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BRIC Competition Conference: Need to Consolidate a Sound Start!

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Special Articles

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

Delegates from over 40 countries witnessed the unleashing of a new chapter in international cooperation on competition. Heads of competition authorities from Brazil, Russia, India and China (comprising the BRIC countries) welcomed a large delegation of experts, scholars and practitioners to the inaugural of BRIC International Competition Conference held in Kazan, Russia on September 01-03, 2009.

The BRIC Competition Conference testifies the importance that the four collaborating countries have invested on the need for cooperation for developing well-functioning markets through the 'Yekaterinburg' process. It should be recalled here that the Heads of State of the BRIC countries met in Yekaterinburg on June 16, 2009 and issued a joint declaration highlighting the need for cooperation on various aspects of economic growth and sustainable development.

Mr Igor Shuvalov, First Vice Prime Minister, Russian Federation

The Conference would add a new dimension to international cooperation on competition – especially by focusing attention on the challenges and requirements for competition reforms in the developing countries. It is expected to evolve as a platform for mutual learning through experience sharing among the partners and other members of this process.

Speaking at the inaugural, all four heads of the BRIC Competition authorities: *Secretaria de Acompanhamento Econômico* (SEAE) Brazil; Federal Antimonopoly Service (FAS) Russia; Competition Commission of India (CCI), India; and State Administration for Industry and Commerce (SAIC), China highlighted the need for well-functioning markets in their respective countries, especially for sustained economic growth and poverty reduction.

Igor Artemyev, Head of FAS Russia asserted that FAS Russia would continue to work towards curbing anti-competitive practices at all levels. Zhou Bohua, Minister SAIC China expressed a commitment to evolve a healthy competition culture in the country. Antonio Silveira, Secretary SEAE Brazil highlighted the need for competition authorities to effectively carry out their 'competition advocacy' function. Dhanendra Kumar, Chairperson, CCI India underscored the need to develop competition policy as a symbol of its commitment to promote competition at all levels.

In order to maintain the focus of the BRIC platform on issues relevant for developing and least developed countries (LDCs), it is imperative that the four partner countries play a key role in mobilising members from other developing and LDCs from their respective regions to join this bandwagon.

Efforts for Better Competition

The US would review guidelines for company mergers and takeovers in a bid to forge greater competition and transparency as well to better protect consumers. The US Department of Justice (DoJ) and the Federal Trade Commission (FTC) would hold joint public workshops "to explore the possibility of updating" Horizontal Merger Guidelines used by the two agencies to evaluate potential competitive effects of mergers and acquisitions.

Having guidelines that offer more clarity and better reflect agency practice provides for enhanced transparency and gives businesses greater certainty when making merger decisions, resulting in a more competitive marketplace that benefits consumers.

(Channelnewsasia.com, 23.09.09)

Merger Control Guidelines Published

The Norwegian Competition Authority published best practice guidelines on the conduct of merger control proceedings in August 2009.

The purpose of the guidelines is to improve the predictability of proceedings and establish an efficient review process. The guidelines discuss both pre-notification contacts and case handling after receipt of a formal notification.

The guidelines further describe how the Competition Authority will handle a case following receipt of a formal notification. Receipt of notification is confirmed by publication on the authority's website.

(ILO, 10.09.09)

Law to Curb Unfair Competition

Swedish government bodies can in future be prevented from engaging in business activities that distort competition. This is the implication of a legislative proposal that the government has just presented to the Riksdag (parliament).

The proposals will enable the Competition Authority and entrepreneurs to approach the Stockholm City Court and apply for a municipality, a state actor or a county council to be prohibited from engaging in a certain business activity in a manner that distorts competition. An exception is if the activity (procedure) is judged to be in the public interest and therefore defensible.

The Competition Authority welcomes the new rules, which will come into effect on January 01, 2010 if approved by the Riksdag.

(www.konkurrensverket.se, 27.08.09)

Latvia Competition Law Amended

The Competition Law of Latvia was amended once again in June 2009, the third amendment within 18 months. All of the amendments have dealt in part with merger notification thresholds.

In Spring 2008 the merger notification thresholds were changed by the deletion from the law of the 40 percent combined market share. That left the only threshold contained in the Competition Law as a combined turnover US$53mn for 2008.

Thus, as of September 01, 2009 when the amendments enter into force, the law will contain an obligation to notify a merger if: (i) the combined turnover of the parties exceeds US$53mn; or (ii) the combined market share of the parties in the relevant market exceeds 40 percent, unless the turnover of one of the parties to the merger is less than US$3.16mn for 2008.

(ILO, 06.08.09)

Maintenance of Resale Price = Nice?

Online sales and resale price maintenance (RPM) are under debate in the European Commission's (EU) review of the Block Exemption Regulation on Vertical Agreements. The Dutch Competition Authority recently decided not to pursue an investigation into possible anti-competitive practices with regard to online sales.

Media coverage led the authority to believe that suppliers treated online retailers differently from regular shops. However, the authority concluded that there was insufficient justification for investigation into RPM in regard of online sales and acknowledged that RPM is not always a bad thing – it could have benefits for consumers.

(ILO, 27.08.09)

Slovak Law Conforms to EU Law

The EC is satisfied that amendments made to the Slovak Competition Act have brought it into conformity with EU law by ensuring that the Slovak Competition Authority can apply EU antitrust rules to the electronic communications, energy and post sectors and has therefore closed its infringement procedure against Slovakia.

A provision of the Slovak Competition Act had previously limited the power of the Slovak Competition Authority to apply EC Treaty rules. This provision has now been repealed after the Commission sent Slovakia a reasoned opinion under EC Treaty infringement procedure requesting the law to be amended. The Slovak Competition Authority is now able to apply EU competition rules without restrictions.

(GAW, 24.07.09)

Russia Revises Competition Law

Several amendments to the existing antimonopoly law have been recently implemented. They are called 'the second antimonopoly package'. The first package was introduced in 2006 and made significant changes in the existing competition law: the natural monopolies were considered as the ones having the dominant position at the market; a dominant position was defined as 50 percent market share; government control over the business activities was significantly reduced.

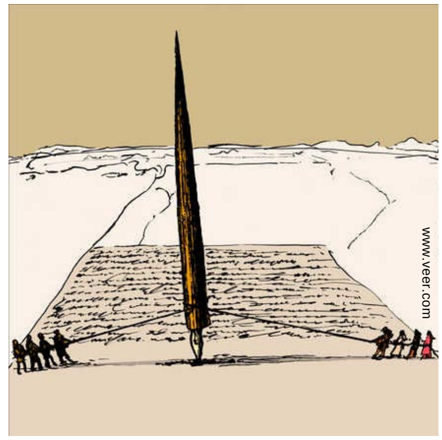
The second antimonopoly package toughens rules against corruption and abuse of power by government officials in the implementation of competition law. The Russian Administrative Code has been amended accordingly. Some of those changes to the competition law are implemented from July 23, 2009 and others will come into force on August 23, 2009.

(GTA, 28.07.09)

South African Competition Amendment Act Signed into Law

– Daryl Dingley*

President Zuma signed the Competition Amendment Act (1/2009) into law on August 28, 2009. The date of its entry into force is yet to be announced, but the signing into law of the new act concludes a legislative process that began in June 2008 when the act was first tabled; it was finally passed by Parliament in October 2008. However, President Motlanthe was concerned that certain provisions in the new act were unconstitutional and sent it back to Parliament for reconsideration, which returned it to him unchanged.



New Legislation

The new act aims to introduce new provisions and amend certain existing provisions in the Competition Act. A number of these provisions are contentious:

- Various questions have arisen on the scope and application of several of the provisions and these questions will likely lead to litigation over their interpretation.
- As many of the provisions require the competition authorities to act reasonably and in accordance with certain criteria, administrative justice disputes will likely result from the exercise of these new functions.
- Some of the provisions may lead to constitutional challenges.

Concurrent Jurisdiction

The new act amends the provision in the Competition Act that establishes concurrent jurisdiction between the Competition Commission and industry-specific regulators in order to clarify the authority of the commission and industry regulators. The amendment clarifies that the commission has primary authority to detect and investigate prohibited practices and review mergers in any industry.

Market Inquiries

The new act introduces the concept of market inquiry to deal with the new competition policy focus on the inadequate performance of markets from a competition perspective. Under the new act, the commission may conduct a market inquiry on its own initiative or at the request of the minister of trade and industry if it has reason to believe that (i) any feature of a market prevents, distorts or restricts competition, or (ii) conducting an inquiry will achieve the purposes of the Competition Act.

Complex Monopolies

For the purposes of the new act, complex monopoly conduct exists if two or more firms in a concentrated market conduct their businesses in a parallel manner without discussion or agreement, which in turn has an anti-competitive effect that is not outweighed by any pro-competitive gains. If the commission reasonably believes that complex monopoly conduct is occurring in a market, it may investigate this conduct without initiating or receiving a complaint.

Criminal Liability

The new act introduces a provision which aims to hold individuals personally accountable who cause firms to engage in cartel conduct. A director or manager of a firm commits an offence if he or she (i) causes the firm to engage in cartel conduct; or (ii) knowingly acquiesces in the firm's engagement in cartel conduct while having actual knowledge of such conduct.

If the tribunal or Competition Appeal Court finds that a firm has engaged in cartel conduct or receives acknowledgment from the firm of its cartel conduct, this will serve as *prima facie* evidence against the accused director or manager in any subsequent criminal trial. It is highly likely that an accused person prosecuted under this section of the new act will challenge the constitutionality of the provision.

Leniency Policy

The new act will empower the commission to grant immunity to a cartel member if it assists in the detection and investigation of cartel conduct. However, the new act clarifies that the granting of immunity does not preclude a complainant from applying to the tribunal for a declaration that the conduct engaged in by the cartelists is a prohibited practice, or an order declaring the whole or part of such agreement void.

* *Partner in the Competition Law Department of Webber Wentzel Bowens. Abridged from an article that appeared in the International Law Office, on September 17, 2009.*

ABUSE OF DOMINANCE

Intel Appeals Antitrust Fine by EC

By filing an appeal in the European Court of First Instance in Luxembourg – Europe's topmost appeals court – the world's largest chip maker, Intel, has challenged the EC record US$1.49bn fine and its May 13 ruling that the company had abused its dominance in the computer-processor market by giving discounts to computer makers using Intel chips.

According to Intel, the EC "refused to look at some of the evidence and in some cases refused to get some other evidence that was available" while investigating the case. It was after an eight-year investigation that the EC ruled against Intel, saying that the company resorted to the undisclosed rebates to computer manufacturers essentially to thwart the business of rival chip maker Advanced Micro Devices. *(www.topnews.in, 23.07.09)*

Utilities Fined on Abuse of Dominance

The Estonian Competition Board fined Narva Elektrijaamad AS, a subsidiary of the state-owned electricity monopoly Eesti Energia, US$23,608 for an abuse of its dominant position on August 03, 2009.

The Competition Board had declared Narva Elektrijaamad to hold a dominant position in the production and sale of electricity. Thus, Narva Elektrijaamad cannot, without an objective reason, refuse to sell electricity to third parties or make such sales subject to the acceptance of supplementary obligations that have no connection to the sale of electricity.

(ILO, 10.09.09)

Competition Commission Slams ICASA

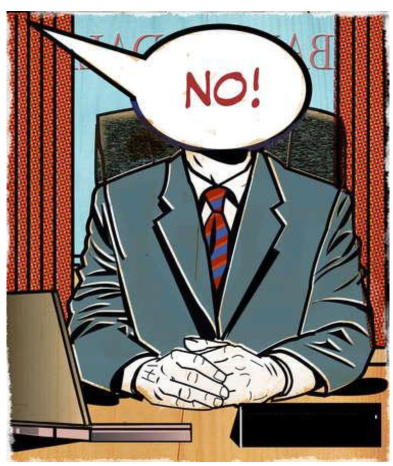
The South African Competition Commission, tasked with evaluating restrictive business practices and ensuring that companies do not abuse their dominant market positions, has slammed Independent Communications Authority of South Africa (ICASA) decision to let telecoms companies negotiate new interconnect rates among themselves.

ICASA recently announced that a meeting between the regulator on the country's major telecoms operators had concluded in a decision to embark on an industry-led process to reduce termination – or interconnection – rates, with ICASA exercising an oversight responsibility.

ICASA said at the time that the meeting resolved to ensure that in negotiating a new termination rate regime they took into account competition law requirements, but the Competition Commission feels that these type of industry led negotiations 'can only lead to collusion'. *(MB, 15.09.09)*

Canada Rules on Refusal to Deal

The Canada Competition Tribunal dismissed an application by Nadeau Poultry Farm Limited which would have forced Groupe Westco Inc, the largest chicken producer in New Brunswick, and two smaller producers, Groupe Dynaco and Volailles Acadia SEC, to continue selling their entire production of live chickens to Nadeau, despite there being no contract of supply between the parties.



www.images.com

The ruling afforded the tribunal an opportunity to clarify the scope of Section 75 of the Competition Act, which deals with 'refusal to deal', a civil provision that, in specific circumstances, may allow an applicant business to obtain an order forcing a supplier to accept it as a customer. *(ILO, 27.08.09)*

France Télécom Fined

The *Autorité de la Concurrence*, France's antitrust watchdog, has imposed a US$41m fine on France Télécom for a series of abusive practices relating to the markets for fixed telephony and internet access in France's overseas departments.

They included, among others, practices which resulted in a deterioration of the quality of rival services; winback practices targeting customers which had switched to rivals; and a margin squeeze on high speed internet offers at la Réunion.

France Télécom's fine was increased by 50 percent for recidivism, but reduced by 20 percent in recognition of France Télécom not contesting the charges, and of commitments it offered to prevent a recurrence of such practices.

(Autorité de la Concurrence Press Release, 28.07.09)

Highest Ever Fine on Mobile Operator

The Belgium Competition Council fined Proximus US$98mn for abuse of a dominant position. Proximus had a dominant position on the Belgian market for mobile telephone services and had abused this position in several ways.

Proximus was held responsible for a serious breach of Belgian and EU competition rules, and was hit with the highest fine ever imposed by the Competition Council – US$98mn. The fine amounted to 15 percent of the sales made by Proximus in that market sector in 2005, increased by 30 percent because the behaviour was proven to have continued over two years. *(ILO, 02.07.09)*

Oil Producer Guilty of Price-fixing

The FAS of Russia has found state oil producer Rosneft to have broken antitrust laws in forcing up petrochemical prices. Russia's largest oil company abused its dominant market position by raising wholesale prices for petrochemicals to an unjustified level, including through means of withholding goods from circulation, and creating discriminatory conditions for the sale of oil products for certain counterparties.

The charges relate to sales of gasoline, diesel, kerosene, and fuel oil. The company could face a fine of between one and 15 percent of revenue for breach of antimonopoly laws. Three Russian oil companies have been found breaching antitrust legislation – Rosneft, Gazprom Neft, and TNK BP.

(http://en.rian.ru, 29.07.09)

CARTELS

Bank Associations Raided

Bulgaria's central bank rejected claims that the Balkan country's banking sector operated a cartel, and urged the anti-trust watchdog to speed up a probe and clean up the banks' image.

The Commission for Protection of Competition said it had raided the office of the Association of Banks in Bulgaria (ABB) and confiscated documents after it launched the probe into alleged fixing of interest rates and market share distributions.

The claims were ungrounded and had unnecessarily hurt the reputation of the Bulgarian banking sector. The anti-trust commission said that such probes were complicated and investigations could take about a year.

(GAW, 14.07.09)

Shell and Exxon Mobil in Paraffin Wax

International claimant law firm Hausfeld & Co LLP (Hausfeld) has launched its second High Court cartel action in the space of a month. The firm has commenced proceedings against industry giants Shell and Exxon Mobil for their involvement in the paraffin wax price fixing cartel.

The cartel took place throughout Europe for a period of 13 years between 1992 and 2005. Hausfeld has issued the claim on behalf of several large European candle manufacturers, and is in the process of being instructed by additional candle manufacturers as well as other substantial wax purchasers seeking to take action against the cartelists. *(hausfeldllp.com, 05.08.09)*

Spanish Watchdog Probes Utilities

Spain's competition regulator had asked five electricity distributors it is investigating to resume giving their customers the information they need to make a decision on changing their supplier.

The CNC opened an investigation into possible anti-competitive practices by Endesa, Iberdrola, Hidrocantabrico EDPP.LS, Union Fenosa, and E.ON EONG.DE. The last resort tariff came into force and applies to clients who buy less than 10 kilowatts of electricity — mostly households — as part of moves to further deregulate Spain's electricity market. *(Reuters, 03.07.09)*

EU's Probe into Oracle, Sun deal

European Union (EU) antitrust regulators launched an in-depth probe into Oracle Corp's US$7bn takeover of Sun Microsystems Inc on concerns the deal could dent competition in the database market.

The delay could hurt Sun, the No. 4 maker of computer servers, by allowing its rivals more time to poach customers before Sun became part of Oracle, the world's No. 3 software maker, and thus became able to take advantage of its sales resources.

Oracle has already received the green light from the US DoJ for its takeover of Sun, developer of Java software, which is among the world's most widely used computer languages.

(BL, 03.09.09)

Glass Sector Raided for Cartelisation

The EC raided the premises of a number of companies in the special glass sector on suspicion of cartel activities but did not identify them. The Commission said the raids took place on March 04, 2009 and there was no strict deadline to complete its probe.

It said such raids are preliminary steps in investigations into suspected cartels and that it was not prejudging the outcome of the investigation. The EC can fine companies up to 10 percent of annual turnover if they are found guilty of antitrust violations. In 2008, it slapped an US$1,323mn fine – the second highest penalty on an individual company – on glass maker Saint-Gobain for price fixing.

(Reuters, 03.07.09)

EU to Probe Drug Patent Abuses

Europe's top competition regulator opened its first probe into suspected marketing abuses by individual drug companies, as it concluded in a report that the entry of generic drugs into the EU's pharmaceutical sector was being delayed and costs to consumers inflated.

The EC's investigation will look into patent settlements around Servier's blood pressure medicine perindopril. Servier emphasised that the commission had not identified any "conclusive proof" and said it would "continue to defend [its] rights in this domain in accordance with the law".

(FT, 09.07.09)

Dawn Raids on Fruit & Veg. Cos

The Netherlands Competition Authority recently carried out dawn raids on several companies active in the fruit and vegetable sector to collect information on suspected price fixing and information exchange. The EC was not involved in the raids.

More and more roads appear to lead to the authority as it taps new sources of information on possible competition law infringements through cooperation with other competition authorities.

(ILO, 17.09.09)

FINES & PENALTIES

UK Regulator Punishes Builders

The Office of Fair Trading (OFT), UK has fined 103 companies, including Balfour Beatty, Kier and Interserve, for breaching competition rules by colluding with competitors to rig the pricing of building contracts worth more than US$316m in total.

The taxpayer was the biggest loser of the bid-fixing, with many of the projects involving schools, universities and hospitals. Most of the cases involved cover bids, where parties submitted bids that were not intended to win the contract but instead boost the price for a rival by creating a misleading impression of competition. In six of the cases studied by the OFT, the successful bidders then paid up to US$94,657 to the rival bidders in compensations for any costs incurred.

(WSJ, 22.09.09)

Greenberg Pays in SEC Settlement

Hank Greenberg, the former chairman of American International Group (AIG) agreed to pay US$15m to settle the US Securities and Exchange Commission's investigation into his role in accounting fraud at the company from 2000 to 2005.

The settlement focuses on Greenberg's alleged involvement in "numerous improper accounting transactions" that inflated AIG's results. The SEC complaint is vague about Greenberg's role, saying simply that "as a control person of AIG" he was "aware of transactions that enabled AIG to create the false impression that it consistently met or exceeded expectations" on performance goals. *(FT, 07.08.09)*

GdF and Eon Fined For Collusion

European competition authorities hit GdF Suez and Eon, two of Europe's largest utilities, with a combined fine of more than US$1.6bn for colluding in a carve-up of their respective domestic markets. The EC imposed fines of US$817m each on Germany's Eon and GdF Suez over a deal dating back to 1975, which was drawn up when they jointly built the Megal pipeline, which transports Russian gas from the German-Czech and German-Austrian borders to the French-German border.

The hefty fines are the first to be imposed by Brussels for an antitrust infringement in the energy sector and among the highest in total for any price or market-fixing case. *(FT, 09.07.09)*

Barclays Fined for Data Failure

Barclays Capital, the investment banking arm of Barclays, has been fined US$4.02m for inaccurately reporting 57.5m transactions to the City regulator, the largest fine of its kind.

The Financial Services Authority (FSA) said Barclays had either failed to report trades or reported inaccurate data – such as trade time – for 85 percent of equities trades and 100 percent of other trades including foreign exchange and commodities.

Barclays, which absorbed the US part of Lehman Brothers in 2008, also had "serious weaknesses in systems and controls" relating to transaction reporting. The fine is the eighth-largest in FSA history and the largest for transaction reporting and would act as a "warning" to other companies that it will not tolerate inadequate systems and controls. *(FT, 09.09.09)*

Qualcomm to Pay Record Fine

South Korea's antitrust watchdog fined Qualcomm a record US$207m for "unfair" business practices related to its chipset sales, sparking strong protests from the US wireless chip and technology supplier.

Qualcomm had levied higher royalties on handset makers that bought modem chips from its competitors, while offering rebates to customers who bought products mainly from the US group. The fine is the largest the commission has imposed on a single company. *(FT, 24.07.09)*

PRICE FIXING

Proceedings Against Price Fixing

The Australian Competition and Consumer Commission (ACCC) instituted proceedings in the Federal Court against PT Garuda Indonesia Ltd. PT Garuda is the tenth airline to be the subject of ACCC proceedings for alleged price fixing in the air cargo industry.

The ACCC alleges that between 2001 and 2006, PT Garuda Indonesia Ltd entered into arrangements or understandings with other international air cargo carriers that had the purpose or effect of fixing the price of a fuel surcharge and a security surcharge that were applied to air cargo carried by PT Garuda Indonesia Ltd and other airlines.

The ACCC is seeking declarations, injunctive relief, pecuniary penalties, and costs. A directions hearing has been set down for October 22, 2009 in Sydney. *(ACCC, 02.09.09)*

Cos. Fined for Fixing Price of Pipes

Three companies have been fined by the Japanese Fair Trade Commission (JFTC) for forming a price-fixing cartel in the market for ductile cast-iron pipes used in water supply systems.

Kubota Corp. received the largest fine of JPY7bn, while Kurimoto Ltd. and Nippon Chutetsukan K.K. were fined JPY3bn and JPY1bn respectively.

The fines follow requests from the three companies for hearings following the JFTC's initial decision in June 2008, which has remained unchanged. Kubota has said it will now appeal the fine with Tokyo High Court.

(JFTC Press Release, 05.09.08)

Qantas Fined in Price-Fixing Scam

Qantas has been fined more than US$167,000 by Canadian competition regulators for taking part in a price-fixing cartel. The fine was levied after Qantas admitted its air freight division joined the cartel to fix prices on cargo exported on certain routes from Canada between mid-2002 and early 2006.

During that time, Qantas sent cargo by truck from Canada to the US so it could then be shipped by air to Australia and other destinations. The Canadian charges follow penalties already levied by other countries against several airlines.

The Canadian Competitions Bureau fined three related airlines, KLM, Air France and Martinair, nearly US$11mn after they pleaded guilty to price fixing.

(www.abc.net.au, 18.07.09)

Cemex in Price-fixing Investigation

Spanish anti-trust authorities searched the local offices of Mexico's Cemex in an investigation into possible price fixing by the cement maker, the company told US securities regulators in a filing.

Cemex, the world's No. 3 cement maker said in the filing with the US Securities and Exchange Commission that the search was part of an investigation of building materials companies in Spain "for possible unlawful practices consisting of price fixing and market sharing agreements". If any companies were found guilty, they could face a penalty of up to 10 percent of total sales volumes.

(Reuters, 22.09.09)

Trade and Professional Associations and the Potential Problem of "Overt" Cartels

– Charles Webb*

A central focus of competition authorities worldwide is the fight against hard-core cartels. This can be classified as an "overt" cartel, which is a professional or trade association with rules that fix prices, recommend prices, or set minimum or maximum price levels. Whereas hard-core cartels are often "covert" as they almost always involve competitors communicating in secret with an intent to fix prices or otherwise restrict competition. Both overt and hard-core cartels harm consumer welfare. Thus, the elimination of overt cartels, in addition to the continuing fight against hard-core cartels, is of vital importance, perhaps especially so for new competition authorities in developing countries.

The Application of Competition Law to Overt Cartels

The Jersey Competition Regulatory Authority ("JCRA") is the competition authority for the Island of Jersey. In 2005, as Jersey's competition law was coming into effect, one of the JCRA's early enforcement priorities was the elimination of many long-standing restraints contained in the rules of trade associations. Due to the JCRA's advocacy, backed-up by enforcement powers, the Law Society agreed to voluntarily eliminate this rule at the end of 2005.

In 2008, the JCRA studied the effects arising from this action. It was found that conveyancing fees in Jersey vary substantially among different suppliers, and that consumers shop around. This has resulted in substantially reduced prices. The JCRA's findings are consistent with a study produced for the EC on conveyancing services within the EU Member States, which found that consumers have greater choice and are on average paying less for conveyancing services in countries with deregulated systems, with no loss in service quality.

Enforcement Considerations

Despite the importance of targeting overt cartels, an "all guns blazing" enforcement approach may not necessarily be appropriate. The JCRA's substantial successes in this area were not the result of formal decisions and fines, but through encouraging the professional associations themselves to take voluntary action.

For restrictive trade association rules that may be facilitated or mandated by government regulations, efforts should be directed at competition law advocacy with the relevant decision-makers. Finally, a simple stock-taking exercise – collecting and assessing the rules from various trade associations in a country – can itself be informative. To be credible, however, efforts to encourage voluntary compliance must be backed-up by an expressed willingness by the competition authority to pursue more formal enforcement action, if necessary, to ensure compliance.

Other Potential Restrictions from Overt Cartels

By focussing on "overt" cartels, this article has focussed on trade association rules that directly effect members' pricing. These type of restraints can almost never be justified. To analyse trade association rules in general, the EC suggests a proportionality test that examines if the rule in question truly serves a clearly defined public interest, and is no more restrictive than necessary to achieve its desired objective.

Overt Cartels and New Competition Authorities in Developing Countries

A focus on overt cartels by new competition authorities in developing countries can be of particular importance, for the following reasons. Many developing countries share legacies of government economic intervention and regulation, which may have been implemented through restrictive trade association rules. Furthermore, as developing economies continue to expand, international experience suggests that the service sector will grow in importance and represent an ever-larger share in total value added. As this happens, growth in professional services should not be shackled by outdated and restrictive trade association rules. Thus, the elimination of overt cartels can help to build a jurisdiction's competition culture, as well as contribute to a new competition authority's standing and overall creditability.

* *Executive Director, Jersey Competition Regulatory Authority. Modified from a speech given by the author at the first BRIC International Competition Conference, Kazan, Russia, on September 02, 2009.*

Abbott Buys Nutritional Arm

Mumbai-based drug major Wockhardt Ltd, which is battling a debt pile of over Rs 3,700 crore, has sold its nutritional businesses and a few facilities to Abbott Laboratories of the US for around US$130mn in cash.

Wockhardt has well-known products in the pediatric nutritional category such as Farex, Dexolac and Nusobee infant formulas. The transaction also includes nutrition manufacturing facilities in Lalru and Jagraon. Wockhardt had acquired nutritional supplement maker Dumex India Pvt Ltd in June 2006.

Abbott has confirmed it would acquire Wockhardt's nutrition businesses, Carol Info Services Ltd, and certain Wockhardt subsidiaries and group companies. The acquisition includes around 600 employees. Abbott expects the transactions to close in the second half of 2009, but they are not being conducted by its publicly traded subsidiary, Abbott India Ltd, it said. *(FE, 29.07.09)*

Sanofi Acquires Shantha Biotechnics

In another indication of Big Pharma's growing interest in India's drug manufacturing capabilities, French drug multinational Sanofi Aventis has announced plans to acquire Merieux Alliance's majority stake in Hyderabad-based vaccine firm Shantha Biotechnics. Merieux Alliance owns 80 percent in Shantha through its subsidiary ShanH.

The offshore deal, which values Shantha at US$810mn, will see Sanofi's vaccine division – Sanofi Pasteur – acquire ShanH's 80 percent stake in Shantha. This will be the fourth major deal involving an overseas drug company since 2006. For the current fiscal year, Shantha's sales are expected to be around US$90mn. *(BS, 27.07.09)*

PepsiCo Controls Key Bottlers

PepsiCo, the soft drinks and snacks company, has agreed to take full control of its two largest bottlers, Pepsi Bottling Group and PepsiAmericas, in a US$7.8bn deal that will reshape its North American business.

The deal will give the company direct control of 80 percent of the distribution of its soft drinks in the US, from about 20 percent currently. The move would allow the co-ordination of snack and drink distribution to "present a single face to retailers".

The system would enable PepsiCo to deliver different mixes of drinks and snacks to retail outlets and to respond to developing trends in the soft drinks industry, including the proliferation of new products such as health and wellness drinks that require early support. *(FT, 05.08.09)*

Calpers in Retail Joint Venture

Calpers, the US's biggest pension fund has agreed to buy back a portfolio of 86 US shopping centres for US$1.73bn, about US$1bn less than it sold it for four years ago.

Calpers, the California Public Employees' Retirement System, and its joint venture partner First Washington Realty, will buy a majority stake in the shopping centres from Macquarie CountryWide Trust, the indebted Australian group that bought the portfolio for just over US$2.7bn in 2005.

The deal – Calpers' first significant real estate transaction for more than a year – came within days of the pension fund revealing that its property assets had fallen 36 percent and its total asset value had dropped 23 percent to US$180.9bn since June 2008. Its total property portfolio is worth US$20bn. *(FT, 27.07.09)*

Air China Lifts Cathay Stake

Air China Ltd., mainland China's biggest airline, raised its stake in Cathay Pacific Airways Ltd., another step in China's strategic aim of upgrading its fast-growing aviation industry.

The state-owned Air China paid US$812.8mn to buy a 12.5 percent stake in Cathay from Citic Pacific Ltd., a Chinese state-controlled conglomerate based in Hong Kong, raising Air China's stake to just under 30 percent from its current position of 17.5 percent.

Cathay Pacific planes at Hong Kong International Airport, its primary hub. Swire Pacific Ltd., a Hong Kong-based conglomerate with British roots and Cathay's biggest shareholder, will spend about US$0.13bn to increase its stake to just under 42 percent, from the current 40 percent. *(FT, 18.08.09)*

VW, Porsche to Integrate Operations

Volkswagen, Europe's biggest carmaker, and luxury auto manufacturer Porsche had approved a plan to merge by 2011 and create an automotive giant.

The merger of the car giants draws a line under a four-year battle marked by multiple twists and turns, family feuds and boardroom battles. Under the terms of the agreement, Volkswagen will initially buy a 42-percent stake in Porsche by the end of 2009 for US$4.7bn, a deal that values Porsche at US$17.7bn.

Volkswagen will then increase its capital in the first six months of 2010 by issuing new preferred shares and Porsche will increase its capital in the first half of 2011 by issuing ordinary and preferred shares. *(BS, 14.08.09)*

No Nod to Bharti, MTN Deal

The South African government is tightening the screws on the proposed US$23bn share-swap deal between its telecom major MTN and Bharti Airtel, Indian's largest telecom company, by making it clear that the company has to retain its character as a South African company.

The Bharti/MTN transaction extended, for a second time, the deadline for their exclusive talks for a US$23bn complex cash-cum-stock swap deal, which would create the world's third largest telecom firm by subscriber base with revenues of over US$20bn.

South Africa is pressing India for an agreement on dual listing of companies before the end-September deadline. Analysts opine that regulatory problems were always resent in cross-border transactions. Bharti would pay US$4bn in stock for a total package of US$14bn, seven percent more than the earlier US$13bn proposed deal. *(ET, 16.09.09 & BS, 14.09.09)*

Vivendi Eyes Latin American Market

Vivendi, the French communications and entertainment group, set out to establish a foothold in the fast-growing Latin American market by launching a US$2.9bn takeover bid for GVT, a Brazilian telecoms provider.

The French company has been looking for acquisitions in emerging markets but its move on GVT marks an abrupt switch of focus from Africa and Southeast Asia to Latin America. A takeover of GVT would also pitch Vivendi into direct competition with Telefónica of Spain, which has a 31 percent market share in Brazil.

Vivendi said it had secured agreement from GVT's two largest shareholders – Swarth Group and Global Village Telecom (Holland) – to a takeover and that they would be selling 20 percent of the shares out of their combined 30 percent stake.

(FT, 10.09.09)

Orange and T-Mobile Merger

Deutsche Telekom and France Telecom plan to merge T-Mobile UK and Orange UK, their British mobile phone unitsT-Mobile UKOrange, to create a market leader better able to compete with two remaining big rivals.

The companies started negotiations about putting their assets into a 50-50 joint venture by October 2009. The combined company would have 28.4million subscriptions, or 37 percent of the UK's mobile phone user base.

Deutsche Telekom would put its business into the venture free of any debt, while France Telecom would shift US$2.07bn of intra-group debt into the venture to make up for T-Mobile UK's lower asset valuation. *(FT, 09.09.09)*

Essar Bids to Buy Shell's Refinery

Essar, the Indian conglomerate, has bid for three European Royal Dutch Shell refineries on sale as part of the Anglo-Dutch oil group's restructuring of its downstream operations.

Essar – the conglomerate that spans mobile phones, steel, shipping and energy and is founded and controlled by Ravi and Shashi Ruia – is understood to be one of several potential buyers.

Essar is understood to be among the bidders for two German refineries as well as Shell's Stanlow UK refinery at Ellesmere, in Cheshire.

Stanlow is Shell's only UK refinery, employs 1,000 people and 800 contractors and has a capacity of 272,000 barrels a day, producing about a sixth of the UK's petrol. *(FT, 18.08.09)*

Xstrata Faces Bid Demand from Anglo

Britain's mergers and acquisitions (M&As) watchdog has waded into the merger tussle between Xstrata and Anglo American, asking Xstrata to confirm its estimates of US$1bn in synergies from the proposed US$66bn tie-up.

The request from the Takeover Panel followed representations made to it by Anglo American, which was concerned at the discrepancy between media and market estimates on the synergies from a possible merger, and the officially-stated estimate in a public letter from Xstrata, which estimated synergies of "over US$1bn" from the deal. Some media reports said Xstrata's advisers had estimated the synergies at more than US$3bn. *(FT, 01.07.09)*

Centrica Secures Majority in Venture

British Gas owner Centrica has lifted its interest in Venture Production to above 50 percent, taking the utility closer to a full takeover of the oil & gas producer. Centrica had bought an aggregate 16.8 percent of Venture shares taking its holding to 48.4 percent.

It also has acceptances from shareholders holding just over 10 percent of shares, giving it majority control of the company it wants to buy in order to reduce its exposure to volatile wholesale gas prices.

Centrica, which received EU approval for the 845 pence-a-share, US$2bn final offer had said the only condition of the offer was passing the 50 percent mark. *(FT, 25.08.09)*

Cadbury Spurns Kraft's Marriage Offer

Kraft Foods Inc, the second-largest food company will pursue a takeover of Cadbury Plc after the British maker of Trident gum and Dairy Milk chocolate rejected a US$16.7bn bid.

Cadbury shares soared as much as 42 percent, pushing its market value above the bid price. Analysts opine that Kraft's 745 pence-a-share proposal may trigger rival offers from Nestle SA and Hershey Co forcing Kraft to raise its bid.

Kraft, the maker of Oreo cookies and Kool-Aid drinks, said that buying the UK company would create a "global powerhouse" with annual revenue of about US$50bn.

(FT & FE, 08.09.09)

Microsoft-Yahoo in Web Partnership

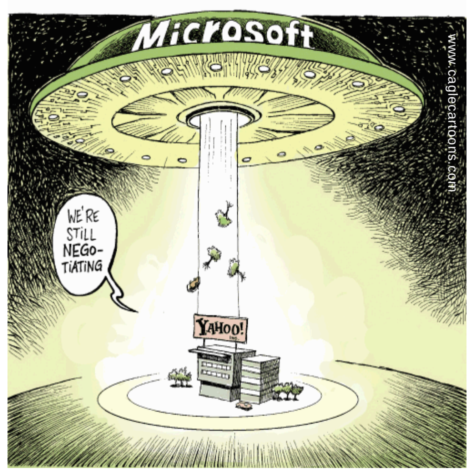
Microsoft Corp and Yahoo Inc have launched a 10-year Web search deal to challenge market leader Google but stopped short of combining other advertising businesses or suggesting any deeper ties.

The long-expected deal means Microsoft's new Bing search engine will be combined with Yahoo's experience attracting advertisers in the first serious threat to Google Inc – if the companies get regulatory approval and can make the partnership work.

Yahoo estimated the deal would boost its annual operating income by about US$500mn and yield capital expenditure savings of US$200mn.

Microsoft Corp and Yahoo! Inc have been asked by the US Justice Department for more details on a proposed internet-search partnership, expanding the agency's review of the agreement.

(FT, 31.07.09 & BS, 12.09.09)



End of the Affair

Business Daily

How EABL has outmanoeuvred SABMiller in the EAC beer market by ending its marriage of convenience in Tanzania

The fact that the marriage of convenience between EABL and SABMiller has come to a rude and abrupt end should not have come as a surprise. SABMiller wants reconciliation and possibly for the current arrangement to remain in place.

A deeper analysis of what the two companies have gained from each other reveals that Kenyan investors are primed to get a lot more from ending this co-operative arrangement. Then there is the question of how much it will cost EABL to complete the Serengeti deal.

EABL joined TBL board under the arrangement in 2002, in which SABMiller agreed to sell 20 percent of TBL to EABL in exchange of a similar stake in its Kenyan subsidiary. This deal saw SABMiller exiting Kenya as a direct competitor to EABL, and the latter did the same in Tanzania. They also exchanged plants in both countries. The two firms were supposed to manufacture and distribute each other's flagship brands.

TBL was to grow Tusker in Tanzania, and EABL was to do the same for Castle in Kenya. While TBL claims to have grown Tuskers sales by 12.7 percent compounded annual rate, Castle cannot be said to enjoy such market presence. The decision to break the marriage works mostly in favour of EABL in the medium term for several reasons.

First, EABL will significantly boost its presence in Tanzania by buying Serengeti, which is estimated to command 17 percent market share. EABL's brands are estimated to constitute 12 percent of TBL's 80 percent market share. This means that an EABL, Serengeti tie up will boost their market share to 29 percent.

Secondly, ending the cooperation could be painful for TBL's shareholders. TBL's current market capitalisation of US$0.024bn yields an equivalent stock exchange market value of the Tanzanian alcoholic beverage market at US$0.029bn. Removing EABL's brands from TBL's product portfolio could potentially wipe out US$0.0033bn of the Tanzanian brewer's stock market value, which will be left with 68 percent market share.

Thirdly, in the face of this hostile action by EABL, SABMiller finds itself in a weak position to both defend its market position in Tanzania in a fight with a rival who knows the inner workings of TBL or attack the Kenyan market which it long conceded. With Serengeti adding more capacity in 2010, when its plant is set to be completed, TBL will face a more organised competitor with a strong balance sheet, local knowledge and with an established distribution network.

Fourthly, the Serengeti deal gives EABL an opportunity to deploy its free cashflows in a growth market after a period of aggressive dividend payouts. With few opportunities to invest its free cashflow, which stood at US$0.0049bn before dividends in 2008, EABL has been aggressively returning cash to its shareholders.

Analysts opine that a judgement in favour of EABL, clearing the way for the Serengeti acquisition, would be of strategic benefit to EABL.

Should the new partnership be cemented, EABL would have a chance to "aggressively" increase the sale of their brands in Tanzania – a market where beer consumption is growing at about 11 percent – hence cushioning it against slowing sales in Kenya, its home market.

EABL's volumes in Kenya for the first half ended December 2009 grew by 4.0 percent, compared to 20 percent in Uganda, 17 percent in Tanzania and 39 percent in exports. Revenues increased by 12.5 percent to US$0.0138bn.

However, the returns will be pegged on how much is put into advertising, enhancing distribution network and capital expenditure. Serengeti Breweries has two breweries in Tanzania, one in Dar-es-Salaam and one in Mwanza.

The brewer is also in the process of building another brewery in Moshi, presenting an opportunity for EABL to inject capital in a project aimed at growing the market share.

* *Abridged from an article written by Emmanuel Were that appeared in the Business Daily (Kenya), on August 03, 2009*

Calls for Cap on Aviation Emissions

Airlines have agreed to cut emissions of greenhouse gases (GHGs) to 50 percent below 2005 levels by 2050. The move, which aims to pre-empt unfavourable attention at the Copenhagen summit in December, is the most radical vision to date of the future of air travel.

The plan, launched by British Airways CEO Willie Walsh, will be presented to the UN Forum on Climate Change in New York. In addition to reducing emissions through improved technology, the plan aims to make all industry growth carbon-neutral by 2020, and for aviation to join a global carbon trading scheme in 2010.

(BR, 22.09.09)

SA Switches Position on Lawsuits

The South African government has reversed the position of the previous administration, and come out in favour of lawsuits brought against companies accused of having aided the apartheid regime.

Barclays, Daimler, Ford, Fujitsu, General Motors, IBM, Rheinmetall and UBS are accused in a suit brought in the US of having aided and abetted apartheid. Previously, the South African government had disputed that such a matter should be heard in a US court, and said that it wanted to work with companies to rebuild South Africa.

The suit, filed in 2002, is being brought by 26 individuals who suffered under apartheid. They are hoping to get US$400bn from the companies.

(BR, 06.09.09)

UK Bans Alcohol Advertising

The main doctors' association in UK has called for a ban on all alcohol advertising, including sponsorships, along with an end to cut–price promotions in supermarkets. The British Medical Association (BMA) said that the measure was necessary to tackle rising levels of consumption that have made alcohol a leading cause of early death.

The BMA believes that measures such as minimum pricing, to end 'happy hour' cheap rate promotions, need to be introduced. The government is currently committed to a voluntary approach, engaging the industry in promoting responsible drinking. But it has said it will act to curb 'happy hour' drinking if the industry does not respond to concerns. *(BR, 08.09.09)*

Sinopec Chief Convicted of Bribery

A court in Beijing has found the former chairman on China Petroleum and Chemical Corporation, Sinopec, guilty of taking US$28.7m in bribes. He was given a suspended death sentence which, in practice, is likely to mean a life term in prison.

Chen Tonghai pleaded guilty to the charge, and has already paid back bribes. He reportedly helped prosecutors with other investigations. Normally, offences involving such large amounts of money would result in a death sentence, but his cooperation with authorities is thought to have bought relative leniency.

The case is just the latest in a string of corruption cases that China has had to deal with, in business as well as in government. Most recently, the ruling Communist Party said that 14 officials had been fired for corruption in Chaohu. *(BR, 15.07.09)*

Minerals firms 'Fuelling Conflict'

A number of European and Asian companies, including Britain's Amalgamated Metals Corporation (AMC) and Afrimex, have been buying minerals from the Democratic Republic of Congo (DRC) without checking they are not buying from armed groups and funding the conflict, according to campaign group Global Witness.

Global Witness has called upon the UN to impose sanctions against the companies involved. The group says that AMC's subsidiary, Thaisarco, purchases minerals from legal brokers, but should do more to find out who is supplying the brokers.

AMC has denied the claims and attacked the report as containing "inaccuracies and omissions". It said that it was part of an industry group looking at tackling the problem of traceability in the DRC. *(BR, 23.07.09)*

GSK Cuts AIDS Drugs' Prices

Pharmaceutical giant GlaxoSmithKline (GSK) said that it is to give South African firm Aspen the rights to manufacture HIV drug abacavir royalty-free as part of its drive to get medicines more accessible to the poor.

The move follows the company's announcement recently that it would pool a number of its patents for drugs addressing diseases affecting developing country environments. HIV drugs are not included in GSK's contributions to the patent pool.

The company argues that the purpose of the patent pool was to focus on neglected diseases. But there is a great deal of research going on addressing HIV, and this would not be improved by creating a patent pool for HIV drugs. *(BR, 21.07.09)*

Cola Cleared of Union Deaths

A US federal appeals court said that it can find no connection between Coca-Cola or its Colombian bottling subsidiary in attacks made against union leaders during the last decade. The ruling drew on a recent precedent to throw out the case under America's Alien Claims Tort Act because the plaintiffs had failed to show that killings had been carried out paramilitary murderers had been acting as state agents – a requirement under the statute.

As a result, no connection could be drawn between the company and the violent events that had taken place in the country. Family members of victims had argued that the Coca-Cola bottlers had worked hand in hand with paramilitary forces to silence union leaders at their plants. *(BR, 11.08.09)*

Attract Investment or Hold Back?

In the midst of a financial crisis, Ukraine is in urgent need of external investment. However, the Ukrainian legal system does not provide favourable conditions for attracting investment and the existing regulations in this sector are neither liberal in their policy nor adequate for a country in the global economy.

Foreign investors often fail to understand why M&A deals in Ukraine seem to be overcomplicated and overregulated in comparison with those in other European countries, particularly in the sphere of investment and the regulation of relations between participants to a joint business.

In order to mitigate the risks connected with investing in Ukraine and conducting business there, foreign investors are forced to engage with complicated legal structures or hire professional consultants.

(ILO, 05.08.09)

Norway's Fund in Green Push

Norway's US$400bn sovereign wealth fund, the world's second-largest, has overhauled its investment strategy to increase its exposure to environmentally responsible companies in an effort to combat climate change.

The Norwegian Government Pension Fund had directed about one percent of its funds, or US$4bn, into "green shares" targeting investments in the developing world. As part of this major policy shift, Norway has invested US$1.2bn in 232 Indian companies that support environmental sustainability and clean energy.

The issue of how the developed world will pay for climate saving measures by emerging economies is at the top of the agenda. The fund is often held up as a model of good governance practice. *(FT, 01.09.09)*

FDI in China Continues to Slide

Foreign direct investment (FDI) in China fell in July 2009 as companies stalled expansion plans amid the global financial crisis. Investment declined 35.7 percent in 2007 to US$5.36bn. That compared with a 6.76 percent drop in June 2009.

Japan emerged from its worst postwar recession in the second quarter, the Cabinet Office said, and a Bloomberg survey of users shows confidence in the world economy surged to a 22-month high in August 2009.

China's economy will expand 9.4 percent in 2009, topping the government's official 8 percent target as a US$585bn stimulus and record bank lending spurs growth.

(www.bloomberg.com, 17.08.09)

Japan Pulls Out of Recession

Japan's economy returned to growth in the second quarter, ending its longest recession since World War Two, but analysts warned of a rocky road ahead as the nascent recovery was based on short-term stimulus efforts around the world.

Growth in the world's No.2 economy is likely to continue in coming quarters as companies restock inventories due to exports and government stimulus spending around the world, providing further evidence that the worst of the damage wrought by a global financial crisis may be over.

The gross domestic product (GDP) grew 0.9 percent in April-June 2009, slightly short of a median market forecast of a 1.0 percent increase. That puts Japan in the first camp of G7 countries that have pulled out of recession, along with Germany and France. *(IE, 17.08.09)*

India Tightens Investment Scrutiny

India's National Security Council (NSC) has recommended that the government should tighten its scrutiny of foreign investments. The proposal is likely to raise alarm among multinationals already frustrated by the hurdles of entering the world's second most populous nation.

India maintains strict bans and limits on foreign investments in a broad range of sectors, but the NSC's recommendations, contained in a confidential report being circulated to other agencies, would subject investments from certain countries in key sectors to monitoring on a continuing basis even if they are initially approved. *(FT, 20.08.09)*

Taiwan Allows Chinese Investment

Taiwan will allow investment from mainland China in 100 industries and projects, helping the island's economy to benefit from the warmest cross-strait relations in 60 years. The Ministry of Economics Affairs said that Taiwan will open up 64 sectors in manufacturing, 25 in services and 11 public infrastructure projects.

This is another major step toward an improving relationship between Taiwan and China. The normalisation between the two sides will help boost the local economy and corporate earnings in the long run, and thus increase the valuation of local stocks.

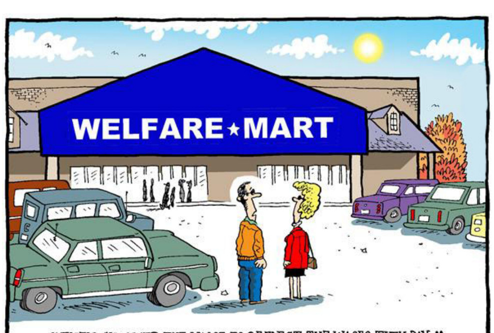
(http://www.ccpittex.com, 03.07.09)

Wal-Mart: World's Biggest Employer

At a time when the economic crisis is forcing companies to reduce costs and cut jobs, retail giant Wal-Mart has emerged as the biggest employer in the world with a whopping 2.1 million people working for it in 2008, according to the Fortune magazine.

The Fortune Global 500 list ranks Wal-Mart Stores as the top company in terms of employee strength at the end of 2008. In 2008, Wal-Mart racked up US$30bn in additional sales – the equivalent of adding the annual sales of a Fortune 75 company.

Wal-Mart's 2009 prospects remain promising as shoppers battered by the recession shop for value, it added. The retailer has seen 7.2 percent increase in profit at US$405,607 in 2008 as compared to 2007.



www.caglecartoons.com

(FE, 09.07.09)

Beware of FDI Protectionism

– Karl P. Sauvant*

During their most recent meetings, the G-8 took a strong stance against protectionist measures in the area of foreign direct investment (FDI), echoing calls for a moratorium in such measures issued earlier by the G-20. Both were right to do so.

According to the United Nations Conference on Trade and Development (UNCTAD), only six percent of all the changes in national FDI regulations around the world between 1992-2002 were in the direction of making the investment climate less welcoming.

The bottom line is that the investment climate for foreign direct investors is becoming less welcoming. While this is certainly not the dominant approach toward FDI, we need to be vigilant that it does not become so.

That figure doubled to 12 percent of all regulatory changes in 2003-2004, and almost doubled again, to 21 percent of all FDI regulatory changes, in 2005-2007. In Latin America, for example, some 60 percent of all FDI regulatory changes in 2007 were unfavourable to foreign investors.

Overall, countries that had implemented at least one regulatory change that made the investment framework less welcoming in 2006-2007 accounted for some 40 percent of world FDI inflows during that period – an impressive figure that demonstrates that something very dubious is afoot.

And these data refer to formal changes in laws and regulations; no data are available on the extent to which unchanged laws and regulations are implemented in a more restrictive manner, increasing informal barriers to the entry and operations of foreign firms.

Of course, not every measure that makes the climate less welcoming for foreign direct investors is protectionist. Basically, there are two situations that should qualify.

In the case of inward FDI, protectionism involves new official measures that are used to prevent or discourage investors from coming to or staying in a host country.

For outward FDI, protectionism involves measures that require domestic companies to repatriate assets or operations to the home country, or that discourage certain types of new investments abroad.

But the definition of FDI protectionism can become more complicated, because measures taken in the interest of legitimate public policy objectives – for example, protecting national security or increasing FDI's contribution to the host economy – are not necessarily instances of it, even if they make the foreign-investment climate less hospitable.

Nevertheless, even with this caveat, there has been a rise of FDI protectionism that predates the current financial crisis and recession.

This suggests that a re-evaluation of the costs and benefits of FDI was already underway, led, interestingly enough, by developed countries, which in the past had championed liberalization of entry and operational conditions for foreign investors and their protection under international law.

For some countries, like the US, this re-evaluation is grounded in national security concerns (largely undefined) that arose in the aftermath of the terrorist attacks of September 11, 2001.

But there also seems to be a bit of a reaction against the "new kids on the block", namely multinational enterprises from emerging markets, especially when these are state-owned and seek to enter the US market through mergers and acquisitions. Hence, there is a need of the strengthening of the active screening mechanism of the Committee on Foreign Investment in the US.

In the case of some other developed countries (for example, Canada, France, Germany), national security concerns extend to economic considerations and the protection of "national champions."

In these countries, too, screening mechanisms have been strengthened, and China and Russia, as well as some other emerging markets, are following suit.

In some of these cases, legitimate public-policy objectives may well be involved. But the boundary line between such objectives and protectionism can be a very fine one.

The financial crisis and recession may dampen the rise of FDI protectionism, as countries seek capital to shore up local firms and increase investment to help them promote economic recovery.

But the global downturn may also accentuate protectionism, especially if nationalistic impulses gain the upper hand, perhaps stimulated by fire-sales of domestic assets (as we saw during the Asian financial crisis).

What would be helpful in this respect is an objective FDI Protectionism Observatory that monitors FDI protectionist measures and names and shames countries that adopt them.

* *Executive Director, Vale Columbia Centre on Sustainable International Investment at Columbia University and Co-director of the Millennium Cities Initiative. The article appeared in the Project Syndicate, on August 10, 2009.*

Penalties for Call Centre Failures

On the basis of Decree 6523/08, which determined that public service provider companies should create customer service centres, mobile service carriers in Brazil are facing a series of multimillion-real actions for damages filed by the Public Ministry and consumer protection agencies on the grounds of failures in the services provided to their customers via the customer service centres.

Claro (Telmex) and OI/Brasil Telecom alone are facing two class actions for moral damages of this nature, filed by the National Consumer Protection System, which together total more than US$169mn. This sum is equivalent to 100 times the highest penalty imposed under the Consumer Protection Code. After the filing of these lawsuits, several other similar suits have been filed against mobile telephony carriers. *(ILO, 10.09.09)*

Quicker and Easier Switching

The Communications Authority (AGCOM), Italy issued Resolution 41/09/CIR on July 24, 2009, which approved a revision of the procedure for migrating customers between fixed-line service operators.

The resolution is intended to expedite the processing of migration requests and to simplify the migration procedure. The new resolution requires operators to reduce migration times to 10 calendar days from November 01, 2009 and to five calendar days from March 01 2010, irrespective of the service in question. *(ILO, 02.09.09)*

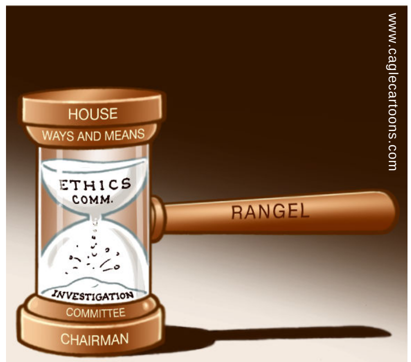
Competition in Motor Vehicle Sector

The EC is setting out policy orientations for the future legal framework for motor vehicle distribution and after sale services agreements after the expiry of the current Block Exemption Regulation (BER) in May 2010.

The policy orientations draws a basic distinction between issues arising in the primary market for the sale of new vehicles, where it has found no indications of significant competition shortcomings in the EU, and those which may affect consumers in the so-called "after market", where competition is less intense. *(EC, 23.07.09)*

Greece Amends Code of Ethics

After carrying out a public consultation, and in view of a large number of consumer complaints, the National Telecommunications and Post Commission of Greece decided to amend the code of ethics for the provision of multimedia information services.



The amendment aims to protect consumers more effectively by imposing specific obligations on multimedia information service providers regarding the complete and accurate notification to consumers of the rules governing the provision of subscription-based multimedia information services. Examples of the use of such services include participation in competitions and the downloading of, among other things, ringtones, logos, videos and games.

(ILO, 23.09.09)

Increase in Retail Tariffs in France

The electricity retail tariffs in France increased by 1.9 percent for household customers and by 2.3 percent on average (for households and companies) on August 15, 2009. The tariff structure also changed to take account of the new network tariffs. On August 04, 2009 the government had proposed the tariff increase and asked the regulator, the CRE, for its opinion.

The CRE gave an overall favourable view on August 10, 2009. The increase is less than the increase of 20 percent over three years that EDF had asked for. The government said the tariff increase had to be seen in the context of investments in the electricity sector and that French tariffs remained on average 15 to 30 percent lower than European tariffs. *(AFP, 04.08.09)*

Sulphur Regulations for Shipping

The International Maritime Organisation adopted tighter limits for the sulphur content of marine fuels in October 2008. The new regulations mean that globally, the maximum permitted sulphur content in marine fuel will be cut from level of 4.5 percent by weight to 3.5 percent by 2012. This level will be reduced to 0.5 percent by weight, possibly by 2020 or at the latest by 2025, depending on fuel supply.

The Swedish Maritime Administration has investigated the matter and anticipates distorted competition as well as a large-scale transfer towards carrying freight by land rather than by sea. *(ILO, 26.08.09)*

NZ to Cut Mobile Termination Rates

A draft report has been released by the New Zealand Commerce Commission that recommends regulation of mobile termination prices. Mobile termination prices are the wholesale charges mobile phone companies charge for terminating calls or texts from other fixed or mobile networks.

The Commission suggests that above cost mobile termination charges are likely to limit the ability of new entrant mobile phone companies to compete. In reaching its final decision, the Commission has invited submissions from interested parties and revised undertakings from the main telecom companies (Telecom, Vodafone and 2degrees). *(www.bnet.com, 29.07.09)*

EU Monitors Energy Investment

The EC is proposing to increase monitoring of national energy infrastructure investments in key areas like biofuels, nuclear energy, gas and carbon dioxide transport and storage.

The proposal seeks to strengthen the collection and analysis of data on investment projects for oil, gas and electricity as well as related areas such as transport and storage of carbon dioxide. The Commission will use the data to identify investment trends in Europe and provide cross-sectoral analysis. *(www.euractiv.com, 17.07.09)*

Antitrust Enforcers Begin Visiting Farm Belt

– Scott Kilman*

The Obama administration will take an extensive look at concentration in US agriculture as part of its increased emphasis on antitrust enforcement.

Philip J Weiser, a telecommunications-law expert who was recently named deputy assistant attorney general, told a farmer gathering that federal antitrust regulators are "committed to examining" the level of competition in several agribusiness sectors, such as the marketing of genetically modified seed, dairy processing and meatpacking.

Washington has often sympathised with farmers who find themselves selling their commodities to fewer and larger processors. But the Obama administration is taking a further step, with plans for a nationwide series of sessions next year for the US Agriculture Department to hear competitive concerns of farmers.

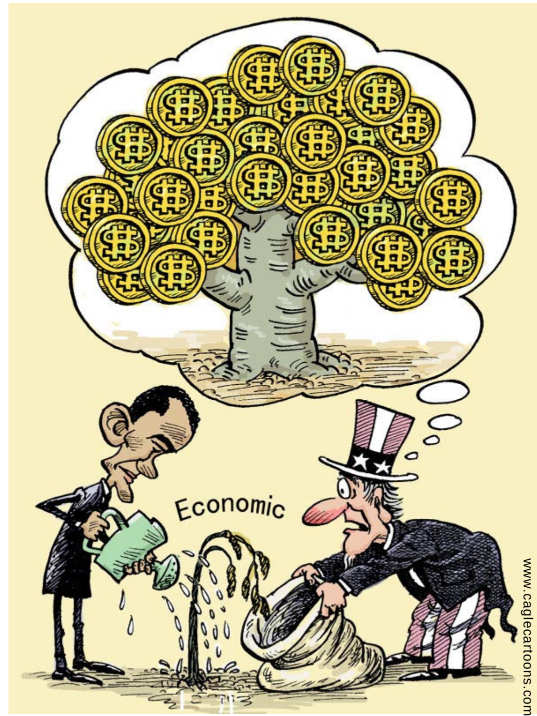
Weiser's remarks are another sign the Obama administration intends to step up enforcement of antitrust laws. In May 2009, the Justice Department's antitrust division withdrew anti-monopoly legal guidelines issued under the Bush administration and signaled closer scrutiny of some industries.

While Weiser did not single out any agricultural companies for criticism, his 30-minute appearance came in the hometown of St. Louis crop-biotechnology titan Monsanto Co., where he addressed the annual convention of a farmers advocacy group called the Organisation for Competitive Markets. Officials of the group have complained about Monsanto's dominance over genetically modified seeds.

The vast majority of the genetically modified crops grown in the US farm belt contains at least one gene from Monsanto. Its success has made the company a formidable rival of DuPont Co.'s Pioneer Hi-Bred seed unit, which has accused Monsanto of being a monopolist.

DuPont spokesman Dan Turner said Friday the Wilmington, Del., concern has "funded and supported" the OCM farmer group for years, as it has many other farmer and commodity trade groups. Turner said DuPont did not sponsor the meeting at which Weiser spoke.

Monsanto spokesman Lee Quarles called DuPont's backing "extremely disappointing, because they are aligning themselves with an organisation that is spreading false and misleading information about our business".



The Obama administration will take an extensive look at concentration in US agriculture as part of its increased emphasis on antitrust enforcement.

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* *Agriculture Reporter. Evan Perez in Washington also contributed to this article, which appeared in the Wall Street Journal, on August 08, 2009.*

OFT to Review Consumer Credit

The OFT, UK has launched a review into the supply of high cost credit as part of its ongoing Financial Services Strategy.

The review will focus on the level and nature of competition in the sector, including the impact of the economic downturn on competition and whether suppliers compete vigorously in a way which delivers benefits to consumers; the business models of lenders within the sector; the behaviour and decisions made by consumers when purchasing credit; and whether consumers have the appropriate level of protection and are given the information they need to make well-judged decisions.

(OFT Press Release, 02.07.09)

Rules to Mitigate Credit Risk

In Mexico, an order modifying the General Rules Applicable to Financial Institutions was published in the *Official Gazette* on June 11, 2009. The changes are intended to encourage lending and stimulate economic activity.

In order to attain this objective, it was necessary to consider the methodology for calculating commercial loan portfolios and the role played in the banking system by guarantees provided by public trusts that are considered to be government-owned entities.

The security that these entities provide mitigates credit risk and allows the National Banking and Securities Commission to authorise temporary higher financing limits for development banks that are guaranteed by one of these institutions. *(ILO, 14.08.09)*

Ghana's Financial Sector in Crisis

The Financial Intelligence can confirm that there is currently an uneasy calm among experts in Ghana's financial services industry with regards to regulation, as the sector becomes increasingly fragmented, with some banks, insurance companies and other financial houses offering services that were hitherto outside their domain.

Such fears have heightened in view of the fact that under the current fragile global financial system, consultations among regulators of Ghana's Financial Services Sector has broken down. This follows the collapse of 'a Committee of Regulators' that was set up to meet periodically and discuss developments of common interest. *(GN, 15.09.09)*

'Bad Bank Act' in Germany

The Act for the Further Development of the Financial Markets Stabilisation – often referred to simply as the 'Bad Bank Act' – came into effect in Germany on July 23, 2009. The act provides the opportunity for short-term relief of bank balance sheets and is targeted at financial institutions, financial holding companies, their subsidiaries in Germany and abroad and special purpose companies.

The act contains two models for such spin-off: (i) through the establishment of private special purpose companies (the 'bad bank' model); and (ii) liquidation institutions on a federal and land level (the 'consolidation' model). *(ILO, 04.09.09)*

A Strong Banking Network

Citing the need for a strong banking sector to support economic growth and the aim of developing a sound *shariah* banking network as part of the national banking system, the governor of Bank Indonesia recently issued the Regulation on the Conversion of a Conventional Bank to a *Shariah* Bank (11/15/PBI/2009), which came into force on April 29 2009.

The main effect of the regulation allows conventional banks to convert to *shariah* banks and community credit banks to convert to *shariah* community credit banks, but not vice versa. The regulation also regulates the penalties for violations of the provisions. *(ILO, 03.07.09)*

CBN Reviews Banking Act

Plans are afoot by the Central Bank of Nigeria (CBN) to review the Banks and Other Financial Institutions Act (BOFIA) for better regulation and greater efficiency. CBN has adopted the International Financial Reporting Standards (IFRS) as well as a common year-end for banks, beginning December 31, 2009.

Part of the agenda is to improve the data integrity and comparability of banks. Besides, the CBN will guarantee inter-bank placements, including those with banks by pension funds, so as to lay the foundation for a risk-free yield curve, in addition to risk-based supervision, with plans to migrate from the fragmented sub-sectoral supervision to one that is all-inclusive. It has laid greater emphasis on the Code of Corporate Governance.

(www.allafrica.com, 16.07.09)

Bank Profits Less than they Seem

The big banks are making big money again, but they would not be back to health as long as they have to deal with a recession and customers defaulting on mortgages and credit cards. The impressive numbers included a US$3bn second-quarter profit announced by Citigroup and US$2.4bn for Bank of America. They followed similarly robust earnings for Goldman Sachs and JPMorgan Chase.

Bank of America Corp., JPMorgan Chase & Co. and Goldman Sachs Group Inc. earned profits this spring largely on investment banking and trading — not traditional banking businesses, which still look shaky. Citi benefited from selling its majority stake in the Smith Barney brokerage.

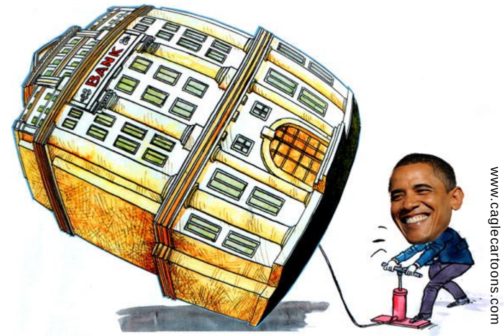
Strip away those money-makers and the banks have to rely on customers who are losing their jobs or earning less money. The banks will suffer as long as their customers do. Bank of America, JPMorgan Chase and Citigroup Inc. all reported they lost more money on loans during the second quarter. Bank of America alone set aside US$13.4bn to cover loan losses.

(www.mail.com, 18.07.09)

America Needs a Single Bank Regulator

– Mark Warner*

In recent times, American financial markets have shown signs of recovery thanks to unprecedented action to stabilise markets and stimulate the economy. Yet this crisis has many distressing qualities. Perhaps most dispiriting is the sense that we have seen this movie before, and it wasn't very good the first time, either.



When President Bill Clinton came into office in the early 1990s, the US faced, among other challenges, waves of thrift and bank failures, huge hits to its deposit insurance system, and enormous piles of "toxic assets" in need of taxpayer-financed liquidation. It was a colossal regulatory failure.

Determined to identify the causes, Lloyd Bentsen, then Treasury secretary, proposed legislation to consolidate all four federal banking regulation and supervision agencies into a single body. That proposal went nowhere. The Federal Reserve opposed any reduction in its turf. Lobbyists fiercely asserted the benefits of "competition" among regulatory agencies. After months of struggle, the legislation died an ignominious death.

Nearly 20 years later, financial regulatory system has failed again, on a scale so massive as to make the failures of the late 1980s and early 1990s seem quaint. Once again, America have a new president determined to overcome a legacy of inattentive financial regulation.

President Barack Obama and Tim Geithner, his Treasury secretary, deserve credit for their willingness to tackle modernising financial regulation. There is little political reward for taking on these issues. It is no-fun technical stuff, poorly understood by the general public and the media. And as past administrations have learnt, the *status quo* has many stakeholders who will bitterly oppose even the most objectively meritorious change.

But unfortunately, the Obama administration's proposal contains too much *status quo* to protect taxpayers against the costs of future bank failures. While Bentsen's proposal in 1993 would have shrunk the federal banking regulators from four to one, Geithner's would eliminate only the Office of Thrift Supervision through consolidation with the Office of the Comptroller of the Currency. This approach leaves a single regulator for federally chartered banks, plus two federal regulators, the Federal Deposit Insurance Corporation and Federal Reserve, for banks chartered by the states, plus an additional regulator, the Federal Reserve again, for all companies that own banks.

As complicated as this may appear it has a clear consequence: it would allow financial groups to continue to shop for the weakest regulator. The opportunity for regulatory arbitrage will encourage money to migrate to the most weakly regulated parts of the system.

America need a single agency combining the OTS and OCC while absorbing the responsibilities of the FDIC and Federal Reserve for prudential regulation and supervision of banks and their holding companies, affiliates and subsidiaries. This agency should have a level of independence commensurate with the FDIC and Federal Reserve (including an independent chair) with the authority to oversee banks from top to bottom and end to end.

Through this reorganisation the country can create a more powerful and effective federal bank regulator while preserving the dual banking system with both state and federal chartering and allowing the Federal Reserve and FDIC to focus on their core responsibilities for monetary policy and deposit insurance, respectively.

The country need a system that can tolerate risk and promote safe innovation. It cannot afford hobbled regulators that can be played off one another, forced to pull punches for political reasons, or that are too compromised by other missions to act.

Of course this is hard. But America need real solutions, not half measures. Because it had not learnt from history, it had been doomed to repeat it: in just 20 years, the country regulatory system has twice failed our country, at massive risk and expense to taxpayers. It is time to change the ending to this movie.

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* *US Senator from Virginia and a Member of the Senate's Banking Committee. The article appeared in the Financial Times, on August 05, 2009.*

The Antitrust Anachronism

– L Gordon Crovitz*

Markets were so much simpler in the 1890s, when Sen. John Sherman got almost unanimous support in Congress to go after the Standard Oil Co. of Ohio. The Sherman Act and later antitrust laws were supposed to protect consumer interests. That's not so easy when regulators have to deal with industries as different as oil, with its cartels and long product cycles, and technology, where fast change is a constant necessity for survival.

The result: It could be months before the government approves or vetoes last week's deal between Yahoo and Microsoft to team up on search, undertaken as an effort to create a real alternative to the dominant Google.

In a conference call announcing the deal, Microsoft CEO Steve Ballmer said, "[I]t's really the competitor who may not like more competition, because . . . this is one of those cases where us coming together will actually provide more effective competition . . . not less."

The market for search on the Web is no textbook picture of "perfect competition". Google has some 65 percent of the market, Yahoo has less than 20 percent, and Microsoft has about 10 percent. Google earned its position by offering a great experience for people doing searches and building a system for delivering highly relevant advertisements to them.

Scale matters, because marketers are willing to devote more of their spending to reach just the right audience, making Google by far the largest media company for advertising.

The size of the audience is so important to success in search that Microsoft tried to buy Yahoo, and then Google tried to do a deal with Yahoo. Under the 10-year agreement, Yahoo will use Microsoft's new Bing search engine. Meanwhile, there are many new entrants in search, focusing on particular areas of interest or using new technological approaches to deliver more relevant search results.

When will technology's ever faster cycles of creative destruction spell the end of antitrust law?

The bottom line is that by the time regulators can assess a technology market, the market has often moved on. Not long ago, Google was the upstart and the search leaders included names like AltaVista and Excite. The antitrust laws are anachronisms when applied to industries of constant innovation. Even theories about the role of antitrust were designed for the industrial era.

Antitrust lawyers once focused on "predatory pricing", "vertical contracts" and "industry concentration". Close economic analysis over the past 50 years has shown that these are not the dangers for consumers that regulators assumed. There's a strong case that government interference through antitrust has done more harm than good.

The Obama administration has said it will be a tough enforcer, with antitrust chief Christine Varney promising that the Justice Department will focus on "high-tech and Internet-based markets". But where's the harm to consumers on the Web from weaker competitors being able to invest in better products? Haven't antitrust regulators learned from the experience battling Microsoft when its ubiquitous operating system seemed to give it unassailable power?

Microsoft is now the weakling, admitting it needs help competing with Google in search and also in areas from email to Web browsers. And while Google is "dominant" for now, what Google dominates is an open Internet where barriers to entry are low and falling.

Indeed, regulators will have a hard time even defining the market they're reviewing for competitiveness. Google, Yahoo and Microsoft are social-media laggards compared with Facebook and Twitter, which provide new organising networks for information online.

Instead of more aggressive enforcement of a legal relic, the real question is when will technology's ever faster cycles of creative destruction spell the end of antitrust law? Consumers benefit from competition, innovation and new technology, which regulation cannot provide but can suppress. Instead of using 19th-century tools for this century's challenges, President Obama should tell his regulators to study the humility of technologists who understand that today's leader can be tomorrow's laggard.

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* *Executive Vice President of Dow Jones and President of its Consumer Media Group. Abridged from an article that appeared in the Wall Street Journal, on August 02, 2009.*

About a Competition Law – Ethiopia*

Ethiopia is located in East Africa, West of Somalia, also bordering Djibouti, Eritrea, Kenya and Sudan. In 1974, a military junta, the Derg, deposed Emperor Haile Selassie, who had been ruling since 1930, establishing a socialist state. The regime was toppled by the Ethiopian People's Revolutionary Democratic Front (EPRDF) in 1991. A constitution was adopted in 1994 and the country's first multiparty elections were held in 1995.

Economy

Ethiopia's economy is based on agriculture, accounting for half of gross domestic product (GDP), 60 percent of exports and 80 percent of employment. Coffee is critical to the Ethiopian economy, with exports of US$156mn in 2002. In November 2001, Ethiopia qualified for debt relief from the Highly Indebted Poor Countries (HIPC) initiative.

Competition Evolution and Environment

The 1960s was a period of modernisation of the Ethiopian legal system. During this time, major legislation was introduced, including the Commercial Code (1960), regulating company formation; trade name and trademark regulation; and other elements of business. In spite of the legislative reforms, only a handful of commercial companies abided by the legal framework of these laws.

Until 1974, Ethiopia was characterised by its feudal style of economic governance, where land was the mainstay of the economy and owned only by few feudal lords.

The coup d'etat, which overthrew the Imperial regime in 1974, installed a socialist government, which nationalised all land, rented urban houses, and major medium and large scale manufacturing enterprises. The nationalisation scheme marginalised the private sector to petty economic activities and retarded the entrepreneurship skill development of the business community. By regulating all markets and controlling prices, the regime effectively eliminated all forms of competition as well.

Commercial activities remained dormant for another 17 years under the Derg regime. Succeeding yet another historic event of political transformation, in 1991, Ethiopia became a country with a liberalised market and an open economic policy.

Since the emergence of the regime in power in 1991, and partial liberalisation thereafter, market based economic activities have become increasingly evident in Ethiopia. Wide scale liberalisation measures, particularly in external trade, have been undertaken. The opening up of the economy, as a condition for the International Monetary Fund (IMF)-led Structural Adjustment Programme (SAP) undertaken in the 1990s, significantly increased imports, which, in turn, forced most medium and large scale enterprises to substantially lose markets, resulting in a reduction in their production capacity and closing down of many firms. The country has recently applied for World Trade Organisation (WTO) membership, which has been accepted, and is preparing for the forthcoming negotiations.

However, there are still areas where strong and strict regulations and control are imposed, like land and nationalised urban houses, which are still under state ownership.

Competition Policy

Following the liberalisation measures, and as groundwork for the WTO accession, the Ethiopian government issued a Trade Practice Proclamation (No. 329/2002), in April 2002, and which was announced on April 17, 2003 under proclamation No. 329/2003, to promote competition in the domestic markets. Its major objective was to secure a fair competitive process through the prevention and elimination of anticompetitive and unfair trade practices, and safeguarding the interests of consumers, through the prevention and elimination of any restraints on the efficient supply and distribution of goods and services.

Consumer Protection

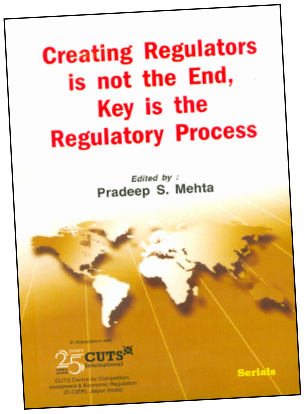
Ethiopia does not have a consumer protection law in a consolidated form. This does not mean that there is no consumer related legislation at all. Consumer protection legislation in Ethiopia can be seen as a mix of various legal provisions taken from different branches of the country's legal system.

Future Scenario

Legal interpretations and literature develop in the due course of implementation of a given proclamation. Loopholes, ambiguities, inconsistencies with other laws and legal principle may not be identified unless the new law is subjected to judicial exercise. Moreover, there is a general lack of awareness about the existence of this proclamation. It is, therefore, felt that further research is required to outline a strategy to consolidate the competition regime in the country. Proper monitoring and follow-up of the implementation process of the legislation is imperative to ensure that consumer rights are protected in the effort of maximising economic efficiency, in the country.

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

Creating Regulators is not the End, Key is the Regulatory Process



Creating Regulators is not the End, Key is the Regulatory Process is being released at a time when the world is with a financial crisis triggered, atleast partially, by regulatory batting failures. This lesson which has been learnt from real world events is also echoed through this report – establishment of regulatory commissions is not enough, effective implementation is not enough, effective implementation is equally important.

This report focuses on the regulatory process and examines how regulation actually works in a cross-section of developing countries that have taken significant step towards liberalization and commercialization. There is a commendably wide rage of seven countries from Asia and Africa, and regulated sectors including telecoms, energy, water, transport and financial services.

It encompasses many aspects of the regulatory framework: extent of industry restructuring; nature of the regulatory mandate; appointment and governance; regulatory resources; the decision making process and the networks and network access; accountability and appeals; and enforcement and government intervention.

This report will be interest to almost the entire spectrum of professionals connected to regulations or its use: academicians, researchers, practioners, policy makers and members of various regulatory commissions apart from the interested layman.

http://www.serialspublications.com/bookdetails.asp?bookid=447&title=Creating+Regulators+is+not+the+End,+Key+is+the+Regulatory+Process

The Relationship between Competition and Investment

One area that has generated debate is whether a market in which firms are subjected to conditions of competition would result in more investment compared to a market under a monopoly. The debate has also found its way into the realm of competition law reforms, which are generally intended to instil competition into the markets.

This viewpoint paper summarises the two main arguments that are put forward in supporting either competition or monopoly characteristics as tools for attracting investment. It also makes an attempt at reconciling these arguments.

http://www.cuts-ccier.org/pdf/Viewpoint-The_Relationship_between_Competition_and_Investment.pdf

Linkages between Informality, Competition and Economic Growth

The large informal economy continues to exist in many developing countries. A problem may exist with inadequacy of capturing different channels of growth stemming from this sector. Though evidence of a direct positive relationship between informality and growth may be largely absent in the literature, the informal sector may have growth implications through indirect channels such as the level of competition in the economy.

This viewpoint paper presents an argument as to how the informal sector may impact economic growth by altering the degree of competition.

http://www.cuts-ccier.org/pdf/Viewpoint-Linkages_between_Informality_Competition_and_Economic_Growth.pdf

Sources

ACCC: Australia Competition and Consumer Commission; AFP: Agence France Presse; BD: Business Daily; BL: The Hindu Business Line; BR: Business Respect; BS: Business Standard; EC: European Commission; ET: Economic Times; FE: Financial Express; FT: Financial Times; GAW: Global Antitrust Weekly; GN: Ghana News; GTA: Global Trade Alert; IE: Indian Express; ILO: International Law Office; JFTC: Japan Fair Trade Commission; MB: My Broadband; OFT: Office of Fair Trading; WSJ: Wall Street Journal

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