REGULETTER

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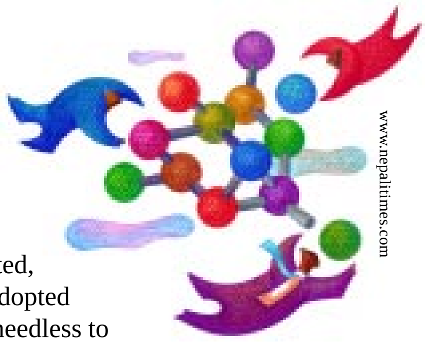
Reinventing Regulatory Framework in Developing Countries

In the past, most developing countries were characterised by significant government involvement in their economies. Economic liberalisation led increased competition, which in turn brought about several fair and unfair means to deal with competition. The evolving process of economic reforms was initiated, whereby many developing countries adopted competition and regulatory laws. But, needless to say, mere adoption of these laws is not sufficient, as its implementation is equally important.



Developing countries pose unique challenges in implementation of regulatory regimes. The challenges comprise of institutional and governance aspects such as regulatory objectives, independence, accountability, interface with the competition authority, decision-making process, selection, and staffing.

An important feature of regulatory reform relates to the separation of policy-making, formation of an independent regulatory body, and operational functions. It is generally observed that separation of the three functions is seldom effected in the true sense and they continue to be interlinked. Most prominent are cases where an independent regulator has been set up, but is made to report to a line ministry, which also manages the state-owned incumbent.

Confusion, however, prevails over what is a policy matter and what is a regulation matter. Government departments seek to deal with typical regulatory issues under the garb of 'policy' matters. This severely undermines the ability of a regulator to function independently.

When it comes to regulating the state-owned incumbent or taking measures that could impact its interest, cases of micro-management by the minister are observed, and independent regulators are perceived to be ineffective or powerless. The regulatory design followed in South Africa is worth mentioning in this context, which has helped in avoiding such conflict of interest situation.

Regulatory effectiveness depend on the initial conditions of industry structure as well as the genuineness and depth of political and social commitment to the goal of independent, open and transparent regulation. But, governments are reluctant to hand over the regulatory role. Many regulators lack adequate autonomy and a clear mandate to make and enforce key decisions, free of political interference. Resources, both financial and human, at the disposal of a regulator, help in effective implementation of its mandate.

Regulatory authorities often compete for qualified personnel, which becomes more important in a country where regulatory skill is in scarce supply. Weak financial autonomy can greatly damage a regulator's ability to compete in this area. The problem is further compounded if a regulator does not have the freedom to appoint staff and determine their salary. The state of India's regulators is precarious on this front. Most staff in regulatory agencies are on deputation from various government departments. The federal government prescribes salaries and other terms and conditions of service of a regulator's staff. In contrast, regulators in Kenya have powers to appoint their own staff and determine terms and

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conditions of their employment, for instance, a small multi-dimensional team of professionals and administrative staff. Likewise, regulatory bodies in Zambia and Cambodia are also empowered to appoint their own staff and determine their terms and conditions. This allows them to offer staff market-based salary, already witnessed in the case of the water regulator in Zambia.

An important requirement of good regulation is to have the right people on board. This requires having in place proper mechanisms to ensure appointment of experts as regulators, as is the practice in Indonesia. Vacancies are announced in the media and candidates have to pass a rigorous test process, prior to being considered for appointment as regulator. In South Africa, nominations for appointing the telecom regulator are invited from the public and public hearings are held in respect of each candidate. In some countries, Parliament plays a decisive role in ratifying candidates. These practices ensure transparency in selection and keeps discretionary elements at bay.

Even regulatory systems in developed countries are not completely free from political pressures, and their information and staff expertise are often inadequate. Since privatisation and regulatory reforms are largely concentrated in public utilities, where there is a strong public interest factor, and therefore political sensitivity to both policy reforms and to regulatory practice, it is difficult to envisage what 'independent regulation' could possibly mean, or how it might be insulated from overriding political considerations.

Furthermore, autonomy should be accompanied by appropriate mechanisms to make independent regulatory agencies accountable. Existing mechanisms that require a regulator to submit annual reports to the legislature are grossly inadequate, as annual reports are not always discussed with seriousness. In fact, in most cases, it is the line minister that is questioned, and not the regulator. This practice makes the line minister assume performing functions that are otherwise delegated to a regulator by law, thus prompting the line minister to interfere in the functioning of a regulatory body.

The practice followed by South Africa shows the way forward in such cases. The Parliamentary Portfolio Committee on Communications, for instance, oversees the performance of the communications regulator.

One of the rare examples where stakeholders are involved in evaluating the performance of a regulator comes from Kenya. The Capital Markets Authority has an institutionalised annual review forum, which allows stakeholders to review its progress as well as raise any issues or suggestions to help stimulate domestic capital markets.

By way of conclusion, regulatory reforms should recognise the political-economy realities that exist in a country and incorporate them into agency models, rather than be designed on the basis of international best practices. Regulatory framework should be refabricated with commitment on the part of the government, clear and consistent policy objectives, and enough scope for stakeholders to participate in an informed way.

(This article is from a recent CUTS research study, entitled, "Creating Regulators is Not the End, Key is Regulatory Process", suppported by AFD, France. Full report is available at: **http://www.cuts-international.org/pdf/RegFrame-report.pdf)**

Limits to Liberalisation of the Electricity Industry*

Ten years after the first directive aimed at promoting competition in the European electricity industry, the European Commission (EC) continues to complain about the lack of enthusiasm of most member states in unbundling incumbents and opening markets to new entrants, and about the poor results of liberalisation.

In the EC Sector Inquiry Report of February 2006, the explanation is that in most member states, not only does a high level of concentration persists in generation, but there is also persistent and significant vertical integration between generation and retail, and insufficient unbundling between supply and transportation, despite the EU legislation.

For electricity, the European regulatory model relies on the basic economic model of network activities: transmission and distribution are natural monopolies for which competition is impracticable and require sectoral regulation; generation and supply are competitive activities; de-integration, market forces, and antitrust authorities will promote efficiency. The first step of the liberalisation process has been to demand the separation of grid activities from node activities. This partition has made visible several service requirements that were formerly internalised by incumbents.

The second stage of the liberalisation process consists of two strategies: first, decreasing concentration in production and supply by assets sales and making entry easier and secondly, converting consumers into active demanders.

In industrialised countries, the entire daily life of households and a large proportion of industrial and business activity are electricity dependent because of equipment installed at consumption locations. Thus power outages are catastrophic, and to protect citizens against catastrophes in Europe, member states assiduously promote national champions who can allegedly 'guarantee' secure provision of cheap energy.

The basic obstruction in continental Europe is probably that consumers of energy are less mature, less price-responsive, and poorly trained in behaving as economic agents. They view electricity as an essential input with public good's features rather than as a marketable commodity.

As long as demand is not trained to be market reactive, liberalisation will not work.

**Abridged from the original article in Connexions, October 2006, a quarterly newsletter of the National Council of Applied Economic Research, New Delhi, India.*

To Reap Diamonds

www.images.com

In a bid to counter monopoly over the international diamond market by the supposed 'white cartel', dominated by the US and the UK, the Indian government has initiated swift moves by extending a helping hand to African nations.

So far, the 'white cartel' has been allegedly exploiting African nations just to get raw diamonds at cheap rates. The cartel then processes these diamonds, add value, and sell them at exorbitant rates in the international market.

The initiative assumes significance as Africa is home to approximately 65 percent of the world's diamonds – worth close to US$8.3bn per annum. The moot thrust is that India is downright earnest about the mission and that it can be a win-win situation for both, if the possibility of joint venture is explored.

(FE, 04.07.06)

Order for Exemption

Singapore's trade and industry ministry has issued an exemption order exempting shipping conferences from the country's new Competition Act. The order allows members of shipping conferences to fix prices, agree on remuneration terms, and co-operate on technical and operational issues.

Provisions in Singapore's exemption order are designed to preserve competition in the market. Blacklisted behaviour include disclosure of confidential information about service arrangements and setting tariffs at mandatory levels.

The order further lays down norms for shipping companies, who have a market share in excess of 50 percent, to publish information on pricing strategies. The exemption order does not carry bulk or tramp shipping. Unlike foreign liners, tramp ships trade with no fixed schedule. *(GCR, 27.07.06)*

Focusing on Advocacy

The Netherlands Competition Authority (NMa) plans to set up an Information Desk with the help of the Telecommunication Authority and the new Consumer Authority focusing on advocacy.

The Information Desk will operate, in addition to the existing information line, and offer free assistance to consumers via Internet, telephone or email.

In comparison to the existing information line of the NMa, the Information Desk will function as one single channel of communication between consumers and the three market authorities.

This novel initiative is an attempt to enhance advocacy on the part of the authority and facilitates contacts with consumers. Further, it is also indicative of the fact that NMa and other regulators require the direct help of the consumers, since they alone cannot survey market on their own and take actions against the defaulters.

(GCR, 11.07.06)

A Step Ahead

Mauritius has decided to take step to open and diversify its economy in order to attract foreign direct investment (FDI) and diversify. Realising the island state cannot cope on its own, the government has moved to slash red tape that has been a bane for foreign businessmen seeking to invest and work on the island.

The economy of this Indian Ocean Island has been stymied by the end of textile quotas and the European Union's (EU) decision to slash sugar prices by 36 percent.

Under the new legislation adopted towards this end, foreigners would receive licences to invest in companies with more than US$100, 000 within three days. The same applies for work permits for foreign employees earning more than US$1, 000 per month.

It is hoped that the new steps would help turn Mauritius into a regional hub for education, services, health, and fisheries. *(allAfrica, 14.08.06)*

New Statute

Portugal's government has passed a law shortening merger review deadlines and bringing the country in line with European directives. The new statute is expected to enter into force shortly.

Presently, Portugal's Competition Authority has 30 working days from the date it receives a merger filing, to decide whether to clear the deal, block it or investigate further. If it chooses to examine further, the authority has 90 working days to reach a final decision.

These deadlines are suspended whenever the authority has to ask for extra information from notifying parties.

Now, according to government notice, the authority's deadline for extended investigations will be 90 working days from the notification date. The new statute also limits suspension periods to 10 days. The new rules will not apply to bids already underway,

(GCR, 13.09.06)

Relaxing Restrictions

Japan's trade ministry is pressing for an easing of the country's merger restrictions to encourage companies make domestic acquisitions and hence be better able to compete with global rivals.

In this context, the Japan Fair Trade Commission (JFTC) is reviewing its merger assessment criteria, which contain guidelines limiting post-merger market share to 35 percent, and is set to outline revised criteria by March 2007.

Unlike the trade ministry, which is concerned about Japan's competitiveness in the face of global industrial consolidation, JFTC's priority is to break up monopolies that have stifled domestic competition and sustained artificially high prices in certain industries.

Although the JFTC has long been criticised for lacking teeth, it has pushed through the most sweeping changes to Japan's anti-monopoly law in well over two decades. In particular, it has cracked down on *dango*, an institutionalised form of bid-rigging in Japan. *(FT, 06.07.06)*

Please refer to RL7(1) for more on Dango

Regulating Trade in Grain

The cereal sub-sector industry players from the East African region have formed a council, called the East African Grain Council (EAGC) to regulate trade of the commodities.

EAGC would be setting up rules, which would govern cross-border trade for both wheat and maize. The council's main objective is to create a level playing ground for the cereals sub-sector players and lobby for friendly policies that favour farmers. It will, for instance, check the exploitation of grain farmers through unfair trade practices.

The Council has been formed in collaboration with the Ministries of Agriculture and Trade in the three neighbouring states of East Africa – Kenya, Tanzania, and Uganda.

Along with regulating trade in cereals, the Council will bring together associations in the region. The EAGC would also look for markets and explore linkages in the cereal sub-sector in the region.

(allAfrica.com, 20.09.06)

Single Market

Trade ministers from the Association of South-east Asian Nations (ASEAN) have agreed to speed up services liberalistion and provide new incentives to achieve its plans to create a single market in the region by 2015.

The objective is to allow the free flow of goods, services and investment across the region. The plan does not call for a single currency system.

The groups have further agreed to remove all forms of restrictions that affect national treatment and market access in the services sector which includes air transport, tourism and healthcare, most of which are owned or controlled by the government.

(PROACT, August 2006)

China to Keep a Check

A think-tank under China's powerful National Development and Reform Commission (NDRC) has called for the creation of a government body to 'rigorously examine' foreign takeovers of state-owned companies.

If the research institute's call for a new body were adopted, it would create a potentially daunting new hurdle for foreign companies hoping to carve out a position in the many industrial sectors still dominated by state-owned companies.

In a parallel development, China's government has attempted increased scrutiny of foreign acquisitions seeking to curb inflows of capital to cool economic growth and prevent overseas control of industries regarded as strategically important.

(BS, 05.08.06 & FE, 11.08.06)

Sharpened Nails

Russia has passed a new competition law providing the country's antitrust authority with sharper weapons against monopolies.

The law revises the thresholds for determining whether or not a company is a monopoly. The upper limit is now a 50 percent market share, unless the company can prove that it does not have unilateral market power. The law even states that, in certain circumstances, a company with a market share below 35 percent may be considered a monopoly if demand for its product is inelastic.

The basis for the changes is the unification of two different laws regulating competition in the commodities and financial markets. A consequence to this is that both markets will now be subject to a more uniform application of competition law. *(GCR, 10.08.06)*

Shake-up

In the biggest shake-up ever of the public sector in Japan's history, every government service could be put out to competitive tender.

A new law that has come into force recently will allow public services to be 'market tested' to see if they can be better run in private hands. According to sources, the government has so far received 200 applications from the private companies for the purpose.

Under the 'market testing' concept, direct comparisons will be made to see whether a service can be provided more efficiently by the public or private sector.

If the private company wins a tender, it will have three to five years to show it has run the service efficiently and met the right quality standards as conditions of being re-awarded the contract. *(FT, 19.08.06)*

Security Checks

The government of India is planning to bring in legislation that would empower it to stop foreign investments on security grounds.

As of now, there is no legislation in India that bars foreign investment for security reasons.

In future, all tenders floated by public sector units would have enabling clauses by which the government could intervene and disqualify a company for security reasons.

Similarly, all government licences will have a clause that would enable to cancel licences in case of security reasons. *(ET, 30.07.06)*

Broader Ambit

To improve Hong Kong's antitrust regime, an independent committee appointed by the government has reported the introduction of broad-ranging competition laws.

The committee has further recommended introduction of legislation relating to seven types of anti-competitive behaviour, including collusion.

Currently, Hong Kong deals with antitrust companies on a case-by-case basis, as it has no antitrust law.

The committee also indicated that sanctions, which should be limited to civil penalties, should be handed down from a newly formed tribunal and competition commission.

(GAW, July 2006)

Taking Over

New Zealand's Competition Commission is taking control of the country's largest electricity provider, Vector Limited, because of the company's unfair pricing policies.

The Commission found that Vector Limited was guilty of overcharging industrial and commercial customers. Vector was doing so, despite earning excessive revenues overall.

Vector was also undercharging some residential customers, who were part of the Auckland Energy Consumer Trust. The Trust owns 70 percent shares of Vector. As such, the Commission stated that shareholders were not being treated equally.

These unfair inconsistencies resulted in little competition in the sector. Due to competitive concerns involved, the Commission decided to use its powers and take over Vector.

(GCR, 25.08.06)

Investigating Acom

Japan's regulator has started an investigation into Acom as to whether or not the group engaged in abusive loan collection activity.

The move is likely to raise calls for stricter regulation of the US$206bn industry. Acom is one of the country's largest consumer finance groups. The body had earlier been inspected in January 2006.

An Acom representative confirmed that the inspection had started, but said the group had not been informed as to what it was for or how long it would last.

The inspection is at a time when the Financial Services Agency is set to unveil recommendations on lowering the interest rate cap and tightening the rules on consumer lending. This is likely to strengthen calls for a clampdown on an industry that is seen as profiting from the plight of weak borrowers.

(BS, 24.08.06)

Railway Regulation

The *Comision Federal de Competencia* (CFC), Mexico's antitrust authority, has initiated an investigation on monopolistic practices in the railway sector.

The CFC is investigating the deficiencies of this sector in depth, in order to strengthen its regulatory framework. The CFC would focus on anti-competitive practices, since January 2002.

In another incident, the country's National Commission for Foreign Investment (CNIE) has decided to block the acquisition of Transportes Ferroviarios de Mexico (TFM) by Kansas City Southern.

Kansas City Southern, which already has a 39 percent stake in TFM, planned to create NAFTA Rail — a 'giant' railway connecting the US and Mexico. Sources have stated the decision of the authorities might have to do with the timing of the acquisition, and the need for further clarification.

Till now, the decision is not definitive and approval for the acquisition may still be granted.

(GAW, 04.08.06 & 16.09.06)

Salt Cartel in Portugal

The Competition Authority of Portugal has fined four salt companies for running a cartel.

The cartel saw the companies compensate each other for breaking cartel rules. The four companies were found guilty of price-fixing, dividing up and fixing the salt market, and sharing customers.

The cartel ran between 1997 and 2005. Its members operated under a sophisticated agreement based on freezing market shares – any company exceeding its agreed share were compensated by other members of the cartel. The companies exchanged information on sales volumes, prices, customers and competitors, allowing them to monitor compliance with the agreement. *(GCR, 27.07.06)*

Ferrying Free

Even though ferry operator Color Line gave away free tickets on routes to Denmark, Norway's Competition Authority has cleared the company of charges of predatory pricing.

A statement released from the Authority said that Norway's Competition Act, like the European Union's (EU) Article 82, was intended to protect competition, not competitors. On that basis, the authority rejected rival operator Fjord Line's complaint that Color Line was guilty of dumping, when it offered free travel on certain days.

The authority stated that the relative inefficiency of Fjord Line meant that its argument could not be upheld.

The authority also said that pricing below average variable costs could be justified in some circumstances – such as when a company is trying to launch a new service or product.

Until 2005, Fjord Line was the only operator offering a ferry service from the west coast of Norway to Denmark and England. But then Color Line launched a rival service to Denmark.

(GCR,29.07.06)

www.images.com

Price-fixing in Propane

The US energy regulator has slapped UK-based energy group, BP, with a lawsuit on allegation that it cornered a significant proportion of the US propane market.

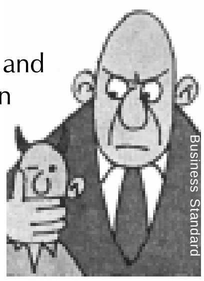
The statement of the Commission was that BP Products, North America, unlawfully attempted to manipulate and did manipulate the price of a type of propane used widely in the country in February 2004.

Propane is used by millions of US consumers to heat houses in rural areas, trailer homes, and fire domestic cookers and barbeques. It is also heavily used by the industry.

Experts opine that cornering a commodity market is more than a threat to market integrity. It is an illegal activity that could have repurcusions for commercial market participants as well as retail consumers around the country.

(BS, 30.06.06)

Penalty Imposed



In Argentina, the Secretary of technical co-ordination and the National Commission for the Defence of Competition (the Antitrust Commission) has recently imposed a penalty for late filing on the parties to the Sanofi/Aventis transaction.

Since 1999, Argentina has enacted various regulations regarding the control of certain merger & acquisition (M&A) transactions, which provide for large fins for late filings (up to US$322,580).

Under Resolution 21/2006, a fine of US$268,548 was imposed on Sanofi/Aventis. In its decision, the Antitrust Commission stated that the parties had filed notification 185 days late. Deviating from the parameters of previous cases, the Commission imposed a fine of US$1,451 for each day of delay – a penalty greater than those previously imposed, but less than the maximum amount allowed for in the Antirust Law (25, 156). *(ILO, 04.08.06)*

Order to Cease and Desist

Competition authorities in New Zealand have issued their first ever cease and desist order against port owner Northport.

New Zealand's Commerce Commission sought the order after a rival complained that Northport, the owner of Marsden Point Port, had granted an exclusive cargo-handling licence to its own port services company. Since the Commission issued the order on August 11, 2006, Northport has allowed competitors to provide services at the port on the same terms.

The Commission has decided to take no further action against Northport since its anti-competitive behaviour, which included denying rival International Stevedoring Opertaions access to cargo-handling facilities, has stopped. Marsden Port's principal traffic is wood veneer, which is exported to Japan. The port is the largest in New Zealand's Northland.

(GCR, 16.08.06)

Czech's Natural Gas Market

The Czech Republic's Antimonopoly Office has imposed a record fine on RWE Transgas for abuse of dominance in the natural gas market.

Transgas also restricted the supply of gas to the competitors of RWE-owned local gas distributors, charging some of them unfair prices. According to the Office, this undermined the liberalisation of the Czech natural gas market and hurt private households and small businesses – even though the country's energy regulations supposedly protect them from anti-competitive behaviour.

Apart from penalising Transgas, the Office has imposed remedial measures to prevent the company from differentiating between rival local gas distributors and RWE-owned ones.

This was Transgas's first infringement of Czech competition law, which the Office saw as a mitigating factor. The Office launched its investigation of the natural gas market in 2005. Since the time, it has received 35 complaints as to Transgas's conduct and had even consulted the European Commission (EC). *(GCR, 17.08.06)*

Criminal Cartels

Ireland, like the UK, is one of the few EU member states that criminalises cartel behaviour. Ireland's recent successful criminal prosecution of a price-fixing cartel – the first in the EU – suggests that while these difficulties are undoubtedly real, they can be overcome and cartel convictions secured to a criminal standard.

The Irish Director of Public Prosecutions charged about 24 defendants in Spring 2004 – both individuals and corporations –with fixing the price of heating oil in the Galway region between January 2001 and February 2002. By May 2006, convictions had been secured against 15. Total fines imposed have been •95,000.

Criminal cartel cases in the EU are relatively new. While the difficulties of bringing successful prosecutions should not be understated, it is clear that they can be overcome. *(FT, 11.07.06)*

Goodbye to Foster's

Foster's, Australia's leading beer and wine company, completed its withdrawal from brewing in mainland Asia by selling its businesses in India and Vietnam for a combined US$225mn to two of its largest international rivals.

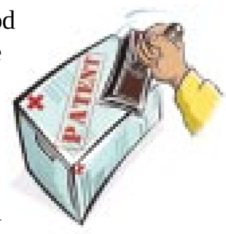
The move reflects management efforts to exit the money-draining international market for premium beers and strengthen the group's wine operations and dominant position in the Australian beer market.

The transaction leave Foster's with a very limited international dimension as a brewer, restricted to the islands of the Pacific, where it owns three breweries.

Company officials quoted that both its Indian and Vietnamese operations had been making looses. Despite Foster's taking full control of the brewery, analysts said it failed to reach a sufficient size to derive economies of scale in an increasingly competitive market. *(FT, 05.08.06)*

Patent Puzzle

The patent fight over Plavix has taken on the characteristics of a pharmaceuticals industry 'whodunit' mystery.



Plavix, a blood thinner, is the second best selling drug in the world and is jointly marketed by Bristol and Sanofi.

Apotex, a privately held Canadian drugmaker, has been producing and selling a generic version of the blood thinner with approval from the Food and Drug Administration (FDA), but without legal clearance.

Therefore, Bristo and Sanofi are attempting together to get a federal court to stop Apotex's sales of its generic Plavix.

Bristol-Myers recently came under investigation by the Department of Justice (DoJ), after the company offered Apotex a US$40mn settlement to halt production of generic Plavix until 2011. Experts have opined that Plavix is an important issue, but the market has already assumed the worse.

(FT, 05.07.06 & BS, 23.08.06)

Mowing Down a Merger

The European Court of First Instance has shocked the music industry by annulling ECs approval of the 2004 merger that created Sony BMG, the world's second largest recorded music company.

The court backed a challenge by independent music companies, who claimed regulators had been wrong to allow Sony and Bertelsmann to combine their recorded music businesses.

The EC had earlier ruled in July 2004 that the merger – which left the bulk of the recorded music market in the hands of four big companies – would not pose a risk to competition in the music market.

In spite of concerns about potential price collusion among big music companies, the EC argued that there was insufficient evidence to prove that further concentration in the market would be detrimental to consumers.

(BS, 14.07.06)

Worldwide Rights

Digital film solution company UFO Moviez, a subsidiary of Apollo International, has acquired 51 percent stake in its technology partner Singapore-based DG2L Technologies' digital cinema arm.

The deal will give UFO Moviez worldwide rights for MPEG-4 Digital cinema system. The DG2L cinema system is an end-to-end solution, comprising film capture, encoding, encryption, management and secure digital delivery as well as playback at the theatre.

With this acquisition, UFO Moviez, is all set to bring in the next-generation technology, which would reportedly revolutionise the way cinema is viewed around the world

The new company will be called UFO International and will work towards setting up a global front.

(ET, 08.08.06)

Spinning a Yarn

In what would be the biggest cross border mergers and acquisition (M&A) deal in the textile sector in India, Spentex Industries, is acquiring Uzbekistan-based, state-owned spinning company, Tashkent Toyepta Tekstil, along with its two manufacturing facility. The company said the buyout would catapult the company as India's biggest yarn manufacturer with an installed capacity of over 5.70 lakh spindles.

Uzbekistan is the world's fifth largest cotton producer with four percent share of total output.

With a proximity to eastern European markets and availability of quality cotton locally, it makes strategic sense for Spentex to be present in Uzbekistan. It also expects to get benefit from low labour and power cost in Uzbekistan. *(ET, 25.07.06)*

Licking Lollipops

Spain's Chupa Chups, the world's largest maker of lollipops, has sold itself to Perfetti Van Melle, a privately owned Italian confectioner for a reported US$512mn.

Chupa Chups, which is based in the northeastern Spanish region of Catalonia, said it would keep its headquarters and main production units in Spain.

The giant maker of lollipops said the deal would boost its competitivity in the rapidly integrating candy market, describing Perfetti Van Melle as 'the best possible ally'. The two companies already joined forces to market their products in Germany, in 2005.

Chupa Chups has suffered from the rising value of the euro in the US market, but more recently, Spain's new anti-smoking legislation has boosted candy sales in Spain. *(FT, 04.07.06)*

Approved Merger

The Pro-competition Superintendency of Venezuela has approved the merger of Digitel with regional telephony service providers Digicel, Infonet and Digitel Cellular.

The superintendency determined a number of economic efficiencies and benefits resulting from the transaction.

The new unified company would enhance competition with respect to offering state of art technology in products and services. Further, interconnection costs will be significantly reduced consequent to the merger.

The transaction would strengthen Digitel as the third player in the market. It would widen Digitel's coverage through the elimination of inefficiencies, which is imposed by the limitation of each network to a certain geographical area.

The deal would further reduce the transportation and domestic roaming charges to link any user outside its area of operation. *(ILO, 13.07.06)*

Consolidation in Mining

The booming metals market across the globe marks an era where consolidation is high in the air. The big opportunities are particularly more in poor countries where unsophisticated policymakers are turning miners to each other.

Triggered by China's industrial growth, driving demand, and soaring metal prices, consolidation in the Chinese mining sector has started attracting global attention. All the excitement is a stunning turnaround for an industry that was anaemic just three years ago.

It all started with Canadian mining company Inco Ltd's willingness to acquire nickel miner Falconbridge Ltd. Consequently, Teck Cominco stepped in to make a Play for Inco followed by Swiss based Xstrata bidding for Falconbridge.

In another instance that underlines the accelerating pace of consolidation in the global mining industry, Goldcorp, a medium-sized Canadian gold producer, agreed to acquire Glamis Gold of Nevada in a friendly US$8.6bn all-share deal.

Goldcorp and Glamis aim to create one of the world's lowest cost and fastest growing producers. The new company would become the fifth largest gold producer in the world and hold the sixth largest reported mineral reserves and resources with 41.1 million ounces of proven and probable gold reserves.

(BL, 15.08.06 & FT, 01.09.06)

'National Champion'

The boards of Italian banks Intesa and Sanpaolo IMI have agreed to merge, creating an Italian national champion with a market capitalisation of US$83bn that would be one of the top 10 European banks competing at the European level.

The two banks – Italy's second and third largest – would now gain regulatory approval by Italian antitrust and central bank authorities. The deal would subsequently be put to a shareholder vote.

The merged group would have an overall market share of about 20 percent in Italy, well ahead of competing banks. Its market share of customer loans and deposits would be 22 percent, nearly twice that of its nearest competitor.

The two banks' activities in central and eastern Europe are also complementary. There, they would have a combined customer base of more than six million clients in 10 countries.

(FT, 28.08.06)

A Step Away

Videocon is just one step away from making the biggest overseas acquisition by an Indian company. The Mumbai-based electronics and energy group has emerged the preferred bidder for acquiring Korean electronics company Daewoo Electronics, including its asset and brand.

The acquisition would push Videocon into the global big league with close to US$4bn sales in its electronics business alone. With Daewoo in its lap, it would become a serious player in the consumer electronics business.

Though it is a distant third player in its home market in Korea behind Samsung and LG, Daewoo has a strong brand recall in the developed markets, including the UK and the US, while it has leadership position in certain segments in select markets, including Poland and Vietnam. The acquisition would open big opportunities for the group. *(ET, 09.09.06)*

Broadening Product Range

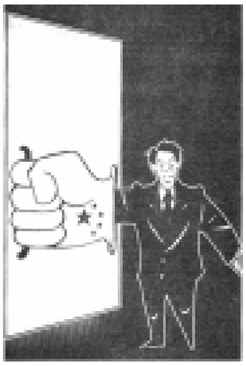
Volvo, the world's largest truck maker after DaimlerChrysler, plans a series of acquisitions to broaden its product range. Possible purchases include increasing its existing 13 percent interest in Nissan Diesel, the Japanese truck maker. The company is also in discussion with Dongfeng, the Chinese truck maker, about a possible alliance.

It will also consider acquiring a truck maker in Russia. Another area of interest is likely to be construction equipment where Volvo is the number three player behind Caterpillar of the US and Komatsu of Japan.

(BS, 22.08.06)

Bigger is Better!

China's Shandong province plans to merge its two biggest steelmakers to form the country's largest producer after Baosteel Group Corp, in a bid to increase bargaining power with raw material suppliers.


Business Standard

Jinan Iron & Steel Group and Laiwu Iron & Steel Group Co Ltd, located in the eastern coastal province, will pool assets in Shandong Iron & Steel Group, the publicly traded unit of Jinan Steel.

Building bigger steel companies may help China negotiate lower prices for iron ore, which surged to a record19 percent this year. Sources quote that China wants to create large steel groups, so that it can have a bigger voice in talks related to iron ore.

China, maker of a third of the world's steel, is reported to create two steel makers. Each would have capacity greater than 30 million tonnes a year by 2010, and a few producers of 10 million tonnes a year. *(FE, 02.08.06)*

War Intensified

The Japanese pulp and paper industry had expanded rapidly during the economic boom in the 1980s. Massive new paper capacity came on stream consequent to which the demand for paper products remained stagnant.

The latest development in the industry was the hostile takeover of Hokuetsu Paper Mills by Oji paper. The proposed acquisition would have resulted in a rationalisation of capacity and would have improved the demand-supply balance in the industry.

However, the takeover bid was dropped in light of several allegations accusing rival Oji paper of bullying and trying to stifle competition. In a report to the Fair Trade Commission (FTC), Hokuetsu said that if it was bought by Oji, the two companies' combined market share of white-coated paper board would total 59 percent, potentially violating the anti-monopoly law and unfairly stifling competition.

The instance is considered to be the latest episode in an increasingly bitter public battle between the two paper makers. It is the first example in Japan's gentlemanly corporate environment of a hostile bid by an established group for an industry rival.

(BS, 24.08.06)

Railway Merger

America Latina Logistica acquired two railroad companies in Brazil for US$616mn, creating the largest logistics company in Latin America.

The deal provides capital to complete a year-long restructuring and investment process for each of the railroad operators – Brasil Ferrovias, the holding company for the Ferronorte and Ferroban railroads, and Novoeste Brasil, which controls the Novoeste railroad.

The beauty of the transaction is that it will permit Brazil to improve its infrastructure and is a step towards a modern railroad system.

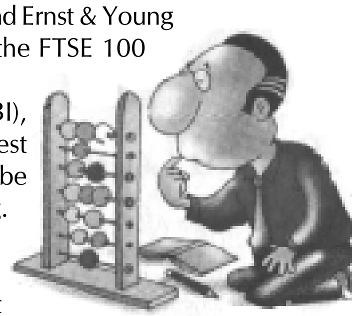
The role of ANTT – the regulatory agency for the rail transportation sector in Brazil – was also important. It put in every effort to approve the deal in a very short period of time.

(latinlawyer.com, 13.07.06)

Sizing Down Audit Firms

Four big firms dominate the international market for audit, and the investors whom these auditors are supposed to protect have had enough.

The big four – PwC, Deloitte, KPMG, and Ernst & Young – audit all but one of the companies in the FTSE 100 and 97 percent of the FTSE 250.



The Economic Times

The Association of British Insurers (ABI), which represents some of the UK's largest investors, has proposed that firms should be forced to shed clients if they grow too big.

The ABI, which represents shareholders controlling nearly 20 percent of the UK stock market, is one of the first heavyweight organisations to back such an aggressive policy response.

In its response to a consultation by the Financial Reporting Council, the UK accounting regulator, the ABI has called for heightened vigilance from competition authorities in the UK and the EU.

Splitting one of the firms into two is conceivable but drastic, and regulators will shrink from it. Regulators and investors alike would need to work out a strategy to ensure that smaller firms are able to challenge the big four.

(FT, 07.08.06 & 08.08.06)

Guilty of Conspiracy

The US drugmaker Schering-Plough has pleaded guilty of conspiracy to mislead the government and agreed to pay US$435mn, resolving a six-year Department of Justice investigation into alleged sales and marketing practices.

In the late 1990s, Schering-Plough was charged with misleading federal healthcare programmes over its best price for Claritin Redi-Tabs, an allergy drug. Federal prosecutors also charged the company had improperly marketed two cancer drugs – Temodar and Intron A – for uses not approved by the FDA.

The company has resolved to remove the last significant overhanging legal issues left by the previous management. *(BS, 31.08.06)*

Abusive, Antiquated Voting

The Asian Corporate Governance Association, whose members are among the world's biggest investment groups, has found that shareholders have to overcome a host of obstacles to exercise their ownership rights at company meetings.

The ability to vote at meetings by proxy – rather than attending in person – is regarded as an important investment tool because it enables investors to hold management at many different companies to account and to enforce higher standards of corporate governance.

The report, based on responses to the association's first membership survey into the issue, ranked 10 Asian countries on 10 issues related to proxy voting, including time given to vote before meetings, clustering of meeting dates and whether companies count the proxies. *(FT, 04.09.06)*

Whittling Down the Workforce

Agfa-Gevaert NV, Europe's largest supplier of industrial printing equipment will cut as many as 2,000 jobs, or 14 percent of the workforce, to slash costs after two years of losses.

In another sector, Australia's biggest airline, Qantas Airways, stated that owing to a 30 percent fall in annual profit, due to higher fuel and redundancy costs, it planned to slash more than 1,000 management and support staff.

Elsewhere, the world's largest automaker, General Motors Corp., may save about US$3.9bn a year by buying out at least 30,000 workers to help end losses. *(FE, 27.06.06, FT, 18.08.06 & BL, 24.06.06)*

Below Average

A long-held perception that companies based in emerging economies have poor corporate governance is mostly true, according to a survey released publicly of 3, 800 companies worldwide.

GovernanceMetrics International, for the first time, examined 321 companies from 25 countries in emerging markets, and found their average rating of 4.3 was below par.

Only two emerging market companies – Taiwan Semiconductor Manufacturing Co. and Gold Field, South Africa – rated above the average of 7.5. The country with more than one surveyed company that had the lowest average score was South Korea, at 2.31, followed by Greece at 2.52, China at 2.94, and Brazil at 3.23.

Only 35 percent of emerging market companies have a majority of independent directors, compared to 75 percent for industrial markets, the survey said. 27 percent of companies in emerging economies do not disclose an audit committee, revealed the report.

Ratings for companies in Australia, Canada, the UK, and the US were higher still, with more than 90 percent of them holding audit and compensation committees. Larger companies generally have better governance than smaller companies, because of their wherewithal, and the trend has been towards improved governance. *(Reuters, 18.09.06)*

Credit Ratio Ratings at Risk

Asian telecom operators will likely step up their merger and acquisition (M&A) activities, but this could spur them to adopt aggressive financial policies that might affect their credit ratios reports ratings firm Standard & Poors (S & P).

Most Asia Pacific telecom firms have intermediate-to-modest financial risk profiles, but significant improvement in credit ratios could be limited, especially if they take on more debt to boost their overseas expansion efforts as stated by Yasmin Wirjawan, Director of S & P's Corporate and Infrastructure ratings in South and Southeast Asia.

Observers believe that in the light of declining growth in domestic markets of the Asia-Pacific, competition would only heighten among telecom operators to find attractive investment opportunities outside the home turf – a move that could reflect on their credit ratios in the foreseeable future. *(BS, 05.07.06)*

Corporate Code of Dubai

Abu Dhabi Securities Market (ADSM) will introduce three phased corporate governance code voluntarily to ensure greater transparency, which will lead to better performance and strengthen investor's trust in the listed companies.

As part of its international best practices programme and drive to encourage more foreign companies to dual-list in Abu Dhabi, the ADSM has been preparing a proposed corporate governance code for the UAE. The ADSM reviewed UAE laws and international corporate governance principles and identified the relevant 'best practice'.

The draft code was then published on the website and distributed to the authority, listed companies, and other interested parties in the UAE's first ever public consultation process.

Rashid Al Baloushi, acting director-general of ADSM, pointed out that reward and recognition help establish a culture of good governance more effectively than the imposition of greater liabilities and duties, which may discourage good people from becoming directors.

Baloushi also said that well-governed companies are central to the health and stability of the Gulf Co-operation Council (GCC) economies and essential for future economic growth. *(menafn.com, 18.09.06)*

Heavy Penalties

Prudential Financial Inc. and a subsidiary have agreed to pay US$600mn in penalties to resolve government allegations of deceptive market timing in the trading of mutual funds, as per the announcement of the US Justice Department.

The department said that the subsidiary, Prudential Equity Group, LLC, admitted to criminal wrongdoing dating back to 1999.

Charges were outlined in a criminal information prosecutors are filing in the federal court against Prudential Financial and the subsidiary. Justice officials have agreed to defer prosecution so long as the companies abide by terms of the agreement. A criminal information is a charge filed in court by prosecutors, usually when the defendant agrees to waive grand jury indictment.

The government has accused Prudential of engaging in deceptive late market timing in the trading of mutual fund shares. The US$600mn in fines, restitution, and penalties would resolve all civil and criminal allegations.

(BL, 30.08.06)

Biggest Paychecks on Record

While consumers grapple with higher prices at the gas pump, oil company executives are enjoying their biggest paychecks on record. The CEO compensation report released by two social policy organisations found that the top 15 oil executives in the US brought home an average of US$32.7mn in 2005.

It's almost three times more than the average compensation for chief executives of large US companies in all-large industries in 2005.

The pay for chief executives at nine of the world's largest oil companies averaged US$21.2mn in 2005, a 43 percent raise on the 2004 figures.

(BL, 30.08.06)

Fined for Breaching

In Dhaka, the Securities and Exchange Commission (SEC) fined 13 former directors, a former managing director and a company secretary of the Oriental Bank Ltd for breaching securities rules.

The former directors were disciplined for not furnishing the commission with uninterrupted audio-visual records of the 18th Annual General Meeting (AGM) held in October 2006.

The bank had submitted edited minutes of the AGM that was found to have lasted only for five or six minutes. The board of directors did not also place and discuss the agenda properly, said Mansur Alam, executive director of the SEC.

Experts observe that, for the first time, the SEC had taken disciplinary action against a bank for not providing a complete audio-visual record of an AGM, and was done specifically to set an example for others to bear in mind.

(The Daily Star, 18.09.06)

Amnesty on Condition

The World Bank (WB) is to offer conditional amnesty to companies that voluntarily admit to corrupt dealings on bank-funded projects.

Under the terms of the new Voluntary Disclosure Programme, the WB will not take action against companies that come forward with information about past wrongdoing and will allow them to continue to take part in projects.

In return, the companies would agree to investigate thoroughly their past dealings with the Bank, share this information with the Bank, and appoint a Bank-approved independent monitor to track internal compliance for the following three years.

The companies will not be required to pay any fine, but will have to pay the cost of investigation and compliance.

Companies that fail to come clean voluntarily but are caught by bank investigations will continue to be debarred from participation in future projects. Currently debarred in this manner are 330 companies.

(FT, 07.08.06)

Preferring Arbitration

A research study conducted by PwC, the School of International Arbitration and Queen Mary, University of London revealed that majority of the corporations prefers international arbitration to transnational litigation.

Also, 95 percent corporations are expected to continue using international arbitration with an increase in cases.

As cited by respondents, privacy, flexibility of procedures, and enforceability of awards are some of the advantages of international arbitration. However, the expenses of the international arbitration process turned out to be the most widely recognised disadvantage. *(FE, 22.06.06)*

Offshore Operations

Brazilian state-owned oil company, Petroleo Brasileiro SA, is in talks to acquire Japanese refiner, Nansei Sekiyu KK, in a bid to enter the booming Asian market. The transaction would mark the first direct acquisition of a production facility on Japanese soil by a major oil-producing nation.

The reported move comes as the Japanese oil sector suffers from overcapacity amid dwindling domestic consumption. If Petrobas completes the deal, it would become the first oil-producing nation to own a refinery station in Japan, whose oil needs almost entirely rely on imports.

Petrobras plans to refine Brazilian oil in Japan to produce gasoline for demands in Japan and the rest of Asia, especially China. Petrobras, the world leader in deep-water exploration, opines that it must own offshore refineries to boost its profitability.

(petroleumworld.com, 15.09.06)

'Golden Share'

The EC has allowed France to retain a so-called 'golden share' protecting state influence in the privatisation of Gaz de France (GdF). France wants the right to such a share, amounting to a veto on key strategic moves, under its highly controversial scheme for GdF to be absorbed by Suez.

The principle of a golden share is intended to provide the state with specific powers, for a period at least, to ensure that private owners do not take decisions counter to national strategic interests.

In May 2006, the EC had ruled out the possibility of such a golden share and had stated that such golden shares put obstacles in the way of foreign investors and ran counter to the principle of the EU internal market.

The plan to privatise GdF by putting it under the wing of Suez has provoked opposition on the grounds that it would dilute government's ability to restrain price increases for consumers of energy and would also lay GdF's energy assets open eventually to acquisition by foreign interests.

(petroleumworld.com, 09.08.06)

Choppy Waters

Uncertainty is sweeping across the Mombasa Port, Kenya, as the wheels of privatisation of operations at the Container Terminal begin to turn faster. The process, which has dragged for many years, kicked off last month after a committee to oversee its implementation procedures was put in place by the government of Kenya.

According to the government, it was losing billions of shillings (Kenyan currency) every year because of inefficiency at the port. Complains are coming from as far as Juba, Kampala, and Rwanda over container jams and overall inefficiency at the port.

While some stakeholders are happy with the government's efforts to privatise Container Terminal, many are agonising over possible retrenchments and the impact of privatisation on port operations.

Kenya Ports Authority has expressed disappointment over why the government was rushing the privatisation of the port.

(allAfrica.com, 07.09.06)

Process of Privatisation

The government of Zimbabwe has completed a report on the privatisation of key parastatals, which will set basic guidelines on how the process should be implemented.

Also, the government intends to privatise non-performing public entities in efforts to boost efficient discharge of critical services, but little progress had been made so far.

The privatisation of state enterprises was first mooted in early 90s under the first phase of Economic Structural Adjustment Programme (ESAP) before the idea was shelved, as orthodox economists pushed the government to adopt a 'hands-off' attitude to critical services. Analysts believe representation of private sector on public entities' boards of directors would allow closer co-operation and participation in the formulation and implementation of turnaround strategies.

(allAfrica.com, 05.09.06)

Sold for a Purpose

Colombia's government has sold the country's largest natural gas transportation company Ecogas to local pension and employee funds for US$301mn. As many as six privately owned Colombian pension funds teamed up to acquire Ecogas.

The government has also approved the sale of up to 20 percent of state oil company Ecopetrol, arguing that private sector participation would help guarantee Ecopetrol's financial and administrative independence, which is needed to carry out exploration and production (E&P) investments and to modernise oil infrastructure.

According to sources, Ecopetrol suffers from all types of restrictions that prevent it from competing and makes it more difficult to find more oil. As such, to grant the company more freedom, it necessitated the 20 percent sale.

(GAW, July 2006)

Largest Investment Abroad

Vietnam's state oil monopoly, Petrovietnam, has won government approval to make its largest investment abroad of US$208mn to develop two oil blocks in Algeria.

Sources report a Planning and Investment Ministry directive as saying the state oil firm was licenced to invest the money in oil exploration and production at block 433a and block 416b near Touggourt, Algeria.

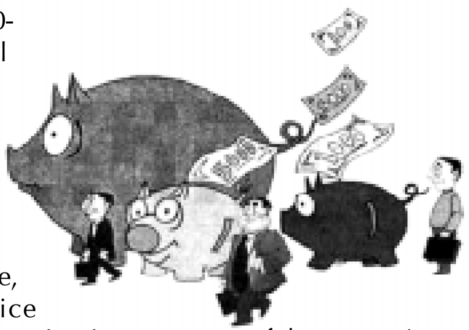
Petrovietnam's investment arm, PIDC, is in charge of the project. Petrovietnam officials have said the oil firm wanted to expand its operations overseas in Asia, Africa, and the Middle East in an effort to offset declining production at home.

Besides the Algerian project, Petrovietnam has business interests in two Malaysian blocks, Mongolia's Tamtsag, the Amara field in Iraq, and the North East Madura I and II blocks in Indonesia.

(Vietnamnet, 29.08.06)

From Giant Post to Giant Bank

Japan Postal Corp has unveiled a 10-year privatisation roadmap that will create the world's biggest bank. Japan's sprawling postal service, which also runs banking and insurance services, has been the centrepiece of the reform programme in Japan.



Business Standard

Under the plan, Japan Post will be split into four entities – banking, insurance, mail delivery, and counter service management. The new postal savings bank, tentatively named Yucho Bank, will have US$1.98tn in assets, thus making it the biggest bank in the world by assets. The privatisation plan would commence in 2007 and would complete by 2017.

Yucho will conduct consumer financing and sell bonds and investment trust at 233 outlets in Japan. But, experts opine that the sheer size of the new private company would give it an unfair advantage over existing companies. *(ET, 02.08.06)*

Expanding Wings

It has been reported that the Irish government will sell most of its stake in Aer Lingus Group PLC to permit the airline to buy new aircraft and expand services worldwide.

Official sources report that the sale would give Aer Lingus commercial flexibility and financial strength to succeed in what is a highly competitive global marketplace.

Further, the sale will give the company access to wider capital markets and enable it to realise its full potential.

Sources state that the government would retain a minimum 25.1 percent stake in the privatised entity and that the holding would be strong enough to block sale of airline assets considered of Irish public interest, such as Aer Lingus' current landing slots in Heathrow Airport in London.

(Jamaica Gleaner Online, 29.08.06)

Selling Big to Smallholders

The government of Uganda is all set to sell its tea estates to smallholder farmers. The surprise decision is expected to improve production and fully liberalise the tea industry.

Kampala, the Ugandan capital, privatised all tea factories except those owned by state-owned Uganda Tea Growers Corporation (UTGC).

Sources report that the government has decided to sell the tea estates to smallholders to empower them. Instead of selling estates to others, the government wants to give small-scale farmers the opportunity to own properties, since they already own the factories.

Official sources state that the decision is in line with the government's economic liberalisation policy in which it encourages private sector to invest in strategic industries that sell under public enterprises.

(allAfrica.com, 19.09.06)

A Bid for Sustained Growth

Manila Waters, the joint venture between Philippine conglomerate Ayala Corp and UK's United Utilities, plans to bid for water privatisation contracts in other Asian countries to sustain its rapid growth.

Sources from Manila Waters report that the company, which runs water system in the eastern half of Manila, was working with international partners on competing for contracts to acquire or manage water-related services in Asian countries.

In addition to overseas expansion, Manila Water is looking at domestic growth opportunities, including bidding for government's stake in Maynilad Water Services, which runs the water system in the western half of the Philippine capital. *(FT, 01.08.06)*

Laying A New Track

The signing of the lease agreement to run the Tanzania Railways Corporation (TRC) to an Indian firm has been postponed to pave way for further consultation on the deal.

Official sources report that TRC's privatisation has been put on hold to 'finalise finer details'.

It was further stated that handing over would not take place as planned because talks with the investors have not been concluded.

Earlier, after a thorough scrutiny, the government of Tanzania through the Parastatal Sector Reform Commission (PSRC) announced Rites Consortium of India as the concessionaire in the 25-year contract to run the 2,715 km TRC infrastructure.

Analysts opine that the government wants to be as careful as possible to ensure that they do not repeat past mistakes in privatisation of other government utilities.

The government is therefore looking for a win-win situation and has hence delayed signing the agreement.

(allAfrica.com, 18.09.06)

Snippets

A Strategic Investor

Kuwait Investment Authority (KIA), the Gulf state's investment arm has acquired a stake in the Industrial and Commercial Bank of China (ICBC), China's largest lender.

According to official sources, KIA has become one of the strategic investors in ICBC.

(Channelnewsasia, 24.09.06)

Shop-in Spree

The Belgian and Cameroonian Consortium called The First Delta Air Services has bought the government-owned Cameroon Airlines (CAMAIR), thus completing its liquidation process.

The consortium which bought CAMAIR comprises of the Belgian airline company SN Brussels Airlines and the Cameroonian company, Cenainvest.

For Better Regulation

Guyana is drafting a five-year legislative reform plan to increase competition in the telecommunication sector.

The draft legislation provides for promoting competition in the supply of telecommunication services as a means to achieving improved services and increased efficiency.

The monopoly of the Guyana Telephone and Telegraph Company (GT&T) was broken in 2004 following the entry of Cel*Star. Despite this, GT&T has by and large remained the dominant service provider in the sector.

The fundamental problem plaguing Guyana's telecom regulatory environment has been GT&T's dominance of the sector, in an age when telecom sectors around the world are moving towards increased competition.

It was in this backdrop that the need for comprehensive reform of the telecom sector, especially regulatory framework was felt, which consequently resulted in drafting the five-year legislative reform plan.

(BBC, 19.09.06)

'Super Regulator'

China is debating the establishment of a new 'super regulator' for its finance and banking industries to improve co-ordination in a sector in which reform has been increasingly hamstrung by infighting and inertia.

With major decisions largely behind the government on the reform of state banks, a key focus for reform remains the capital markets, where development has badly lagged growth in the real economy.

Elements of the capital markets and brokerages are governed by separate banking, insurance and securities regulators, as well the People's Bank of China, the central bank. Local governments also have significant shareholdings in brokerages, making them difficult to sell-off. *(FT, 10.09.06)*

Unified Regulatory Framework

Hong Kong is set to introduce a unified regulatory framework for the communication sector.

The telecommunication and broadcasting stakeholders of Hong Kong have submitted their final contributions to the government's three-month consultation paper on the establishment of a unified regulator for the electronic communication sector.

Digitisation of broadcasting and telecommunication services has removed limitations on spectrum capacity, creating an industry in which transmission networks are increasingly substitutable and operators are able to provide telephony, broadband Internet access, and broadcasting services through a single data pipeline. Other countries have already responded to this international trend by restructuring their regulatory systems.

The Communications Authority, to be composed of seven members, will replace the Telecommunications Authority and the Broadcasting Authority, assuming their statutory powers and functions. *(ILO, 29.06.06)*

A Licence for Efficiency

Kenya has shortlisted seven operators for a second national operator (SNO) licence. It is expected that the licence would be issued in early 2007. According to industry officials, the response by international firms was good, partly because the licence on offer is a unified one.

Kenya is inviting, for the second time, international companies to compete with state-run Telkom Kenya. Previously, the bidding process of 2003 had been cancelled after only one bidder remained in the race.

Kenyan businesses have complained that the poor and unreliable telephone services by Telkom Kenya add a tremendous cost to doing business. It is in this that the SNO licence is expected to improve services and bring in efficiency. *(Reuters, 12.09.06)*

Dealing with Drugs

The government of Pakistan has finalised the draft Drug Regulatory Authority Act, 2006, which will facilitate the establishment of an autonomous Drug Regulatory Authority (DRA) in the country.

The proposed DRA will replace the existing drug control organisation in the Ministry of Health.

In line with the above, neighbouring country India proposes a new pharma policy to plug in loopholes that are often utilised to keep drugs out of price control.

According to official sources, the policy proposes to provide *suo motu* powers to the National Pharmaceuticals Pricing Authority (NPPA), which would be the regulator for the industry.

The regulator will enjoy powers to monitor production and marketing, and could also set the price at a particular level. *(South Asian Media Net, 15.09.06 & BL, 06.09.06)*

Proceeding On

The go-ahead has been given to the Fijian Ministry of Public Enterprises and Public Sector Reform to proceed with the succeeding phases of port reforms. The earlier phases saw the reorganisation of the Ports Authority of Fiji and establishment of a port management company called the Fiji Ports Corporation Limited.

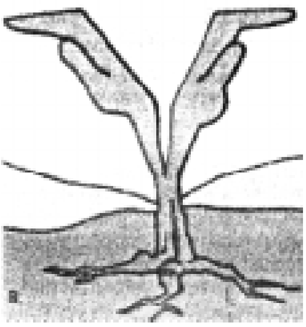
The final phase will now see the declaration of Ports Terminal Limited as a reorganisation entity. This would allow private sector companies to enter the industry and instil some competitive pressure on service providers at the ports.

In another landmark decision, Fiji has endorsed the new Telecommunications Policy 2006, which aims to promote rapid expansion of reliable and affordable telecommunication services, with particular improvement in rural areas.

Among other things, the policy would see the separation of the industry's regulatory arm into the proposed Telecommunications Authority of Fiji. Also proposed is encouragement to new market players. The policy would open the sector to full competition in line with the world's best practice.

(www.fijilive.com, 13.09.06 & 17.08.06)

Impetus for a New Start


Business Standard

The government of Afghanistan has opened a special branch under the Ministry of Finance to encourage insurance companies to start work under the amended insurance law.

The new department would supervise private insurance companies and be responsible to monitor work in accordance with the law. The department would try to create awareness among people about insurance.

The country's insurance law was amended this year to allow private companies to start operations in this sector. Currently, the only insurance company is a government-owned one, and was established some 40 years ago. *(South Asian Media Net, 04.08.06)*

Designed to Liberalise

The government of the Turks & Caicos Islands had enacted a new Telecommunication Ordinance in 2004, designed to liberalise the local telecommunication market. However, the bureaucratic hurdles were such that the first new licensee Digicel, launched operations in mid 2006.

Nevertheless, the effect on competition was immediate. Cellular call charges became a fifth of what they were 18 months ago. The cellular phone penetration rate also skyrocketed.

Among other provisions, the Ordinance provides for the establishment of a Telecommunication Commission whose functions include the regulation of telecommunications in the Islands and maintenance of competition in the industry.

(ILO, 10.09.06)

First One

France is set to become the first EU country to introduce price controls on text messages in a move that could pave the way for other member states to regulate the booming market.

Brussels had backed a request by the French telecom watchdog to cap the wholesale fees which operators charge each other to send customers' SMS across their networks in France.

Text messaging is a multi-billion-euro industry in the EU and an important revenue generator for the mobile phone companies. No EU wide regulation applies to this sector as the EC sees it as a developing industry.

The French watchdog states that the move is designed to increase competition in the national market, which it said was dominated by the three operators – Orange, SFR, and Bouygues. *(BS, 22.07.06)*

Ambiguous Warning

China's Ministry of Information Industry (MII) has heightened the regulatory uncertainty shrouding the country's telecom sector, when the industry's main regulator gave an ambiguous warning against what it called unapproved foreign involvement in 'value-added' telecom service providers.

Taken at face value, the warning appears a potential challenge to the contractual arrangements that lie at the heart both of China's Nasdaq-listed foreign-registered Internet companies such as Baidu.com and the local operations of international names such as Google.

Such companies have been structured – with apparent official approval – to get around restrictions on foreign involvement in the Internet and wireless sectors by separating Chinese ownership of local licences from foreign ownership of brands and technology.

Experts opine that the new regulations seem to be aimed to encourage newcomers to use a joint venture structure. *(FT, 16.08.06)*

Infrastructure Firm

Under consideration by the Malaysian government is the setting up of an infrastructure firm for telecommunications. The purpose of such a firm would be the management of state plans for expansion of high-speed Internet access. Malaysia hopes that technologies such as wireless broadband and fibre-optics would increase data transfer speeds and be more affordable alternatives to copper wires for Internet access.

Official sources opine that if Malaysia wants to remain competitive and further integrate into the global economy, it will have to ensure that the nation's communication infrastructure continues to keep pace, if not lead with latest advancements.

An added statement is that this can only be achieved in collaboration with the private sector that can bring the latest technology to consumers. The new company could include state telecom provider Telekom Malaysia either in competition or in collaboration with the private sector.

(Reuters, 21.08.06)

String of Reforms

The Indian power ministry has proposed an independent systems operator (ISO) in the transmission sector. The idea is that ISO will be capable of objective decision-making, with no concentration of its ownership in the hands of any player. ISO is envisaged to be an agency that will federally control power transmission systems in the country.

Currently, PGCIL is the dominant player in transmission. Even though private players are allowed in the segment, absence of a systems operator for discretionary allocation of load is said to be one reason for the continued monopoly-like situation in the transmission industry.

In another decision, the coal ministry has initiated discussions to set up an autonomous body to replace the government committee, which currently determine coal prices.

The regulator is expected to improve exploitation and allocation of available resources, to regulate pricing of coal and to enable a competitive coal market to emerge for user industries. Prices are currently determined on the basis of costs incurred in coal production, plus a reasonable amount of profit.

(ET, 15.08.06 & FE, 17.08.06)

Evolution of Competition Policy and Law in India

Derek Ireland*

The purpose of this essay was to conduct a case study on the evolution of competition policy in India over the past four decades, which culminated in the establishment of a new Indian Competition Law and Commission, in 2003. Particular emphasis has been placed on the interactions between Indian competition policy and law, which has a relatively short history of four decades, and the country's informal business institutions, informal rules of business conduct, and informal business arrangements, such as the family based business groups that have evolved and been applied in India over decades and even centuries.

The central question in this essay is how Indian competition policy has accommodated itself to the country's informal business institutions and to the business interests, ideas and ideologies, and the more formal policy and regulatory regimes and institutions that have formed around and benefited from these informal business rules.

The conceptual framework has been developed from two literatures, and the interrelationships between them: (i) the new industrial organisation (IO) economics, which provides the foundation for competition policy design and competition law analysis in all competition law jurisdictions, and (ii) the new institutional economics, which stresses that history, path dependence, and formal and informal institutions – including the informal rules of business conduct and the informal arrangements such as India's business groups that resulted from applying those rules – are important to past economic performance and current economic and political outcomes.

The literature review has focused in particular on the transaction cost model of Oliver Williamson and his colleagues that has been very important to new institutional economics, recent economic development literature, new industrial organisation theory, and the treatment of vertical restraints and horizontal arrangements under competition law.

History

The context for the research programme has been provided by three major developments of the past sixty years. The first is the remarkable growth in the number of countries with modern competition laws, which increased from about 30 to more than a 100 in less than two decades. The second is the continuing debate surrounding the merits, impacts and implications of India's static economic policy regime before 1991, and then, the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quite sudden and rapid change to a more liberal policy regime, which accelerated with the balance of payments crisis of 1991. The third is of course the quite complex and quite checkered history of competition policy and law in post-Independence India, which in fact begins with the Indian Constitution of the late 1940s.

One, perhaps, ironic finding from comparing the two periods is that competition law in India under the Monopolies and RestrictiveTrade Practices Act (MRTPA) and the Commission is portrayed in the Indian economics and business literature as one playing a central (albeit perhaps disappointing) role within a fundamentally anti-competition policy regime, before 1991. Since 1991, however, the existence and enforcement of competition law has played very little role in the implementation of India's liberalisation programme over the past 15 years.

Subsequent to the observations, there has been a summary of the preliminary findings to date wherein, needless to say, history is very important in framing an understanding of new institutional economics.

As such, compared with Europe, pre-colonial India had for about 2000 years, a long and virtually uninterrupted history of high quality (pre-industrial revolution) manufacturing and handicraft production, inter-regional (within India) trade, international trade with China, Southeast Asia, and the Gulf/Middle East and indirectly with Europe, relatively modern money lending and other banking functions, and large and highly profitable merchant houses.

India's impressive commercial and economic capabilities throughout the pre-colonial period were supported by a wide range of informal business institutions, rules of business conduct and arrangements that on balance favoured fair trading, and the appropriate balance between co-operation and competition over collusion, monopolies, and rent-seeking. The success of these informal business institutions and arrangements provided the foundation for the managing agencies of the later colonial period and early post-Independence years, and the family based business groups of today.

Historical records suggest that regardless of other benefits to business and economic development, provided by the British colonial regime, 200 years of British rule placed India on a development trajectory that was much less supportive of competition policy and law in modern India. The British – with a little help from the Dutch, Portuguese, and French – were largely responsible for introducing protectionism, monopolies, collusion, rent seeking, predatory behaviour, short-term 'get rich quick' business strategies, and currying favour with politicians and bureaucrats into India's business life. The result (together with a host of other more contemporary factors which also have links to India's past) was a difficult business culture for implementing competition policy and law in India, over the past four decades.

India's family based business groups have displayed significant resilience and continuing success despite major changes in the policy environment and pre-1991 policies that were intended to regulate their operations and control their growth in order to reduce economic concentration and private economic power in India's private economy.

Current debates now focus on whether the business groups will continue to be major players in the domestic market and successful participants in the global marketplace. While the business groups have their critics, most of the evidence suggests that the groups will continue to survive and prosper. This is partly because many of the traditional informal institutions, rules of business conduct, business practices and arrangements that worked for them in the past continue to be effective and important today as India moves into the knowledge-based economy.

Concluding

Putting together the study given above and recent CUTS research on competition policy and law in India, few suggestions can be inferred. They are, for insatnce:

(i) the possible priorities for competition policy for the Government of India and the administration and enforcement of the Competition Act 2002 by the Competition Commission; (ii) the roles of other ministries, departments and agencies in making a functional competition policy a reality for all Indian citizens; and (iii) how competition issues could vary across five industry groupings, e.g, India's traditional manufacture where the business groups continue to be major players, non-traded goods and services, the new economy industries, the previously regulated sectors that are now undergoing regulatory reform and experiencing greater competition in some of their markets. Also included in the grouping is India's rural economy with a thrust on the importance of competition principles to the growth and modernisation of agriculture, rural industrialisation, agro-processing, and farm and rural services.

Major Conclusions

- ***Industrial organisation economics and competition policy law and analysis need to be better tailored to India's current socio-economic and institutional conditions and stage of economic development.***
- ***Effective competition policy advocacy and competition law compliance and enforcement programmes implemented can play a major role in the design and implementation of a functional competition policy for India over the next five years.***
- ***Once the current amendments are passed, the Commission should move forward with strong advocacy, compliance, enforcement, and adjudication programmes under the current law for an extended period.***

There have been three major conclusions that can be stressed upon. The first is that industrial organisation economics and competition policy law and analysis need to be better tailored to India's current socio-economic and institutional conditions and stage of economic development. The second is that effective competition policy advocacy and competition law compliance, and enforcement programmes implemented by an independent, highly competent, and well-resourced competition agency, can play a major role in the design and implementation of a functional competition policy for India over the next five years.

The third conclusion is that once the current amendments are passed, the Commission should move forward with strong advocacy, compliance, and enforcement and adjudication programmes under the current law for an extended period. The current law is not perfect (no competition law is), but law evolves through time by way of experience, learning-by-doing, and a development of the case law. The Commission must begin very soon after the amendments are enacted to enforce the amended Competition Act 2002 in a carefully targeted but effective manner.

It also needs to be stressed that the historical and the geopolitical context are very important tools to understand the evolution of competition policy in India and the design and effectiveness of the MRTPA and the new Competition Act 2002. The role that smaller fringe enterprises in the informal sector can play in disciplining the price and other strategies of larger firms and the Indian business groups is also important.

To the extent possible and given limited data, these smaller firms must be taken into account in tailoring IO theory to India's conditions and in determining the extent of competition in Indian markets, as these are defined for the analysis of competition policy and law.

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*Derek Ireland is a third year PhD student in public policy at Carleton University in Ottawa, Canada and honorary research fellow at CUTS International. Ireland was in India for a period of time for the purpose of his research and in the context made a presentation to CUTS, the one given in these pages.

This particular essay has been culled from a presentation of Derek Ireland titled "Implications for India's Competition Policy and Law". The essay gives a summary of the purpose, literature, review, conceptual framework, and context of the PhD research and presents some of the major (albeit still preliminary) findings, conjectures and conclusions, and discusses the implications of the research for competition policy design and competition law enforcement in India, as of the present.

Dismantling Price-fixing in Shipping

The European Union (EU) has announced that it will outlaw a system dating back to the 1870s, which has allowed shipping companies to fix freight rates in exchange for ensuring regular services. The ruling means that the so-called 'block exemption on liner conferences' will end in October 2008, opening the industry to the Union's more restrictive competition rules. The move risks sparking a war in the maritime transport industry, which is crucial for world trade. About 75 percent of EU exports and imports, in terms of volume, are carried out by sea, or around 45 percent in terms of value. The European Commission (EC), the EU's executive body, said the abolition of liner conferences will affect EU and non-EU carriers operating on routes both to and from Europe. (BL, 25.09.06)

Introduction

Maritime transportation has always been the dominant support of global trade ever since its modest origins as Egyptian coastal sailships around 3, 200 BC. With the development of the steam engine in the mid-nineteenth century, its role expanded considerably. Broadly speaking, maritime trade involves two major maritime transport sectors – Liner Shipping and Bulk Shipping. *Liner Shipping* services can be defined as scheduled transport of freight by sea. It involves the transport of goods on a regular basis on any particular route between ports and in accordance with timetables and sailing dates advertised in advance and made available by a liner operator to any transport user, against payment. On the other hand, *Bulk Shipping* operations are undertaken by vessels designed to carry homogeneous unpacked cargos on unscheduled routes.

The most crucial organisational characteristic of the liner shipping sector has been the ability of operators to enter into a variety of co-operative arrangements and agreements, which in most other sectors would be in breach of laws intended to ensure competitive behaviour. These arrangements in liner shipping have traditionally taken the form of liner conferences. Shipping companies have traditionally organised themselves since the nineteenth century in such conferences, whereby they agree to common or uniform freight rates in return for ensuring regular scheduled maritime transport services to shippers and freight forwarders. Such liner conferences allow shipping companies to fix the price for transporting goods. Despite 130 years of economic, political and social changes, these formal arrangements – the liner conference system – have become the order of the day for the industry and still continue to be an organising principle for many in the sector.

Rationale For Capacity & Price-fixing Agreements

The basic characteristics of the liner sector provide for the rationale for capacity and rate fixing agreements. It has been argued that liner operators operate an almost common carriage service where freight is transported according to defined routes and schedules. Hence, ships must sail at set times irrespective of the amount of cargo they have on board. If they fail to provide such regular services, shippers turn to other operators/carriers who could ensure steady sailing schedules. Several similar ships need to be fielded on any given trade route, in order to provide scheduled services at relatively frequent intervals. But, the purchasing and operating costs of these ships require substantial capital outlay and subsequent financing charges. Further, carriers face unbalanced trade flows and therefore capacity deployed in sufficient quantity for the dominant flow often falls in excess of the amount needed.

In light of the above, carriers fear that without capacity limitation and price-fixing agreements, the industry has to face destructive cut-throat competition that may result in a profoundly destabilised industry. The supporters of price-fixing arrangements further argue that price-fixing and capacity limitation are necessary pre-conditions for the provision of continued and uninterrupted high quality ocean shipping services. They claim that without such arrangements shippers would experience difficulty getting their goods shipped, as sailing schedules would likely be perturbed by the bankruptcy of weaker carriers. The argument for retaining immunity is based on the belief that there is no natural short or long-term equilibrium in liner shipping and that without collusion among service providers, there will be an overall decrease in welfare as supply becomes uncertain and trade becomes negatively impacted. Carriers across the globe hence contend, that in order to ensure stable international services, there is a need for capacity control and rate-fixing in the international liner-shipping sector.

Effects of Capacity Control & Rate-fixing as Perceived by Carriers

- Earning a compensatory rate of return on investments allowing carriers to continue to provide scheduled shipping services
- Avoiding destructive shipping competition leading to much greater potential for monopolistic behaviour
- Ensuring regular predictable services, sufficient capacity deployment & stable and predictable rates to shippers.

On the other hand, shippers at large have remain unconvinced of the so called 'benefits' of price-fixing and capacity control arrangements by carriers. They contend that rate-fixing and manipulation of capacity lead to abuses of power. They further opine that such practices have resulted in freight rates to be much higher than what they would otherwise be in a fully competitive market. Shippers by and large believe that like any other market, the liner market can reach an efficient outcome through more competition. Further, they argue that it is completely normal for inefficient operators to drop out of the industry leaving only those who are able to provide cost effective services. Therefore, shippers have been repeatedly pitching in for government and courts to intervene and protect their interests.

Need to Repeal Block Exemption Regulation

Historically, liner shipping conferences have been granted some form of exemption or immunity from the competition rules in many jurisdictions across the globe. Governments of all major trading nations have provided carriers with exemptions from national anti-trust statutes, which govern price and capacity fixing in other sectors of the economy therein.

Like in other jurisdictions, in the EU, the Council Regulation 4056/86 contains a block exemption for liner conferences. The block exemption essentially allows the members of a liner conference to fix prices and regulate capacity. The exemption was granted on assumption that it was necessary to ensure the provision of reliable services.

In March 2003, the process of reviewing the block exemption from EC Treaty competition rules for liner shipping conferences was launched. Following a three-year in-depth investigation by the Commission, during which it carried out extensive consultations with carriers and transport users (shippers and freight forwarders), the Commission proposed to repeal the block exemption for liner conferences. It was felt that the assumption under which the exemption was granted no longer existed in today's market conditions.

Key Findings of the Potential Economic Impact of Repealing the Conference Block Exemption

- Transport prices for liner shipping services will decline
- Service reliability on deep sea and short sea trades is expected to improve
- Service quality will either be unaffected or will improve
- There will be either a positive impact or no impact on the competitiveness of EU liner shipping firms
- No negative impact or even a positive impact on EU ports, employment, trade and / or developing countries.

The immunity granted has been subject to review in several other parts of the world other than the EU. In its report 'Liner Shipping Competition Policy' in 2002, Organisation for Economic Co-operation and Development (OECD has concluded that liner shipping should no longer be granted anti-trust immunity for price-fixing and freight rate discussions, as there is no convincing evidence that these practices offer more benefits than costs to shippers. The report, which formed part of the OECD's work on regulatory reform looked at the impact on both carriers and shippers of common pricing and stabilisation agreements under anti-trust exemptions and assessed the possible effects of their removal. Several strands of evidence were examined, including market share, freight rates, financial performance and regulatory trends.

It was in accordance with the above findings and observations that the need to outlaw the so-called 'block exemptions on liner conferences' was felt. Consequently, in 2004, the European Commission adopted a White Paper to bring more competition in the maritime sector to the benefit of Europe's overall economy.

The paper considered repealing the generous exemption from competition rules, which has benefited the sector for almost 20 years and which allows it to fix the price for transporting goods between the EU and other countries.

Implications – The Odds & Ends

On one hand, carriers feel that the removal of exemptions would have severe and lasting impacts on world trade and consumer welfare. In particular, they are of the opinion that the direct implication of the repeal would be below cost pricing that in turn would lead to bankruptcies. Consequently, the removal of exemptions would result in service disruption. Another fear is that a more competitive liner shipping market ultimately would not benefit the most efficient carriers but would benefit state owned and supported carriers and/or large diversified shipping groups. Finally, some carriers and regulators feel that the removal of anti-trust exemptions would lead to further consolidation of the industry resulting in a more monopolistic/oligopolistic market environment.

As against the above, many anti-trust regulators and majority of shippers believe that the removal of antitrust exemptions will lead to lower overall rates and have little impact on services. Further, they point out that regulatory reforms and increased competition has led to positive outcomes in other sectors. Liner industry is unique just like any other industry and is not fundamentally so different that more competition will lead to any destructive outcome.

The Tripartite Shippers' Group (TSG), representing shippers from major trading nations, firmly believe that the current system allowing carriers unfettered freedom to dictate services, capacity and freight should be immediately abandoned in favour of a new arrangement that values efficiency through competition and encourages customer-friendly relationship.

The Commission too has concluded that a repeal of the block exemption will bring about substantial benefits to EU industry and consumers, in particular in the areas of transport prices, reliability of liner shipping services, competitiveness of the EU liner shipping industry and small EU liner carriers. It observes that the ban would correct the 'market distorting effects' of price-fixing and result in lower prices for sea containers.

However, the shipping industry has vehemently opposed any changes to the arrangement, as it believes that the dramatic growth in world trade over the last decade would not have been possible without it.

Liner shipping is a global industry that is of crucial importance for world trade, since 75 percent in volume terms (45 percent in value terms) of EU exports and imports are carried out by sea. In light of the above, repealing of the exemption order can have far-reaching implications on the overall health and well-being of the sector, worldwide. The liner conference exemption will continue in operation until October 2008. Thereafter, all shipping companies operating routes into and out of Europe will no longer be able to operate in conferences that fix price and capacity. This will apply equally to EU and non-EU based carriers.

(Information in this article has been collected from http://europa.eu/index_en.htm & the OECD "Liner Shipping Competition Policy Report")

Competition Law in Venezuela

Venezuela, the third largest economy of South America, is highly dependent on petroleum, which accounts for roughly one-third of the Gross Domestic Product (GDP), around 80 percent of export earnings, and more than half of government operating revenues. The economy of Venezuela is mainly based on oil, although efforts have been made to develop heavy industry, e.g. steel and aluminium, and to revive the agricultural sector.

The government of Venezuela has opened up much of the hydrocarbon sector to foreign investment, promoting multi-billion dollar investment in heavy oil production, reactivation of old fields, and investment in several petrochemical joint ventures.

Competition Law and Institutions

The principles of competition are enshrined in several provisions of the Venezuelan constitution and some laws of the country. The most important among them are:

- Article 299 of Constitution of Venezuela: "The economic regime of the Bolivarian Republic of Venezuela is based on the principles of social justice, democratisation, efficiency, free competition..." ;
- Article 113 of the Constitution contains the following restrictions: Monopolies; Abuse of Dominant Power; and Concentrated Demands;
- Article 114: "The economic unlawful, speculation, monopoly, usury, cartelisation, and other related practices, will be prosecuted severely in agreement with the law";
- Law to Promote and Protect the Exercise of Free Competition, G.O Nº 34.880 was enacted in 1992;
- Rule Nº 1 to Promote and Protect the Exercise of Free Competition (1993); and
- Rule Nº 2 to Promote and Protect the Exercise of Free Competition (1996).

In 1991, the Antitrust Law was enacted. The free competition regime in Venezuela was initiated in 1992, including the Law to Promote and Protect the Exercise of Free Competition, when the government set up new policies in order to prepare the country to face up to globalisation. The objective of the Law is to guarantee the efficiency that benefits producers and consumers and also to prohibit monopolies and oligopolies. In short, the objective of the Law is to avoid all practices that could impede or limit economic freedom.

The Superintendent for the Promotion and Protection of the Free Competition (Pro-Competencia) is the organisation that administers the Competition Law. It has functional autonomy, but administratively, it is under the Production and Commerce Ministry.

The Venezuelan system of free competition prohibits in general all conducts, practices, agreements that impede or limit free competition. In particular, the legislation prohibits boycotts, cartels and other horizontal agreements, bid-rigging, vertical agreements that contain vertical restraints and the abuse of dominant position. The Law also prohibits all mergers – be they horizontal, vertical or any other that are restrictive of the market or could generate or reinforce a dominant position in a relevant market. Finally, the Law prohibits unfair competition in terms of misleading or false advertising, bribery in commerce, violation of industrial secrets, etc. and other commercial policies, which tend to eliminate competitors.

Cartels, bid-rigging, boycotts, abuse of dominant position, and unfair competition are *per se* violations of the Law. The Office should analyse other anti-competitive practices using the rule of reason in order to establish whether or not there is violation of the Law or if the Office should authorise the practice. In order to develop the case, the Office uses the methodology of the relevant market.

In the case of mergers, there are two ways to review them. One is to authorise them (*ex ante*) and that is voluntary for the parties, that is, the pre-merger notification procedure is not obligatory. The other is to make an administrative procedure. The principle is to determine *ex post* if the merger has violated the law, because it is anti-competitive or restricts competition.

Future Scenario

The State used to be interventionist in Venezuela. Practices, such as price control and import restrictions were the cornerstones of economic policy. Collusive practices were common before the approval of the Competition Law.

Prohibitions in Venezuela's Competition Law

Horizontal Agreements	Vertical Agreements	Market Power
• Price-fixation	• Price Agreements	• Price Discrimination
• Boycotts	• Market Sharing	• Tying Practice
• Market Allocation	• Selling Agreements	• Negation to Product
• Auction Manipulation	• Limitations to Production	

In an economy as concentrated as Venezuela's, where monopolies and oligopolies are influential in many sectors, an aggressive attitude against powerful companies was expected of the Competition Authority. The Competition Law was enacted with the objective of changing this situation. Nevertheless, some sectors have been protected for so many years that the legal structure of these sectors conflicts with the Competition Law.

There are four important measures to improve the Competition Law in Venezuela. They are: improvement in cartel monitoring; more exposure of the financial sector to foreign competition; a sign that the government has assumed an anti-protectionist posture with application of competition Law *de facto*; and creation of a Competition Commission (as proposed in the project of law).

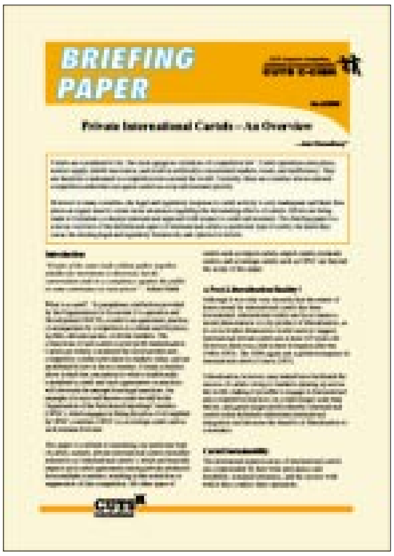
Forum

We applaud the impact that CUTS has had in raising the profile of competition policy issues in developing countries, and indeed, among the donor community. We value the productive working relationship that CUTS and Department for International Development (DFID) have built up in recent years on this agenda. In particular, we are pleased to have been supporting you in the development and implementation of the successful '7-Up' competition model in Asia and Africa.

Gareth Thomas
Parliamentary Under-Secretary of State, DFID, UK

Publications

Private International Cartels – An Overview


BRIEFING PAPER
Private International Cartels – An Overview

The briefing paper "Private International Cartels – An Overview" focuses itself on cartel behaviour with reference to the definition and parameters of private international cartels. The paper elaborates on the history of cartels, the scope and range of cartel behaviour in various parts of the globe, and the detriment such cartels bring upon economies. The paper offers interesting and insightful case studies on cartels inclusive of investigations that have been carried out as means to uncover them. Written in simple, lucid language, the briefing paper makes for absorbing, intelligent reading.

To read the paper, please access the following link:

www.cuts-international.org/ccier_publications.htm#bp


BRIEFING PAPER
Evolution of Competition Policy & Law

Evolution of Competition Policy and Law

This briefing paper is a compressed version of the introductory chapter of the CUTS publication "Competition Regimes in the World – A Civil Society Report". Pradeep S Mehta, Secretary General of CUTS, had edited the book while Simon J Evenett, Professor of International Trade and Economic Development, University of St Gallen, had co-authored the introductory chapter. The paper retreats in time, charting the evolution of competition policy and law around the globe, while giving a succinct picture as to the main impetus in adopting competition policy and law by countries across the world, as of the present.

To read the paper, please access the following link:

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