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CUTS C-CIER

Call for World Competition Day

INCSOC

On December 05, 1980, the UN adopted the international standard for competition laws under what is called the UN Set on Competition Policy. This Set has guided a large number of developing countries to draft and adopt new competition laws. From about 30 countries in 1995, today over 120 countries have adopted a new law or improved their existing competition laws, and few more are in the queue.

Recently, the Set was reviewed at the United Nations Conference on Trade and Development's (UNCTAD) 6th review conference in the midst of enthusiastic delegates from over 100 developed and developing countries. This was also the 30th anniversary of the Set.


www.google.com

To mark this anniversary, a proposal to observe December 05 as the World Competition Day was mooted by the International Network of Civil Society Organisations on Competition (INCSOC), an international coalition spread across 66 countries.

A large number of delegates at the conference agreed to celebrate the World Competition Day in their own countries. It was also agreed that the Day be used to raise awareness and rally common people around the issue of air cargo cartels, which have been causing serious harm to consumers and the economy.

While cartels are most pernicious of all anti-competitive practices and very difficult to detect and investigate because of their inherently secretive nature, the task gets more difficult in the aviation industry because it operates across borders. However, once one airline was caught, it had a domino effect around the world.

A bit late, but the European Union (EU) did act on it by slapping one of its biggest fines in history on 11 airlines totalling US$1.1bn for running a global cargo cartel, which manifested itself through coordinated action on surcharges for fuel and security between 1999 and 2006. Those penalised included Air France-KLM, British Airways, Cargolux, SAS, Singapore Airlines, Air Canada, Qantas, LAN Chile, Martinair and Japan Airlines. Lufthansa was pardoned because they spilled the beans.

The prosecution by the EU was not the first for most of the airlines, as earlier the US Department of Justice had also found that some of the world's biggest airlines had conspired between 2000 and 2006 to fix cargo prices. In 2009, three cargo airlines in the US agreed to pay fines totalling US$214mn for the same crime. In this case, 15 airlines were prosecuted and a total fine of US$1.6bn was imposed.

In addition, three senior air cargo industry executives agreed to serve jail terms. This concerted practice to fix cargo rates started in 2001 and continued till February 2006. Before this, in 2008, four airlines, including Air France-KLM and Cathay Pacific, had to pay fines in the US totalling US$504mn for their roles in a criminal conspiracy to fix surcharges on air cargo shipments.

The Japanese Fair Trade Commission, in 2009, was also reported to have notified more than ten companies that they would be fined about ¥10 billion for operating a cartel of international air cargo fees. This year, the South Korean Fair Trade Commission imposed a total fine of US$100mn on 19 airlines for their conspiracy to levy fuel surcharges and continued to raise surcharge rates for air cargo to-and-from Korea between 1999 and 2007. South African and New Zealand authorities are also investigating similar cartels that affected their markets.

Cartels in the air cargo industry should be of concern to all stakeholders as they have a serious negative impact on efforts towards economic development and poverty reduction in developing countries.

A study done for the International Air Cargo Association and Air Cargo Forum by John Kasarda and others, in 2006, showed that the air cargo industry is responsible for transporting about 29.9 percent of all international trade, with an annual value of US$2.7tr.

The study also showed that Korean Air, Lufthansa, Singapore Airlines, Cathay Pacific and China Airlines were the largest combination passenger-cargo carriers in terms of capacity. American Airlines and United Airlines were found to be providing substantial cargo service even without use of dedicated freighters, while airlines such as Lufthansa, Air France and KLM had broad geographic coverage, servicing more than 50 countries, and British Airways offered cargo service to over 100 countries.

It is therefore, very alarming to see that almost all the major players in the air cargo market were part of a cartel, and one shudders at the impact in terms of overcharges that consumers across the globe suffered due to the cartel.

The air cargo transport also specialises in high value to weight products (like minerals), perishable goods, emergency deliveries and products requiring high security. Mostly, airlines are used by developing countries to transport either finished goods for resale or raw materials for value addition to produce finished goods. Most of these products find their way into the value chain of most finished products; hence, cartelising their transportation has serious multiplier effects on the prices of the final products.

Developing countries are not spared the impact of the cartel as there is significant amount of air cargo trade going on in these regions, a proportion of which is handled by members of the cartel. The proportion of exports shipped by air from less developed regions such as Africa and some parts of Asia exceeds 10 percent.

What is therefore apparent from this is that competition authorities in developing countries also need to be in a position to join in and prosecute such international cartels once they are discovered. Being hamstrung by resources and perhaps their own weak laws, competition authorities in developing countries should innovate and use various means at their disposal in handling international anticompetitive practices. This could include initiating and enlarging informal cooperation between authorities in the countries targeted by the cartel. The first World Competition Day on December 5 should be the D-Day for launching a global crusade.

Thematic Note 2010*

5th December as World Competition Day

International days are observed to draw the attention of the society at large on issues that are extremely important for human development in the present and particularly for the future.

CUTS calls on the international competition community to voice the need for adopting a WORLD COMPETITION DAY, as we celebrate 30 years of adoption of the UN Set on Competition Policy. It would be ideal to mark 5th December, the day of adoption of the UN Set on Competition Policy by the UN General Assembly, as the WORLD COMPETITION DAY.

CUTS urges countries and competition agencies worldwide to begin this process by observing 5th December 2010[1] as an occasion to propagate the benefits from competitive markets, and harmful effects of anticompetitive behaviour, nationally. A suggested theme this year is International Airtransport Cartels and its Impact on Developing Countries, given the recent spate of action on such cartels globally with landmark decisions.

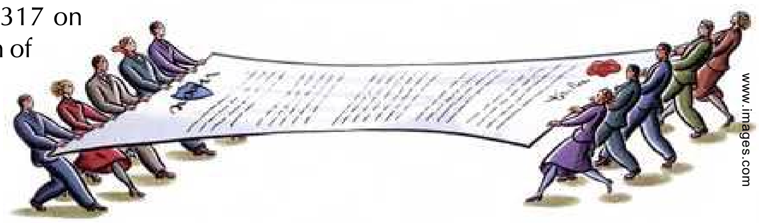
Interested countries/competition agencies are encouraged to contact cuts@cuts.org or c-cier@cuts.org for information, etc.

**This Note is also available in French and Spanish*

1 *As this is a Sunday the Day can be observed on Sunday following on to Monday 6th December for public events.*

Albania Amends Competition Law

The Albanian Parliament approved Law 10,317 on Amendments to Law 9,121 on the Protection of Competition. The amendments were proposed by the Albanian Competition Authority as part of a special competition law review taskforce, with the aim of harmonising Albania's competition legislation with the EU law.



The amendments address some practical challenges in the implementation of the Competition Law in Albania since its first approval. It also deals with various other provisions on cartels; merger controls; abuse of dominant position; procedures to replace members of the Competition Authority; general administrative procedures; special investigation procedures; exemption penalties and public involvement. *(ILO, 04.11.10)*

FTC Unveils Web Privacy Code

The US Federal Trade Commission (FTC) has issued guidelines on internet privacy, calling on industry to let protection of private data permeate nearly every business decision. But the new guidelines, which will be voluntary, fell short of what many consumer advocates have been calling for – including requiring a universal opt-out that would allow citizens to say they do not want to be tracked by advertisers, in the same way they can opt out of calls by telemarketers.

The most effective way to allow consumers meaningful choice in the area was to ask companies to honour browser settings that enhanced privacy. But such settings already exist, and they can be circumvented by newer types of tracking 'cookies' that lodge themselves in other parts of users' computers and recreate themselves if deleted. *(FT, 02.12.10)*

EC Revise Competition Rules

The EC released revised guidelines for the Assessment of Horizontal Cooperation Agreements. It also released a draft Regulation on the application of Article 101(3) of the Treaty to Certain categories of Research and Development Agreements and a draft Regulation on the Application of Article 101(3) of the Treaty to certain categories of Specialisation Agreements.

The New Guidelines attempt to provide more clarity and greater detail to enable companies to determine for themselves whether any cooperation agreement with their competitors is legal. The new analytical framework laid out by the European Commission to assess horizontal cooperation agreements encompasses two "key features," i.e., the adoption of an entire section dedicated to information exchanges between competitors, and a substantially revised section on standard-setting. *(EC, 14.12.10)*

Indian Firm to Draft Afghan Law

Attempting to do away with a Taliban-era law, the Hamid Karzai-led Afghanistan government has roped in an Indian law firm for the job.

Two partners of leading law firm Economic Laws Practice (ELP) are giving final touches to the competition law. Among other things, the brief to the lawyers is also to prepare a law that would be "21st Century-Compliant".

They have been asked to go through the prevailing laws in the country (Afghanistan) and suggest a modern-day competition law that would help the government in making a smooth transition to a free market economy. *(IE, 20.12.10)*

Pak Proposes New Penalties

Following the signing of the Competition Bill 2010 by the President in Pakistan, subsequent to its approval by the National Assembly, the Competition Law has been revived.

However, there are some significant differences. The Act amends the penalties that may be imposed on undertakings which contravene the provisions of Chapter II. A tribunal, to be known as the Competition Appellate Tribunal, is to be established within 30 days of promulgation of the law which would comprise a chairperson and two technical members.

Whereas an appeal from the commission's appellate bench was previously referred to the High Court, it will now be referred to the tribunal. An appeal against a tribunal decision will be referred directly to the Supreme Court. *(ILO, 28.10.10)*

Uganda Needs Competition Regime

Telecom companies in Uganda and the region have recently dropped their prices to shocking figures as the cutthroat competition for market share rises. Similar competition trends are seen in the banking and beverage sectors.

With the coming into force of the protocol on the establishment of the East African Community (EAC) Common Market, it has become essential for Uganda to have strong regulatory regime to address issues concerning national competition in its market.

Currently, Uganda has a draft Competition Bill which has not been presented before the Parliament for debate, or circulated to stakeholders for discussion, which means that there are barely any terms of reference regulating of competition in the country. *(NV, 21.10.10)*

Merger Developments in Canada

The Canadian Competition Bureau announced new service standard periods and complexity designations in its revised Fees and Service Standards Handbook for Mergers and Merger-Related Matters.

The Bureau also issued an updated Fees and Service Standards Policy for Mergers and Merger-Related Matters and a Procedures Guide for Notifiable Transactions and Advance Ruling Certificates under the Competition Act, which contain more technical changes aimed at ensuring that the bureau's merger review process is in line with the amended merger provisions. *(ILO, 09.12.10)*

Merkel Weighs in Over Reforms to Regulation

Angela Merkel, Chancellor, has thrown her weight behind the push for tougher regulation of commodity markets in Europe that is being led by France. The prospect of more stringent regulation in Europe and the US is one of the most significant issues facing the industry. Lawmakers in Washington are debating the details of regulatory reform in the US.

Nicolas Sarkozy has made reform of European commodities regulation one of the priorities for France's G20 presidency, which begins in November 2010. "The French president has made it clear that his G20 presidency will have three priorities, one of which is the issue of commodity speculation, and I support him," Merkel said ahead of a gathering of Asian and European political leaders in Brussels.

The drive for reform comes after food commodities spiked higher this summer, led by the soaring cost of wheat. In a letter to the European Commission, Christine Lagarde, French Finance Minister, said: "We consider European regulation of trading in commodity derivatives to be insufficient".

The push by Paris and Berlin is likely to be felt acutely in London, the centre of commodity trading in Europe. The UK government and the country's regulator, the Financial Services Authority, have argued that supply and demand fundamentals explain commodities price moves rather than speculators. But London appears ready to move with some reforms, even if it is seen as unlikely to back a radical overhaul.

Brussels is planning to introduce European regulations for commodity markets following a review of the Markets in Financial Instruments Directive in 2011. Nonetheless, traders and analysts said that physical buying from traditional Asian markets had held up surprisingly strongly, and, conversely, sales of gold for scrap – which usually soar when the metal rises to new records – have remained muted.

"Macro data, coupled with currency movements, have set the tone of trading lately for gold prices but stronger-than-expected Asian physical demand has provided a solid footing for prices to build fresh gains on," said Suki Cooper, precious metals analyst at Barclays Capital in London. Spot gold hit a peak of US$1,341.20 an ounce, up more than 13 percent since August 2010. It remains well below its 1980 peak when adjusted for inflation.

(FT, 06.10.10)

Watchdog Merger Merits Review

The coalition government wants to rejig the UK's competition authorities as part of its assault on the quangos. The case for this is not clear cut. Merging the Competition Commission into the Office of Fair Trading will not achieve the government's objectives in reorganising these public bodies.

Savings will be small and there will be no improvement in public accountability. Rather the case seems to rest on a desire to complete competition investigations more swiftly and at a lower cost to those being investigated. This is an admirable objective so long as their rigour is not impaired.

Britain's system of competition regulation is unusual in that the two phases of an investigation are handled by different bodies. The OFT is like an investigating magistrate – both determining whether a case should be brought and preparing the prosecution's arguments. Meanwhile, the Competition Commission plays the role of an independent judicial tribunal. It hears evidence from the OFT and affected parties and investigates the competition issue itself before pronouncing on the outcome. These inquiries are outsourced to specialists.

Investigations can overlap because the Competition Commission conducts its own review and does not re-use the OFT's work. While this does not cause the extreme delays it slows things up. That said, there are advantages in separating the two parts of an investigation. It ensures rigour and objectivity. It is harder for the competition watchdog to be sidetracked by irrelevant political goals.

The government should be mindful of the different roles played by the OFT and the Competition Commission before making such changes to the regime. Ultimately, the amounts competition can save the economy as a whole dwarf any budgetary advantages from regulating it on the cheap.

(FT, 15.10.10)

ABUSE OF DOMINANCE

EU Launches Google Probe

The top European anti-trust regulator opened an investigation into Google to examine allegations that the Internet giant has abused its dominance in online search. The move follows complaints by specialised search-related companies about unfavourable treatment of their services in Google's unpaid and sponsored search results.

The Commission was also looking into whether Google may have given its own services "preferential placement" in search results. It would investigate whether Google had unfairly lowered the rankings of competing search services.

It would look into allegations that Google manipulated a so-called Quality Score that helps to determine how much advertisers pay Google to buy ads linked to a particular search keyword. *(FE, 01.12.10)*

Italy Investigates Pfizer

The Italian Competition Authority, AGCM, has opened an investigation into a possible abuse of dominant position by Pfizer Italy Srl in the market for glaucoma treatments. The company is alleged to have implemented strategies to artificially extend the patent protection of latanoprost, the active ingredient to treat glaucoma used in Pfizer's product Xalatan, in order to prevent the entry of generics into the market after the expected expiry of Pfizer's patent in September 2009.

Pfizer is accused by complainant Ratiopharm of having deceiptfully requested and obtained an extension of patent coverage for latanoprost until 2011, through an application for a divisional patent and a subsequent request for a supplementary protection certificate.

The AGCM will now assess whether this conduct was aimed at preventing access to the market for new generic drugs. *(AGCM Press Release, 26.10.10)*

Abusing Dominance in Telecom

ThunderWorx Limited filed a complaint with the Commission for the Protection of Competition against the Cyprus Telecommunications Authority for its apparent refusal to grant ThunderWorx, as an individual distributor of premium short messaging service (SMS), the ability to provide such services to the authority's mobile users.

The Commission found that the authority was in breach of Section 6(1) of the Protection of Competition Law 2008. It held that the authority had abused its dominant position by limiting production, distribution or technical development to the prejudice of consumers. It had also applied dissimilar conditions to equivalent transactions, thereby placing ThunderWorx at a competitive disadvantage. *(ILO, 16.12.10)*

Probe into Airport Entry Fee

The Competition Commission of Pakistan (CCP) has written to Pakistan's Civil Aviation Authority (CAA) requesting an explanation over the imposition of an entry fee to Benazir Bhutto International Airport in Islamabad.

Certain individuals such as ticketed passengers and their drivers are exempt from the fee, but the CCP has concerns that the CAA's conduct may be in violation of the Competition Act. In its letter, the CCP sought clarification on whether additional services are being provided in lieu of the fee, whether a similar fee is imposed at other airports and who exactly is exempt from the fee. *(CCP Press Release, 23.10.10)*

Supermarket Under Scanner

The Office of Fair Trading (OFT), UK has called off its long-running probe into supermarket price-fixing, citing "administrative priorities" for the decision. The big four supermarkets, as well as suppliers including Procter & Gamble and Unilever, were all raided by the OFT in April 2008. That began a multimillion-pound investigation into alleged collusion over pricing in the three-year period leading up to the raids.

The allegations concerned so-called "A-B-C information exchanges", where retailers gave details on pricing to suppliers, who then passed on the information to other retailers. Following the receipt of substantial evidence from more than one source, the OFT opened a formal investigation into suspected breaches of competition law by a number of retailers and suppliers. *(www.thegrocer.co.uk, 18.11.10)*

CARTELS

Causes of Building Collapse

Price competition between construction firms in Uganda is to blame for the increase in collapsing buildings and shoddy work. Price competition is when rival firms cut prices to get business over others without factoring in costs.

Enock Kibuuka, the architects body president, revealed that the legal and regulatory gaps in the construction industry will be closed in the upcoming Building Control Bill currently being reviewed by the Cabinet.

He was dismayed that the public had also resorted to focusing on saving more money on contracts, and therefore seeking services of unprofessional and cheaper 'engineers' culminating into making mistakes in executing duties which eventually leads to loss of lives. *(NV, 07.10.10)*

LCD Makers Under Fire

The EC has fined six LCD panel producers of Korea and Taiwan for operating a cartel which harmed European buyers of LCD-equipped consumer electronics. LCD panels are the main component of thin flat screens used in televisions, computer monitors, and laptops.

The companies held multilateral and bilateral meetings where they agreed on prices, including price ranges and minimum prices, and exchanged other commercially sensitive information. Samsung Electronics participated in the price fixing but escaped a fine because it blew the whistle on the cartel.

Chimei InnoLux Corporation and HannStar Display Corporation are each required to pay their fines in full. *(FT & ET, 09.12.10)*

EU Raids Pharma Companies

AstraZeneca, which makes the best-selling heartburn drug Nexium, has been raided by EU antitrust regulators investigating suspected collusion to block the sale of cheaper generic medicines. Company officials said the US$5bn-a-year heartburn and stomach ulcer drug was a key focus of the raids – the latest in a series targeting improper activities in the sector.

Nexium was AstraZeneca's biggest-selling drug in 2009, although its importance is declining. It was eclipsed in 2010 by cholesterol fighter Crestor, which is now AstraZeneca's most important product. For AstraZeneca, the investigation into Nexium marks the latest brush with competition authorities in Brussels, who have targeted the company before.

(Reuters, 03.12.10)

Tyre Manufacturers Brought to Book

The South Africa Competition Commission has referred a complaint of price fixing against the South African Tyre Manufacturers Conference (SATMC) and four tyre manufactures and suppliers (Apollo Tyres South Africa, Goodyear South Africa, Continental Tyre South Africa and Bridgestone South Africa) to the Competition Tribunal for adjudication.

The Commission initiated an investigation after receiving a complaint alleging that certain tyre manufacturers and suppliers had agreed on price increases and on when such increases would be implemented. It asked the tribunal to impose an administrative penalty of 10 percent of the total turnover of the firms that were involved in the alleged cartel.

(SACC Press Release, 11.11.10)

ArcelorMittal Fined

The EC has slapped a fine of over €458mn on the world's largest steelmaker ArcelorMittal and 16 other companies for operating a price-fixing cartel for nearly two decades. It is amazing how such a significant number of companies abused nearly the entire European construction market for such a long time and for such a vital product. This was almost as if they were acting in a planned economy.

On June 30, 2010 the EC fined 17 steel producers €518.5mn for fixing prices of a type of steel used in concrete. On September 30, 2010 the Commission corrected errors in the calculation of the fine, after which the new figure stands at €458mn. ArcelorMittal was imposed the largest individual fine – over €230mn.

(BS & BL, 07.10.10)

FINES & PENALTIES

FTC Hits Dairy Firms

A dozen dairy manufacturers have been slapped with considerable fines for price fixing and other collective agreements aimed at limiting competition. The FTC of the US assessed the penalties to help break up entrenched practices of price collusion, which are common in consumer products such as milk and dairy.

www.townnews.com

The price fixing was the result of a regular meeting of officials from each company, including the nation's three largest whole milk manufacturers – Seoul Milk, Namyang Dairies and Maeil Dairies.

The agency also ordered the trio of large milk manufacturers to scrap a collective agreement to limit 'buy one, get one free' offers reached in April 2008.

(www.joongangdaily.joins.com, 20.12.10)

You Break It, You Pay

The Netherlands Competition Authority has imposed a fine on the National Association of General Practitioners for breaking a seal affixed by authority officials during a dawn raid. This is the second time the authority has imposed a fine for breaking a seal.

The authority was unconvinced by the association's argument that the fine should have been imposed on the security guard who opened the sealed door. The association could be held responsible for breaking the seal, as it should have informed security of the affixed seal.

The authority further considered that it is generally not necessary to show that the breaking of a seal is attributable to the company in question, unless the company proves that there were exceptional circumstances.

(ILO, 04.11.10)

JFTC Fines Electric Cables

The Japan Fair Trade Commission (JFTC) is set to impose fines on four electric cable makers for their participation in a cartel for indoor electric cables. The four companies receiving fines will be Sumiden Hitachi Cable Ltd., Fujikura Dia Cable Ltd., Furukawa Elecom Co. and Yazaki Corp.

SWCC Showa Cable Systems Co. was also investigated by the JFTC, but appears to have been granted leniency from fines for voluntarily reporting its involvement in the cartel. The cartel is believed to have operated from 2005 to 2009 as an attempt to prevent the fall of prices of cables sold to electrical installers.

(DJ, 26.10.10)

Kingfisher Accused for Not Complying

The Competition Commission of India (CCI) has fined Kingfisher Airlines for its failure to cooperate in the CCI's investigation into its proposed agreement with Jet Airways.

Kingfisher said that it provided all available information to the CCI and is seeking legal advice on the matter. The proposed agreement between Kingfisher and Jet would include code-sharing on domestic and international routes as well as joint fuel management. The CCI began its probe in August 2009, but was temporarily halted after Kingfisher went to the Bombay High Court.

(ET, 21.11.10)

AA, BA & Iberia Tie-up

Three of the world's biggest airlines have agreed to cooperate commercially on flights between Europe and North America after more than a decade of talks. The move by American Airlines (AA), British Airways (BA) and Iberia, all of whom belong to the 11-member Oneworld airline alliance, will see a batch of new routes, better frequent flyer benefits and the rehiring of hundreds of flight crew.

The move comes 14 years after BA and AA first sought regulatory approval for a tie-up, with Iberia joining the plan for the joint venture a few years later. The new business would boost the airlines' footing compared with their rivals in the world's two other main alliances: Star, the largest group with 28 members, and SkyTeam, which has 13 members. *(FT, 07.10.10)*

GE Buys Dresser For US$3bn

General Electric has struck a US$3bn deal to buy Dresser, a Texas-based maker of gas engines used to power oil and natural gas production, marking its first big acquisition since the global financial crisis began.

The deal came after GE confirmed it had made a US$1.2bn offer for Wellstream, a UK maker of flexible pipeline products for oil and gas companies, but had been rebuffed. GE, which was badly hit by the downturn, will probably have about US$25bn to spend on acquisitions, share buy-backs and increased dividends by the end of 2010.

Energy is GE's largest industrial unit and analysts expect it to generate about US$31bn of revenues in 2010.

(FT, 07.10.10)

Vimpelcom Joins Telecoms League

Vimpelcom has agreed to merge with most of the telecoms assets of Naguib Sawiris, the Egyptian entrepreneur, to form the world's fifth largest mobile phone group by customers. The US$6.6bn deal, excluding debt will transform Vimpelcom – Russia's second largest mobile operator by subscribers – into a global telecoms group with businesses across the former Soviet Union, Asia, Africa and Italy.

By combining with Weather Investments, Sawiris' private investment company, Vimpelcom will secure a 51.7 percent stake in the Orascom Telecom group, and full ownership of Wind, Italy's third largest mobile operator. Weather, which controls Orascom and Wind, will receive US$1.8bn in cash and a 20 percent stake in the enlarged Vimpelcom group, worth US$4.8bn.

(FT, 04.10.10)

Pfizer Snaps up King Pharma

Pfizer has agreed to buy King Pharmaceuticals, a maker of prescription pain treatments, for US$3.6bn in cash as the world's largest drug company by revenues seeks to diversify its portfolio before it loses patent protection on key drugs.

With the acquisition of King, Pfizer will expand its presence in the pain relief medicine market where it has products such as Lyrica, used to treat pain from damaged nerves.

Pfizer expected the deal to add about US$0.02 to its earnings per share in 2011 and 2012, and US$0.03-US$0.04 per share between 2013 and 2015 as it makes about US$200m of cost savings and leverages its size to sell King's pain products. *(FT & FE, 13.10.10)*

Deutsche Bahn Sold to Italy

Italy's state railway is poised to become Germany's second-biggest passenger train operator after the consortium it is leading won an auction of some of Deutsche Bahn's assets. The transaction is the first major passenger transport acquisition for Ferrovie dello Stato outside Italy, although it has held a 51 percent stake in TX Logistik, a German freight operator, for several years.

Regulators forced the German state-owned operator to sell the German assets of Arriva, as part of the clearance for Deutsche Bahn's US$2.3bn takeover of the listed UK transport group in April. Arriva operates 252 trains and 830 buses across Germany.

(FT, 09.12.10)

AOL Could Merge with Yahoo!

AOL Inc, undergoing a radical transformation into the king of content on the Internet, is actively exploring a breakup involving a complicated series of transactions that may lead to a merger with Yahoo.

Combining Yahoo! and AOL's web properties makes strategic sense. Yahoo, which is expected to generate US$1.64bn in Ebitda in 2010, could support AOL's display ad business, giving AOL the confidence to shed the dial up division, a big financial engine at the company.

AOL has been reluctant to shed its dial-up business as it remains a major source of revenue and its existing 4 million customers remain a big contributor of traffic to AOL's homepage. The division is expected to contribute a little over US$1bn of revenue out of US$2.4bn overall revenue in 2010. *(FE & BS, 06.12.10)*

Intel Gets Green Light for McAfee

Intel Corp., the world's largest chipmaker, won clearance from the US Federal Trade Commission to acquire McAfee Inc., bringing the company a step closer to expanding into the security-software market. Intel announced the decision in a statement on its website. The company is still working with the EC as that organisation reviews the purchase, Intel said.

www.allvoices.com

In August, Intel agreed to buy the company for US$7.68bn, saying it will use the deal to create chips with built-in security. The acquisition of McAfee would be the biggest purchase in Intel's history. Integrating McAfee defenses into its products will make devices more efficient and secure. Intel would pay US$48 a share in cash per share. *(BS, 22.12.10)*

KKR to Acquire Del Monte

A buy-out group led by Kohlberg Kravis Roberts has agreed to acquire Del Monte Foods for US$19 a share, in a deal which values the US food and pet products company at about US$5bn including debt. The deal is one of the biggest leveraged buy-outs this year and underlines the resurgence of "take-private" deals in the US in the consumer products sector.

KKR, which will be the majority owner, is buying Del Monte with the buy-out fund of Centerview Partners, run by James Kilts, the former chief executive of Gillette, and Vestar Capital Partners, a rival fund.

The deal will give KKR access to Meow Mix cat food and Milk-Bone dog biscuits which Del Monte makes in addition to canned vegetables.

(FT, 26.11.10)

Novartis Wins Alcon

Novartis AG will take full control of Alcon, the world's largest eye-care company, after agreeing to pay US$12.9bn for the stock it doesn't own to end an 11-month dispute with minority shareholders. Novartis rose the most in more than two years in Zurich trading after saying it will buy back shares to offset the issuance of stock.

The payment will be a combination of Novartis stock and, if necessary, cash to bring the value of the bid to US$168 a share, the Basel, Switzerland-based company said. Alcon's independent directors recommended approval. Novartis's initial offer in January valued Alcon shares at US$153.

Alcon will become the eye-care division of Novartis, which will also include CIBA Vision contact lenses and eye medicines. The unit would have had sales of US$8.7bn in 2009.

(ET, 16.12.10)

Rio Tinto Bids for Riversdale

Rio Tinto held talks with Riversdale Mining, an Australian developer of coal mines in Africa in which Tata Steel has 24.21 percent stake, to take over the Australian company for US$3.46bn). Tata Steel's Singapore-based subsidiary, Tata Steel Global Minerals Holdings, holds stake and a seat on the board of Mozambique and South Africa- focused Riversdale.

Riversdale Mining said, "The company has had discussions with Rio Tinto concerning a possible transaction at the corporate level for indicative consideration of Australian $15 per Riversdale share".

Riversdale further said, while discussions with Rio Tinto are ongoing, there is no certainty that Rio Tinto or any other party will proceed with any proposal for the acquisition of Riversdale. *(FE, 06.12.10)*

ACCC Nod for Bourse Merger

The Singapore Exchange Limited (SGX) announced plans to take over the Australian Securities Exchange (ASX) to form the world's fifth largest bourse, ASX-SGX Ltd in October 2010. The Australian Competition and Consumer Commission (ACCC) reviewed the proposed acquisition and it did not believe the merger would substantially lessen competition.

The ACCC said the key focus of its investigation was whether the proposed acquisition would deter the entry of Chi-X Australia or Chi-East, because of a joint venture agreement which SGX has with Chi-X Global.

The SGX has a 50-50 joint venture with Chi-X Global to establish Chi-East which plans to offer an offshore "dark pool" that will list ASX listed securities.

(ET, 16.12.10)

Doubts Over Carrefour's Asia Sale

The sale by Carrefour, the French hypermarkets group, of its Thai operations to Casino, its smaller domestic rival, for US$1.2bn, has once again raised questions about the wisdom of the world's second biggest retailer by sales exiting from fast-growing economies.

Lars Olofsson, Carrefour Chief Executive, is selling the business, as well as its 19 stores in Malaysia and two in Singapore, to focus efforts on countries in which it has a leadership position, or has the top position in sight.

However, the decision to pull out of some of Asia's fastest-growing economies has raised eyebrows and questions over short-term profit against long-term gain. *(FT, 16.11.10)*

BHP Billiton Scraps Potash Bid

BHP Billiton Ltd, the world's largest mining company, resumed a share buyback after abandoning its hostile US$40bn takeover offer for Canada's Potash Corp. of Saskatchewan Inc in the face of government opposition.

BHP will purchase US$4.2bn of its shares under a US$13bn buyback programme suspended in 2007, the Melbourne-based company said. The buyback "probably isn't as much as some people had wanted," said Tim Schroeders, who helps manage about US$1bn at Pengana Capital Ltd. in Melbourne, including BHP shares. Scrapping the Potash deal indicates BHP "didn't really have a Plan B or any wriggle room to move forward", he said. *(BS, 16.11.10)*

Caterpillar Strengthens Position

Caterpillar, the world's biggest maker of earthmoving equipment by revenue, took a long-term bet on commodity prices and emerging market growth by striking an US$8.6bn deal to acquire Bucyrus International, a US manufacturer of mining machinery.

The deal is the latest sign of booming commodities activity, as demand in China and other emerging countries tightens mining markets ranging from copper to iron ore. Purchasing Bucyrus will enable Caterpillar to offer the widest range of mining equipment of any global manufacturer. The deal will accelerate the pace of Caterpillar's expansion into the sector. *(FT, 16.11.10)*

National Antitrust Laws are Often Not Enough

– Frederic Jenny* and David Lewis**

Media reports allege that negotiations are taking place for the sale of the African beer business of French drinks group Castel to SABMiller, for US$9,6bn

In 2001, SABMiller and Castel formed an alliance in Africa enabling both groups to protect their preferred zones. SABMiller acquired 20 percent in Castel's beer division, while Castel acquired 38 percent in SABI Africa. Castel distributed SABMiller brands in about 15 West and Central African countries, where it had a dominant position. SABMiller distributed Castel brands in the southern and eastern African countries (with the exception of SA and Namibia), where it was dominant.

SABMiller is practised in market-sharing agreements in Africa. In 1979, the South African alcoholic beverage market was divided up, with, in effect, the Rembrandt group keeping the wine and spirit business and SAB sticking to the beer market. And SAB's market allocation agreement with Diageo ended a price war between them in Tanzania and Kenya.

The agreement between SABMiller and Castel enabled each group to enter African markets where it had not previously had a significant presence. Thus, in the short run, the agreement increased the diversity of beer brands sold in each country. However, by allocating national markets between them, the parties ensured they would not compete in the future.

Asked whether the agreement created national monopolies, Najil Fairbass, SABMiller Communications Director, said: "This agreement enabled us to develop opportunities. There may be antitrust laws at the national level, but none covering the continent. I do not see what the problem is". Pierre Castel was even more blunt: "It's better to have an undisputed monopoly than to be weakened by competition".

The takeover of Castel's African beer business by SABMiller would eliminate the possibility that their market sharing agreement could fall apart or be challenged in court as the Diageo SABMiller agreement was. It would reinforce the dominance of SABMiller in a large number of beer markets in Africa and allow Castel to capitalise the rents from its African monopolies. This was envisioned at the time of the original agreement as evidenced by the finance director's statement that "should at any stage they (Castel) decide to sell … we would obviously be in a preferential position".

Yet, thanks to the original anticompetitive agreement, there is no geographical overlap between the two groups and the takeover would substitute one dominant player for another in a number of West African countries. This may make it difficult for national competition authorities to challenge such a transaction, although it is clear that a sale of Castel's African beer interests to a third party would be more favourable to consumers than a sale to SABMiller in that it would maintain potential competition in a number of national African beer markets.

Multinational firms, from developed and developing countries, are brazen in systematically eliminating competition between themselves, often by engaging in transnational practices they know contravene the most fundamental tenets of their home countries' competition laws.

There are possible solutions to the problem. Had a regional African competition law covering all African countries existed, the market-sharing agreement between Castel and SABMiller could have been prohibited and vibrant competition could have been preserved.

Alternatively, co-operation between nations based on comity principles would allow national competition authorities of the afflicted countries to request the competition authority of the country where the takeover would take place – be it the UK, France or SA – to block it because of its restrictive effect on competition in their domestic markets.

For developing countries, fighting the practices of transnational firms that do not comply with competition principles as part of their DNA requires more powerful instruments than a mosaic of sometimes weak national competition laws.

* *Professor, Economics, ESSEC Business School (France)*

** *Gordon Institute of Business Science*

The article appeared in The Business Day*, on October 20, 2010.*

Conscious Consumerism in UK

Spending on products that carry a green or ethical label has grown by almost a fifth over the last two years, in spite of the recession. Such goods include eco-friendly travel, food products such as Fairtrade, and other goods.

Beneath the totals, there have been some winners and losers. Fairtrade has enjoyed significant growth. Organic food has suffered. Some of this can be explained by the increasing move of the Fairtrade label into the mainstream. For instance, over the period covered by the report, companies like Cadbury have introduced Fairtrade standards on mainstream products that are not sold to customers on the basis of the ethical link. *(BR, 30.12.10)*

Glaxo Charged as Law Targets Individuals

The US Justice Department has charged a former vice president of pharmaceutical giant GlaxoSmithkline with obstructing an investigation into illegal marketing of the company's drug Wellbutrin. The move is attracting attention because it signals a shift in government focus from suing the companies to one that targets individual executives.

The defendant, Lauren Stevens, is accused of having lied to the Food and Drug Administration on behalf of the company denying that doctors speaking on behalf of the firm had promoted Wellbutrin for uses that had not been approved. Stevens said that she will be pleading not guilty, and expected to be acquitted. *(BR, 10.11.10)*

Shell Firm Fined for Bribes

Seven companies have been fined US$236m to settle charges that they paid bribes to foreign officials for favourable treatment. The companies include Royal Dutch Shell, as well as oil service companies and shipping firms.

The Securities and Exchange Commission said that the cases were the first of a number of reviews of specific industry sectors aiming to raise the heat on firms paying bribes in different parts of the world. In this case, fines were held to have been paid in India, Gabon, Equatorial Guinea, Mexico and Venezuela. Other companies concerned were Pride International, Noble Corp, Transocean, GlobalSantaFe and Tidewater Inc. *(BR, 04.11.10)*

Trust in UK Business Rises

UK public opinion over the ethics of British business remains divided, although there has been a marked shift toward greater trust in 2009. Just over half of respondents believed UK businesses were behaving ethically, compared with nearly a third who thought otherwise. The figures represent an increase of about seven percentage points among those who now feel British companies were either 'very' or 'fairly' ethical.

About half of respondents, however, felt companies either had made no progress or had regressed in the area. Just 38 percent saw improvements in business behaviour during the past ten years. The biggest single issue remains executive pay – 35 percent of respondents placed this among the three issues they felt needed to be tackled. *(EP, 06.12.10)*

MAL Denies Wrongdoing

MAL Hungarian Aluminium, which leaked 700,000 cubic metres of caustic alkaline sludge after a reservoir ruptured at one of its plants in west Hungary, has said the material was 'non-hazardous', despite the fact it has killed four and injured over 150, many seriously, as a result of burns.

MAL has termed the disaster a 'natural catastrophe', and says it could not have done anything to avert it. The company has also drawn criticism by offering families affected by the leak US$500 each. The firm has also offered to cover funeral expenses for the four killed by the spill, despite denying culpability. The pollution has reached the Danube, one of Europe's main waterways, with the clean-up expected to take at least a year and to cost tens of millions of dollars. *(EP, 11.10.10)*

Sony Pulls Out of Climate Campaign

Sony is withdrawing from the climate change campaign 10:10 following a video aimed at building support for the initiative that graphically shows non-supporters being blown up. The company said that the video was "ill-conceived and tasteless".

The video, which has been withdrawn by the campaign but is still viewable on YouTube, shows schoolchildren, actress Gillian Anderson and footballer David Ginola being blown up after they decline to get involved with 10:10. Although the explosions are fantasy explosions, by-standers are left covered in blood and gore.

The campaign has apologised for any that were offended by the video, but said that many had found it extremely funny. They said, however, that they would not be trying to remove copies circulating on the internet. *(BR, 05.10.10)*

McDonald's 'Happy Meal' Targeted

McDonald's CEO Jim Skinner defended the company's 'Happy Meals' against the growing number of critics that link McDonald's with the epidemic of childhood obesity. The comments came as the San Francisco board of supervisors voted to ban restaurants from giving toys with meals that failed to meet standards on calories, salt, sugar and fat.

Skinner told that such measures were designed to undermine parents in making decisions for their families. McDonald's has made a number of changes in the face of changing expectations from the society, such as introducing a range of salads and fruit smoothies into its menu options. However, the company still does best when focusing on its basics – burgers and other convenience foods. *(BR, 14.12.10)*

Whose Corporate Social Responsibility?

– Jagdish Bhagwati*

Increasingly, corporations are under pressure, often from activist non-governmental organisations, to take on specific "corporate social responsibility" (CSR) obligations. But the fact that CSR is being demanded, and occasionally conceded, does not ensure clarity about either its rationale or the ways in which it should be undertaken.

CSR can be divided into two categories: what corporations should do (say, contribute to a women's rights NGO or build a village school) and what they should not do (say, dump mercury into rivers or bury hazardous materials in landfills). The latter is wholly conventional and subject to regulation (and recently to questions about how corporations should behave when there are no host-country regulations).

But are CSR obligations really good practice? Milton Friedman and other critics often asked if it was the business of businesses to practice corporate altruism. Prior to the rise of the corporation, there were mainly family firms, such as the Rothschilds. When they made money, it accrued principally to the family itself. Altruism, where it existed, also was undertaken by the family, which decided how and on what to spend its money. Whether the firm or its shareholders and other stakeholders spent the money was beside the point.

With the rise of the business corporation, large family firms have generally disappeared. But that does not mean that a corporation is the right entity to engage in altruism – though its various stakeholders obviously can spend any portion of the income they earn from the corporation and other sources in altruistic ways. Instead of CSR, we should have personal social responsibility (PSR).

There are strong arguments in favour of CSR as well. First, the political reality is that society treats corporations as if they were persons, which is often also a legal reality for many purposes. Society increasingly demands that these "corporate citizens" be altruistic, just as people are. Given this reality, corporations want to give simply because it is expected of them.

Second, many corporations view CSR as an effective defensive strategy against powerful activist NGOs (such as Greenpeace) that have taken to using online agitation, boycotts, and other means to "blackmail" targeted corporations into acceding to the activists' demands. The more CSR a company can point to, the less such efforts will succeed – or even be mounted.

The attempt by some non-governmental organisations and activists to impose a straitjacket on CSR, reflecting their priorities, is misguided and must be rejected

Consider the contrasting experiences of Coke and Pepsi. Coke has been targeted by NGOs for alleged lapses in labour and environmental standards. By contrast, Pepsi, which once teamed up with AT&T and the CIA to oust President Salvador Allende in Chile, smells like a rose nowadays, because it has distributed CSR largesse to several causes that influential NGOs embrace.

That is a lesson that Wal-Mart has since learned. In 2005, the Service Employees' International Union (SEIU) created Wal-Mart Watch, with an annual budget of US$5mn. The purpose was to make Wal-Mart a "better employer, neighbour, and corporate citizen," and Wal-Mart eventually capitulated on some of the SEIU's specific demands as well.

Finally, CSR can be simply a matter of advertising. In this case, the choice of CSR spending is focused directly on generating added revenue, much like advertising, and is aimed at sales much the way advertising is.

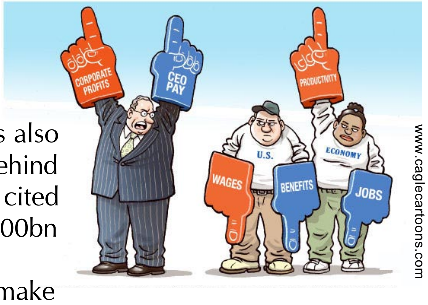
All these rationales for CSR suggest that it should be left to each corporation to determine, just as PSR leaves altruism to each individual's conscience and sense of what needs supporting. The attempt by some NGOs and activists to impose a straitjacket on CSR, reflecting their priorities, is misguided and must be rejected.

Instead, the model should be former UN Secretary General Kofi Annan's initiative, the Global Compact. What Annan has done is to embrace ten wide-ranging guiding principles while leaving signatory corporations free to choose that which they wish to support actively.

* *Professor of Economics and Law at Columbia University and Senior Fellow in International Economics at the Council on Foreign Relations. Abridged from an article that appeared in* The Economic Times*, on October 29, 2010.*

Best Places for Investors

Investors are seeing opportunity and taking on greater risk, looking more to emerging markets such as China, Brazil and India than developed countries. The US was in fourth place behind those economies in offering the most opportunity, in the latest quarterly Bloomberg Global Poll of 1,030 investors, analysts and traders who are Bloomberg subscribers.



The world's largest economy was also named the third-worst place to invest behind the EU and Japan. Some respondents cited the Federal Reserve move to buy US$600bn of Treasuries as cause for concern.

While professional investors can make money in these markets and protect themselves from the inevitable downturn, the market appreciation is being driven by the Federal Reserve, not underlying economic fundamentals. *(FE, 13.11.10)*

France Telecom Buys Meditel Stake

France Telecom bought a 40 percent stake in Meditel, Morocco's second-largest mobile operator, for US$840m, the first step in its drive to increase exposure to fast-growing African markets.

The deal is the first acquisition since Stéphane Richard took over as chief executive in March 2010. It also underlines his determination to pursue overseas growth opportunities amid a continuing crisis of staff morale in its French operations and stiffer competition and tighter regulation in its domestic market.

Meditel is owned by CDG, Morocco's state investment house, and FinanceCom, a private holding company. The deal puts France Telecom in direct competition with Vivendi, its domestic rival, which owns 51 percent of Maroc Telecom, the north African country's largest provider. *(FT, 21.09.10)*

Cargill Reaps Harvest from Grain

Big spikes in grain prices have led to soaring profits at Cargill, the world's largest agricultural commodities trader. The Minnesota-based company's net profit rose 68 percent to US$883m in the first quarter ended August 31, from US$525m a year earlier.

Cargill's trading and processing segment, the historic heart of the 145-year-old company, was the fastest-growing contributor to earnings. The gains came as food demand rebounded after the global financial slowdown and fears of a shortfall sent grain prices toward the highest levels since the world food crisis of 2007-2008.

Cargill said changes in trade flows created opportunities for the group that source and trade grain, oilseeds and other commodities between continents, without specifying which flows changed. *(FT, 12.10.10)*

Vietnam Warned Over Tax Regime

One of the few foreign mining companies operating in Vietnam has warned it will withhold US$100m of investment because of the government's tinkering with the tax and royalty regime. The new levy is the latest in a long line of changes to Vietnam's tax system, legal framework and regulatory environment that has led many in the mining industry to conclude that the Vietnamese government wants to shut foreign investors out of the sector.

The government has come under growing pressure to assert control over the natural resources sector after it licensed a Chinese state-owned company to develop a large bauxite mining project in Vietnam's central highlands, sparking widespread concerns about environmental degradation and national security. *(FT, 06.12.10)*

FDI Goal in Jeopardy

Colombia's 2010 goal for foreign direct investment (FDI) may not be met, as the divestment of foreign companies continues. The investment goal for 2010 is between US$9bn and US$10bn, but may not be met due to increased divestment of foreign companies.

In the first half of the year, companies took US$5.4bn out of investment in Colombia to be used for capital repayments, and US$4.8b in profits. In the first half of 2010, the FDI in Colombia was US$4.1bn, falling below the US$5bn reached in the same period in 2009.

According to government statistics, FDI reached US$6.7bn by September 2010, and is expected to exceed the 2009 FDI level of US$6.9bn by October 2010. The Central Bank estimates that most of FDI goes toward the oil and mining industries, which received around US$5.6bn so far in 2010. *(CR, 04.10.10)*

India Seeks UAE Investment

India, which is negotiating a free trade agreement with the six-nation Gulf Cooperation Council made a strong pitch for greater investment from the UAE, asking the oil-rich country to be a part of its growth story, especially in the infrastructure sector.

The Abu Dhabi Investment Authority manages one of the largest sovereign funds in the world, financial reserves and investment. The strong fundamentals of Indian economy combined with a young population will continue to generate huge demand in every economic sector in India, especially in the area of infrastructure. India and the UAE are the largest trading partners with a turnover of US$43bn. *(TH, 23.11.10)*

Still a Favoured Destination

India is projected to become the second most attractive destination for FDI in 2010-12, as per UNCTAD's World Investment Report, 2010. The projection made in the report is based on the survey conducted among Transnational Corporations (TNCs).

Government has put in place an investor-friendly policy on FDI, under which FDI, up to 100 percent, is permitted on the automatic route, in most sectors/activities. This policy is reviewed, on an ongoing basis, through a consultative process and significant changes have been made in the policy regime, in recent times, to ensure that India remains increasingly attractive and investor-friendly. *(IINS,09.09.10)*

Global Drive for Healthcare

More than 100 million people are plunged into poverty every year by illness or "catastrophic" medical bills, the World Health Organisation said as it launched a global drive for universal healthcare.

The agency's annual report underlined that the need for universal health coverage "has never been greater" with the economic slowdown, globalisation of disease and ageing populations that need more care for chronic conditions.

The UN health agency found that in countries that depend heavily on people paying for their services when they seek care "health bills push 100 million people into poverty each year" as many suffer "catastrophic costs."

(AFP, 23.11.10)

ICT for Development

Mobile phones and other forms of communication technology can be used to reduce poverty and improve livelihoods in developing countries, says the latest UNCTAD report.

Better access to information and better chances of communicating through information and communication technologies (ICTs) can help poor people raise their incomes significantly, says the UNCTAD Information Economy Report 2010 entitled 'ICTs, Enterprises and Poverty Alleviation'.

Urging policymakers in developing countries to make the ICT sector a more important component in their poverty-reduction strategies, the report points out that more benefits could be secured for the grassroots creation of small-scale enterprises if enlightened government support is added.

(TH, 16.10.10)

CEOs Fear EU Regulation

Senior European telecoms executives reacted coolly to the EU's proposals on regulating the next generation of broadband Internet networks, warning that excessive regulation could make large-scale investments less likely.

Stéphane Richard, Chief Executive, French Telecom, said he was "not fully comfortable" with the proposals, released by Neelie Kroes, EU Telecoms Commissioner. They will extend the obligation for large telecoms operators to provide their competitors with cheap access to their infrastructure.

(FT, 24.09.10)

Regional Electricity Regulator

An independent entity to regulate cross-border trade of electricity and provide support to national regulators of the electricity sector in West Africa was launched in Accra.

Known as the Economic Community of West African States (ECOWAS) Regional Electricity Regulatory Authority, the body was created in 2008, to oversee the development and monitoring of uniform technical rules for the management of the exchanges between interconnected systems to maximise their technical efficiency.

It will also supervise wholesale electricity sales between the various operators in Member States and analysis of their efficiency in order to avoid anti-trust practices and also monitor compliance with commercial rules and contractual commitments by partners, as well as the developing of procedures for the settlement of disputes. *(GNA, 09.11.10)*

China to Tackle Food Inflation

China will unveil food price controls and crack down on speculation in agricultural commodities to contain inflationary pressure. With consumer prices rising at their fastest pace in more than two years, the National Development and Reform Commission, is preparing a "one-two punch" of actions to rein in food costs.

Such direct intervention would mark an escalation of the government's efforts to tame inflation and underline its worries over the rapid run-up in food prices.

Possible steps include price controls, subsidies for shoppers, a crackdown on hoarding and price gouging as well as a system whereby mayors are made responsible for a basket of food items. Those found speculating on corn or cotton will also be punished severely. *(FE, 16.11.10)*

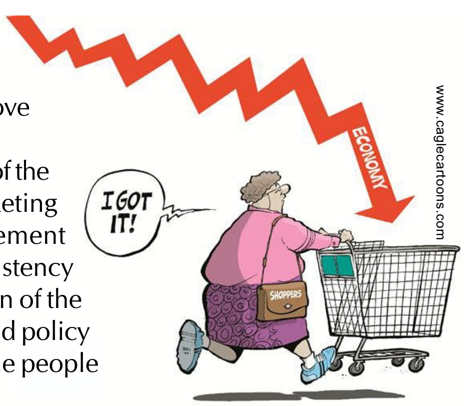
EU's 'Easy to Roam' Plan

European travellers using their mobile phones within the EU could be allowed to choose a different network than the one they subscribe to at home under plans that would upend "roaming" rules. Brussels is looking at ways to regulate roaming charges in an attempt to change its current approach – moving away from price caps it imposed in 2007, which are due to expire in July 2012.

The new model, if adopted, would allow customers attached to a single network in their home country to pick from a range of operators as they travelled to other European countries. It would be a move away from price caps, which was a high-profile piece of regulation that resonated with consumers far more than most other EU legislation. *(FT, 09.12.10)*

Retail Sector Law for Review

Viet Nam needs to review its legal system for the retail network as well as impacts of opening up its retail market to improve management of the sector.



Prof Francois Bobrie, President of the French Association of Retail Marketing and Strategy, said State management should be a tool to ensure consistency between investment and expansion of the retailing sector on the one hand, and policy goals that protect the interests of the people on the other.

Proper policies should have three elements; clear goals; well defined, fair and objective standards that aim at reaching the goals; and consistent, transparent and accessible decision-making process. *(BN, 30.11.10)*

Regulators Back New Capital Plan

Bank holding companies would not be allowed to dip below the strict capital standards of their federally insured bank units, under a proposal issued by US bank regulators. The rule proposed by the Federal Deposit Insurance Corp (FDIC) and other banking regulators would set a uniform risk-based capital floor across the banking industry, but will not necessarily spark any capital raising in the short term.

US banks, pushed in part by industry regulators, have already built large reserve pools of capital in the wake of the financial crisis. The FDIC is required to take the action under the Collins amendment in 2010's Dodd-Frank financial overhaul law.

The new capital floor would also apply to any non-bank institution that regulators deem important to the financial system and therefore subject to supervision by the Federal Reserve. *(BL, 14.12.10)*

Draining Taxpayers...

Fannie Mae and Freddie Mac, the government-owned mortgage finance companies, could cost US taxpayers as much as US$363bn to the end of 2013, according to their regulator, less than some of the worst-case scenarios circulated by critics of the agencies, but more than projections by the White House.

Since they were rescued by the government in 2008, Fannie Mae and Freddie Mac have drawn US$148bn from the US Treasury to stay afloat as losses on bad loans underwritten during the housing boom turned bad at a record pace.

The Federal Housing Finance Agency, which regulates the two entities, said it was possible losses could be less than US$363bn. If house prices rebounded, interest rates remained low and unemployment fell, Fannie and Freddie might only need US$221bn in cumulative aid. *(FT, 21.10.10)*

Banks Face Stricter Scrutiny

Global regulators will turn their attention to the lightly supervised shadow banking market, according to Lord Turner, Chairman of the UK's Financial Services Authority and one of the world's leading voices on regulation.

Turner said it had been one of the "fundamental failures" of the world's regulators not to think in systemic terms about the role that shadow banks had played in the run-up to the financial crisis.

He said efforts to control the shadow sector should look at how specific groups of financial vehicles interact and amplify risk. Regulators' other focus would be finalising how much additional capital banks should hold if they are deemed to be global systemically important financial institutions, he said. *(FT, 17.11.10)*

In Favour of Bank 'Bail-in'

Banking regulators are "light years away" from agreeing an international framework for winding up large failing banks, so more government bail-outs may be inevitable, according to Jochen Sanio, head of the German regulator BaFin. As a result, he and other European regulators are enthusiastic about "bail-in" measures, which would force creditors to share the cost of propping up large banks before taxpayers have to foot the bill.

His remarks and those of other European regulators highlight a growing transatlantic split over how best to deal with the risks posed by the largest global banks. US regulators are pushing for a cross-border resolution regime that would allow a large global bank to collapse without having it take the entire financial system with it.

(FT, 05.10.10)

Ready for a Shake-up

The German government believes it could take until spring for the troubled publicly-owned Landesbanken to agree the first steps of a reorganisation after the global financial meltdown and the eurozone crisis.

The talks are being billed as a chance for the German banking system to reduce its exposure to the Landesbanken, risky wholesale institutions that have sometimes been tools of industrial policy or patronage for regional and local politicians. Moody's, the rating agency, said there were potential long-term benefits if a merger created a bigger Landesbank but warned of liquidity and funding risks.

(FT, 28.09.10)

Tightening Credit Agencies

The EU proposals to tighten regulation on credit rating agencies (CRAs) have been praised by a financial expert. Martin Bamford, chartered financial planner at Informed Choice, welcomed the EU Commission's plans to better regulate CRAs.

"The opinions of CRAs can have a big impact on markets and economies, so better regulation of these bodies is needed. They should remain independent companies, but become subject to better rules on how they assess markets and report their findings", Bamford said. Currently, credit ratings are controlled by Standard and Poor's, Fitch Ratings and Moody's, all US-based institutions.

(Livemint, 30.09.10)

Audit Reforms Proposed

The EU would propose reforming the auditing sector in 2011 after the financial crisis uncovered failings in how it operated. Regulators are turning their attention to whether auditors were proactive enough in questioning what was going on at banks before the crisis unfolded and sparked a string of bailouts.

Britain's Financial Services Authority and Financial Reporting Council (FRC) published a consultation paper in June 2010 saying there may be a need for new rules forcing auditors to "blow the whistle" on suspect practices.

Matthew Lawson, a partner at law firm Mayer Brown said Barnier did not address the question of allowing audit firms to limit their liability in a meaningful way. *(BS, 14.10.10)*

Recession Fuels Insolvency Rejig in Emerging Market Nations

– Alan Beattie*

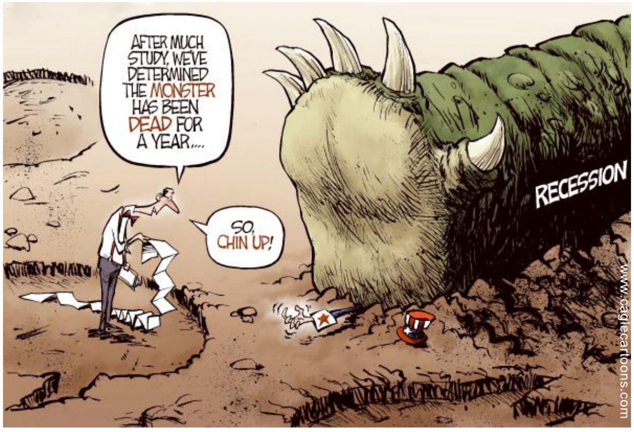
The global economic recession has forced many emerging market countries to streamline their bankruptcy procedures to prevent viable companies being shut down prematurely, according to a report from the World Bank.

The Bank's annual Doing Business study, found countries in general continued to reform their business environments by making it easier to start and close businesses, pay taxes, trade across borders, register property and enforce contracts.

But performance was uneven across regions. More than three-quarters of governments in eastern Europe, central Asia and the Asia-Pacific region had undertaken such reforms, in contrast with less than two-thirds in the Middle East and North Africa and in sub-Saharan Africa.

The study was forced to drop – for the year 2010 at least – measurements of labour market policy after complaints the measurements welcomed all deregulation of employment without judging the trade-off between flexibility and worker protection.

The World Bank said 16 countries, mainly in eastern Europe and central Asia, and the high-income nations, improved their insolvency regimes in response to the gloabl recession. Notable reformers including the Czech Republic, Hungary, Japan, South Korea, Romania and the Baltic states.



"In times of economic distress, efficient court and bankruptcy procedures are needed to ensure that assets can be reallocated quickly and do not get stuck in court", the report said. "Before, it was common for insolvent firms in many economies of eastern Europe and central Asia to be liquidated even if they were still viable".

Dahlia Khalifa, one of the report's authors, said: "We often see ... that countries within a region are motivated by competition with their neighbours, with the result that regions tend to show improvements as a whole".

The report has attracted controversy for suggesting that labour market regulation, such as protection against dismissal, is intrinsically bad for growth.

Following complaints from some countries and organisations, including the International Labour Organisation, the employment indicators are being changed to reward countries that have a statutory minimum wage and at least some paid annual leave. The labour market measures have been dropped from the overall business environment measure for this year's report.

The Doing Business report, which was started in 2003, has become one of the key ways in which the bank and other observers gauge business climate within developing countries, with high performers often touting their improvements to attract foreign investment.

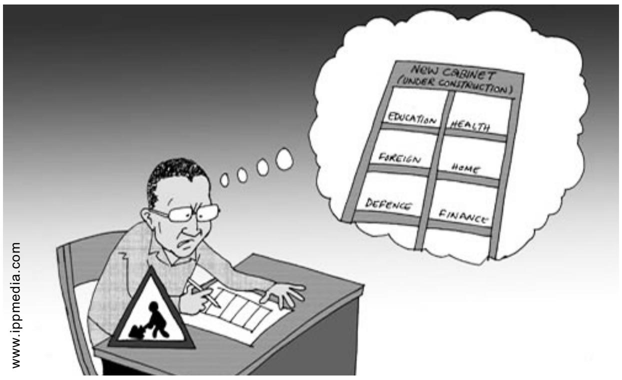
Rwanda has implemented reforms allowing entrepreneurs to register a new business in three days and pay fees amounting to 8.9 percent of national income per capita, compared with 223 percent in 2005. The streamlined procedures meant that 3,000 businesses were started in 2008 compared with a previous annual average of 700.

* *International Economy Editor,* Financial Times. *The article appeared in* The Financial Times *on November 04, 2010.*

Ways to Improve Africa's Business Culture

– Michael Keating*

The regulatory environment is improving across most of Africa



The explosive growth of commercial activity in Africa, both local and international, cannot hide the reality that the continent remains a difficult place to conduct business.

Africa tends to get a worse press than it deserves, much to its own business community's frustration. Nevertheless, there are common challenges to doing business across much of the continent – challenges that frustrate home-grown companies as much as would-be international investors.

Across Africa, impediments to doing business include – to a greater or lesser degree – a weakly regulated business environment with most entrepreneurs confined to the informal sector; multiple barriers to accessing affordable finance; rickety legal systems and poorly enforced laws; inadequate infrastructure, poor power supply and unreliable access to input and output markets; and a political environment in which personal connections carry more weight than the law.

The continent's advantages include abundant natural resources, whether commodities, land or energy, whose strategic and financial value is generally increasing. It also has a vast, inexpensive pool of labour; a growing middle class that brings growing demand for consumer goods; and an increasing recognition that business can play a much greater role in reducing the costs of goods and services to all of Africa's billion people, including the hundreds of millions living on or below the poverty line.

There are countless examples of bold businesses grasping these opportunities – and not just the "big ticket" items relating to extraction of resources, promoting tourism or investment in infrastructure, land or agricultural productivity.

Businesses also come from transforming frustrations into opportunities: addressing the energy deficit by tapping Africa's vast natural power, including solar, hydro, wind and geothermal; using mobile phones to overcome communication barriers and to extend financial services to those without a bank account; and developing financial and other products that poor people and communities can afford.

Some companies are looking more systematically at ways to modify or tweak supply chains, not just to boost the bottom line, but also to create more jobs and thereby strengthen their local credentials. They are seeking to tap into the entrepreneurial talent of rapidly growing numbers of otherwise unemployed young men and women .

Much more needs to be done if African countries are truly to be open to business from their own continent and further afield, as a drumbeat of policy reports both from business associations and the international development community now insists.

The recipes for success vary, but the key ingredients are not a mystery; there is now much experience to draw upon. The central challenge is to forge partnerships between governments, the private sector and the development community that will sustain progress.

Governments must offer basic macroeconomic and political stability, and consistent national policies that support private sector development, encourage local and international investment, reduce the cost of finance and of doing business, and reward local entrepreneurship.

They must ensure a predictable regulatory environment by acting on corruption, and invest in human capital, particularly women, by improving access to information, training and skills development, for example.

The private sector can make it easier for governments to respond to entrepreneurs' needs by engaging in sustained policy discussions and setting out clear steps for governments to take that will improve the business environment and help cash-strapped governments develop better strategies for economic growth and poverty reduction.

The development community is increasingly energised by the imperative of engaging the private sector and entrepreneurs in activities that will spur equitable economic growth and create jobs. Without those activities, the goal of reducing poverty and achieving the Millennium Development Goals will remain a mirage.

If bold businesses are beginning to grasp the opportunities Africa has to offer, governments and development partners need to be bold, too – and make improving Africa's business environment a top priority on the fast track to growth and poverty reduction.

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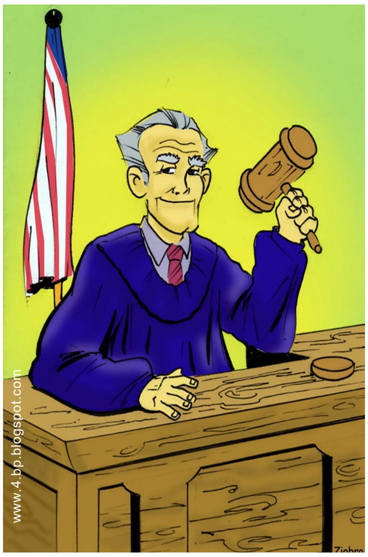
* *Executive Director, Africa Progress Panel. Abridged from an article that appeared in* The Financial Times, *on October 22, 2010.*

Better a Distant Judge than a Pliant Regulator

– John Kay*



Even agencies with the best intentions come to see issues in the same way as the corporate officers they deal with

In 1887, Congress passed an act to regulate the US railroad industry. The legislation originated in the demands of farmers and merchants for protection against the "robber barons".

Despite this background, railroad interests supported the bill. Charles Adams, president of the Union Pacific Railroad, explained his reasoning to a sympathetic congressman, John D. Long. "What is desired," he wrote, "is something having a good sound, but quite harmless, which will impress the popular mind with the idea that a great deal is being done, when, in reality, very little is intended to be done."

On the whole, he got what he wanted. The Interstate Commerce Commission established by the act was chaired by a lawyer with experience of the railroad industry – acquired, naturally, by acting on behalf of his railroad clients. When, a decade later, the Supreme Court ruled that a rate-fixing agreement between railroads was illegal, the ICC was crestfallen: surely, the commission said, it should not be unlawful to confer, to achieve what the law enjoins – the setting of just and reasonable rates. Soon after, Congress approved legislation making it a criminal offence to offer rebates on tariffs the ICC had approved, and the commission thereafter operated as the manager of a railroad cartel.

Regulatory capture is the process by which the regulators of an industry come to view it through the eyes of its principal actors, and to equate the public interest with the financial stability of these actors. Sometimes such capture is overtly corrupt, as when regulators are in the past or present pay of the corporations they oversee. The largest contributors to congressional campaign funding are heavily regulated industries such as financial services, pharmaceuticals and energy.

Corruption can be more subtle. A politician who looks to a life after politics knows that big companies can offer lucrative consultancies and directorships, but representing the public interest does not. Everyone who works in a regulatory agency knows that if they are well regarded in the industry, they are eligible for jobs in the private sector that are often more rewarding than employment in a public agency.

But the most common form of capture is honest and may be characterised as intellectual capture. Every regulatory agency is dependent for information on the businesses it regulates. Many of the people who run regulated companies are agreeable, committed individuals who are properly affronted by any suggestion that their activities do not serve the public good. Few members of the public, by contrast, ever make contact with a regulatory agency; almost always, they are less well informed than the professionals who deal with regulatory issues.

Judges are surrounded by pompous ritual and dress in gowns and wigs, plaintiffs and defendants are not allowed to take them to lunch, and judicial proceedings enforce the law rather than promote economic efficiency. The purpose is to maintain distance between the arbiter and those he must arbitrate between, and to secure a clash of conflicting views.

A price must be paid for this judicial detachment. There is a loss of intimacy in knowledge and understanding, and a reduction in subtlety and flexibility of approach that comes from insistence on judicable principles and rigid rules. But the prevalence of regulatory capture is such that it is often a price well worth paying. Charles Adams was prescient in his quick understanding of this issue.

* *Britain's Leading Economist. The article appeared in* The Financial Times*, on November 03, 2010.*

About a Competition Law – China

In late 1978 China started moving from a sluggish, inefficient, Soviet-style centrally planned economy to a market oriented system. The rules relating to competition were first introduced by the State Council in a regulation entitled, 'An Interim Regulation on Promotion and Protection of Socialist Competition' (PPSC), which was promulgated in October 1980, two years after China began its economic reform. However, these rules were not effectively enforced. The present Anti Monopoly Law (AML) of China was enacted on August 30, 2007 and came into effect on August 01, 2008. It is modelled on EU competition law and includes provisions governing anti-competitive or so-called 'monopoly' agreements (e.g. cartels), abuse of dominance and merger control.

Enforcement Agencies

From an organisational point of view, a complex institutional structure exists in two levels of administration and enforcement: on the upper level, the Anti-monopoly Commission (AMC), which reports directly to the State Council, is responsible for policy formulation and co-ordination; and on the lower level, three anti-monopoly enforcement agencies (AMEAs) have been designated to be responsible for day-to-day enforcement of the AML.

Anti-competitive Practices

The AML prohibits discriminatory and anti-competitive practices by local administrative and public bodies against products, business operators and investors from other parts of China. It also prohibits administrative bodies from compelling business operators to engage in monopolistic activities and from abusing their administrative power by formulating provisions eliminating or restricting competition.

Merger Control

Under the AML, a transaction will require pre-merger notification if it amounts to a 'concentration of undertakings', which is defined as: a merger of undertakings; an undertaking acquiring control over one or more undertakings by acquiring equity interests or assets; or an undertaking acquiring control or being able to exert a decisive influence over one or more other undertakings by contract or any other means.

National Security Review

In addition to any concentration review under the AML, where a foreign investor participates in an acquisition or other transaction that leads to a concentration of business operators, and 'national security is involved', the new law provides that the transaction will also be subject to national security review in accordance with the relevant national laws and regulations.

Prohibition of Monopoly Agreements

The AML prohibits monopoly agreements, which are defined as 'any agreements, decisions or other concerted actions that eliminate or restrict competition'. The two agencies' enforcement priority is detecting and investigating the most serious 'hard-core' infringements of the AML: price fixing; output restrictions; market sharing; customer allocation; boycotts; and bid rigging.

Exemption

Monopoly agreements are exempt from these prohibitions if the business operators can prove that the agreement reached by them is for the purpose of improving technologies or developing new products, improving product quality, making cost reductions, improving efficiency, increasing the competitiveness of small and medium-sized business operators, achieving public benefits, mitigating the effects of severe decreases in sales volume or excess production during economic recessions, or protecting legitimate interests with respect to foreign trade or economic co-operation.

Abuse of Dominance

A dominant market position is one held by an undertaking that is capable of controlling the price or quantity of products or other trading terms in the relevant market or restricting or affecting other undertakings' entry into the relevant market. A dominant market position in China can be presumed based on market shares.

Investigation Powers

The enforcement agencies have wide-ranging powers, including: compelling production of documents; inspecting premises; conducting interviews; inspecting and copying relevant documents; and examining bank accounts. The agencies have the power to impose fines and request possible criminal liabilities for failure to comply, intentional obstruction or destruction of materials.

Leniency Applications

China operates a leniency regime under the AML. If a company is the first to report voluntarily relevant information regarding the monopoly agreement concluded, with material evidence; it may be exempted from fines.

Conclusion

A perusal of various provisions of Chinese Competition Law clearly suggests that it endows the agencies with sufficient powers to ensure and promote competition in the market. However, the true challenge ahead is the political economy dimension and it has to be seen if SoEs are brought within the strict application of the competition law. On the other hand, Ministry of Commerce other agencies seem all poised, with their recent capacity building activities, to take up the enforcement of the competition law.

A Spring in the Stride

Delegates from across the world gathered in Geneva in November 2010, to review the UN Set on Competition Policy. The fact that this review (sixth) recorded a record participation of the highest number of participants testifies to the growing interest among countries on the subject of competition policy and law, and especially its linkage with socio-economic development.

Interventions and participation in discussions by delegates from the developing countries over the five days in Geneva was definitely one of the major highlights of the Sixth Review Conference. It clearly demonstrates the growth in ability of a large number of developing (and least developed) countries not only in defending their positions on competition law & policy reforms, but also in rallying support from the international community for greater attention to domestic competition and consumer reforms in the developing world.

Such enthusiastic participation of the delegates from the developing countries ensured that they were able to make their submissions loud and clear, especially challenges that they face in implementing their national competition regimes and seek guidance from their counterparts from developed countries, with much greater experience of competition enforcement.

A 'peer review' process involving a candid assessment of strengths and weaknesses of Armenia's competition regime ensured that there was such free flowing exchange of information and knowledge in this conference. Countries such as Kenya that have undergone this exercise admitted that the 'peer review' process has been extremely useful in helping them evolve a 'roadmap' for competition enforcement, drawing from the experience of other countries/experts.

Almost exactly three decades ago, on 5th December 1980 the United Nations General Assembly approved the United Nations Set of Multilateral Principles and Rules for the Control of Restrictive Business Practices, better known in the international community as the UN Set on Competition Policy. Today, it stands out as one of the most successful multilateral agreement relating to economic policy

That the focus of much of the plenary sessions was on issues pertaining to competition reforms in the developing world can be well-understood from the fact that two issues were mainly highlighted in these discussions. Firstly, international cooperation on competition and secondly the need to broach competition reforms in the national development agenda of countries.

There is growing recognition among developing countries' competition agencies that the lack of capacity on competition enforcement that a majority of them are faced with can be addressed through the process of international cooperation on competition.

Experience from regions where such cooperation has been achieved indicates that forging cooperation at the regional level has been beneficial on several counts. One of the reasons could be the similarities in the contour of competition legislation among countries within a region, which makes cooperation easy. It has also been noticed that often informal interactions/networks promote greater cooperation among members, rather than formal modes of cooperation. There was consensus that often 'protection of confidentiality of information' is a bone of contention in cooperation on competition, and needs to be properly sorted out, possibly through informal means.

The other issue that reverberated in several sessions was the importance of integrating competition reforms in the national agenda, especially its merit for developing countries. A suggested way to get attention of national policymakers and parliamentarians was to demonstrate benefits from competition reforms in sectors like food, public procurement to state actors, and to gain their patronage and support for taking the competition agenda forward in developing countries.

It is important, that developing countries maintain their level of enthusiasm for competition reforms – and engage more meaningfully with the stakeholders, particularly civil society organisations and consumer groups to gain support for the process of domestic competition reforms. There is sufficient information available in literature of how countries have engaged in this exercise, when they started off – and can serve as source of reference for other countries.

The role of UNCTAD, other international organisations working on competition and competition agencies from developed countries is equally important for nurturing creation of fair markets across the developed world. All these can assist countries in addressing challenges towards evolving an enabling environment, which helps balancing the twin objectives of consumer protection and industrial promotion.

Publications

7Up4 Project Reports

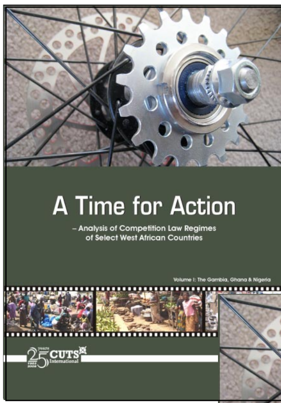
A Time for Action
Un Temps pour Agir

The country research reports of a two-year project 'Strengthening Constituencies for Effective Competition Regimes in Select West African Countries' (also referred to as 7Up4 project) that CUTS has implemented in seven countries of West Africa is published in two volumes. The English volume contains the anglophone country reports (Ghana, Nigeria and The Gambia) and the French contains the francophone country reports (Burkina Faso, Mali, Senegal and Togo).

The reports are a unique source of information about the state of competition in each country and the comparative inter-country analysis leads to very useful observations. These observations relate to the sequencing of policies in the process of economic liberalisation, the institutional design of competition law systems at the national and regional levels, and the prerequisites for a successful transition to a market economy, and others.

It emerges that there are huge opportunities for countries in this region to achieve economic development by evolving well-functioning markets, which are promoted by enabling policies and nurtured by effective institutions. These are areas that the international community should particularly focus its assistance efforts in the future.

For more details please visit: www.cuts-ccier.org/7up4/



Anglophone Country Reports

Francophone Country Reports

CUTS Competition Distortions Dossier

The highlight of the 10th edition of these 'Dossiers' is the Bimal Jalan Committee report on governance and ownership issues of exchanges and other market infrastructure institutions (MIIs) in India, which has faced widespread opposition for dampening competition. As expected, this report has given rise to a heated debate and stakeholders are demanding to revamp this report altogether. Considering the upheaval brought by this report and its possible adverse affects on competition we have covered it in this dossier and have also provided a brief analysis. But the jury is still out.

CUTS has always taken a view that competition is the best restorative force in the market which, eventually, ensures consumers' welfare. Although fixing or capping prices of commodities ensures reasonable prices, it impedes market growth and innovation in the long run which are otherwise ensured if prices are regulated by competition. This phenomenon is exemplified by the story on Pharma sector which is also covered here.

Other issues, which feature in this dossier, for their deleterious impacts on competition include government tenders for procurement which suit only foreign suppliers, opposition of existing banks to RBI for issuing licences for new banks, purchase of water pumps only from two suppliers instead of through competitive bidding, etc.

This Dossier and earlier ones can be accessed at: www.cuts-ccier.org/Competition_Distortions_India.htm

Sources

AFP: Agence France Presse; AGCM: Italian Competition Authority; BL: The Hindu Business Line; BN: Business News; BR: Business Respect; BS: Business Standard; CCP: Competition Commission of Pakistan; CR: Colombia Reports; DJ: Dow Jones; ET: Economic Times; FE: Financial Express; FT: Financial Times; GNA: Ghana News Agency; IINS: India Infoline News Service; IE: Indian Express; ILO: International Law Office; NV: New Vision; SACC: South Africa Competition Commission; TH: The Hindu

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