REGULETTER

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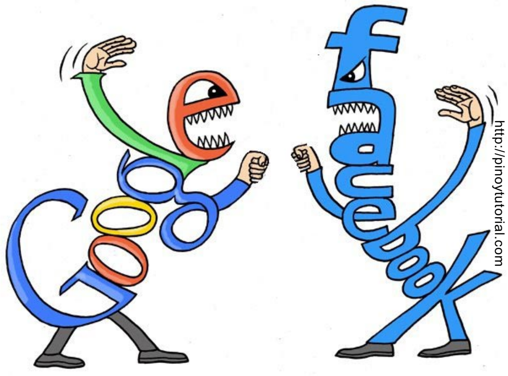
Google & Facebook
Competition Concerns to Watch Out for!!

Inside this Issue

Special Articles

The information age which has been ushered in by the advent of the personal computer in the latter half of the last century has transformed the way we work, live, socialise and play. With the turn of the millennium, this tendency has got further strengthened with the advent of search engines, social networking sites, smartphones on which everyone and everything is reachable anywhere. As a result of these technological changes, profound changes are taking place in lifestyles and the world is becoming truly multicultural, multipolar and multiplural which is of course a very welcome trend.



Globally, in the last 15 odd years, one of the great improvements in public policy has been the adoption of competition laws in a very large number of countries. This reflects an increasing consensus which happily follows hard upon the heels of the major upheavals in the world of the collapse of the Soviet Union, the dismantling of the state apparatus in the former East bloc countries and the subsequent adoption of market friendly policies, to a lesser or greater extent, by a very large percentage of the world's population.

Against this backdrop, the present investigations of Google are taking place the world over, especially so in advanced Western economies, the US, in the EU, in several competition jurisdictions. Similarly, Consumer Watchdog, a US-based consumer organisation has filed a complaint to the Federal Trade Commission (FTC) urging action against Facebook for a potential abuse of dominance. Such financially powerful corporations who have a strong presence in India where there is a relatively weak competition enforcement regime can easily evade detection for years as also have a distorting effect on the relevant and related markets in India. In this context, CUTS has recently filed two Preliminary Information Reports (PIRs) with the Competition Commission of India (CCI) urging them to investigate the activities of Facebook and more recently Google with reference to related relevant markets in India.

Regarding the former, there are possibilities that in its use of Facebook Credits, Facebook is undertaking an abuse of dominance in the market for virtual goods in social gaming. Also, the PIR has urged the authorities to investigate its unique agreements with Zynga, the world's largest developer of social games. With Google, CUTS concern is threefold, namely its dominant share in the search engine and hence online advertising market, its purchase of several companies using various kinds of technologies related to the internet and related advertising and e-commerce markets and also its potential crowding of the patent space. The PIR also marks an innovation in legal process, a new instrument created by CUTS analogous to the FIR which allows the CCI to investigate a potential anticompetitive abuse without obliging them to do so.

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

More Teeth to Antitrust Agency

Richard Bruton, Ireland's Minister for Jobs, Enterprise and Innovation published the country's new competition bill. The new bill has increased the authority's power.

Key changes that will bolster the Competition Authority's enforcement power include doubling criminal convictions for anti-competitive practices from five to 10 years. Additional new legislation allows for interim relief and injunctions, adds provisions for convicted parties bearing the costs of court cases and investigations, and lessens the burden of proof for victims pursuing private enforcement actions.

The Competition (Amendment) Act 2011 is tailored to fulfil Ireland's commitments to the European Commission and International Monetary Fund as agreed in its memorandum of understanding, in return for financial support. *(www.congoo.com, 29.09.11)*

Positive Effects on Business

Romania's new competition law that came into effect introduces various amendments that generate positive impacts on the business community, yet there are still some provisions that should be better clarified.

The possibility extended by the Competition Council to issue recommendations for good practice or guidelines is important support to businesses. They are not mandatory and may not be used in courts. Yet, they spell out what the rules of the game are and if a company is responsible, it will take the advice into account. If there is the possibility of the Competition Council saying how an industry should behave in terms of competition, the companies will have an easier time getting in line.

(www.kinstellar.com, July 2011)

Brazil Passes New Antitrust Bill

Brazil's Congress approved the country's new competition law. Brazil's Council for Economic Defence (CADE) and Secretariat of Economic Law (SDE) will be merged into one authority. The Secretariat for Economic Monitoring will remain, although its focus on competition advocacy and its merger review responsibilities will transfer to the new CADE authority.

The most significant change in the bill is the new pre-notification system for mergers, which will significantly alter the way deals are forged in Brazil. In each case, CADE will have 330 days to complete its merger review. The authority will also be able to examine mergers below the threshold within one year of their completion.

(www.latinlawyer.com, 06.10.11)

Merger Control Legislation on Anvil

Ecuador is on the verge of enacting a competition law after the country's National Assembly approved a draft bill. The bill introduces merger control legislation in Ecuador, as well as behavioural penalties for cartels and abuse of dominance.

Companies can be fined up to 12 percent of their 2010's revenue, and this can be doubled in cases of recidivism. Criminal penalties and imprisonment of individuals are also included in the law.

It is essential that the appointed enforcement authority is independent, otherwise the strong legal powers it has been granted could be used to promote corporate policies rather than free market economics and consumer choice. *(www.latinlawyer.com, 06.10.11)*

Finland Expects New Law

After being accepted by the new Finnish government, the President approved the bill and the new act will come into force in November 2011. The new legislation aims to bring Finland's competition policy in line with the European Commission's, and it will increase the authority's powers in carrying out competition enforcement.

Changes include adopting the commission's merger control test, which assesses whether there is a significant impediment of effective competition (SIEC) in the affected market, rather than just assessing dominance.

The authority will also be allowed to perform dawn raids at private premises and have the power to prioritise cases. *(GCR, 18.08.11)*

Competition, a Basic Element

Korea's Federal Trade Commission (KFTC) is marking the 30th anniversary of the passage of the Monopoly Regulation and Fair Trade Act.

The KFTC's achievements in enforcing competition law have been "remarkable"; the commission turned around an economy characterised by cartels and abuse of market dominance. The enactment of the act triggered a paradigm shift in the Korea's economy, from government-led economic development to market and competition-oriented management, leading to changes in economic and social mechanisms.

The law also contributed to emphasising the importance of competition as a basic element of a free market economy. *(GCR, 02.08.11)*

Merger Control in Spotlight

Russia's State Duma is considering a new package of amendments to the country's competition law, which includes reduced controls on foreign-to-foreign mergers. If the amendments to the third antimonopoly package are passed, only foreign-to-foreign transactions where a target company has sales in Russia exceeding one billion roubles in 2010 will have to be notified to the Federal Antimonopoly Service (FAS).

The amendments will help to increase the efficiency of Russia's merger control regime. They will bring further clarity to filing requirements, significantly liberalise them as far as foreign-to-foreign deals are concerned and will make the life of both foreign companies and the FAS easier.

The aim of the amendments is to exclude restrictions on companies, allowing the service to focus companies and activity that restricts or distorts competition within the Russian market. *(GCR, 01.09.11)*

Kenya Must Enforce Competition Law

– Joseph Kieyah*

While the intentions of price control policy are good, its implementation may adversely affect the very venerable Kenyans it purports to protect. Without guaranteeing the supply of essential commodities, imposing arbitrary price control will lead to shortage and unemployment.

As the saying goes, it is the wearer of the shoe who knows where it pinches most. Analogously, market economies like ours are dedicated to the principle that people are the best judges of their problem, and as such should be responsible for their own welfare. Further, they should make voluntary exchange of goods and services. If all exchanges occur at competitive prices, society as a whole will be wealthier than if some occur at controlled prices.

The most important rule governing price is the law of supply and demand. Price setting in any market is a function of the availability of the product in question and the amount the consumers are willing to pay.

Intuitively, most consumers prefer purchasing goods at the lowest price possible, while sellers prefer selling at a price that will give them the highest possible profits. Such interaction between sellers and consumer leads to a point of equilibrium where the amount of goods that consumers want to buy at the set price equals the amount that the sellers supply to the market.

Price control policy would be justifiable if such controlled prices mimic the market prices. However, achieving such a noble objective would be an insurmountable task for the government because it lacks adequate market information on the demand and supply of the goods in question. Such information is privately held by the consumers and sellers.

The government is thus likely to set controlled prices below the market prices where the consumers demand more of the good than the sellers can provide. The sellers will likely cut their production and deploy the residual resources elsewhere where the return is higher leading to shortages and unemployment. On the other hand, controlled price that is below the market price is likely to generate excess demand given that consumers tend to demand more when prices decrease.

One important consideration that is conspicuously missing in the debate is the cost of implementing such a policy on price control. An immediate short term solution to deal with the problem of escalating prices of essential commodities is to adopt a less disruptive programme like targeted social benefits.

The long-term strategy is to devote adequate resource to enforce the competition law. Enforcement of the Competition Act is likely to produce benefits for consumers and sellers. Controlling anti-competitive practices that prevalent in most commodities markets will yield quantifiable benefits to the consumers in form of low prices.

Dismantling anti-competitive practices will benefit firms especially the small and medium sized enterprises (SMEs). More importantly, institutionalising compliance of Competition Act will form part of the long-term policy strategy of manipulating the aggregate supply side to stir economic growth with low commodity prices in general.

* *Principal Analyst at Kenya Institute for Public Policy Research and Analysis (KIPPRA). The article appeared in the* Business Daily*, on September 21, 2011.*

A Healthy Debate on NGOs Intervention in Competition Issues

In a landmark ruling, South Africa's Competition Tribunal has allowed NGOs' intervention in the merger proceedings between Du Pont seed subsidiary Pioneer Hi-Bred and South African competitor Pannar Seed. The merger between both the companies was blocked in 2010 on the grounds of restricting competition in the maize market. NGO's are allowed to intervene on the issues related to consumer choice, pricing, availability, increased barriers to entry and the public interest. Whether NGOs be granted competition intervention or not? Comments from various people were invited on this very crucial and hot topic through the FunComp e-forum and are summarised below:*

CUTS is of the view that Section 36 of the Indian Competition Act 2002 should be amended to include institutions such as NGO's, etc., in addition to experts. **Sankar,** Executive Director, Empower India endorse the suggestion of CUTS.

Somasekhar Sundaresan, Partner, J Sagar Associates begs to differ. For an NGO to intervene in a merger proceeding, the NGO should be one that can demonstrate that it has a stakeholder interest that would be impacted in a material manner by the merger.

Ken Davidson, Senior Fellow, American Antitrust Institute opined that the issue of "intervention" should focus on making sure that competition agencies pay attention to relevant information which may come from NGOs, competitors, customers, suppliers, etc.

Mukul G Asher, Professor of Public Policy, National University of Singapore is not in favour of granting granting NGOs more powers and rights without accountability, transparency, and above all a sense of self-restraint will be counter-productive in the Indian context. While agreeing with Mukul, **Dinesh Mathur**, Partner, Dua Associates says that India is not ready to give a right of intervention to NGOs.

In response to Mathur's comments, **S L Rao** opined that we do not need a separate body to look at NGO's; or, we must abolish existing ones and introduce one with teeth. This was a red herring introduced by the brilliant legal minds in the government to frighten the frontmen of Anna Hazare's movement.

M K Venu, Managing Editor, *Financial Express* said that 80 percent of Indian NGOs can be described as non-government operators and roughly 20 percent of them do good work. **Pradeep S Mehta**, Secretary General, CUTS disagreeing to Venu said that this is an uncharitable and undesirable comment coming from a respected media person. One cannot and should not use a paint brush to paint all black.

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Michael Gaweseb, NANGOF Trust Council member and Economic & Social Justice Sector Chairperson stated that in many countries consumer groups and relevant CSOs are consulted by the competition authority.

In **Kris Dev's** opinion, there is a need of transparency laws for every individual and organisation the world over. **Jyoti Parikh**, Executive Director, Integrated Research and Action for Development (IRADe) rather than saying "they (NGOs) are not ready", checks and balances already designed should be enforced and new ones may have to be added. **Prasanna Srinivasan,** Secretary, Federation of Karnataka Chambers of Commerce and Industry (FKCCI) questioned, why do NGOs need any special dispensation other than what they already get as citizens? Any citizen, including forums such as NGOs, should be able to put in a case to the commission to review.

Manas Chaudhari, Partner, Khaitan & Co. opined that there are sufficient enabling provisions which could provide opportunities to NGOs to take part in the proceedings before the Competition Commission of India, in case it is aggrieved. As such, no amendment of the Act is required.

Bipul Chatterjee, Deputy Executive Director, CUTS stated that competition agencies should be proactive in engaging NGOs in their work so that not only there can be better political buy-in for competition reforms but also consumer and political economy interests will get upfronted in their work.

* *A platform to exchange and communicate news and views, focussing on Competition & Economic Regulation in India. For subscription, mail at: FunCompForum-subscribe@yahoogroups.com*

ABUSE OF DOMINANCE

EU's Probe in Exchanges Merger

The EU's competition regulator deepened its probe into the planned takeover of NYSE Euronext by Deutsche Boerse, citing concerns over the combined exchange's weight in derivatives trading and clearing.

The US$10bn takeover would create the world's largest exchange, which would not only control important stock markets on both sides of the Atlantic, but also have a potentially dominant position in the trading of derivatives.

Deutsche Boerse said the Commission's decision "was fully anticipated and does not in any way prejudge or prejudice the ultimate outcome." The merger would combine Europe's two largest derivatives markets, Deutsche Boerse's Eurex and NYSE's Liffe. *(FT, 05.08.11)*

CFC Upholds Telmex Ruling

Mexico's Federal Competition Commission (CFC) confirmed its earlier findings that telecoms heavy weight Telmex is dominant in the market for fixed line phone calls.

The Commission began its investigation of Telmex's fixed-line operations in 2008. It released a report in 2009 saying that Telmex wields too much market power in the country and that it was the dominant player for local calls and leasing capacity.

Telmex, owned by the world's richest man, Carlos Slim, is the largest fixed-line telecoms company in Latin America and controls around 85 percent of the fixed phone lines in Mexico. *(GCR, 05.09.11)*

Spain Fines Postal Incumbent

Spain's National Competition Commission fined the country's incumbent postal operator, Correos, US$6.34mn for failing to implement a commitment in an abuse of dominance settlement. Under the agreement, Correos promised to ensure that its prices covered the costs of providing services once the discounts had been applied.

In 2010, the authority's investigations division discovered that Correos may not be fulfilling its obligation in 32 contracts it had with large clients in 2008, and 33 contracts in 2009. The Commission began investigating the case in February 2011. *(GCR, 30.08.11)*

BSkyB's Dominance Challenged

BSkyB is the UK's leading pay-TV provider. The UK Competition Commission says BSkyB's rivals have not been able to compete effectively for pay-TV movie subscribers because of BSkyB's long-running purchase of the exclusive rights to the recent movies of all six major Hollywood film studios.

The Commission says because of BSkyB's large subscriber base, and incumbency in the pay-TV market, competitors cannot successfully challenge BSkyB for the pay-TV film rights. As a result, consumers are paying more than they should for BSkyB's Sky Movies channels.

It also examined the influence of new technological developments in the market, such as internet movie distribution services, but says it has "not seen evidence that these are likely to diminish Sky's bidding advantages to any meaningful degree in the foreseeable future." *(GCR, 19.08.11)*

India Slaps Penalty on DLF

The Competition Commission of India (CCI) has fined DLF, the country's largest real estate developer, US$127mn for abusing its dominance in two construction projects. The fine is the largest the Commission has ever issued, and only the second related to abuse of dominance.

The CCI opened an investigation of DLF in 2008 after receiving a complaint from real estate association Belaire Owner's Association (BOA). DLF was contracted to build a new apartment block for BOA on the outskirts of New Delhi. Under the agreement the building was to have 19 floors and be built in 36 months.

BOA alleged that DLF then changed the terms of the agreement by building 29 floors, which delayed the project. Under the terms of its agreement with BOA, DLF could make the changes without informing BOA or consumers, or requiring their consent. *(GCR, 17.08.11)*

BMW and Volkswagen in Spotlight

More than US$141m of investment aid to two of Germany's biggest carmakers – BMW and Volkswagen – is to be investigated by Brussels to see whether it complies with EU rules. The project involves the manufacture of two models of electric passenger cars – the "i3" Mega City Vehicle, which is a battery-driven electric car designed for urban use, and an "i8" sport model, which is a hybrid car using a mixture of a combustion engine and electric propulsion.

This is the first investigation of regional investment aid for electric cars. EU officials said that, while they realised the importance of the project from an environmental and energy perspective, they needed to assess how it fell within guidelines for large investment projects. Relevant issues will include whether the electric cars can be viewed as "new products" and whether the market is global or European. *(FT, 13.07.11)*

Watchmakers Face EU Scrutiny

The European Union (EU) antitrust regulators are to investigate an allegation that several luxury watchmakers breached EU rules by refusing to supply spare parts to independent repairers. The European Commission (EC) did not identify the companies but Switzerland's Swatch Group, the world's largest watchmaker, confirmed it was involved in the probe.

The Telegraph

The EC had thrown out the complaint brought by the European Confederation of Watch & Clock Repairers' Associations (CEAHR) three years ago, but CEAHR appealed to the Luxembourg-based General Court, which annulled the decision in December 2010. *(TT, 06.08.11)*

CARTELS

Milk Price Sparks FTC Inquiry

Taiwan's Fair Trade Commission is investigating suspected cartel behaviour in the market for processed dairy products following government-planned price hikes on raw milk. The dairy companies were planning to raise the price of a litre of milk by up to 27 percent, while other dairy products will go up by between 6 and 14 percent.

The reports follow recommended price rises on raw milk by Taiwan's National Industry Animal Foundation. The foundation has a statutory requirement to occasionally review and propose raw milk purchase prices to the government as a measure to protect Taiwanese dairy farmers.

The Commission is concerned that Taiwan's large dairy companies are using the legal price changes on raw milk as a cover for illegal price-fixing agreements on processed dairy products. *(GCR, 27.09.11)*

Brazil Faces Individual Sanctions

Brazil's Secretariat of Economic Law (SDE) wants to increase sentences for individuals convicted of cartel offences to equal those levied for offences such as robbery. The proposed amendments to the country's cartel laws are due to go before Congress for approval.

Under the suggested amendments, sentences for cartel offences would increase from between two and five years, to up to eight years in prison. Individuals would also face fines of between 10 and 50 percent of the penalty imposed on their company. The current legislation only allows for imprisonment or a fine, but not both.

The bill also proposes double damages in private lawsuits against cartel members to help boost private enforcement. *(GCR, 26.09.11)*

CFC Slams Job Agencies

Singapore's Competition Commission (CFC) has fined 16 employment agencies US$120909 for colluding to fix the price of workers' salaries. The Commission found the agencies had met to "collectively fix the monthly salaries of new Indonesian domestic workers in Singapore, with the object of restricting competition".

The workers are primarily housemaids, and the companies colluded to increase their wages from US$300-US$356 per month. Nation Employment was issued the highest fine of US$33352, followed by Crislo Employment Agency and JPB International Services, which were fined US$9727 and US$9448 respectively. The remaining 13 agencies were all fined less than US$7919. *(GCR, 30.09.11)*

Germany Cuts through Wood Cartel

Germany's Federal Cartel Office fined four wood manufacturers a total of US$58mn for an alleged price-fixing conspiracy. Among the companies was Pfleiderer, which is seeking damages in a separate cartel case in the decorating paper market.

Global Competition Review

The German authority also imposed administrative fines on company executives who had taken part in the cartel. The companies had agreed prices for many years, damaging competition in the market for particleboard, wafer board and other engineered wood product

The cartel office refused to provide full access to the leniency application and Pfleiderer took the matter to a local court in Bonn. The court referred the matter to the European Court of Justice, seeking clarity over EU law on access to documents in competition law cases. Pfleiderer and the other wood cartel companies may appeal against the fines. *(GCR, 21.09.11)*

Hitachi-LG to Admit Price-fixing

The US Department of Justice announced that Hitachi-LG Data Storage Inc. will plead guilty and pay a US$21.1mn criminal fine for its role in bid-rigging and price-fixing conspiracies involving the sale of optical disk drives to some of the largest computer and software firms in the US.

The deal will settle 15 felony charges filed against the firm, a joint venture of Hitachi and LG Electronics. Among the victims of the scheme were Dell, Hewlett-Packard and Microsoft. The bid-rigging and price-fixing conspiracies involving optical disk drives undermined competition and innovation in the high tech industry. *(www.foxbusiness.com, 30.09.11)*

Contractor Guilty in Bid-rigging

A Quebec construction contractor has been fined by the Competition Bureau of Canada after pleading guilty to bid-rigging. Les Entreprises Promécanic Ltée pleaded guilty in Quebec Superior Court to three criminal charges of rigging bids on three calls for tenders issued by general contractors to install ventilation systems.

According to the Bureau, Promécanic admitted that it had secretly participated in the coordination of its bids with competitors to pre-determine the winners of private-sector ventilation contracts for residential highrise buildings in the Montreal area. *(www.cbc.ca., 19.07.11)*

Cleaning Cartel Investigated

Austria's Competition Authority has brought a case before the country's Cartel Court alleging collusion between two companies in the cleaning supplies market. The probe was initiated following a leniency application by one of the companies in early 2011.

The matter continues the authority's recent record of stepping up its enforcement against cartels.

The authority has not confirmed which companies are under investigation. The claim primarily relates to the rental and cleaning of laundry facilities to the health sector, as well as the cleaning of work clothing and other work-related textiles in several industries. *(GCR, 24.08.11)*

FINES & PENALTIES

Comply with Rules & Avoid Fines

The Swedish Competition Authority submitted two applications for procurement fines to administrative courts. The applications relate to cases where it is mandatory for the Swedish Competition Authority to apply for procurement fine.

The applications are the first mandatory applications that the Swedish Competition Authority has filed. The rule on mandatory applications for procurement fines was introduced in 2010 in conjunction with other changes to the procurement legislation.

The aim of the rule is first of all to persuade contracting authorities to respect the stipulated standstill period, and second, to counteract the illegal direct award of contracts.

(www.kkv.se, 06.10.11)

Russia Focussing on Power Sector

Russia's Federal Antimonopoly Service (FAS) has fined a local electricity company US$59,976 for impeding access to its infrastructure. Tyumenenergo, which serves the Tyumen region, allegedly imposed unfair conditions on a competitor, Suenko, when it tried to connect to Tyumenenergo's electricity infrastructure.

Suenko complained to the regional branch of the FAS because it was obliged to sign an agreement allowing Tyumenenergo to postpone the connection date for any period it saw fit. The power sector is one of the FAS's priority enforcement areas, along with food, medicine, petroleum products and construction. *(GCR, 15.08.11)*

Diagnostic Imaging Cos. Accused

Italy's Antitrust Authority has fined four makers of magnetic resonance equipment US$7.57mn for bid rigging. The authority says Toshiba Medical Systems, Philips, Siemens and Alliance Medical conspired to control the supply of medical machinery used for diagnostic imaging to a health authority. The equipment is used in procedures such as MRI scans.

The authority claims the companies met to draw up a joint agreement to ensure the contract was shared out. Siemens and Alliance agreed to jointly supply three machines, while Alliance subcontracted Philips and Toshiba to provide the remaining four machines for rental. The authority says the fines account for around 68 percent of the companies' national sales.

(GCR, 10.08.11)

Greece Fines Gas Monopolies

Greece's Competition Commission has ordered the Gas Supply Company of Thessaloniki (EPA Thessaloniki) and the Gas Supply Company of Thessaly (EPA Thessalia) to stop their anti-competitive practices – or face daily charges of US$6889.

The Commission fined the companies a total of US$855,520 for abusing their dominant position in the natural gas installation market by failing to offer certain kinds of pipe for indoor gas fittings. Additional fines were imposed on EPA Thessaloniki for not responding in time to the commission's information requests and on EPA Thessalia for providing incomplete information to the commission. *(GCR, 12.09.11)*

Jersey Issues Record Fine

Jersey's Competition Regulatory Authority (JCRA) fined investor Brookfield Asset Management US$140632 for failing to notify its acquisition of Prime Infrastructure. It is the highest fine the JCRA has issued to date.

Prime Infrastructure is the parent company of both Jersey Gas and fuel company Kosangas. Jersey Gas has a 40 percent share of the market. Canada's Brookfield made the purchase in December 2010, but did not notify the deal despite its meeting Jersey's merger thresholds. The authority says the relatively high fine was justified because it "wanted to remind the local business community in particular that compliance with the law was vital."

(GCR, 08.07.11)

CCP takes Action in Cooking Oil

Pakistan's Competition Commission (CCP) fined a trade association €408,000 for playing a "significant role" in price fixing on the cooking oil market. The Commission ruled that the Pakistan Vanaspati Manufacturers Association (PVMA) held meetings to discuss fixing prices, and distributed the information to its members so they could jointly increase their prices.

The CCP issued a show-cause-notice to PVMA in April 2011, after carrying out dawn raids. In its judgment, the Commission says the price of cooking oil increased four times in four months.

The PVMA was also found to be discriminating against non-members by charging them more for cooking oil products than its members.

(DT, 07.07.11)

CNC Fines Telecinco

Spain's National Competition Commission has fined free-to-air broadcaster Telecinco US$5mn for breaching an obligation linked to its purchase of rival television channel Cuatro.

The Commission issued the fine because Telecinco failed to submit an action plan detailing how it would initiate the commitments agreed during the Commission's review of the deal.

The deal was conditionally approved in November 2010, after an in-depth investigation by the Commission. It was concerned that the tie-up could lead to competition distortions in the advertising and programme content sectors of the broadcast market. The Commission said in July 2010 that the companies could "lose all incentive to continue to compete" should the merger go ahead.

(www.telecinco.es, 03.08.11)

Qantas-American Deal Takes Off

The Australian Competition and Consumer Commission (ACCC) provisionally cleared Qantas and American Airlines to enter into a joint business agreement on flights between Australia and the US.

Under the agreement, the airlines will coordinate their sales and marketing operations on the routes between Australia and New Zealand and the US. American Airlines and Qantas already code share on flights to 54 destinations in the Americas – a practice whereby they are entitled to sell seats on one another's flights.

Qantas and American Airlines say the venture will result in new products, lower fares and efficiency savings.Scope for further ventures will depend on existing alliances and whether there is current competition on the routes in question. *(GCR, 23.08.11)*

Volvo and Siemens Forge Alliance

Volvo, the Swedish carmaker owned by China's Geely, has formed a partnership with Siemens, the German engineering group, to develop electric cars and the equipment needed to run them.

Siemens and Volvo would work together on developing electric motors, inverters, and charging elements for electric cars, as well as charging infrastructure and software to manage the cars' motors. The two companies plan to integrate the technology initially into an electric version of Volvo's small C30 hatchback, which the Swedish carmaker will begin producing in small volumes in 2011.

Volvo will deliver up to 200 vehicles to Siemens for internal testing by the end of 2012. *(FT, 01.09.11)*

Cheung Kong to Buy UK Utility

Cheung Kong Infrastructure (CKI), controlled by Hong Kong-based tycoon Li Ka-shing, is to buy Northumbrian Water – the largest takeover of a UK publicly listed company since Kraft snapped up Cadbury in 2010.

Northumbrian, which serves 2.6 million people in the north-east of England, will be incorporated into the newly created company UK Water, wholly owned by a consortium within the CKI group.

The offer represents an attractive premium to both the regulated capital value of Northumbrian Water and the company's share price before recent speculation began. Whilst Northumbrian would have a strong future as an independent company, the consortium's offer to Northumbrian shareholders fairly values the current and future prospects of the company. *(FT, 03.08.11)*

Canada Bank bids for MBNA

Canada's Toronto-Dominion (TD) Bank Group has offered US$8.56bn for Bank of America's Canada-based credit card business, MBNA Canada Bank. The deal would make TD Bank Canada's largest MasterCard issuer. The parties expect the transaction to close early in 2012.

Canada's Minister of Finance has the final say on mergers between financial institutions. The minister will decide after receiving reports from Canada's Competition Bureau and the Office of the Superintendent of Financial Institutions.

Bank of America says in a statement that it wishes to leave the credit card market. MBNA agreed earlier in August to sell its Spain-based card business to Apollo Capital Management, and is also exiting the credit card market in the UK and Ireland. *(GCR, 30.08.11)*

Kirin's Stake in Brazil's Brewer

Kirin, the Japanese brewer, is paying US$2.5bn for a controlling stake in Schincariol Group, Brazil's straggling number two beer maker. The transaction is the latest in a string of acquisitions by Kirin, which is counting on growth overseas as it struggles with years of deflation and an aging population in its home market.

The deal will give Kirin access to Brazil's rising middle class with its increasing beer consumption. The country's beer and soft drink markets each have annual sales of US$38.7bn, making Brazilians the biggest beer drinkers after the Chinese and Americans.

The acquisition will pit Kirin against Anheuser-Busch InBev, the world's biggest brewer, in its own backyard. *(FT, 03.08.11)*

Coal & Gas Tie-up

Arrow Energy has made a US$540mn bid to acquire Brisbane-based rival Bow Energy. Arrow is taking competition advice from partner Peter Armitage at Blake Dawson. The firm declined to say if the transaction would require approval from the Australian Competition & Consumer Commission (ACCC).

Both companies are active in the coal seam gas markets. Arrow is an Australian joint venture owned by Shell and PetroChina – they bought the company for US$3.44bn in March 2010. Arrow and Bow both extract coal-bed methane in the Gladstone and Brisbane regions.

Bow was a subsidiary of Arrow until 2005, when Arrow announced it wanted to focus on developing its coal seam gas exploration and production in Queensland. Arrow is now seeking to enhance its liquefied natural gas (LNG) plant in Queensland, where Bow has eight coal seam gas operations. Arrow is also currently developing an LNG plant on Curtis Island in eastern Queensland. *(GCR, 25.08.11)*

Time Warner Cable Seals Insight

Time Warner Cable, the second-largest cable operator in the US announced the purchase of Insight Communications for US$3bn in cash. The deal is Time Warner Cable's first big acquisition since its 2009 spin-off from Time Warner and a fresh sign of consolidation for the cable business.

Insight Communications, owned by private equity firm Carlyle Group, has been for sale for several months. Carlyle had hoped the group, which provides television, internet and phone services to about 750,000 customers in Ohio, Indiana and Kentucky, would fetch between US$3.5bn and US$4bn. *(FT, 16.08.11)*

Supermarket Merger gets go-ahead

After an in-depth inquiry, Ireland's Competition Authority has cleared supermarket chain Musgrave's buyout of rival Superquinn without conditions. The deal would not harm competition in the supermarket sector.

Musgrave focuses on the wholesale distribution of grocery and food products. In Ireland, it supplies a network of independent retailers that include Supervalu and Daybreak and operates seven of its own cash and carry outlets.

Superquinn is a grocery retailer with 24 shops, including supermarkets and convenience stores, across Ireland. The authority was concerned that the merged entity would drive up prices for consumers, discourage new competitors from entering the market or use its new weight to force better terms from suppliers, which could, in turn, drive them to discriminate against smaller retailers. *(GCR, 29.09.11)*

Greencore Agrees Uniq Takeover

Convenience food company Greencore has announced a £113 million offer to purchase rival Uniq, subject to competition approval. Eversheds LLP is representing Greencore in the deal, while Uniq has enlisted Slaughter and May as competition counsel.

The convenience food sector supplies packaged food and related products to supermarkets and other retailers. Dublin-based Greencore operates 20 facilities in the UK, US and Ireland. England's Uniq has four production sites across the UK and specialises in chilled foods.

Greencore says the deal will complete subject to approval by the UK's OFT and Ireland's Competition Authority, most likely in September 2012. *(FT, 12.07.11)*

Caterpillar/Bucyrus gets Nod

China's Ministry of Commerce (Mofcom) has approved the merger between engineering equipment companies Caterpillar and Bucyrus. Caterpillar and Bucyrus both supply surface and underground mining machines. The US$8.8bn merger will create the world's largest mining equipment manufacturer.

Caterpillar says the Chinese clearance is "the last major regulatory requirement needed for the acquisition to be completed". Mofcom's decision follows the US Department of Justice's antitrust division's clearance of the deal in May 2011.

Both the EC and the ACCC cleared the transaction unconditionally. Caterpillar says the deal is expected to close shortly. *(www.iolaw.org.cn, 27.07.11)*

Vanguard/Encore Announce Tie-up

Oil and gas producer Vanguard Natural Resources is acquiring rival Encore Energy Partners for US$544mn. Vanguard already owns 46 percent of Encore, which it bought in November 2010 from Denbury Resources for US$380mn. Encore produces oil and gas in several locations across the US.

Texas-based Vanguard has retained Vinson & Elkins LLP as antitrust counsel; Bracewell & Giuliani is handling the transaction for Encore.The deal will likely be scrutinised by the US Department of Justice.

Vanguard says the deal with "expand [its] geographic reach and diversification", which should improve its ability "to compete more aggressively for future acquisitions". *(http://fuelfix.com, 11.07.11)*

Cargill Beefs up Animal Nutrition

Cargill, the American agricultural giant planned to buy a Dutch animal nutrition company, Provimi, for US$2.1bn from the private equity firm Permira. One of the largest privately held companies in the world, Cargill said it made a binding offer for Provimi, which specialises in nutrition and supplements for farm animals, for US$ 2.07bn to add vitamin mixtures and additives to its existing animal nutrition business.

It would also help Cargill expand in Latin America, Russia and Asia, where Provimi operates. The deal comes as food prices increase and demand for meat from developing economies rises. *(http://dealbook.nytimes.com, 15.08.11)*

Bottling Venture gets Green Light

Mexico's Federal Competition Commission has cleared the bottling joint venture between drinks companies PepsiCo, Grupo Embotelladoras Unidas (Geupec) and Empresas Polar.

The venture will combine PepsiCo's drink manufacturing and distribution operations in Mexico with those of Guesa – the other bottler of the Pepsi brand in Mexico and a subsidiary of Geupec. Empresas Polar, the largest food and drink company in Venezuela and a bottler of Pepsi-Cola in that country, will also have an equity stake in the joint venture.

The deal makes the group the only manufacturers and distributors of all PepsiCo and Guesa brands of carbonated and non-carbonated drinks in Mexico with 950,000 points-of-sale in the country. *(www.latinlawyer.com, 16.09.11)*

Google to Acquire Motorola Mobility

Google Inc, maker of the Android mobile-phone software, agreed to buy mobile-phone maker Motorola Mobility Holdings Inc for US$12.5bn, gaining wireless patents and entering the hardware business in its biggest deal.

Google, whose Android software runs mobile phones made by Motorola Mobility and companies such as Samsung Electronics Co, gains patents it needs to compete against Apple Inc's iPhone. The deal - the largest wireless equipment deal in at least a decade also makes Google a competitor to most of the handset makers that use Android.

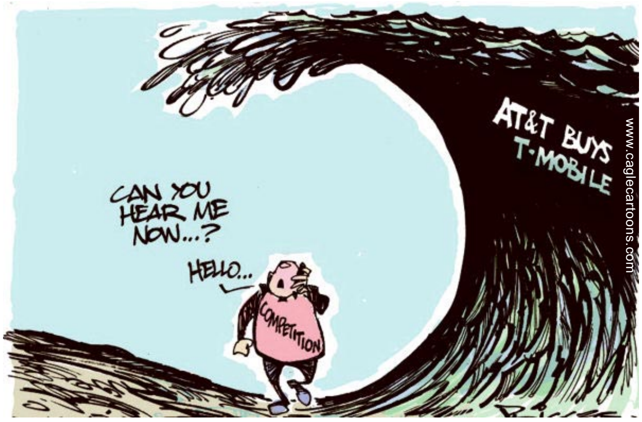
This combination will enable to break new ground for the Android ecosystem. Android, which Google gives away for free, will remain available to other manufacturers. *(BS, 30.08.11)*

Who's Afraid of the AT&T Merger?

– Michael Lind*

American antitrust law is a relic of 19th century agrarian populism

Recently, during a visit to a national park, I found that I could not use my cellphone to communicate with the friend who had accompanied me. A park ranger was kind enough to explain that calls in the park could not be made by those of us who pay my particular private wireless carrier, but phones using the services of other companies worked. I used the park's land line to call my friend, thinking grimly: This does not happen in countries with national phone monopolies.



Now we are told that the merger of AT&T and T-Mobile would create a monopoly. I am tempted to favour any monopoly that allows all phones to work everywhere in the US.

Most Americans think that antitrust is among the founding principles of the American republic. And many people assume that there is widespread consensus among economists behind antitrust policy. Neither assumption is correct.

Antitrust law in its present form goes back not to the Founding but to the Sherman Antitrust Act of 1890. Like most pieces of bad legislation, the Sherman Act and later antitrust laws passed because they were vague enough to satisfy groups with entirely different conceptions of what it meant. The Sherman Act says: "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal." This sounds good, but what does it mean? To this day, nobody knows.

Even the name "antitrust" is weird. It comes from the term "trust" for the legal entities that late 19th century businesses in America created so they could operate in more than one state.

According to antitrust theorists who believe that "excessive" market share in itself is a threat, there is supposed to be a balance between efficiency produced by scale and "harm to consumers." But this is doubly dubious. First, efficiency benefits consumers. Second, the alleged harm to consumers frequently is not identified with actual, identifiable acts of harm that violate the law.

Some observers of the AT&T/T-Mobile case have speculated that AT&T has downplayed the efficiency argument for the merger because greater productivity means doing more with fewer people – an unpopular argument at a time of high unemployment. If so, that is further evidence of the irrationality of antitrust. Here's a bold jobs plan: We could reduce unemployment, at the price of long-term growth, by replacing efficient, capital-intensive big companies with lots of small, labour-intensive, under-capitalised mom-and-pop operations.

All of this explains why American antitrust law has had surprisingly little support from economists of right or left. At the time the Sherman Act was passed, most conservative economists as well as most progressive economists welcomed the efficiencies made possible by large industrial corporations.

With so many critics, who are the friends of antitrust law in America? Other than individual companies that believe they can gain an advantage from antitrust litigation, the friends of antitrust tend to be limited to antitrust lawyers, politicians and some populists and liberals.

What about limiting antitrust law to outlawing monopolies? That would be a bad idea, too. There are two kinds of legitimate monopolies. In utilities like water or electric grids, natural monopolies ought to be socialised or regulated with private ownership. In industries where superior technology or organisation temporarily results in a few winners there is no need to intervene, as long as companies with new and better technology or organisation can displace

From this logic follows the conclusion that mergers, like that of AT&T and T-Mobile, in general should be allowed to proceed. If, following the merger, the company were to exploit monopoly power by jacking up prices and gouging consumers, then it should be punished. But preventing mergers because companies might do something wrong, even though they haven't yet, is too much like the corporate version of laws against "pre-crime" in the movie "Minority Report."

* *Policy Director of the Economic Growth Programme at the New America Foundation. Abridged from an article that appeared on* www.salon.com, on September 06, 2011.

Act on Anti-corruption Standards

Indian corporates operating in the UK or having business interests there will come under the ambit of the new UK Bribery Act 2010 that imposes criminal liability for failure to prevent bribery committed not necessarily on British soil.

No limit has been set for the level of fine that can be imposed on the corporate and the imprisonment for the employee involved in receiving/paying or not preventing the offence could extend up to 10 years.

The Act introducing 'corporate offence', ensures commercial organisations' exposure to criminal liability, has come into force from July 01, following Royal Assent. The Act's jurisdiction is global and a corporate and an employee acting on its behalf can be docked for the offence committed in any part of world.

(BL, 14.08.11)

New Energy Ready to Implement

The British Standards Institution (BSI) launched a new energy management standard to help organisations cut their carbon emissions and improve profitability.

ISO 50001, aimed at businesses of all sizes, outlines the processes necessary to measure energy usage, implement action plans, set targets and identify, prioritise and record opportunities for improving energy performance to make financial savings.

BSI says rising energy costs and increasing UK greenhouse gas regulation, such as the Carbon Reduction Commitment, have prompted the development of the standard, which has been devised over a number of years in consultation with energy management practitioners from around the world.

The new standard looks set to replace BS EN 16001, BSI's current energy management system, which is set to be withdrawn from use in 2012.

(EP, 15.07.11)

Investors Warn Italian Oil Firm

Investors are keeping the pressure on companies still operating in Libya by calling on firms to publicly ensure their products are not reaching the country's dictator, Muammar Qaddafi, or face divestment.

The Italian refiner, Saras, has been targeted by the Conflict Risk Network, a group of around 100 institutional investors and SRI firms, following the organisations earlier call to companies to halt their operations in the country or commit to stopping their products reaching areas controlled by the Qaddafi regime, which is charged with killing civilians as part of its repression of a recent uprising.

Most big oil firms have already pulled out of the country. Investors, however, are not so much concerned that Saras remains, but that its corporate policy is not fit to deal with the situation and does not necessarily prohibit the abetting of Qaddafi's atrocities.

(EP, 16.08.11)

McD-KFC Probed on Low Wages

The Labour Bureau in Guangdong province has begun a probe into allegations that McDonald's and KFC paid part-time employees less than the minimum wage of US$1.17 per hour. The companies said that they are working with the authorities to resolve the charges, and seeking clarification of labour laws which have been recently amended.

The companies failed to pay the legal minimum, and also demanded part-time employees work full-time hours without any of the benefits. The All-China Federation of Trade Unions, the collective group for state-approved unions, called on the companies to make good any underpayment.

(BR, 01.09.11)

Amazon Slammed

Amazon has been accused of subjecting workers to 'sweatshop conditions' at its warehouse in Pennsylvania where employees have complained of unbearable temperatures, high pressure and mandatory overtime.

Employees were frequently fired if their productivity suffered under the brutal conditions, and things got so bad the company had paramedics parked outside to treat stressed or dehydrated workers.

Amazon is aiming to install air conditioning to these centers considering the possibility that such events may become more frequent in the future. *(BR, 28.09.11)*

Indonesia's Anti-graft Case Widens

Indonesia's top anti-graft body widened a bribery investigation into the former treasurer of the ruling Democrat party to include several government departments, in a case that has thrown the political establishment into disarray.

The probe into Muhammad Nazaruddin now spans the ministries of sport, health and education and at least US$352mn in suspect transactions, Johan Budi, a spokesman for the Corruption Eradication Commission, said.

Nazaruddin is suspected of paying off officials to secure multimillion-dollar building contracts for the Southeast Asian Games for his company, Duta Graha Indah. The Commission is investigating the tender contract process for the games and another five cases related to government projects at the health and education ministry valued at US$352mn. *(FT, 17.08.11)*

Big Four Auditors Face Massive Shake-up

EU may bar auditors from offering both audit and consultancy services to a client

The "Big Four" global auditors could be broken up, leaving them susceptible to takeovers if radical European Union plans to boost competition go ahead, a UK auditing official said.

EU Internal Market Commissioner Michel Barnier is due to publish a draft law in November to curb what he sees as a conflict of interest when auditors check the books and supply lucrative consultancy services to the same customer.

Auditors, KPMG , Ernst & Young , Deloitte and PwC , check the books of nearly all big companies in the world.

A copy of Barnier's draft law seen by Reuters proposes that auditors be banned from offering consultancy services to the companies they audit, or even banned from consulting altogether - a move that could force the firms to split their operations.

"Breaking up the Big Four audit firms would make them more susceptible to be taken over by emerging Chinese firms," a UK audit official said on Tuesday on condition of anonymity due to the sensitivities involved.

Barnier has trailed his plans for a year and the industry had hoped they would be watered down by the time he formally proposes them in November.

"To reinforce independence and professional scepticism, the prohibition of the provision of non-audit services to the audited entities and even the prohibition of the provision of non-audit services in general would effectively address this issue," the draft said.

"Better audits and more informative audit reports will enhance confidence in the markets while also informing stakeholders of any problems with regards to any particular entity," the draft added.

The European Parliament, which will have the final say with EU states, gave the plans its broad backing this month.

Auditing industry officials estimate that 28-30 percent of global revenues come from statutory audits, with about 18 percent from non-audit services provided to the same audit client. This means that about half of total revenues is earned from providing consultancy services to clients which are not being audited as well.

Barnier has chosen to legislate in the form of a regulation, which will be directly binding on EU states, giving no room for local discretion.

Britain, as home to the Big Four's European base, is likely to oppose some of Barnier's more radical proposals though its Office of Fair Trading said in July a full blown competition probe into the sector is warranted.

Accounting officials say such a probe would become redundant if pro-competition elements in Barnier's draft make it onto the statute book.

"If I was the UK Competition Authorities I would be inclined to leave this up to Europe. It's not a UK issue, it's actually a global issue," the auditing official said.

Other elements of the draft regulation include:

- Regular dialogue between auditors and their regulators.
- A company would have to change or "rotate" auditors every nine years to end the custom of decades long auditing by the same firm.
- A ban on so-called covenants whereby banks insist that a company receiving a loan must be audited by one of the Big Four.
- Introduction of "joint audits", so that the Big Four share auditing work with smaller rivals. Would apply to companies whose balance sheet is above 1 billion euros.
- The European Securities and Markets Authority to play a coordinating role in supervising auditors in the EU.

Some of the plans are already being applied, like rotation in Italy and joint audits in France.

An EU law that came into force in 2008 sets out rotation of auditing partners – but not the actual auditing firm – every seven years.

It also says an auditor cannot provide non-auditing services to the same customer if it gives rise to a major conflict of interest but many EU states have yet to fully implement this law.

The news item appeared in the Economic Times*, on September 28, 2011.*

US Investment in China Slows Down

US investment in China has fallen 19.7 percent, and US foreign direct investment (FDI) during January to July fell to US$1.94bn. Meanwhile, the rate of US companies setting up businesses in China fell to 844, a 4.74 percent year-over-year decline in the January-July period.

EU investment in China grew, but at a marginal 1.36 percent in the first seven months of the year. And this came against a 23.67 percent increase in investment from countries in the Asia-Pacific region, showing the impact that the debt crisis in the eurozone and America's weak economic recovery is having on the Asian giant.

Foreign investment has been blamed for driving up inflation and fueling the property bubble. But the investment outlook is expected to pick-up according to data published by the Commerce Ministry.

(www.articles.businessinsider.com, 17.08.11)

India-US Investment Pact Soon

India and the US will soon have a bilateral agreement to facilitate two-way investments. Indian Commerce and Industry Minister Anand Sharma said that negotiations on the India-US Bilateral Investment Treaty were almost complete.

Sharma and US Trade Representative Ron Kirk will discuss "issues related to trade and commerce under the Trade Policy Forum Mechanism. Sharma said India would be seeking investment in infrastructure of over US$1tr in the next five years and the "US could be major beneficiary being a leading nation in the world in terms of innovation and technology, which could help India's growth".

(IANS, 21.09.11)

Zimbabwe Crafts Investment Laws

The Zimbabwean government is working on investment promotion and protection legislation as part of reforms to lure foreign investors to help rebuild the economy. The reforms, which include the conclusion as well as negotiating for new Bilateral Investment Promotion and Protection Agreements are designed to provide a favourable environment for investors and get a bigger chunk in terms of the global FDI inflows.

The Bill says all investments should be handled by Zimbabwe Investment Centre (ZIA). Under the current dispensation, investment proposals are processed by sector regulators. It would reform the ZIA board and rename it the Board of Investments so that it dedicates its efforts to issues of investment promotion.

(www.thestandard.co.zw, 31.07.11)

China Warned over Curbs to Business

China's refusal to open its economy to foreign investment could backfire by encouraging European politicians to curb Chinese investments on the continent, The EU's Trade Chief warned.

Karel de Guchi, the Trade Commissioner said, "The fundamental imbalance between our openness and China's restrictiveness plays into the hands of those in Europe who see Chinese investments as a threat and argue that we should selectively screen Chinese investments into the EU".

Wining greater access to invest in China has been a top priority for a succession of EU trade commissioners. But concerns about investment flowing in the other direction have gain heightened sensitivity only in the wake of the crisis. *(FT, 21.09.11)*

Wealthy Pour into Hedge Funds

The wealthy are responding by allocating more of their portfolio to hedge funds, according to a survey by advisory firm Rothstein Kass, which reported that nearly 90 percent of the 151 advisers surveyed say they are putting more money into hedge funds.

Hedge funds invest in a variety of strategies designed to counter equity volatility and enhance overall risk-adjusted portfolio performance. Fees are typically high, with a 2-percent management fee and 20-percent performance fee. Often there's a lockup period of six months to a year, leaving investors with less liquidity than they have in stocks.

(www.bankrate.com, 11.09.11)

Russia Needs Investors not Taxes

Russia must discard its suspicion of foreign investors and clamp down on corruption if it is to benefit from the global shift in economic might away from the West, Russian metals tycoon Vladimir Potanin.

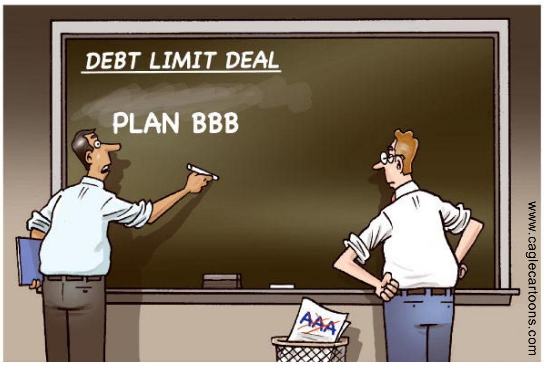
Russia needs to "improve the investment climate and remember that the work of a businessman is to create new jobs and thus increase the tax base". China attracted a record US$105.7bn in FDI in 2010. Russia brought in just US$13.8bn in 2010 and senior officials forecast a net capital outflow of over US$20bn in 2011.

(Reuters, 14.09.11)

S&P Upgrades Turkey's Rating

Standard & Poor's upgraded Turkey's local-currency credit rating to investment grade, underlining the economy's relative strength compared to neighbours in the struggling euro zone and sending Turkish assets higher.

The upgrade of Turkey's lira-denominated debt by one-notch to triple-B-minus from double-B-plus, the lowest rung of investment grade territory, was propelled by improvements in the country's financial sector and the deepening of local markets.



The move for the first time put Turkey's local-currency debt rating on a par with that of Romania, Hungary and Croatia – economies by many measures much weaker than Turkey's – and was warmly welcomed by Turkish officials. *(www.articlesofinterest-kelley.blogspot.com, 20.09.11)*

BT Faces Broadband Price Cut

Regulators have insisted on BT making a big cut in the price of its flagship wholesale broadband product, in a move that should lead to cheaper internet access for consumers living in rural areas.

Ofcom, the UK's telecom watchdog, confirmed that BT must over the next three years make a significant cut in the price of the wholesale product that is used by its rivals to supply broadband services to consumers and businesses in the countryside.

Ofcom is concerned about how consumers in rural areas pay more for broadband compared with their counterparts in towns and cities, partly because of reduced competition between telecoms companies in the countryside.

To try to increase competition, the watchdog has concluded BT must cut the price of its wholesale broadband product by 11 percent below the rate of inflation during each of the next three years. *(FT, 21.07.11)*

Solvency II to Harm Insurance

A survey of the UK financial services market has found that a new EU directive could harm competition in the insurance market.

The directive, known as 'Solvency II', is a package of regulations aimed at setting capital requirements for insurers. It will standardise the way insurance companies work by tailoring their balance sheets to the risks that they bet against, creating significant extra demands on resources. This may reduce competition by driving some insurers out of business or into mergers with other companies, and raising the stakes for new entrants to the market.

When the regulations come into force in January 2013, insurers fear the worst: nine out of ten UK-based executives say that the regulations will force some insurers out of the market. More than 70 percent fear that it will lead to consolidation in the insurance sector. *(GCR, 01.09.11)*

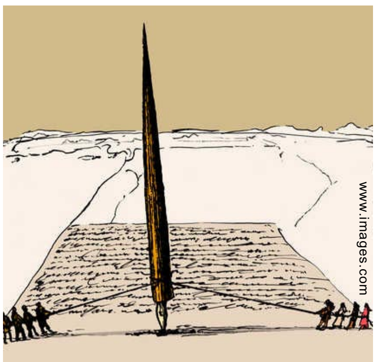
Amendments to Telephony Services

The Brazilian government recently approved amendments to both the General Plan for Universalisation Goals and the National Broadband Plan.

On June 30, 2011 the third edition of the universalisation plan - which established the universal access obligations of fixed-switched telephony services under the public regime for 2011 to 2015 - was approved through Decree 7,512. The plan establishes a series of new goals, catering predominantly to people on low incomes and those residing in rural areas.

Concurrent with the amendments to the universalisation plan, the government negotiated the adhesion of fixed telephony incumbents to the National Broadband Plan. *(ILO, 20.07.11)*

Regulating M&As & Joint Ventures



All mergers, acquisitions and joint ventures involving telecommunications companies incorporated in Nigeria are regulated by the Nigerian Communications Commission (NCC). They must be undertaken in strict compliance with the Nigerian Communications Act 2003, the Competition Practices Regulations 2007 - published by the NCC pursuant to the act - and the various licences issued under the act.

The general requirement is that the transfer of more than 10 percent of the shareholding in a licensee requires the prior approval of the NCC. Prior NCC approval must also be obtained where the proposed transaction involves the transfer of an individual telecommunications licence or an agreement or arrangement that relates to a joint venture between a licensee and a third party. *(ILO, 27.07.11)*

New Air Services Agreement

A new air services agreement was announced between Canada and Mexico. This agreement, which was signed *ad referendum* but is being applied administratively, will replace the restrictive agreement previously in force.

Under the old agreement, designation of air carriers was limited, although a series of diplomatic notes had expanded the rights originally granted. Thus, in 2007 WestJet, Air Transat, Skyservice and Sunwing were all designated as Canadian carriers entitled to exercise rights under the agreement.

The new agreement will eliminate the series of diplomatic notes, many of which are still *ad referendum* and thus not publicly available; impose no restrictions on the number of carriers that may be designated; liberalise pricing provisions in order to allow for greater flexibility when setting fares; and include the safety and security provisions found in the most recent agreements. *(ILO, 07.09.11)*

Rules for Railways in Brazil

The Brazilian Agency for Land Transportation (ANTT) published Resolutions 3.694, 3.695 and 3.696, which aim to regulate the use of railways in Brazil. Resolution 3.694 creates regulations for users of cargo transportation services by rail. Under the rule, a user may make use of a railroad belonging to a concessionaire for its own trains, but must remunerate the concessionaire for the right of transit use.

Resolution 3.695 regulates the right of mutual transit use of the federal railway subsystem. Under the rule, concessionaires may use each others' lines without having to change locomotives or trains. In such circumstances, when another concessionaire's trains or operational resources are used, the grantor concessionaire must be remunerated.

Resolution 3.696 provides rules for agreement on the goals of production per section or area and concessionaires' security goals for the public service of cargo transportation by rail. When discussed during public hearings, these changes were considered highly controversial. *(ILO, 14.09.11)*

Brussels Unveils Capital Rules

Brussels is expected to push ahead with new mandatory European rules for bank capital, despite strong objections from the UK and other countries that want their regulators to have flexibility to impose even higher standards.

The centralised approach will come in draft EU rules designed to implement the latest, internationally-agreed "Basel III" guidelines on banking capital. The world's biggest economies have all committed to the tougher guidelines. The new rules will eventually apply the standards to more than 8,000 banks or investment firms.

By contrast, the Basel III guidelines expressly allow national regulators to top up the global minimums where they see fit. *(FT, 19.07.11)*

'Too many' Banks in Europe

Europe has too many banks and consolidation would be welcome, Europe's top competition watchdog said. The competition watchdog's comments come amid heated debate over levels of competition in the banking sector and whether its structure, after the 2008-related upheavals, is optimal.

The EC itself has been active in reshaping the sector – insisting that banks receiving government support during the financial crisis must take restructuring steps to offset the competitive advantages gained. However, some have tried to kick back against measures imposed by Joaquín Almunia, EU Competition Commissioner. *(FT, 05.07.11)*

UK Banking Sector Faces Overhaul

The UK's Independent Commission on Banking (ICB) released its recommendations on how the country's banking sector should be made more competitive. The Commission recommended structural changes and measures to facilitate improved customer choice, transparency and regulation in the market.

Under EU rules on state aid, Lloyds Banking Group has to divest 632 branches. The ICB has added that Lloyds must also use the divestments to make way for a "strong and effective" new challenger in the market.

In its interim report in April, the ICB had provisionally recommended that Lloyds sell more branches than this. The latest report says additional divestitures would be desirable, but more importantly, the UK government and Lloyds should seek an agreement on how best to create a strong challenger bank. *(GCR, 12.09.11)*

Swiss Banks Vow to Protect Secrecy

Switzerland must solve a dispute with the US over wealthy citizens using secret Swiss accounts to dodge taxes under existing laws and should continue to protect bank secrecy.

The Swiss Bankers Association's President, Patrick Odier said that the US has given an ultimatum to Switzerland, saying that unless detailed information on tax evaders using Swiss accounts is handed over this week Credit Suisse and nine other banks will face charges.

Odier said Switzerland must avoid a repeat of the deal it made to settle a US investigation against UBS, allowing it to bend the country's banking secrecy laws and reveal the details of around 4,450 clients to avoid criminal charges. *(ET, 06.09.11)*

Cyprus Imposes Tax on Banks

The Law on the Imposition of Special Tax for Credit Institutions entered into force on April 29, 2011. The new law requires all credit institutions to pay a special tax for the 2011 and 2012 tax years, equal to 0.095 percent of their clients' deposits.

The special tax will be imposed only on banks that operate in Cyprus, including the branches of banks that originate overseas.

Another significant provision of the law is that the special tax will not be deducted for the purposes of the income tax law, but will reduce the profitability with respect to the special contribution for the defence tax that banks must pay. *(ILO, 08.07.11)*

Remuneration for Bankers

Remuneration policies in the Estonian banking sector have been subject to criticism, as bonus-driven principles encourage the taking of high short-term risks for greater personal benefit instead of aiming for the achievement of long-term stable goals.

The amendments to the Credit Institutions Act entered into force setting forth bankers' remuneration policies and establishing a legal framework that must be considered when designing remuneration regulation in credit institutions. The amendments are aimed at governing the remuneration principles of managers and senior officers employed at banks. *(ILO, 01.07.11)*

Tougher Bank Supervision is Critical

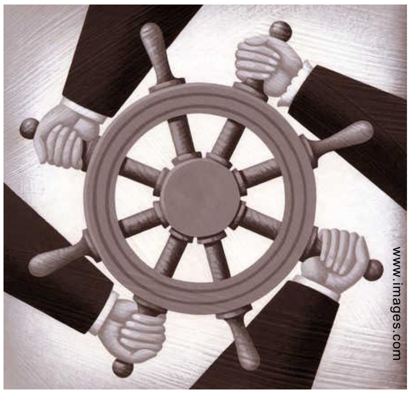
Tougher supervision of banks is critical to financial stability but could easily descend into box-ticking and laundry lists of new rules that will do little good, a global banking industry group has warned.

The Institute of International Finance (IIF) said that its members support and are willing to pay more for tougher oversight by experienced regulators. But the IIF warned that the supervisory process could become unnecessarily contentious and rule-based. Financial groups have a role to play in improving supervision as well, the IIF said. Not only must they provide relevant data, but groups should be open with their regulators about their risks and challenges and interact with authorities on a "no surprises" basis.

The Financial Stability Board, a worldwide regulatory body, is due to consider additional capital requirements for the largest, systemically important banks later in 2011. *(FT, 12.07.11)*

New Competition Regime in Botswana

– Elisa Mugabo



For some time, Botswana has not had a dedicated competition law regime. In 2009 the Competition Act, No 17 of 2009 was enacted to regulate competition in the country's economy. The Act became operational on July 09, 2010 and establishes a body known as the Competition Authority to be responsible for the prevention of, and redress for, anti-competitive practices in the economy, and the removal of constraints on the free play of competition in the market. The Act further establishes the Competition Commission as the governing body of the Authority. Any decision of the Commission may be taken on appeal by an aggrieved party to the High Court, which may confirm or set aside a Commission decision.

Mergers and Acquisitions

The Act provides for mandatory notification of mergers meeting asset and/or turnover thresholds prescribed by the Minister. These thresholds have not yet been promulgated. Notifiable mergers may not be implemented until the merger is approved by the Authority.

In assessing a proposed merger the Authority must determine whether the merger would be likely to prevent or substantially lessen competition or restrict trade of the provision of any service or endanger the continuity of supplies or services; or would be likely to result in any enterprise acquiring a dominant position in a market. The Authority may grant approval subject to conditions it considers appropriate.

Market Inquiries

Notably, and in a similar vein to the amendments introduced to South Africa's Competition Act, the Act introduces the concept of "market inquiries". The Authority may initiate a market inquiry with the objective of determining whether any features of each relevant sector or each type of agreement has the effect of preventing, restricting or distorting competition in connection with the supply or acquisition of any goods or services in Botswana.

If the Authority determines that adverse effects for competition exist in relation to a sector or any agreement investigated in a market inquiry, it may seek to address the effects through its powers set out in the Act in respect of prohibited practices.

Conduct which is Prohibited or May be Prohibited

Provision is made in the Act for the outright prohibition of certain agreements, while other agreements may be prohibited after investigation by the Authority.

The Act prohibits certain agreements between competing enterprises in particular, those involving practices such as price fixing, market allocation, bid rigging, restraints on production or sale and concerted practices. The Act further prohibits agreements between enterprises operating at a different level of the supply chain to the extent that such agreements involve resale price maintenance.

The Authority may grant an exemption from the prohibition of an agreement if it can be reasonably expected that there will be offsetting benefits.

Investigation by Authority

Where the Authority reasonably suspects that a practice constitutes an infringement of the outright prohibited horizontal agreements or vertical agreements or amounts to the abuse of a dominant position in the market, it may initiate an investigation, either of its own accord, or on receipt of information or a complaint. Written notice of an investigation must be served on all the affected parties as soon as practicable, unless the Authority considers that it would materially prejudice the initial stages of the investigation.

Where the Authority determines that a prohibited practice has been established, it must within one year of the investigation being opened refer the matter to the Commission or alternatively it may issue a certificate of non-referral. A complainant who receives such a certificate may refer the complaint to the Commission subject to its rules of procedure.

Other Penalties

A person who commits an offence as prescribed by the relevant provisions of the Act may be liable to a fine exceeding 30 000 Pula or to imprisonment for a term not exceeding 2 years, or both. Where a person fails to comply with an order of the Commission, the person is liable to a fine not exceeding 500 000 Pula or to imprisonment for a term not exceeding 10 years or both.

Corporate leniency

Currently the Act does not provide for corporate leniency. However, as the new regime develops, a leniency policy may be introduced.

* *For further reading: NatureofLawarticle-AfricaLaw-Botswana-TheLaunchOfANewCompetitionRegime.pdf*

Rage against the Rich, Fat *Chaebol*

– Choe Sang-Hun

This is not a happy time for the *chaebol*, the family-controlled conglomerates of South Korea. In Parliament, lawmakers call them "beasts." Newspaper editorials liken them to unfettered predators robbing ordinary people of their livelihood. President Lee Myung-bak, once an ally, has withdrawn his promise to cut taxes for them, instead urging them to win "respect from the people" by doing more to help the poor.

These conglomerates like Samsung, Hyundai and LG ship more than 70 percent of the country's exports, which in turn account for half its gross domestic product. They also dominate domestic markets for cars, TV sets, credit cards and cell phones.

Abroad, they may finally be getting the recognition they have so long striven for, but at home, as one conservative mass-circulation daily, the *Chosun ILbo*, noted in a recent editorial, they are attacked "like public enemies."

Koreans have grown more uneasy as increasing consumer prices and rising household debts have squeezed their standard of living. Meanwhile, the big conglomerates have generated healthy profits for their Owners and expanded their international reach.

"People got disillusioned when they saw big businesses make record profits and roar in the global markets but their own lives got worse," said Kim Byoung-kweon, an economist at Corea Institute for New Society, an organisation that has been critical of Myung-bak's government and the *chaebol.*

For instance, Chung Mong-joon, who holds a controlling stake in Hyundai Heavy Industries, the world's largest shipbuilder, and his peers are trying to show their social conscience.

In August 2011, Mong-joon, also a national legislator with presidential ambitions, and his brothers, all owners of Hyundai subsidiaries, made donations worth US$924mn, to help needy students and young jobseekers.

"If you are successful abroad but fail at home, you can't call that a success," Mong-joon said. Even though a sizeable amount of the money donated, had been pledged years earlier to atone for corruption scandals, President Myung-bak lauded the acts of charity as "a cultural change" in a country where rich businessman are often accused of bequeathing their fortune to their children, rather than sharing them with the general populace.

South Koreans squeezed by tough times vent their ire on wealthy family business

In a further attempt to woo the broader public, Myung-bak's government and the governing Grand National Party said that they would suspend tax cuts for big. Businesses, increase subsidies for low wage temporary Workers reduce college tuition.

Those measures were criticised, as "utter populism" by the daily newspaper *Munhwa ILbo*. The conglomerates are in some ways victims of their own hard-driven success.

While struggling to rebuild the economy after the 1950-53 Korean War, the military dictators of South Korea favoured a handful of families with tax benefits, special loans, anti-labour policies, cheap electricity and other subsidies. They grew into industrial giants, each commanding a fleet of subsidiaries. The policy also left South Koreans with a belief that they had participated in and made sacrifices for the achievements of the *chaebol*, said Byoung-kweon of the Corea Institute.

When Myung-bak, a former Hyundai executive, became president in 2008, he vowed to be "business friendly", arguing that their success would trickle down to the rest of the economy. But under his government, critics say, the gap between big and small businesses, and rich and poor, has only widened.

In a display of public feeling against the *chaebol*, activists and ordinary citizens chartered "buses of hope" to travel to the southern port city of Busan to show their support for a gaunt female' labour activist. She has been protesting layoffs at a shipyard owned by Hanjin for 250 days by barricading herself at the top of a giant crane.

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* *The article appeared in the* Hindu Business Line*, on September 16, 2011.*

World Bank Needs to Refocus its Anti-corruption Fight

> The Bank has to focus on helping countries develop the capacities to govern. That's what the bank should be focused on

The World Bank's fight against corruption needs to focus more on helping borrower countries build the institutions and policies that make them accountable to their citizens, an internal audit said. Since adopting a strategy of better governance and anti-corruption in 2007, the bank has mainly paid attention to improving its resources and reputation in dealing with those issues, according to the report. While it also has increased commitments to help countries strengthen their public sector, institutions and investment climate, that support has yet to show in concrete projects, the evaluation by the Independent Evaluation Group said.

"The bank has to focus on helping countries develop the capacities to govern. That's what the bank should be focused on," Navin Girishankar, the study's main author, said. "There is a gap between the plans and the follow-through that needs to be filled."


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Government distrust and exasperation with widespread corruption fuelled the uprisings that toppled the presidents of Tunisia and Egypt in 2011. International financial institutions, which have been criticised for praising the economic policies of these countries, are now trying to support a growth model that's more inclusive of the population. "Well-governed countries are better able to formulate growth-enhancing policies, deliver essential services to the poor, and regulate financial and product markets," the internal audit said.

The World Bank management welcomed the report, while noting that it didn't cover the full extent of the institution's efforts to fight corruption, such as a recent push to toughen its investigations and sanctions on projects it finances. The audit centers on helping countries improve governance, an area where there are "obvious limits to what can be achieved in such a short time," it said in its response.

"We're glad the report recognises that the Bank is working to support good governance throughout our programmes, and we can live with a criticism that we have spent too much time protecting our own money," Joachim von Amsberg, Vice President for the Bank's operations policy and country services, said.

An example of how the World Bank can improve countries' governance and fight corruption when lending them money is to include funds to strengthen road agencies in a project that finances infrastructure, Girishankar said.

The report also says the bank should be more consistent in the way it deals with countries where governance deteriorates. "Many stakeholders inside and outside the bank hold the view that lending goals conflict with pursuing" goals of the anticorruption strategy, it said.

* *The news item appeared in the* Economic Times*, on September 02, 2011.*

BRICS Competition Coalition Needs to Find its USP

– Pham Thi Que Anh* and Rijit Sengupta**

Some activities should be undertaken urgently under the aegis of the BRICS competition network over the span of next two years until the third conference is held in New Delhi (India) in 2013. This would make this novel and opportune initiative better visible, and more useful

Almost exactly two years after the inaugural meeting in Kazan (Russia), competition agencies from Brazil, Russia, India, China (and South Africa) jointly organised the second BRICS International Competition Conference in Beijing (China) on September 21-22, 2011. This year the event was hosted by the Chinese government. South Africa joined this coalition in end-2010, and thus the BRIC conference of Kazan, 2009 transformed into the BRICS conference of Beijing this year. This second round of the BRICS conference, attended by nearly 300 participants from over 50 countries concluded with the adoption of an agreement among the five founding member countries, to recognise the role that competition policy and law can play in combating the impending financial crisis and economic meltdown.

Being referred as the Beijing Consensus, this agreement between the BRICS competition agencies also called for continued elimination of all barriers to trade and investment, to ensure free flow of goods and people, as well as effective allocation of resources. It reflects key elements of the agreement reached at Sanya (China) in April 2011 between BRICS leaders to, "continue further expanding and deepening economic, trade and investment cooperation" among the countries and to "refrain from resorting to protectionist measures". Achievement of long-term stable and relatively rapid economic development was identified as a key task facing these countries amid the looming financial crisis.

Sharing their views and experiences pertaining to "competition enforcement in the context of economic globalisation" – the theme of the conference, competition agencies from these five emerging economies highlighted the significance of an effective competition policy and law "for ensuring fair competition, protecting the interests of consumers and promoting the healthy development of a market economy".

In his inaugural address, the Chinese Vice-Premier Wang Qishan emphasised on the role of international cooperation to successful competition enforcement in present era of economic globalisation. His views were reverberated in Minister of the State Administration for Industry and Commerce, Zhou Bohua's speech. Igor Artemyev, Head of Federal Antimonopoly Services, Russia stressed on the importance of exchanging relevant information and knowledge through the platform of the BRICS competition network, for the purpose of cross-learning.

President of CADE (Brazil) Fernando Furlan shared the current structural reforms that the competition agency is undergoing at the moment, and also talked about agency's success in dealing with cartels in the country. The contribution of capacity building to agency effectiveness was highlighted as one of the successes by Harish Chandra Gupta, Officiating Chairperson of the Competition Commission of India. He further stressed the need for developing country agencies to have a strategy for international cooperation.

Underscoring the linkage between competition enforcement and economic development, especially from the perspectives of the economically vulnerable constituencies, South African Minister of Agriculture, Forestry & Fisheries Tina Joemat-Pettersson urged competition agencies in developing countries to design enforcement mechanisms that can discipline exploitative entities especially in the essential goods and services sectors.

The Sanya Declaration affirms the commitment of the countries to "advance BRICS cooperation in a gradual and pragmatic manner, reflecting the principles of openness, solidarity and mutual assistance" with "increasing engagement and cooperation with non-BRICS countries, in particular emerging and developing countries, and relevant international and regional organisations".

The diversity of the participants added a lot of colour and flavour to the discussion, and brought out cross-cutting similarities and differences. Participation of a wide range of competition practitioners, experts and academicians at the conference should be better utilised in shaping the future of this network's agenda. This would make this novel and opportune initiative better visible, and more useful. Otherwise, it would merely be an occasion to get together for the international competition community, without much ground impacts, as many such other networks are turning out to be.

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Publications

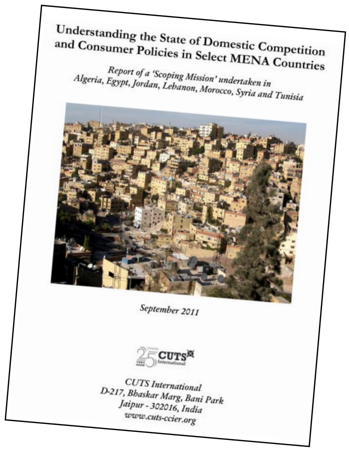
Understanding the State of Domestic Competition and Consumer Policies in Select MENA Countries

In order to develop a deeper idea (and a subsequent initiative on competition and consumer protection issues) CUTS undertook a needs assessment mission in seven countries of the Middle East and North Africa (MENA) region (namely Algeria, Egypt, Morocco, Tunisia, Jordan, Lebanon and Syria). The mission was undertaken jointly with the Arab Network for Environment and Development (RAED) which is based in Egypt, but has a network of CSOs in all the above-mentioned countries.

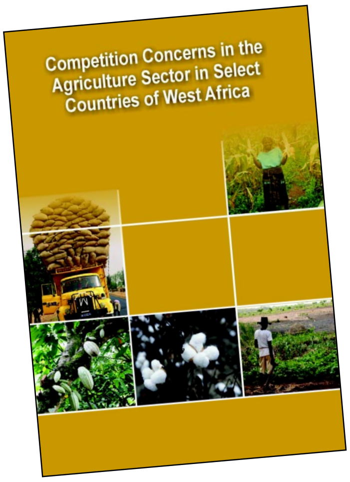
A draft report collating the discussions and the information gathered over the course of the mission has been prepared which highlights both challenges and opportunities that exist in terms of promoting competition reforms and protecting the interest of the consumers in the countries.

The report would be discussed and disseminated within and outside the region, so that a discourse on competition and consumer protection can emerge in some of these countries and the region.

www.cuts-ccier.org/pdf/Competition_and_Consumer_Policies_in_MENA_Countries.pdf



Competition Concerns in the Agriculture Sector in Select Countries of West Africa



In this monograph, CUTS tries to identify certain factors that affect emergence of competitive agriculture markets, with inputs gathered from seven countries of West Africa (Burkina Faso, The Gambia, Ghana, Mali, Nigeria, Senegal & Togo).These countries were part of the CUTS 7Up4 project. Key input markets (seeds and fertilisers) and prevailing marketing systems/channels were analysed for some of the major crops from these countries, to draw lessons for promoting competition in these markets. Factors that could contribute towards anti-competitive behaviour in these markers were also analysed, so that government departments and competition agencies (where they existed) could take cognisance and be more vigilant.

This monograph does highlight certain situations pertaining to agriculture markets in these countries that need to be borne in mind by government departments and policymakers for designing market development and regulatory strategies that could create better market opportunities. This will ensure that agriculture can become a more powerful engine of growth for the continent, than it has been in the recent past.

www.cuts-ccier.org/7up4/pdf/Competition_Concerns_in_the_Agriculture_Sector_in_Select_Countries_of_West_Africa.pdf

Sources

BL: The Hindu Business Line; BR: Business Respect; BS: Business Standard; DT: Daily Times; EP: Ethical Performance; ET: Economic Times; FT: Financial Times; GCR: Global Competition Review; IANS: Indo Asian News Service; ILO: International Law Office; TT: The Telegraph

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