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Economic Globalisation with Uncoordinated Regulation: Cruel Contradictions

Inside this Issue

Special Articles

The economic unification of the world has reached its zenith with international trade assuming unprecedented magnitudes. National boundaries have become largely irrelevant for economic activity, superseded in importance by trans-national ties mediated through multinational corporations. But sadly, systems of economic governance sputter away in their distinctive manner – a cacophony instead of an orchestra. This lack of coordination lies at the root of many recent economic disasters including the present economic recession.

There are several advantages though: specialisation, technology transfer, assimilation of superior foreign work ethos etc. But it is not an unmixed blessing – adverse economic phenomena in one corner of the world are now prone to acquiring a contagious nature which often endangers the entire global economy.

The financial meltdown exemplifies this trend. Sub-prime home mortgages were marketed by creditors to acquire debts elsewhere. Default in the home loan market led to a chain of defaults and rocked the US economy. Many companies with foreign subsidiaries went bankrupt, denting other economics as they terminated operations. Depletion of dollar reserves and destabilising devaluation of currencies resulted.


wiley.typepad.com

Thus, while globalisation can foster joint surges to prosperity by nations a false step by one actor can spell disaster for all. This was not true of the world in the early 20th century.

The Satyam fiasco offers another example. The founder of this Indian multinational seemingly created fake salary accounts to siphon off the company's profits and then cooked accounts to show non-existent cash balances. As the scandal made news, share values collapsed, wiping out Indian as well as foreign investors.

The Satyam fiasco bears an uncanny resemblance to the Enron scandal in which loss of reputation followed a series of revelations about irregular accounting procedures. Enron filed for bankruptcy and scores of employees the world over lost their means of sustenance. The argument being made, therefore, is that in today's globalised world incorrect actions by a major economic agent often results in misery for the whole world.

We need a global guardian of national regulators. A national regulator applies certain rules of the game to the functioning of economic agents residing within the nation's boundaries. The task of the global guardian will be to ascertain that these rules meet certain standards. Different global guardians might be needed for corporate governance, financial transactions and the environment over and above the World Trade Organisation.

However, history will probably record it as another step in the evolution of man – the bridging of national differences to cement the emergence of a stronger, more productive and less risky world.

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

Poland Loses Appeal on Interchange

Poland's Office of Consumer and Competition Protection has lost an appeal against its 2006 decision on interchange fees. On November 14, 2008 Poland's Appeal Court for Competition and Consumer Protection ruled that 20 banks did not form an illegal agreement to fix the levels of interchange fees.

In December 2006, the Authority fined banks including Pekao, BPH, Bank Zachodni WBK, Bank Slaski, Deutsche Bank and HSBC Bank Polska, a total of US$54.56mn following a five-year investigation of the sector. Visa Europe, Visa International, MasterCard Europe and Poland's Bank Association were also accused of colluding to restrict access to the market, but were not fined. *(GCR, 17.11.08)*

Bulgaria's New Competition Law

Bulgaria's Commission for the Protection of Competition developed the law, in cooperation with Italy's Antitrust Authority. The project was funded by the Poland and Hungary: Assistance for Restructuring the Economies (PHARE) programme, which aims to help states accede to the European Union (EU).

PHARE set up in 1989 provides assistance to 10 recently acceded EU member states. Bulgaria joined the EU in 2007.

Most significant changes in the new law is the introduction of a leniency programme, abolition of dominance of undertakings that control 35 percent of a market, change in merger thresholds and the law includes provisions for private enforcement. *(GCR, 04.12.08)*

Australia: Focus on Tackling Cartels

The Australian Government unveiled the Trade Practices Amendment (Cartel Conduct and other Measures) Bill 2008, and with it signalled a renewed focus on tackling cartel behaviour in corporate Australia.

With the Bill being introduced to the Parliament, compliance provides the best defence. Ensuring all relevant people understand the requirements and limitations imposed on conduct is critical in protecting business and its people. The cost of not acting is simply too great. *(Mondaq, 04.11.08)*

New Merger Guidelines by ACCC

Australia's Competition and Consumer Commission (ACCC) has issued its revised 2008 merger guidelines. The guidelines were last issued in 1999. The most significant change of the 2008 set is a new merger notification threshold.

While merger notification in Australia remains voluntary, the Commission has stated that it would expect notification of any deal in which the merged company's market share is greater than 20 percent. In the 1999 guidelines, the threshold was 40 percent.

Commission Chairman Graeme Samuel says that rather than signalling a new approach to merger analysis by the Authority, the revised merger guidelines provide a "better reflection of the approach that has developed in recent years", in line with international best practice, contemporary views on antitrust analysis and the commission's experience. *(GCR, 25.11.08)*

Estonia: Combating Violations

On January 01, 2008, the Competition Board of Estonia and five other authorities united to form the Competition Board and the Technical Surveillance Board. One of the goals of the unification was to strengthen the powers of the Competition Board in identifying and combating competition law violations.

In Estonia, severe cartel infringements are regarded as criminal cases. The Competition Board has also become more active in its investigation of possible cartel activities and antitrust infringements. The Competition Board seems to be taking a more active role in the supervision of the Estonian market, showing a determination to put a stop to cartel activities. *(ILO, 20.11.08)*

UK's Revised Guidance on Leniency

The UK's Office of Fair Trading (OFT) has published revised leniency guidance for businesses and individuals that come forward with information about their involvement in a cartel. Under the OFT leniency programme, members of cartels who provide evidence of such involvement may qualify for criminal immunity and avoid any fine or receive a reduced penalty provided they fully co-operate with an investigation.

Simon Williams, OFT Senior Director of Cartels and Criminal Enforcement, said: "Cartels cheat consumers by restricting competition. The leniency programme continues to be a simple and powerful tool to expose such conduct and the revisions to the OFT's guidance will help ensure that the programme continues to provide a powerful incentive to seek leniency before it is too late".

(government-news.co.uk; 11.12.08)

Gambia: Competition Agency Launched

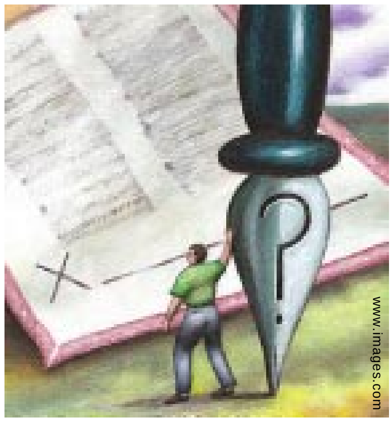
Gambia's Secretary of State for Trade, Industry and Employment has inaugurated the country's Competition Commission, one year after the enactment of Gambia's Competition Act.

Secretary of State Abdou Kolley while announcing the Commission's launch said, "Competition is one of the main engines of economic development". He said the essential function of the competition law is to promote and protect the free functioning of those markets that are open to competition".

The Commission comprises five competition experts, headed by Alhaji Tama. It will work in cooperation with other regulators including Gambia's Central Bank and the Public Utilities Regulatory Authority. *(GCR, 03.11.08)*

The New Swedish Competition Act

– Helene Andersson and Elisabeth Legnerfält*



A new Swedish Competition Act will enter into force on November 01, 2008. The Act was passed by the Parliament on June 11, 2008. The new legislation means further harmonisation with EC competition rules and it also introduces a number of new features in order to enhance cartel enforcement. One of the new features is the introduction of trading prohibitions. The rules regarding fines will become both clearer and stricter in an aim to enhance legal certainty. Furthermore, it will now become possible for companies to enter into settlement agreements with the Swedish Competition Authority (the NCA). As regards merger control, the rules are harmonised with the EC merger regulation with the introduction of the Significant Impediment of Effective Competition (SIEC) test. In addition, new turnover thresholds are to be implemented.

New rules on the method of setting fines

In the new Competition Act, the rules regarding determination of fines are more precise than previously, as they provide more detailed instructions on which circumstances are to be taken into consideration when determining the size of the fine.

Clearer circumstances for leniency

Leniency provisions are another area where the Swedish rules are harmonised with the EC rules. In the new Competition Act, harmonisation is brought in line with the ECN Model Leniency Programme.

Possibility of avoiding trial through a fee order

Currently, the NCA is not empowered to decide on fines. Instead, it must bring action before the District Court of Stockholm. The decision of the District Court can then be appealed to the Market Court which serves as the last instance. It is now suggested that the NCA shall be able to decide on fines in cases that are undisputed.

Amended Limitation Statutes

Investigating infringements of the competition rules is often a time-consuming enterprise. Under the current rules, the NCA must bring action within five years of the time when the infringement ended – otherwise the infringement is time-barred.

Rules on trading prohibition are introduced

For a number of years, criminalisation of the competition rules has been discussed. The Government has now decided against criminalisation, the main argument being that criminalisation would entail that the leniency rules could not be used to the same extent as today. Company executives would lack the incentive to report cartels to the NCA if they themselves would risk imprisonment.

Leave to appeal

Under the current legislation, all judgments by the District Court of Stockholm in competition cases may be appealed to the Market Court as last instance. Under the new Competition Act, the Market Court will be granted the power to refuse an appellant's demand to appeal the judgment of the District Court, as all appellants will be required to move for leave to appeal.

Legal costs

The rules on legal costs are amended. A party cannot be compensated for costs incurred prior to the date the NCA brings action before the District Court. In reality, however, a company that is under the scrutiny of the NCA already incurs considerable costs from the day it is raided by the NCA.

Amendments to the rules on merger control

Finally, it can be mentioned that there are a number of new features in the rules on merger control.

Introduction of the SIEC test

The criteria for blocking a merger will be amended. Just as currently applies under EC law under the SIEC test, the question of whether a merger creates or strengthens a dominant position on the market will no longer be the sole determining factor.

New thresholds

The thresholds for when a merger is to be notified to the Competition Authority have been changed. The rationale behind this is to increase the accuracy of the law and to focus on such concentrations which, *de facto*, may have a damaging effect on the Swedish market.

Statistics regarding prohibitions in Sweden

According to statistical information from the NCA, 2,121 concentrations have been notified to the Authority. Of these, 64 have been subject to a Phase II investigation. However, so far, no concentration has been blocked in Sweden.

Conclusion

Through the adoption of the new Competition Act, the Swedish competition rules are brought even closer to their EC equivalents. In line with the development of Community law, the new Competition Act has a clear focus on cartels and cartel enforcement. Furthermore, the NCA is granted the powers to enter into settlement agreements with cartelists who are willing to confess to the infringement.

– Lawyers at Advokatfirman Delphi in Stockholm. Abridged from an article that appeared in www.legal500.com, October 2008

Fractures within OPEC

– Carola Hoyos and Javier Blas

The oil price sank below US$50 a barrel for the first time since 2005, as the first sign of fractures within the Organisation of the Petroleum Exporting Countries (OPEC) oil cartel became apparent. Nigeria said it did not want to cut its production to try to stop the slide in prices because it needed high output to balance its budget, while Iran, Kuwait and others said they would support another production cut.

Prices are being depressed by falling demand for oil as the world's major economies slow and some of them go into recession

Odein Ajumogobia, Nigeria's Energy Minister said it was not in his country's interest to cut production further, raising the likelihood the cartel could fail to achieve its goal of boosting prices by cutting output. "We are in the process of [processing] our budget . . . based on an [oil] benchmark of US$45 . . . If you cut the volume then it is going to affect your budget, so obviously we are not advocating a cut because it is not in our interest", he said.

OPEC risks collapse if it is unable to act cohesively. The power of a cartel to boost prices depends on all significant members forgoing the revenue gain from selling more oil for the gain from the price boost that comes from withholding oil from the market. If one player cheats, the rest follow and the effort collapses, as it did in the early 1990s. OPEC members in October 2008 pledged to reduce their production by as much as 1.8m barrels a day. Though they have yet to fully implement that agreement, the group is considering a further production cut at its meeting to be held in Cairo.

www.caglecartoons.com

In New York, US oil futures prices plunged to a low of US$49.75 a barrel, down more than US$3.50, and its lowest level since May 2005. The drop came as investors dumped oil and other commodities on heightened fears of a protracted global recession and after Goldman Sachs, Wall Street's largest oil trader, told its clients it was closing all its trading recommendations in energy. The options market priced in a growing likelihood that oil prices could sink as low US$40-US$45 a barrel before the end of 2008, with the cost of insuring against such an event jumping overnight by as much as 90 percent.

Investment banks such as Deutsche Bank and companies such as China National Offshore Oil Corporation have warned that oil prices could fall to US$40 a barrel in early 2009 as the credit crisis hits the real economy, with the slowdown spreading from the US and Europe into emerging markets such as China. The slowdown is curbing demand for raw materials from oil to copper on a scale not seen in decades. Antoine Halff, of brokerage Newedge in New York, said: "Demand destruction today rivals that caused by the oil shocks of the 1970s".

The tone of a recent meeting of national oil companies, many of which came from OPEC countries, was "panic", as pointed by Fu Chengyu, Chief Executive of China National Offshore Oil Corporation. All OPEC members are struggling with the sharp drop in oil prices from this summer's record of US$147. Ecuador, OPEC's newest member raised the spectre of defaulting on its loans. Only the UAE, Algeria and Qatar can balance their external accounts in 2009 with prices below US$50 a barrel, according to research by PFC Energy, the US-based industry consultant. Saudi Arabia needs barely more than US$50, PFC said.

– The article appeared in the Financial Times, November 21, 2008

CARTELS

Italy: Dentists Hauled Up

The Italian Competition Authority opened an investigation to determine whether the conduct of the Order of Dentists of the Province of Bolzano in dealing with those of its members who had taken part in the "Price Transparency Online" initiative constitutes an anti-competitive arrangement.

The step follows receipt of a complaint from the Centro Tutela Consumatori Utenti di Bolzano (CTCU) which since 2005 has publised on its website a table comparing prices for equivalent treatment by dentists in Bolzano, where the practitioners consented.

According to the complaint, in recent months the professionals revoke their authorisation to publish fees on the Association's website, inviting them to "be very careful not to do anything [..] contrary to the decorum of the profession" and threatening possible disciplinary action in that publication of fees on a public website was "a serious contravention" of their ethical code.

(ng/COSTAMA/E-PRESS.NSF, 30.10.08)

Greece Fines Oil Companies

Greece's Competition Commission has fined BP and Royal Dutch Shell a combined €49.6mn (US$62.4mn) for allegedly colluding to fix prices. The Commission claims the companies colluded in setting discount policies for Greece's petrol stations, which it says amounted to price-fixing.

The Commission said that the companies had no intention of competing against each other and converged their net wholesale prices through proportionally adjusted discounts. BP has already appealed against the fine, and recently took out an advert in several Greek newspapers highlighting why it believes the decision to be wrong. *(GCR, 20.11.08)*

Fears of OPEC-style Gas Cartel

Energy ministers from 12 of the world's leading exporters of natural gas met in Moscow to create a producers' group that consumers fear could develop into an OPEC-style cartel.

Russia, the world's biggest gas producer and the driving force behind the group said that it would not be a cartel but would work to enhance energy security at a time when the market is becoming increasingly globalised.

However, members of the forum, including Russia and Qatar, are pushing for higher world gas prices to reflect what they see as its value as a relatively clean source of energy and potential as a transport fuel.

(FE, 27.12.08)

France: Penalty on Steel Cartel

France's competition watchdog imposed fine on 11 steel trading companies, including ArcelorMittal and Klöckner, as it laid bare a price-fixing cartel of "unprecedented proportions".

The Competition Council ordered 11 companies to pay a total of US$747mn after finding they had colluded through the agency of the French industrial federation to control prices and block foreign competition in the steel market.

Competition officials said there was no evidence that the parent companies were aware of the cartel activities. Although at least two of the big three are challenging the level of the fine, they do not contest the findings of illegal practice. *(FT, 16.12.08)*

ANSAC in the Dock

The South African Competition Commission (SACC) has entered into an agreement with American Natural Soda Ash Corporation (ANSAC) in which ANSAC admits that its membership agreement eliminates price competition between its members in exports sales to South Africa in breach of section 4(1)(b)(i) of the Competition Act, which prohibits price fixing.

ANSAC has agreed to pay an administrative penalty of US$953,931. It has undertaken to make no further export sales to South Africa for delivery more than six months after the date of confirmation of the agreement by the competition tribunal and also amend its membership agreement to allow its members to negotiate and contract directly with consumers.

(SACC, 04.11.08)

Spain Probes Iron Association

Spain's National Competition Commission has launched an investigation of the Spanish Association of Iron Stockists for allegedly fixing market conditions.

The Authority found that the association might have breached competition laws by advocating certain trade conditions to its members. The Commission does not specify further information on these conditions, but says there is reasonable evidence which points to the existence of anti-competitive agreements.

Under Spain's competition law, associations can be penalised. If they are not solvent, they are obliged to collect contributions from members to cover the amount of the fine.

(GCR, 24.10.08)

EU Energy Cos. Hit by Fines

Nine of the world's largest energy companies have been hit by fines totalling almost US$983mn by Brussels because of long-running, illegal price-fixing in the market for paraffin wax. The cartel covered almost 75 percent of the European market.

The aggregate US$878mn penalty would have been even higher but for the fact that Shell eventually blew the whistle on the price-fixing deal. This earned it full immunity from any fine, which would otherwise have cost it close to US$130mn. Three other companies also earned some fine reductions because of their co-operation. *(FT, 01.10.08)*

Vietnam Probes Steel Industry

Vietnam Competition Administration Department (VCAD) has opened an investigation of steel makers in the country, after members of the Vietnam steel association agreed not to lower their prices.

The Commission was started up with the investigation where VCAD can proactively utilise the competition law to improve the operation of the free market in Vietnam and increase consumer welfare.

If found guilty of competition law offences in Vietnam, companies can face penalties of up to five percent of annual turnover, or in the case of companies that instigate or encourage the practices, up to 10 percent.

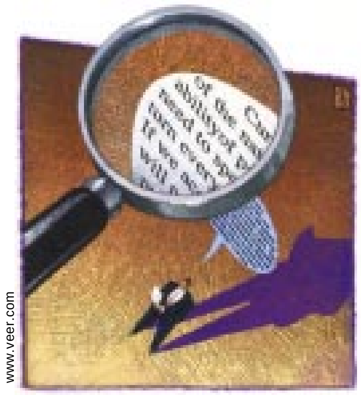
(GCR, 22.10.08)

ABUSE OF DOMINANCE

EU Raids Telecom Operator

European competition regulators have raided the offices of Telekomunikacja Polska, the former telephone monopoly that is now controlled by France Telecom, over suspicions that it may have abused its dominant market position.

This is one of the first potential "dominance" cases involving a telecom operator in one of the newer EU accession states, although regulators in Brussels in 2007 fined Spain's Telefónica US$196m for allegedly abusive practices in the Spanish broadband market.



Officials in Brussels did not detail their concern, but regulators in Poland were reported as saying that the broadband Internet market was the focus. The company said it believed it would be cleared by the probe.

(FT, 31.10.08)

Swisscom Abusing Market Dominance

In November 2008, the European Competition Commission announced its initial finding that Swisscom had abused its dominant position in the asymmetric digital subscriber lines (ADSL) market. Swisscom has been invited to comment on the Secretariat's finding before the Commission hands down its decision.

Swisscom offers its competitors access to its ADSL lines on a wholesale basis, so they can then offer broadband services to their customers. However, according to the Secretariat's findings, the prices Swisscom charges its competitors are excessive compared to end-user (retail) prices. Thus, the Secretariat considers Swisscom's price strategy an abuse of its market dominance. *(ILO, 26.11.08)*

FINES & PENALTIES

Banana Cos. Rig Prices in Europe

Some of the world's biggest banana companies – including Chiquita Brands and Dole Food – were found to have rig import prices into eight European countries, affecting a US$3.4bn market. Fines totalling US$78mn have been levied as a result. According to EU antitrust regulators, the illegal conduct affected many European countries over a three-year period between 2000 and 2002.

Combined retail sales of the fruit amounted to about 1.6million tonnes in 2002. The companies disclosed their pricing plans. The cartel came to light when one of the companies involved, Chiquita, blew the whistle, and European Commission officials raided banana importers' offices. But, Chiquita was given immunity from any fine. Had that not been the case, the US company would have had to pay US$108mn.

Meanwhile, Dole, which claims to be the world's biggest producer of fresh fruit and vegetables, said it had not yet received the full decision from the EU. But it insisted it did not believe that it had violated European competition rules and intended to appeal. *(FT, 16.10.08)*

Russia: Oil Face Record Fines

Russia's antitrust watchdog may slap fines on the oil companies Gazprom Neft and TNK-BP of more than US$36.4mn each for breaking domestic competition laws. The agency said that the final decision would be made on November 24, 2008 and take into account efforts by the companies to improve their pricing policies.

Such a fine would be the largest imposed by the agency, which had been seen as one of the weakest government institutions but started to gain power in recent months after sharp criticism from Vladimir Putin, the Prime Minister.

(Reuters, 12.11.08)

China Fines Securities Trade

China's Securities Regulatory Commission (CSRC) imposed fines and other penalties after investigating 66 cases of illegal 2008 securities trade.

The cases involved insider trading, market manipulation and violation of information disclosure regulations and resulted in 43 administrative punishments, fines of US$32.25mn and confiscated illegal income of US$22mn.

The CSRC said it revoked securities business licences for 13 people and banned two people from engaging in securities fund business. *(AN, 08.11.08)*

STATE AIDS

German Bank to Pay Too Low a Price

The European Commission (EC) is investigating Germany's US$10.7bn capital injection into Commerzbank, in the first public dispute between Brussels and state authorities over an individual bank's participation in a national rescue scheme.

Antitrust regulators are questioning whether Germany's second-largest bank is set to pay too low a price in exchange for the US$10.65bn of capital the Government has agreed to inject.

Before approving these under EU state aid rules, officials have insisted that minimum remuneration terms for funds and guarantees provided to banks are clearly set out, as well as some behavioural conditions, such as restrictions on staff remuneration and time limit on the schemes. *(FT, 05.11.08)*

EU: Resist Temptation of Auto Rescues

Neelie Kroes, the EU's Competition Commissioner said that nations in the 27-member EU should resist the "temptation" of an automobile industry bailout, arguing that such aid would harm the bloc's economy. Governments in the US, France and Germany are considering aid for car companies, which have seen sales plummet in the face of a global recession.

Kroes said EU rules give governments "plenty of scope" to support the car industry without distorting competition. EU rules prohibit governments from giving grants to struggling companies. Such aid would harm competition because it would give companies in certain countries an unfair advantage.

(FE, 22.11.08)

Sweden Reluctant to Take Stakes

Sweden Government is extremely reluctant to take stakes in private companies like General Motors, as it would contradict a manifesto pledge to privatise state-owned companies.

"I think taxpayers should be completely clear that it is a risky project to use their money to buy either Volvo or Saab in this situation where the losses are as big as they are", Maud Olofsson, the Deputy Prime Minister of Sweden, told.

Meanwhile, European carmakers expressed their confidence that an US$10bn financial package agreed by finance ministers will help the industry develop environmentally sensitive vehicles over the next two years could eventually be more than doubled.

(FT, 03.12.08)

GM: Mounting Losses and Worst Sales

A collapse of General Motors (GM) Corp. would mean "more aid to specific states like Michigan, Ohio, and Indiana, and more money into unemployment and extended benefits. Congressional leaders are preparing to bring a US$25bn aid package. The funding would help prop up GM, Ford Motor Co and Chrysler LLC as they struggle with mounting losses and their worst sales year since 1991.

A GM shutdown would cost jobs among suppliers as well as at the automaker itself, pushing the US unemployment rate in 2009 to 9.5 percent. Federal, state and local governments would lose US$108.1bn in tax revenue over three years in the event of a 50 percent reduction in US automaker operations, according to a report by the Centre for Automotive Research in Ann Arbor, Michigan.

(BS, 17.11.08)

PRICE FIXING

Steelmakers Charged of Price Fixing

Japan's Fair Trade Commission (FTC) has decided to file a criminal complaint against three steel makers namely Nippon Steel & Sumikin Coated Sheet Corp, Nisshin Steel Co. and Yodogawa Steel Works Ltd. for their alleged price-fixing for galvanised steel sheets by around US$112 per tonne.


www.images.com

JFE Galvanizing & Coating Co. was also involved in the wrongdoing, but the FTC decided not to accuse it because the firm has voluntarily declared its involvement in the practice.

The FTC raided the three companies and JFE Galvanizing & Coating in January 2008 and has questioned officials of the firms since then.

(I stock Analyst, 07.11.08)

ASDA Profits Knocked by Probe

Asquith and Dairies (ASDA) suffered a fall in full-year pre-tax profits after having to set aside an allowance for legal costs resulting from the OFT's investigations into milk and tobacco price-fixing. In reports filed at Companies House pre-tax profit was US$771mn, down from US$815mn in 2007.

In the report, ASDA said that the group has capitalised on its every day low pricing strategy to increase market share. The result, it said, was that "growth significantly out-performed the market, with the group achieving above market share growth in every single month of the year". *(RW, 06.11.08)*

MISCELLANEOUS

EU Blocks Generic Medicines

Major drug companies are delaying or blocking the entry of cheaper generic medicines, pushing up bills for taxpayers and reducing the incentive for innovation. The attack from the Commission – the EU's executive arm – adds to pressure on a beleaguered global drugs sector that faces loss of patent protection on some of its biggest selling products.

The drug makers have to bear hefty fines if they found to be engaged in unfair practices. Leading drug makers like AstraZeneca, GlaxoSmithKline Plc, Pfizer Inc, Merck & Co Inc and Sanofi-Aventis SA, Teva Pharmaceutical and Novartis AG's were investigated in January 2008 with a series of raids.

(FE, 29.11.08)

Teva Accused for Anti-trust Abuse

Zydus Cadila has dragged Teva pharmaceuticals, the world's largest generic drug maker, to court in the US, seeking damages for Teva's anti-trust violations and unfair trade practices relating to risperidone drug and also threatening both Zydus and its customers with legal action to curtail any distribution of Zydus risperidone API and API formulation.

Zydus has denied any infringement of Teva's patent claims and alleged that Teva obtained the US patents with the intent to deceive the US patent and trademark office. The company has thus filed for declaratory judgement against Teva's patent claims. Zydus also claims that it has not infringed on any valid claim of Teva's patents.

(MN, 01.11.08)

EU Imposes Fines on Glassmakers

Record antitrust fines levied by EU competition authorities on four glass groups could lead to higher glass prices by stifling capital investment, according to the head of one of the penalised glassmakers.

Stuart Chambers, Chief Executive of Nippon Sheet Glass, Pilkington's Japanese parent, said that there was "no question" that Pilkington would reduce investment in plant and equipment because of the "astronomical" joint penalty of US$1.75bn. *(FT, 17.11.08)*

Are Merger Regulations Diluting Parliamentary Intent?

– Manish Agarwal* and Aditya Bhattacharje**

This article analyses one amendment to the Competition Act that covers the threshold limits of mergers of global companies operating in India which would be covered by the Indian legislation. The proposed changes have not been received well in business and legal circles at home and abroad. Will the government then buckle under pressure from the business and legal communities, thereby diluting parliamentary intent?

India enacted a new competition law, the Competition Act, in 2002, to replace the Monopolies and Restrictive Trade Practices (MRTP) Act of 1969. The Competition Act seeks to prohibit anti-competitive agreements, abuse of dominant positions and to regulate combinations, i.e. mergers and acquisitions (M&A). An amendment of the Act in September 2007 has now paved the way for its enforcement by the Competition Commission of India (CCI), the new competition authority. The provisions to regulate combinations have been the subject of intense discussion in recent times.

These merger regulation provisions, in particular, the mandatory notification requirement and the lack of a "domestic nexus" criterion for foreign mergers have been sore points for the domestic as well as international business communities. It has been argued that the mandatory notification system will require notification of foreign mergers with little or no nexus to India and add to the cost of doing business as well as strain the resources of the CCI. The amendment Act has sought to address this concern by providing for a domestic nexus test. However, this amendment has not been well received in business and legal circles.

In order to address this and other procedural objections and to outline its approach towards merger review, the CCI published draft combinations regulations in January 2008, which include a modified two-firm domestic nexus test. The basic premise underlying the modified domestic nexus test remains unaddressed so far. Whereas the CCI thinks so, two scenarios have been identified where this is not the case.

Potential Competition

Our first scenario involves foreclosure of potential competition. In simple words, a merger between two firms (say, A and T) producing similar products and operating hitherto in separate geographic markets can injure competition if it is designed to pre-empt either A's entry into T's market or T's entry into A's market and thereby eliminate future competition.

The cases involving potential foreign competitors are quite possible in India. Foreign firms with no current business in India may enter the Indian market after the dismantling of trade or regulatory barriers following the consummation of the free trade and economic cooperation agreements, which India is negotiating with various countries.

Maverick Firms

Our second scenario applies to situations in which both parties to a merger already have operations in India. In this scenario, the regulations will allow the incumbent firm to acquire its smaller rival and eliminate any competitive threat.

The CCI has thus assumed away the competition that a small "maverick" firm can give to its larger rival, thereby ignoring the "likelihood of the combination resulting in the removal of a vigorous and effective competitor in the market", a factor specified in section 20(4) of the Act. Maverick status has become an important factor in merger evaluation the world over.

The CCI regulations have ignored the anti-competitive possibilities inherent in both these scenarios. One way to address them would be to abandon the additional two-firm test in the regulations altogether and adhere to the domestic nexus test for joint assets or turnover in the Act. In order to avoid inflicting unnecessary compliance costs on mergers that genuinely have no potential impact on India, a much lower filing fee can be charged if the foreign firm gives an undertaking that it has no plans to enter the Indian market independently.

As the Parliamentary Standing Committee on Finance that reviewed the amendments to the Competition Act observed in its report, "in the current economic scenario, combinations are very likely to cause appreciable adverse effect on competition within the relevant market in India" [Standing Committee on Finance 2006]. It then recommended a mandatory notification system so that the CCI can review all potentially problematic deals. But the preceding analysis seems to suggest that the government is buckling to the pressures from business and legal communities and in the process diluting the parliamentary intent.

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Abridged from an article that appeared in the Economic and Political Weekly, June 2008

Ford's Volvo Auction to China Firm

Ford Motors is in talks to sell its Volvo car business to its China partner Changan Automobile Group. Changan President Xu Liuping held discussions with Ford and Volvo during auto show in the Chinese city Guangzou, according to report. Changan is one China's biggest auto groups.

The report did not provide details of the talks, but quoted an unidentified Changan executive as saying there was a chance for a deal. Ford, which owns Volvo, and General Motors Corp. owner of Saab, are trying to sell those units as they seek a multi-billion dollar government bailout. *(BS, 09.12.08)*

Italy Provides Green Light to Alitalia

Italy's centre-right Government is set to approve the controversial sale of loss making Alitalia to a group of Italian investors in spite of complaints by rival airlines of illegal state aid and accusations that its assets have been undervalued.

Augusto Fantozzi, the administrator overseeing the flag carrier's bankruptcy said that he had received the green light from a government committee that had determined that the offer from Compagnia Aerea Italiana (Cai) was in line with market prices.

The new Alitalia will be merged with its smaller rival, Air One, giving the new airline a near monopoly on some routes. *(FT, 20.11.08)*

Recession Spurs 'Big 3' Merger Talks

Record low auto sales and the financial crisis are spurring fresh merger talks about the big three US automakers in a new global consolidation round while the sales rot is also impacting suppliers and car retailers. Renault denied it was in talks to buy Jeep from Chrysler. People familiar with the talks said private equity firm Cerberus was in discussions to sell all or part of Chrysler LLC's operations to the French firm and General Motors Corp as it considers a range of deals that could break up the No. 3 US automaker.

General Motors, Ford and Chrysler, seeking to maximise cash returns while battling with a declining home market due to high petrol prices and an economic recession, are expected to put brands both in the US and overseas up for sale or to seek tie-ups to slash production costs. *(FE, 17.10.08)*

Mittal Abandons Takeover of German Co

ArcelorMittal, the world's biggest steel company, abandoned a bid to take control of Dillinger Hutte GTS, a specialist maker of steel plate used in engineering and construction, as metal prices fall and banks tighten lending.

ArcelorMittal will reduce its stake to 33.4 percent from 51.25 percent, with proceeds from the sale totalling US$1bn. The decision to abandon the plan comes as steel manufacturers and mining companies are cutting jobs and production across the world to cope with slumping demand. Mittal said it may slash as many as 9,000 jobs, or three percent of its global workforce, to lower costs. *(BS, 15.12.08)*

Japan Carmakers May Merge

Japanese automakers may combine to form three large companies as a worsening global recession hurts vehicle demand, Osamu Suzuki, president of Suzuki Motor Corp., Japan's second-largest minicar maker, said. Japan's auto industry, now consisting of more than ten companies, may consolidate into a 'Big Three'.

Toyota Motor Corp., Japan's largest carmaker, predicted its first loss in 71 years, and rival Honda Motor Co. cut its profit forecast as the slowdown damps demand for cars. General Motors Corp., Ford Motor Co. and Chrysler LLC, the three-biggest US automakers, have cut output and two of them received US$13.4bn of federal aid to prevent running out of cash. *(BS, 25.12.08)*

Taiwan to Seek Bank Mergers

Taiwan's Government will seek to use its influence in partially state-owned banks to push for banking sector consolidation, its newly appointed financial super-regulator said.

Sean Chen, Chairman of the Financial Supervisory Commission, told that Taiwan still had too many banks in spite of attempts to reform the financial sector.

Those banks will play a bigger role in any upcoming consolidation because they are still under "some government influence, which means they have the sense of social responsibility" to conduct mergers that would be "very healthy for the financial markets", Chen said. He did not specify any banks but the Government holds minority stakes in only a handful of Taiwan's 37 banks. *(FT, 23.01.08)*

BA-Qantas Merger via a 'Dual-listed Company Structure'

British Airways (BA) "confirms that it is exploring a potential merger with Qantas Airways Limited via a dual-listed company structure". The announcement of the merger deal came after Australian Transport Minister Anthony Albanese said he would not oppose any foreign airline buying 49 percent of Qantas.

BA said that a deal with Qantas would be "a step to a truly global airline. The geography of the network fits very well". A merger between BA and Qantas would be much more ambitious and the first time two carriers have attempted to combine their operations between two different regions of the world.

The two groups would have to overcome formidable regulatory hurdles and pioneer an innovative ownership structure to circumvent national rules on the foreign ownership of airlines and ensure that international traffic rights were not jeopardised. *(FT, 03.12.08 & 19.12.08)*

Hebei Steel Merger Prompts Doubts

Hebei Iron and Steel Group, one of China's biggest steel making enterprises, is to merge its three listed subsidiaries as the global economic downturn hammers the once-profitable sector and increases the pressure for consolidation.

Tangshan Iron & Steel, Handan Iron & Steel and Chengde Xinxin Vanadium & Titanium confirmed that Tangshan would acquire the two sister companies through a share swap. But analysts greeted the deal with scepticism and warned that consolidation on China's steel industry faced huge hurdles and would proceed slowly at best.

(FT, 31.12.08)

ONGC to Take Over Imperial Energy

In its largest buyout abroad, Oil & Natural Gas Corporation (ONGC) is all set to a acquire the London Stock Exchange (LSE) listed Imperial Energy, a British oil and gas company, for US$1.9bn after 97 percent shareholders in the Leeds-based company gave their consent to the takeover bid.

The deadline for the state-owned firm's US$17 per share offer closed on December 30, 2008 or 96.8 percent of the shares were tendered, according to an announcement made by ONGC Videsh, the overseas arm of the ONGC, to London Stock Exchange. Imperial will now have to be delisted from LSE, after the formalities are done with. *(FE, 31.12.08)*

Microsoft in Talks to Buy Yahoo Search Biz

Software major Microsoft is in discussions to buy the online search business of Yahoo for about US$20 billion. A few months back, Yahoo had spurned a takeover bid from Microsoft worth more than US$47bn.

The talks with Yahoo involve Microsoft obtaining a 10-year operating agreement to manage the search business. It would also receive a two-year call option to buy the search business for US$20bn. That would leave Yahoo to run its own e-mail, messaging, and content service.

www.abcnews.com

This cash would be used to buy convertible preference shares and warrants which would give it a holding in excess of 30 percent of Yahoo. Interestingly, the Microsoft buyout offer had valued Yahoo shares at US$33 per piece and ever since the scrip has plunged to below US$9.

(FE, 30.11.08)

MERGERS

M&As: Declining Asset Valuations

Higher crude oil prices resulted in reduced demand and also changed the oil consumption pattern in many countries, especially in OECD nations in 2007, said a report released by financial services provider Ernst & Young. The report suggests merger and acquisition (M&A) activity is a viable option for reducing costs and increasing operational efficiency. "A well structured deal can significantly reduce combined overhead functions, create opportunities to reduce supply chain costs, remove redundant functions and strengthen the resource base". *(FE, 17.11.08)*

M&A Volume Hits Trillion Mark

Global M&A volume has reached the US$3tn mark, driven by a slew of M&A activity undertaken in the background of financial turmoil across the world, according to a report. The US$44.4bn acquisition of Merrill Lynch by bank of America helped in a big way. The US$29.3bn acquisition of HBOS by Lloyds TSB Group and the US$15.1bn acquisition of Wachovia by Wells Fargo were the other significant deals. *(BS, 21.10.08)*

Only Consolation for Bankers

Forced sales demanded by creditors and government-brokered transactions may provide the only consolation for bankers in what promises to be the slowest year for M&As since 2004. Bankers at Barclays Capital and Nomura Holdings Inc say the value of deals may decline 30 percent in 2009 to about US$2tn. Takeovers so far in 2008 are down 36 percent from the same period in 2007, reducing the fees paid to banks by 34 percent to an estimated US$63bn, according to data compiled by Bloomberg and New York-based research firm Freeman & Co.

(FE, 09.12.08)

Slump Forces M&A Revaluing

Chief Executive of public companies could be forced to wipe billions of dollars off their balance sheets as they reassess the value of M&As made in the fourth-year debt boom. The slump means many of the companies they acquired are no longer producing expected cash flow, which could lead to dramatic one-off charges during the next few quarters. Among those who have already taken acquisition-related charges are Sirius XM Radio, which took a US$4.8bn writedown related to its acquisition of satellite radio rival XM in 2007. *(FT, 24.11.08)*

Mergers Rise through Distress

The most dangerous mergers usually occur at times of extreme financial hedonism or periods of deep distress. In market, banning deals such as Royal Bank of Scotland's takeover of NatWest's which involve straightforward cost-cutting and revenue growth, tend to be smooth sailing. Deals that create sprawling financial supermarkets, such as Bank of America's takeover of Merrill Lynch selling everything from credit cards and deposits to initial public offerings and corporate broking may be heading for troubled waters.

(FT, 22.09.08)

The Jurassic Auto and Idea Park

– P Sainath*

The US auto giants are an example of how things work in the age of unbridled corporate power. Of how the collapse of restraint on that power fractures economy and society

It is unfair to call the US auto industry dinosaurs, as some now do. It is certainly unfair to the dinosaurs. The 'Terrible Lizards' did not lay the basis for their own extinction or that of myriad other species. The US automobile companies did – and will take large numbers of jobs, workers and businesses with them. The US auto giants General Motors, Ford and Chrysler are more a fine example of how things work in the age of unbridled corporate power, of how the collapse of restraint on that power must fracture economy and society.

Metal Lizards

The original dinosaurs (which scientists now tell us neither all that terrible nor lizards) were great examples of success and adaptation. Good enough to rule the planet for 150 million years. The US auto industry is the opposite. It's not just that the Terrible Metal Lizards opposed fuel efficiency standards. Of course, they did. They also promoted gas-guzzling SUVs as a lifestyle must. They cranked out cars many did not want to buy. They wielded heavy clout in Congress and were able to sponge off public funds in the name of saving jobs as they have yet again. Having received US$25bn earlier, their hats are in their outstretched hands again.

But that's the easy part. There's a lot more they did, as a major sector of industry – and as part of the larger corporate world of the US. Over decades, they destroyed both existing and potential public transport. All across the country, for decades from the 1920s, they bought up public transport systems and shut them down.

Fostering the cult

Fostering the cult of the individual-owned automobile was a major goal. By 2001, that goal was achieved beyond belief. Some 90 percent of Americans drove to work by that year. The findings of the 2001 *National Household Travel Survey* are striking. Only eight percent households reported not having a vehicle available for regular use. The survey showed that "daily travel in the US totalled about 4 trillion miles, an average of 14,500 miles per person" *(these figures are annual, the sum total and average of daily travel)*. Trips by transit and by school bus each made up just two percent of daily trips taken in 2001.

Almost everything grew dependent on it, from agriculture to aviation, individual to national needs. When oil prices rose (before their present crash) thanks to heavy speculation, countless households in the US were paralysed. Hundreds of little family trucking businesses went kaput. People in outlying places who drive many miles to fetch things like bottled water and provisions found their budgets burning.

But back to the Metal Dinosaurs of Detroit. Their asteroid hit will impact on far more than the nearly quarter of a million workers directly stranded on their turf. There are also more than a million retirees and dependents in trouble. The retirees now watch their health benefits vanish. That's not nice in a country where health costs are the largest single cause of bankruptcies. At age 75 or 80, it is misery. Then there are millions of other workers in associated sectors. In part-makers, supplier companies, in dealerships.

'Too big to fail'

Meanwhile, the logic of "too big to fail" keeps Big Auto and others of its ilk going. There is never any debate in the US on whether they should have been allowed to get as big as they did. It is on the basis of that very fear that the Terrible Metal Lizards are able to bargain for handouts from public money. The US has already lost over 1.2 million jobs in 2008.

So there is a good chance that more public money will be thrown at the auto giants. And that too, without larger strategic shifts was being imposed on them. Yet, everyone knows this does not mean an industry saved. They could be back soon with demands for still more. At which time, with things being even worse (quite likely) the pressure to save jobs by pouring in public money will be still greater. This is the US. The money given out in the bailout so far has delighted the Tuxedo dinosaurs – CEOs and senior executives. Other bailout bandits have held meetings at resorts costing hundreds of thousands of dollars.

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* *Editor, Rural Affairs, The Hindu. Abridged from an article that appeared in The Hindu, November 20, 2008*

Selective Reportage?

Can a company be coaxed into listing out its ills, say, for a prize? That is probably unthinkable. But companies are now seizing the opportunity to list the good they do to society, environment, their own work force and so on. So if Posco, Coke and Dow Chemicals have their share of controversies ranging from land disputes to contamination of water and air, they also share credit for having bothered to report to the Global Reporting Initiative (GRI) on how their businesses helped society, the environment and the economy.

GRI, a non-profit body and formerly a project of the United Nations Environment Programme (UNEP), is the *de facto* global standard for reporting on a company's sustainability.

As of today, about 435 companies have reported to GRI, of which just seven are from India. GRI raised the question of reporting only feel good factors as a way of self appraisal. *(BS, 05.10.08)*

Nigeria Needs Restructuring in CG

The Nigerian corporate governance (CG) culture must be restructured if the country needs to achieve the goal of becoming one of the industrialised nations of the world, the Group Managing Director of United African Company (UAC) of Nigeria Plc, Larry Ettah, said at the 32nd Annual Conference of the Institute of Chartered Secretaries and Administration in Abuja.

He said that in view of the regulatory failure, the onus now rested on the board members to display a high sense of business astuteness and professional dexterity needed to pilot the Nigerian companies into virile business concerns that would contribute effectively to the production base of the country.

(TP, 07.11.08)

ACCION: Train Microfinance Managers

ACCION International, a pioneer and leader in microfinance, launched its new hub office and training centre recently in Accra, Ghana, underscoring the US-based nonprofit organisation's commitment to expanding financial services for Africa's working poor.

The centre's staff will provide support to ACCION's team of African microfinance experts, who currently work with microfinance institutions in both East and West Africa.

The centre will also address the clear need for capacity-building among microfinance practitioners in the region, offering education and training to ensure that future generations of microfinance managers possess the capacity and technical expertise to effectively meet the growing demands of Africa. *(ET, 31.10.08)*

US Groups to Improve Ethical Behaviour

Some of the largest companies in the US, including General Electric, Wal-Mart and PepsiCo are set to launch a drive to improve ethical standards in business in an attempt to stem the decline in corporate America's public standing.

Under the drive, companies will sign up to four principles of ethical behaviour: legal compliance, including not paying bribes; transparency; avoiding conflict of interests; and increasing accountability.

The initiative called the Business Ethics Leadership Alliance is partly driven by companies' desire to burnish ethical credentials. Gary Hill of Wal-Mart said that unethical behaviour was on the rise in corporate America, reversing a trend sparked by the regulatory clean-up that followed the Enron collapse. *(FT, 08.12.08)*

Sydney: Push for Rules on Pay 'Greed'

The Australian Prime Minister Kevin Rudd said he would push for new global rules to outlaw excessive pay packages for bank executives following the credit crisis. Rudd said he was working with the country's financial regulator on a plan linking bank "capital adequacy requirements to executive remuneration in a way that acts against excessive risk-taking in our financial institutions".

David Bell, Chief Executive of the Australian Bankers' Association, said there was no evidence that salary packages paid by Australian banks had weakened their institutions. "Australian banks are profitable and well capitalised", Bell said.

John Colvin, Head of Professional Services at Heidrick & Struggles, a recruitment firm, said "Australia would not escape tougher regulations. What happens in the US will flow around the world". *(FT, 16.10.08)*

Britain: Failed to Pursue Bribery Cases

British business was branded with an unprecendented corruption health warning by leading industrialised nations. They were angered by London's dropping of an inquiry into British defence and aerospace company (BAE) systems' Saudi Arabia arm deals and its failure to persue other cases of suspected foreign bribery.

Mark Pieth, Anti-bribery Group Chairman, said that the British companies were riskier to deal with because they came from a country where the approach to tackling bribery was too lax. He said: "If a country is not up to standard, if the companies are under regulated, in dealing with them you have to be a bit more careful".

(FT, 18.10.08)

PwC Censured for Using Loopholes

PricewaterhouseCoopers (PwC) was criticised by the UK accounting regulator for using loopholes to sell lucrative consulting services to its audit clients – a practice discouraged since the Enron scandal.

The Financial Reporting Council (FRC) singled out the firm in the UK for its practice of allowing senior partners involved in making key audit judgments – but outside the audit department itself – to sell advisory services to audit clients.

PwC said in its formal response that it "disagreed" with the FRC's view on cross-sellling by non-audit partners.

(FT, 09.12.08)

Egypt: Stakes in State Assets

Egypt is preparing a legislation that would provide citizens a stake in dozens of public sector companies in a move designed to address popular misgivings about the state's privatisation programme.

The ruling National Democratic party announced plans under which all Egyptians above the age of 21 would receive a certificate of ownership of shares in a range of companies owned by the state.

"This will push privatisation much further because it will eliminate all the problems and accusations that companies are being sold cheaply", said Aladdin Saba, Chairman of Beltone Financial, an investment bank.

(FT, 11.11.08)

China Poised for Strong Rebound

Overseas investments by Chinese companies will rebound strongly once the global economy stabilises, possibly in the second half of 2009, according to a study. A long pipeline of potential outbound investments were currently on hold, said PwC, with Chinese companies waiting to execute deals as soon as economic conditions become less volatile.

Financial institutions have been the most active overseas investors over the past 18 months, although Beijing has clamped down on further deals in the sector in light of the huge paper losses made. *(FT, 17.12.08)*

Argentina's Pension Plan Hits Shares

Argentina's plans to nationalise private pension funds – widely seen as a move to stave off the prospect of a disastrous new default – have battered shares in some of the country's biggest foreign investors amid fears the government could take further market-unfriendly steps if the economic outlook turns bleaker.

Economists say the move destroys Argentina's weak capital markets because the pension funds are the country's biggest institutional investors. Argentine crashed to the world's biggest sovereign debt crash in 2001 when it defaulted on US$95bn of debt. *(FT, 24.10.08)*

Kuwait Low on Investors' Priorities

In spite of its oil wealth and strategic position at the top of the Gulf, Kuwait in 2007 attracted only US$123mn in foreign direct investment (FDI) – the lowest for a Middle East country except for the Palestinian territories – according to the United Nations' 2008 World Investment Report.

Qatar, the second least popular destination for foreign capital in the six states of the oil-rich Gulf Co-operation Council (GCC), received 10 times more FDI. Experts opine that the main reason for Kuwait to be low on investor's priorities is an inhospitable business environment, particularly for international companies. *(FT, 09.12.08)*

China to Hunt for Fleeing Investors

China, hit by a slowdown in manufacturing from the global crisis, will persue foreign investors who flee the country to escape failed investment and debt. China will ask foreign governments to help investigae and extradite the fugitive especially in cases involving large sums of money.

Government efforts to pursue runaway investors came at a time when shrinking global demand is dealing a heavy blow to export industries and manufacturers, forcing migerant workers to return to their rural homes after losing factory jobs. *(BL, 20.12.08)*

Switzerland On Tax Blacklist

Switzerland should be placed on an international blacklist of tax havens, the German Government said as it joined a dozen other countries turning up the heat on territories that profit from tax evasion.

"Switzerland offers conditions that invite the German taxpayer to evade taxes. Therefore, in my view, Switzerland belongs on such a list", Peer Steinbrück, German Finance Minister said at a conference in Paris.

The Swiss Finance Ministry said it already applied rules on bank information exchange laid out by the Organisation for Economic Cooperation and Development (OECD) in 2000. *(FT, 22.10.08)*

South Korea Closer to State Control

South Korea is one step away from bringing the country's stock exchange under state control, a move that could sit uncomfortably with Seoul's ambition to cast itself as a financial hub.

The Finance Ministry said it was reviewing the two rulings and would issue a final verdict. One of the exchange's executive directors said, "It's a step back and totally against global standards. Foreign institutional investors could lose confidence in our capital market, worried about government interference". *(FT, 11.12.08)*

Turkey Seeks to Boost Investor Confidence

Turkey's Finance Minister Kemal Unakitan presented budget plans designed to reassure investors that the Government would not deviate from its financial discipline. He said Turkey would introduce fiscal rules to cement its commitment to budget discipline.

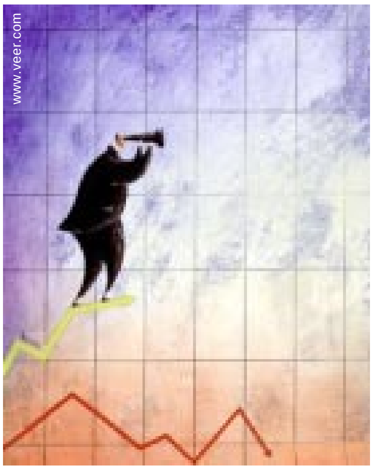
He said the budget deficit would narrow from 1.5 to 1.2 percent of gross domestic product (GDP) in 2009, with a primary surplus of four percent of GDP and spending growth in line with previously announced targets. The budget prepared without the involvement of the International Monetary Fund (IMF) – assumes growth will reach four percent in 2008 and 2009.

The IMF, on the other hand, predicts growth of three percent in 2009. Unakitan said there would be extra help for small and medium businesses, a tax break for local investors in equities, and inducements for Turks to repatriate savings held offshore. *(FT, 24.110.08)*

FDI Drops Down

Foreign direct investment (FDI) worldwide is expected to fall about 12-15 percent in 2009 from 2008's record levels, according to the body set up to promote global cross-border investment.

Alessandro Teixeira, President of the World Association of Investment Promotion Agencies, representing entities from 156 countries, said the fall reflected the reduced availability of credit, sharply lower equity prices and a large-scale retreat from risk.



He said that, in spite of a generalised slowdown, some emerging economies would still be growing at faster rates than developed economies and, therefore, would remain attractive to foreign corporate investors. However, other estimates suggest a more severe downturn in investment, including for emerging economies.

Teixeira said he did not expect governments to raise tariffs as a result of the crisis but thought increasing non-tariff barriers (NTBs) would be imposed in some countries. "That's the scenario for 2009-10". *(FT, 04.12.08)*

Investors Blame US Regulators

Hedge funds and investors who lost money in the alleged US$50bn Madoff scam have begun defending their decision to invest with Bernard Madoff, in some cases trying to shift the blame to US regulators.

Many investors and consultants who rejected Madoff-linked investment vehicles have said some of the "red flags" should have been warning enough for any hedge fund carrying out proper due diligence.

Lawyers are now preparing to target the managers of some of the "feeder" funds that placed money with Madoff, arguing that proper due diligence should have raised serious questions. *(FT, 19.12.08)*

Germany: No to Tighter Rules

Berlin will try to block efforts to regulate energy investments by non-EU companies, including the Russian monopoly Gazprom. Germany depends on Russia for more than 40 percent of its gas imports.

The German Government has drawn up plans to oppose the reciprocity clause, a rule that would force companies buying EU energy transmission assets to abide by the same open market rules that govern EU companies.

Gazprom's decision to cut gas supplies to Ukraine in 2005 over a pricing dispute created widespread alarm within the EU over energy security. *(FT, 06.10.08)*

Georgia Needs Aid to Buoy Economy

Georgia will need at least US$3bn of international aid in the coming three years to buoy the economy until foreign investor confidence recovers from the shock of the conflict with Russia, according to a report to be published by the World Bank.

Much of the necessary assistance has already been pledged, including US$1bn from the US and US$650mn from the EU, to be topped up by member countries. Assistance will be required to rehabilitate war-damaged civilian property, healthcare and education projects and construction of hydropower plants and a high voltage transmission line to Turkey. *(FT, 04.10.08)*

India-China Undeterred By Meltdown

Despite the current global economic slowdown and financial instablity, India and China continues to be the most preferred FDI destination in 2008-10. The United Nations Conference on Trade and Development (UNCTAD) survey entitled "World Investment Prospects (WIPS) 2008-10" points to an upward trend among developing and transition economies especially in Asia, Central Europe and Latin America, both for FDI inflows and outflows.

The increase FDI outflows from the developing region attributes to the countries plan to implement ambitious international expansion strategies. On the other hand, the attractiveness of the regions for inward FDI is mainly due to expected buoyant growth of markets and the availablity of abundant labour resources. *(FE, 06.10.08)*

Temasek to Target Asian Investments

Temasek Holdings, the Singapore state investment company, plans to use the proceeds from the sale of an Indonesian bank to make more investments in the Asian financial sector.

Among the possible acquisition targets would be some overseas financial assets of General Electric if they are put up for sale. The strategy reflects Temasek's belief that the current market turmoil provides an opportunity to buy undervalued financial assets.

Temasek's Fullerton Fund Management unit also said that it would form a new US$60mn fund with SBI Holdings, a Japanese venture capital firm, to invest in Asian financial companies. *(FT, 06.10.08)*

Latvia to Reassure Depositors

The Latvian Government is set to increase its stake in Parex Banka, the country's second largest bank, to 84 percent in order to reassure depositors, creditors and the International Monetary Fund (IMF). The agreement nationalises the last big independent Baltic bank, taking the state's stake up from 51 percent.

Depositors lost confidence in November 2008 because it lacked a strong foreign parent, unlike Swedish-owned rivals. Servicing Russian capital flight proved a fatal weakness when non-resident clients – representing half its deposits – withdrew funds. In November 2008, the founders handed a 51 percent stake to the Government but this was not enough to end the bank's agonies. *(FT, 04.12.08)*

SNCF Accused of Unfair Competition

The once-cosy world of European state-owned railways was given a severe jolt as Italy revealed it had teamed up with Germany's Deutsche Bahn (DB) to press the European Commission (EC) to act against what they saw as unfair competition and fully liberalise national passenger markets.

Mauro Moretti, Chief Executive of Italy's state-owned Ferrovie dello Stato made clear that the Italian-German initiative was aimed primarily at SNCF (National Railway of France), which he accused of unfair competition and obstruction.

SNCF rejected DB's and Ferrovie's accusations, pointing out that since its rail freight market started deregulating in 2005, private competitors had taken eight percent of the market.

(FT, 12.12.08)

Germany in Push for National Grid

Four energy utilities currently operate the electricity power lines that criss-cross the German countryside. The ambitious proposals would see the big energy groups Eon, Vattenfall, RWE and EnBW bundle their regional high-voltage grids into a holding company.

Proponents of a national grid company laud its potential to improve energy efficiency, stimulate competition, attract investment and lower electricity bills. But the apparent simplicity of the concept belies a complex web of corporate, political and regulatory interests that have tussled – in Berlin and Brussels – over the future of Germany's energy infrastructure. *(FT, 03.10.08)*

BAA Vows to Fight Airport Break-up

Ferrovial, the Spanish owner of London's Heathrow airport, took the fight to competition investigators over their plan to make it sell Gatwick, Stansted and Edinburgh airports to break its dominance of the industry in the UK.

Joaquín Ayuso, Chief Executive of Ferrovial, a construction and infrastructure group, said the company would use "all available mechanisms at its disposal" to protect its position.

Britain's Competition Commission wants the biggest shake-up in the country's airports sector with a raft of proposals including measures to improve investment and service levels.

(FT, 18.12.08)

EU: Emergency Accounting Changes

Accounting rules blamed by some banks for exacerbating the financial turmoil were eased in the European Union (EU), bringing its 27 countries in line with changes agreed by international accounting rulemakers.

Under the changes in rules, banks and other financial institutions would be able to "reclassify" certain financial instruments; effectively, they could move them from their trading books, where they must be marked at "fair", or current, market values to their banking books. *(FT, 06.10.08)*

US: Crackdown on Credit Derivatives

The backlash against the US$54,000bn credit derivatives market gathered pace as US legislators renewed calls for regulating a sector widely blamed for contributing to the financial crisis.

"There is no question that we must adopt a stronger system of regulation", Tom Harkin, the Democratic senator told a Senate hearing. He called the market for credit default swaps, which offer a kind of insurance against companies defaulting on their debt, a part of "casino capitalism" operating outside federal regulation, and said they contributed to the collapse of financial institutions. *(FT, 15.10.08)*

Need for a Global Monetary Authority

Even if the US's massive financial rescue operation succeeds, it should be followed by something even more far-reaching – the establishment of a Global Monetary Authority to oversee markets that have become borderless.

Washington recognises that the crisis has become global. Hank Paulson, Treasury Secretary, has said that foreign banks operating in the US will be eligible for federal assistance and he is urging other nations to fashion their own bail-out programmes.

Central banks have also been synchronising injections of funds into markets. These should be steps to a more comprehensive international response designed not just to extinguish the current fires, but to rebuild and maintain the capital markets for the longer term. *(FT, 26.10.08)*

LSE Levying a Special Charge

The London Stock Exchange (LSE) is levying a special charge on orders that do not come to the exchange directly and are instead routed to the LSE through other platforms. The move was criticised as "anti-competitive" by Nasdaq OMX, the LSE's US-based rival, when the London bourse first said it was planning the fee a month ago.

A feature of Nasdaq OMX Europe, the US exchange's recently launched pan-European equities trading facility, is that any order that cannot be fulfilled on Nasdaq OMX Europe is routed to other trading platforms – including the LSE – for matching there. *(FT, 03.10.08)*

Press for Banking Regulation

A complete overhaul of banking regulation is needed in the wake of the global financial crisis, and one of its aims should be to insulate the real economy from the effects of future banking crises, according to some of the world's top economists.

Robert Solow, who won the 1987 Nobel prize for economics said: "I would like to see a regulatory system aimed at insulating the real economy from financial innovation insofar as that is possible. That may require limits on the freedom of action of commercial banks. I think that is the most important lesson of this crisis".

The economists suggested that a start could be made on forging an international consensus on banking regulation. *(FT, 04.12.08)*

We Need An International Regulator

– Carmen Reinhart* and Kenneth Rogoff**

The Group of 20 leaders bemoaned the pro-cylicality of financial regulation caused by lax regulators, inattentive rating agencies and greedy financial institutions. Finding ways to insulate financial regulation from political meddling is critical to creating a more robust global financial system in the future.

Indeed, the need for greater regulatory independence is a compelling reason for establishing an international financial regulator, another topic the G-20 conspicuously avoided. International financial institutions are far from perfect. Nevertheless, a well-endowed, professionally staffed international financial regulator – operating without layers of political hacks – would offer a badly needed counterweight to the powerful domestic financial service sector lobbies.

The political system alone is responsible for the lax discipline that has led to our current predicament. Overly optimistic assessments by rating agencies and negligence by investors, as well as malfeasance in the financial sector certainly did play a role.

The principal activities of an international regulator should be to monitor agreements and promote free capital flows in a market-based system, not to re-regulate the global economy as it was 40 years ago.

But politicians had a big hand in fanning the excessive leverage that lies at the root of the current crisis. Start with a tax system, particularly in the US, that favours debt finance. Add the favourable treatment given to partnerships, including hedge funds and private equity that are largely taxed at very low capital gains rates instead of much higher income tax rates. Many regulators throughout much of the world were put under pressure by leading politicians to lighten up. The lack of transparency, which the G-20 leaders complain of so vehemently, also served as a convenient shield to keep politicians' interference out of public view.

Establishing more independent national regulators, alongside the independent central banks, would help but would not solve the problem. The fact that financial regulatory policy deals with specific companies and markets makes it difficult for a domestic regulator to stand up to focused political lobbying and interference.

Also, national regulators lack the power to resist the "national champions" arguments that are so often used to justify favouritism to the financial sector. Banks and other financial firms love to play the "offshore" card. They tell their politicians and regulators that higher taxes or capital requirements will put them at a disadvantage relative to foreign rivals. An international regulator is better positioned to resist these often specious arguments.

In principle, international co-ordination and monitoring could be achieved through a recurrent series of agreements, in analogy to the World Trade Organisation. The Basel agreements on bank regulation have succeeded to some extent in achieving this, but they take too long to negotiate. The Basel II agreement is already dead on arrival. Arrangements for modifications and decision-making are too inflexible to deal with the pace of change in modern financial systems.

The root problem of excessive leverage, and the political dynamics that produce it, are hardly new. The G-20 leaders were right to argue that containing leverage has to be a focus of any revamp of the global financial system. But they failed to recognise that any practical solution to the problem of domestic political interference will require stronger international agreements and regulation. These agreements are not only to help deal with large multinational banks and protect against cross-border regulatory arbitrage. An international regulator with teeth is needed to protect against national political interests that, left unchecked, will again push the global system to excessive leverage and risk.

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Abridged from an article that appeared in the Financial Times, November 19, 2008

Solutions for Europe

Neelie Kroes
EU Competition
Commissioner

'Now we need better joint working with Member States and the courts – that's my priority'

Everyone has an opinion about State aid in the banking sector in light of the financial crisis – what is yours?

State aid rules play an important role in the current situation and I am 100 percent certain they are part of the solution. My teams have been working day and night to make sure we are an effective stabilising force in our financial system. In the absence of State aid rules, governments would be tempted to start subsidy races, which would weaken the European economy further. Perfectly healthy companies could be put out of business just because their competitors received unfair state subsidies and that would not be fair.

Are you satisfied with what has been achieved in the 2005-08 State Aid Action Plan?

Yes. In just three years, virtually all State aid rules have been modernised. That means about 15 new texts! Anyone who has observed State aid over recent decades would acknowledge it is now much better targeted. Compared to the two percent or more of GDP spent on State aid in the 1980s, today's figure of 0.6 percent looks healthy. The message is this: we're heading in the right direction and making active efforts to keep it that way.

What is the biggest State aid challenge today?

Our immediate focus is the financial crisis, of course. In the longer term it is hard to overlook issues like energy and climate change. Member States could be doing much more to take advantage of the environmental aid guidelines, and when they do it helps everyone. Good use of this aid also complements what we are trying to do with liberalisation of Europe's energy markets.

What is it like to deal with the social consequences of your State aid decisions?

I am very aware that the implementation of our recovery decisions sometimes may produce in the short term, negative consequences from a social point of view. So we do not take these decisions lightly – but we have to apply the same rules to everyone. It's tempting to listen to the loudest people, but if certain State aid is going to waste taxpayer's money or stop other jobs from being created or put healthy competitors at risk, then observers need to consider that as well. Therefore, in the longer term, it is also in the workers' interest to avoid incompatible State aid which artificially keeps inefficient undertakings afloat without requiring restructuring measures.

What are your priorities for State aid for the rest of this mandate?

I would like if Member States took full advantage of State aid reform to support growth and jobs. We are closing in on the limits of what improvements the Commission can offer on its own in terms of reduced red tape and faster decisions. Indeed, we are in the course of initiating better joint working with Member States and the courts to be able to take faster, more transparent and predictable decisions – that's my priority. We are therefore working on a "Best Practice package" that would combine three elements: first of all, closer cooperation between the Commission and national courts to improve private enforcement at national level (the Enforcement Notice); secondly, a Simplified Procedure to quickly approve straightforward aid measures and, finally, a Best Practice Code to lay down the joint commitment of the Commission and Member States to more predictable, transparent and speedy standard procedures and set out the procedural improvements necessary for this purpose.

Excerpts from an interview that appeared in the Special Edition of Competition Policy Newsletter, December 2008

Some Companies are Too Powerful to Fail

– John Kay*

The larger the business, the more likely that legislators will see political advantage in being helpful

Great banks are "too big to fail". The predictable consequence of governments accepting this argument is a queue of other companies "too big to fail" lining up at the front door of treasuries. Insurers were next. This week, the car manufacturers secured their subsidy. The failure of any business has ripple effects on suppliers, employees, distributors and customers. If the business is General Motors such effects are larger. But since GM is many times larger than most companies, the subsidy needed to keep going is correspondingly larger. There is no reason to think that the ripple effects are larger, relative to the size of GM, than the consequences of the failure of a smaller business relative to its size.

So the return on the taxpayers' dollar is not likely to be larger if their largesse goes to a big company. Indeed, since the large company has readier access to a range of alternative funding options, a need for government support is more likely the result of deep-seated competitive weakness than temporary shortage of funds, which can so easily cripple a smaller business.

That is true of the carmakers, whose problems are of much longer standing than the current downturn. In automobiles as in many industries, economies of scale are technological, the diseconomies of scale human. Human factors in business are generally more influential than technological ones in determining the long run fate of a company.

The memory of a meeting in one of Britain's largest companies – now no longer so large – is engraved in my memory. We discussed how best to persuade the regulatory authorities of the cost advantages arising from the company's size. But the room was crowded with people who had nothing substantive to contribute. They were there to defend and advance their political position in the corporate hierarchy. The meeting itself demonstrated that the arguments we were presenting were false. Politics overrode productivity.

As has been true in Detroit. Arrogant, complacent and only belatedly sensitive to competitive pressures and changing customer needs, the big three have been in relative decline for half a century. But there really are economies of scale in political lobbying. The cost of presenting your case is independent of the size of the benefit you seek. The larger the business, the more likely that legislators will see constituency interest or political advantage in being helpful. Big companies have government affairs departments but for small groups the cost of access is prohibitive. Only large companies have access to the sharpest shooters.

Too big to fail, but big enough to exert political influence. The malign consequences are evident in many areas of public policy. Large media and software companies write intellectual property rules, while the interests of users go unrepresented. Big pharmaceutical and defence companies employ thousands of lobbyists. Consumer interests come a distant second to producer interests in the formulation of trade policy. In the past two decades the financial services industry has become the most powerful and effective lobby of all. The cash contributed to political campaigns has now been repaid many times over from the public purse.

But few things corrode business efficiency and effective markets more insidiously than the discovery that it is more profitable to win the favour of politicians than to win the approval of customers. In Italy, and in some other European states, an inefficient large-business sector is parasitic on the vibrant small- and medium-sized enterprises, which are the mainstay of the economy.

The problems are worse in Russia and in many potentially emerging economies. In these countries, the nexus between the political and business elite undermines both democracy and business efficiency. The populist trustbusters who framed anti-monopoly legislation more than a century ago feared that the cost and technical advantages of large companies would be more than offset by damage to economic efficiency and pluralist institutions from the political power they might acquire. These early trustbusters were right.

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* *Columnist, Financial Times*
The article appeared in the Financial Times, December 10, 2008

About a Competition Law – Algeria*

Algeria is situated in Northern Africa bordering the Mediterranean Sea, between Morocco and Tunisia. After more than a century of rule by France, Algeria achieved independence in 1962. Algeria's primary political party, the National Liberation Front (FLN), has dominated politics ever since. Algeria needs to diversify its petroleum-based economy, which has yielded a large cash reserve but has not been used to redress Algeria's many social and infrastructure problems.

Economy

Algeria is important to world energy markets because it is a significant oil and gas producer and exporter. Algeria is also a member of the OPEC and an important, growing energy source for Europe. Algeria has the seventh-largest reserves of natural gas in the world. Due to sustained high oil prices in the past three years, Algeria's finances have further benefited from substantial trade surpluses and record foreign exchange reserves. Real GDP has risen due to higher oil output and increased the Government spending. The Government's continued efforts to diversify the economy by attracting foreign and domestic investment outside the energy sector, however, has had little success in reducing high unemployment and improving living standards.

Competition Evolution and Environment

Political upheaval and vested interests have made privatisation in Algeria a protracted process, and one that has remained a vexed issue. The first tentative attempts at reform, in fact, go back to 1998, when changes were made in the corporate law. Algeria's first regulations on competition were contained in its 1989 Act on Prices. For the first time, new concepts of cartels and abuse of dominant position entered the legal language through economic reforms, which were aimed at transforming the Algerian economy into a free market economy, which until that point had been centrally planned.

The main aim of the 1989 Act, which was to provide for the gradual liberalisation of prices of products and services, was repealed by a 1995 Ordinance. This set forth, in detail, the regulations and mechanisms for competition as an economic policy instrument. Thus there was virtually total price liberalisation, with the exception of a few essential services and products, and the removal of government price controls, which enabled firms to take back possession of a powerful means of resource allocation.

Competition Law, Institutions, and Competencies

The competition law of 1995 was more explicit regarding objectives, which are as follows:

- to foster economic efficiency;
- to improve consumer welfare; and
- to ensure transparency and the fairness of commercial practices.

The number of cases related to competition was very low during the period, i.e.1995 to 2002. Useful lessons can be gleaned from the fact that there were so few referrals on restrictive practices; as such practices are barriers to the effective implementation of the principles of competition. Given the rather uninspiring results achieved since 1995, a new Ordinance was added to the legislation on competition, and came into force in July 2003. The new law was apparently in view of the poor results obtained in implementing competition rules since 1995 and for correcting the shortcomings.

Consumer Protection

Algeria has a framework consumer protection law, namely, Consumer Protection Law (CPL) No. 89-02 of February 07, 1989. The law provides general rules for consumers' protection and covers several areas for protecting consumers' interests. The Law also empowers the Government to issue decrees to regulate specific areas. For example, the Executive Decree No. 97-254 of July 08, 1997 on prior authorisation for the manufacture and import of products that is toxic or presents a particular hazard. The Law is implemented by the Ministry of Trade and/or the other ministries concerned.

Future Scenario

One of the challenges in Algeria is to improve the business environment, and reduce the State's involvement in the provision of goods and services. A more conducive business environment is needed to support the development of the emerging private sector – the crucial pillar of a sustainable growth and employment generation strategy. The major obstacles to private sector development are: large public sector control of economic activity; shortages of industrial real estate; difficulties in raising capital; serious administrative barriers/limited access to information; shortcomings in labour regulations/few skilled workers; inadequate infrastructure; and an ineffective legal/judicial system.

In this context, the structural reforms, virtually stalled at present, constitute a challenging agenda for the future. In particular, critical strands still need to be achieved in the areas of banking sector reform (with better corporate governance, increased competition and privatisation of banks, a more assertive supervision and regulation, and boosted by financial market development); private sector participation in infrastructure, and privatisation and restructuring of public enterprises.

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

Publications

PolicyWatch

The October-December (2008) issue of the CUTS newsletter PolicyWatch encapsulates the Satyam scandal in its cover story entitled, 'Corporate Governance Cries Out for Reforms'. sThe pride of corporate India has taken a serious blow, and the onus is on all of us to help salvage it.

Special article by Pradip Baijal emphasises that we should halve taxation rates and triple investment in infrastructure sectors, such as agriculture, irrigation, roads and power, while Meghnad Desai's article stresses on the need to take an audit of the dysfunctional Indian State before it destroys the Indian economy and indeed the nation. The newsletter captures an interview with the Director, Corporate Finance, KPMG, India which says that most competition regulators out greater emphasis on concentration or market share, while deeming which all combinations should fall within its ambit.

Besides, it carries regular sections on Infrastructure, Trade & Economics, Governance & Reforms, E-governance, Corporate Governance, Expert Corner, Report Desk, Good practices, Corporate Governance etc.

To access the newsletter online
please click on the following link:
www.cuts-international.org/pw-index.htm

Forum

Among International Development Research Centre's (IDRC) competition policy projects is one entitled, 'Competition Research for Economic Development' (CRED), which provides research support directly to competition authorities in developing countries. Though on a smaller scale, it is providing a successful complement to CUTS' valiant efforts in promoting national cultures of competition.

Susan Joekes
Senior Program Specialist
Globalization, Growth & Poverty Program
IDRC Middle East and North Africa
Regional Office

Competition Policy: Essential Element for Private Sector Development in Eastern and Southern Africa

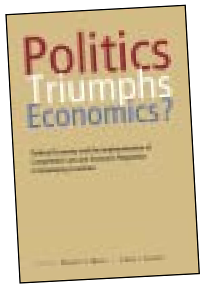
This Monograph highlights impediments to the effective operationalisation of competition regimes in the Eastern and Southern African (ESA) region, which has been argued to be an imperative for private sector development therein. It collates knowledge and evidences from the countries to explore the contribution of a sound competition regime to private sector development in the region.

Enforcing the Competition Law in Namibia: A Toolkit

This document, researched and compiled by CUTS and customised in the Namibia context, is meant to act as a manual for Namibia, providing a simple and concise handbook on various implementation issues relating to the Competition Act, 2003 (Competition Law of Namibia). It analyses the constraints and challenges that the competition authority of Namibia may face towards building a healthy competition culture in the country, and suggests a framework for addressing the same.

This Toolkit can be viewed at:
http://www.cuts-ccier.org/7up3/pdf/Enforcing_the_Comp_Law_in_Namibia_Toolkit.pdf

Politics Triumphs Economics? *Political Economy and the Implementation of Competition Law and Economic Regulation in Developing Countries*



The research volume has been published under the 'Competition, Regulation and Development Research Forum' (CDRF) project. A wide range of issues have been captured in the research volume – for instance, the political economy underlying the implementation and enforcement of competition and regulatory laws and regimes, barriers posed by vested interests to the free and fair functioning of competition and regulatory regimes and regulators attributable to functional overlap which often delays decisions and is, therefore, detrimental to the welfare of any country.

This book can be purchased at:
http://www.academicfoundation.com/n_detail/ptrumph.asp
Hard Back Book: Pp 468, Rs 1195/US$69.95, ISBN 13: 978-81-7188-725-5, 2009 Edition

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