an association agreement with the EU in March 1998 has opened trade opportunities and increased foreign investment in the country. In October 2002, the International Monetary Fund (IMF) expressed its approval of the recent economic reforms.

Competition Evolution and Environment

Until the mid-1980s, the Tunisian economy was based on a centrally-planned model. This model proved to be neither capable of driving the economy to a higher level nor of improving the standards of living. Tunisia adopted the structural adjustment programme (SAP) in agreement with the World Bank and the IMF in 1986, bringing about necessary and inevitable changes to the Tunisian economy.

With structural adjustments and the move towards a growth strategy, relying on market forces and private sector development, it became only a matter of consistency and dedication to promulgate a new law, which would set the rules and guidelines for business conduct appropriate for a market economy and for the prevention and sanctioning of anti-competitive conduct. The inception of this law in July 1991 signalled an important shift in development strategy and underlined the transition from a highly controlled and regulated economy, towards a market economy.

Competition Policy

After its enactment in 1991, The Tunisian competition law was amended several times. It is modelled extensively on the French 1986 ordinance, especially regarding its emphasis on the principle of free price-setting. This law recognised the need for abolishing a complex and highly distortional system of price control, dating back to 1970s.

The opening of the local market to foreign goods; the liberalisation of private enterprise in the manufacturing and service sectors; the introduction of competitiveness and competition as factors governing economic life; and the withdrawal of the state from direct management of the economy, necessitated the creation of a body responsible for monitoring compliance with the rules of competition and thwarting any anti-competitive practices. The creation of the Competition Council was accompanied by the introduction of the first core of Tunisian competition law.

The 1991 law did not differentiate between horizontal and vertical agreements and lacked explicit details on exclusive arrangements. Two amendments of the law were introduced to deal with the latter issue. The explicit prohibition of all exclusive agreements of concessions and commercial representation was added in 1995 and the relative easing of this prohibition, by granting the Minister of Trade the power to authorise such agreements on an exceptional basis, was enforced in 1999.

Consumer Protection

The Consumer Protection Law gives general guidance on policies on labelling and packaging, whilst various standards, varying according to individual products, involve specific rules. The government has introduced measures to increase consumer protection, including a standard sales contract, designed by the Ministry of Commerce, detailing the requirements of retail or manufacturer guarantees. In addition to providing technical instructions in Arabic, French or English and providing verification of the proper functioning and good condition of the merchandise, the law includes a schedule of reimbursements to be made to the consumer, if faulty merchandise cannot be adequately repaired within 15 days of the notification by the consumer.

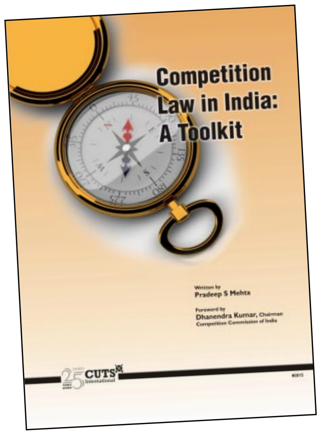
Future Scenario

The Competition Council has, not only worked with very limited human and material resources but also lacked financial and administrative autonomy. The Council stresses the importance of such autonomy, in order to enhance the credibility of the enforcement of competition law and to urge firms, enterprises and consumers to file more complaints, if subject to anti-competitive practices or abuses.

The Competition Council will, undoubtedly, have to face a number of challenges in the future, one of which being the development of certain cross-border practices, which may pose a threat to competition and which, due to cross-border practices, makes it essential to seek a multilateral framework for co-operation.

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

Competition Law in India: *A Toolkit*



This toolkit, researched and compiled by CUTS and customised in the Indian context, is meant to provide a simple and concise handbook on various implementation issues surrounding the Competition Act 2002 (CA02). It provides the definitions, characteristics of and ways to deal with the trade practices which are forbidden by the CA02, which are relevant in the Indian market currently, with practical case studies which can help the readers understand the issues relating to competition in India.

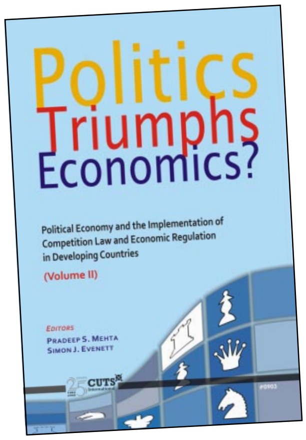
Informal Sector and Competition: A Comprehensive Agenda for Research and Action

The Discussion Paper recommends that the decision to formalise the informal sector should be based on a cost-benefit analysis. It goes on to elaborate various methods of formalisation: reduction in the number of procedures/clearances involved or time involved in registration of firms in the formal sector, extent of corruption that determines the magnitude of bribery involved in the same process; and reduction of disincentives such as high tax rates, coupled with enhancement of incentives such as credit leveraging and entrepreneurial assistance/training provided by the government to the formal sector.

This Discussion Paper can be viewed at:
http://www.cuts-ccier.org/pdf/Informal_Sector_Competition.pdf

Politics Triumphs Economics?

Political Economy and the Implementation of Competition Law and Regulation in Developing Countries (Volume II)



The volume published under the project entitled, 'Competition, Regulation and Development Research Forum (CDRF)' is compilation of nine papers which were presented at the symposium marking the culmination of the research efforts of the 1st research cycle of CDRF. The research papers covered the experiences of a wide range of developing countries as seen mainly through the eyes of developing country authors. Importantly, rigorous analytical techniques were used to draw generalisable policy implications, which were later on also communicated to a vast and heterogeneous audience of stakeholders in a simplified form through policy briefs and online forums.

This Research Volume can be viewed at:
http://www.circ.in/pdf/PoliticsTriumphsEconomics-Vol2.pdf

Sources

A&CP: Antitrust and Competition Practice; AMO: Antimonopoly Office; BD: Business Day; BJ: Business Journal; BL: The Hindu Business Line; BR: Business Respect; BS: Business Standard; EC: Ethical Corporation; ET: Economic Times; FE: Financial Express; FT: Financial Times; IE: Irish Examiner; ILO: International Law Office; IT: Irish Times; LAHT: Latin American Herald Tribune; M&C: Monsters&Critics; SACC: South Africa Competition Commission; SW: Swedish Wire

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