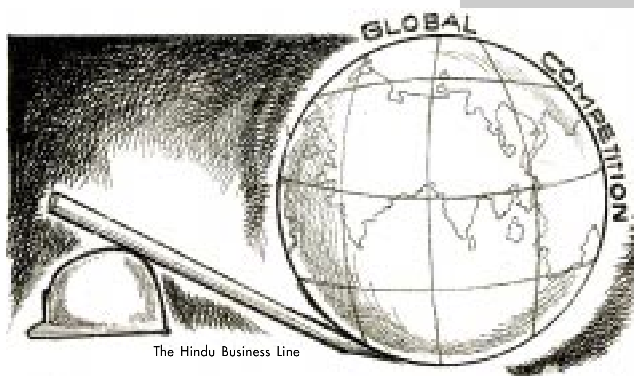
REGULETTER

A Quarterly Newsletter of the CUTS Centre for Competition, Investment & Economic Regulation

CUTS International

Global Competition Challenges: Can ICN Help?



The Hindu Business Line

With globalisation, the issue of competition policy has acquired a greater global dimension than ever before. When the corporations are more global in nature and anti-competitive practices are global, legal/administrative enforcement of competition principles only at the national level cannot go too far. The competition enforcement agencies of different countries of the world have responded to such a situation through the formation of the International Competition Network (ICN).

The ICN is intended to encourage the dissemination of competition experiences and "best practices", promote the advocacy role of competition agencies and seek to facilitate international co-operation. The ICN is not intended to exercise any rule-making function. However, it can work as an informal platform for promoting co-operation and exchange of information among competition authorities.

The ICN has already adopted a common set of guiding principles and practices for merger notification and review. Similar initiatives are likely to be taken in other areas of competition enforcement. The ICN also played a catalytic role in the accord between the US and the EU for simultaneous review of mergers, when officials from both sides of the Atlantic met at the sidelines of the First Annual Conference of the ICN held at Naples, Italy, on September 28-29, 2002. However, what is missing is that such a co-operative effort does not include developing and other countries where the merging firms operate.

These set of principles and practices has also been criticised on the ground that it would help merging companies to get their deals cleared in multiple jurisdictions by smoothening the process. However, it has ignored the fact that a particular merger would have varied impact in different jurisdictions and, ideally, the deal should be cleared only after looking at its impact in all such jurisdictions including the weak ones.

Another area of concern in this regard has been that the ICN has been active only in the area of merger evaluation, while ignoring other areas of competition enforcement, especially international cartels, which are most harmful, especially from the perspectives of developing countries. Fortunately, however, its 3rd annual conference at Seoul, the ICN has created a new working group to deal with cartels. At Seoul, the ICN has also made a significant departure by agreeing to monitor the implementation of the recommended practices in different jurisdictions.

Moreover, the ICN has often been criticised for being dominated by a few countries, especially the developed ones, who have also been setting its agenda. However, this may not be fully justified, as there is no structural problem with the ICN that can allow a few countries to dominate. If a few countries are dominating it at present, it may purely be because most developing countries have shown little interest in the affairs of the ICN.

Nevertheless, the ICN has made significant progress within just three years of its existence. Some of the upcoming competition authorities, particularly in developing countries like Brazil and South Africa, have already benefited a lot from it through facilitation of technical assistance. The ICN, however, may do well by not putting excessive emphasis on the so called

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"best practices", as many developing countries need to be innovative in their approaches, rather than following the "best practices". The ICN should, therefore, try to promote sharing the experiences of "good practices", rather than "best practices".

The ICN also needs to be proactive in getting more and more developing countries into its fold. For example, many developing countries' competition authorities are not able to attend the ICN conferences due to financial constraints. The ICN should try its best to overcome this problem. Moreover, one would typically find representations from several law firms representing the interests of corporations in the conferences of the ICN. However, consumer organisations are conspicuous by their absence, as most of them are not able to attend due to resource constraints. The ICN should try its best to address this problem as well so that its agenda does not get influenced by the interests of business.

Undoubtedly, the ICN has great potential. By now, it is well known that there is an urgent need for a global competition framework. However, there is no agreement as to what should be its contours and what would be the appropriate forum to host it. While the global community is debating on whether the WTO is the right forum or the UNCTAD, the ICN might surprise everybody by providing the right platform. For this, the ICN needs to earn the confidence of all the countries and their stakeholders, which is not an impossible task.

>>PERSPECTIVE

Competition and Regulation in Distribution of TV Channels

Cable Television was developed in the late 1940s in the USA for communities unable to receive TV signals because of terrain, or distance from TV stations.

Since then, transmission of TV signals has come a long way with the advancement in information and communication technology (ICT). Now, several alternate delivery platforms for transmitting TV signals have emerged, such as Direct to Home Services (DTH) and Internet Protocol-based TV (IPTV). These alternate distribution technologies are competing with cable TV operators in the provision of audio-visual services. In several countries the penetration rate of DTH is much higher than cable services and consumers have choices between competing technologies.

Carriage of popular channels by competing distribution networks is essential for competition in the market. As such, success of competition in the distribution chain largely depends on the non-discriminatory treatment of carriage of TV channels. Broadcasters may also face similar problems when distribution network operators refuse to carry their TV channels/programmes to subscribers' premises.

Sometimes broadcasters and distribution network operators vertically integrate to discriminate against competitors in the carriage or provision of signals. In certain circumstances Vertical integration may be used to limit competition, which could take any of the following forms:

- Vertical price squeeze, which happens when a vertically integrated broadcaster increases the price of a TV channel for competing operators but maintains the same price for operator affiliates;
- Exclusivity of content, whereby popular TV channels are denied to a competitor so as to promote broadcaster's own distribution network; and
- Denial of carriage by a vertically integrated cable system of TV channel of the rival company.

To what extent can regulation help to ensure that there is fair competition and to what extent can the market be expected to ensure that the competition is not thwarted?

The concern is that broadcasters may not provide content to rival platforms there by adversely affecting competition in terms of price and quality of service. Moreover, the issue has to be seen primarily from the consumer's perspective. If all channels are not available on one platform, then a consumer may have to access more than one platform to view his/her favourite channels. If content, especially popular content, is exclusively available on one platform then there may not be effective competition.

Moreover, vertically integrated cable companies are prohibited from discriminating against competitors in the distribution of satellite delivered programming. Similarly, vertically integrated satellite delivered programmers may not enter into exclusive contracts with cable operators unless the Federal Communication Commission (FCC) determines that they are in the public interest. The FCC has drawn up the "Programme Access Rules" to check such anti-competitive behaviour.

In Philippines, the National Telecommunications Commission (NTC) has prohibited exclusive agreements between cable and satellite operators and channels as a general rule.

As per the Broadcasting Law in Japan, a broadcaster shall not, unless under a justifiable reason, refuse to provide its paid broadcasting service to any person who wishes to receive its service.

In Canada, Canadian Radio-Television and Telecommunications Commission (CRTC) laid down certain principles for the cable TV industry, such as:

- All specialty and pay services should be supplied and distributed on fair and equitable terms.
- Unaffiliated companies should get terms and conditions that are no less favourable than those with affiliates.

In India, the Telecom Regulatory Authority of India (TRAI) has recently submitted its recommendations to the Government of India on broadcasting and distribution of TV channels. TRAI has recommended that every broadcaster shall provide signals of its TV channels on a non-discriminatory basis to all distributors of TV channels and no exclusivity would be permitted.

Generally, TV channels are provided to all carriers and platforms to increase viewership for the purpose of earning maximum subscription fee as well as advertisement revenue. However, according to some, if all platforms carry the same content it will reduce competition and there will be no incentive to improve the content. Accordingly, some degree of exclusivity is required to differentiate one platform from another.

The experience in USA suggests that the regulation relating to non-discriminatory access can provide an effective stimulus to competition and improve the content. The FCC, after reviewing the impact of its programme access rules over a period of 10 years, found that exclusivity prohibition did not reduced the incentives to create new or diverse programming.

In view of the above, it is necessary that there are regulations in place to check if content is denied in a manner that stifles competition among competing distribution networks. It is important that all distribution platforms are promoted so that they provide consumers with a choice.

Cos may Lose Assets

The UK Competition Commission has warned that the companies merging in the country could be forced to sell "crown jewels" assets, if they do not complete the agreed divestitures promptly. In cases where the competition regulator fears that a merged group may have too much market power, it can force it to sell off some assets to alleviate competition concerns, as a condition of approving the deal.

The warning comes as the regulator sets out how it will handle divestiture remedies, under the recent Enterprise Act, which made it independent from ministers and gave it the responsibility for handling merger remedies.

Earlier, the Takeover Panel had published proposals for the biggest overhaul in 20 years to the Takeover Code, which governs the merger and acquisition activity in the UK. Although many of the amendments put forward by the Panel's code committee reflect codification of previous decisions and existing practice, some of the changes would require greater disclosure of dealings during takeover periods. *(FT, 18.06.04 & 21.06.04)*

Stress on Anti-trust Policy

Urging the international community to step up its efforts to co-operate in adopting and implementing competition law, the Korean Fair Trade Commission Chairman, Kang Chul-kyu, said that consensus should be built around the globe that competition rules need to be established to enhance consumer welfare and economic efficiency.

He pointed out that, due to differences in economic conditions and experience in competition law enforcement, it is not an easy task to co-ordinate the contents and enforcement of competition law. Also, the conflicts between nations are likely to increase along with globalisation. He called for international support to the countries that are reluctant, or hesitant, to introduce and enforce competition law.

Kang also vowed to act as a bridge connecting advanced countries and developing countries in competition policy. The Korean competition agency has conducted education and training programmes for public officials working in the competition field in other Asian countries for several years.

(The Korea Herald, 22.04.04)

Stronger Competition Law

A rare public tussle is brewing between Japan's regulatory watchdog, the Fair Trade Commission (FTC), and Keidanren, the nation's most powerful business lobby. The issue at stake is the Commission's proposed overhaul of the country's anti-monopoly law – the most radical in more than 25 years.

The FTC's mandate is to toughen Japan's competition policy, which, according to critics, has been lagging behind the international standards for years. The Organisation for Economic Co-operation and Development (OECD) said that growth has been hamstrung by anti-competitive business conditions. Economists believe a more competitive market will spur recovery, by creating a more welcoming environment for new entrants and innovation.

The FTC is proposing to amend the anti-monopoly act by increasing the fines imposed on companies that break the law by participating in collusive activities and bid-rigging. The Bill would also introduce stiffer penalties for such offenders.

(FT, 13.05.04 & 24.05.04)

Ending Monopoly

The Sri Lankan Government's move to end the monopoly of the country's sole flour miller, the Singaporean firm Prima, and divest it of pricing controls has gladdened the citizens, but left investors worried. The Government has invited private sector bidders to enter the field. The decision to declare wheat flour an essential item came in the wake of demands by Prima, one of the country's most pampered firms, to grant it compensation of $100bn for annual losses incurred by it for subsiding the price of flour.

Prima said that it lost US$.035 a kg from January to March and US$.075 from April to May and would be forced to increase the prices by US$.075, to avoid further losses. Following the threats, the Government declared that any increase in flour prices should be made only with the approval of the Consumer Protection Authority, the monitoring body for the price and quality of consumer items.

The new decision contravenes an earlier agreement between the firm and the Government under which Prima could raise prices when the average six-month cost of wheat and freight, duties, taxes or other levies crossed US$20 a tonne. *(ET, 04.06.04)*

Legal Fiction

The question of what constitutes an 'acquisition of control' has become a matter of controversy in South Africa. The Competition Tribunal has recently made certain rulings relating to the question of control in both Ethos Private Equity Fund Tsebo Outsourcing Group (Pty) Ltd and Caxton *v* Naspers Ltd. In Ethos/Tsebo, Ethos exercised joint control over Tsebo with two other companies.

The transaction related to an acquisition by Ethos of an additional shareholding in Tsebo. This increase would be less than 5 percent, but would result in Ethos' total shareholding marginally exceeding 50 percent. Ethos sought an advisory opinion from the Competition Commission, which said the transaction was notifiable. Ethos, thus, filed a merger notification, albeit under protest, and the hearing before the Competition Tribunal challenged the view that the transaction constituted a merger.

The Tribunal ruled that the case involved the existence of both joint and sole controllers. Ethos was one of the joint controllers of Tsebo, but by increasing its shareholding to more than 50 percent, it also simultaneously acquired sole control. The transaction was, therefore, notifiable. However, it was decided that such a merger would not lead to a substantial lessening of competition and it was, thus, unconditionally approved.

(TLN, www.internationallawoffice.com, 10.06.04)

Pressure for Anti-monopoly Law

Pressure is growing in China for quicker progress on an anti-monopoly law that could have big implications for leading multinationals such as Microsoft. In a report that raises questions about the software group's conduct in the Chinese market, the State Administration for Industry and Commerce has called for faster action on the law.

A recent report by China's Fair Trade Bureau of the State Administration for Industry and Commerce suggests that any large foreign multinational group may be too big for China. As a state-planned economy, China had little need for anti-monopoly legislation. "Big" was seen as "good", because it helped the State to control the prices and markets in which companies operated.

As China edges closer towards a fully-functioning market economy, the need for anti-monopoly legislation has become clearer. But, some others argue that this legislation is unnecessary to govern domestic companies, as Chinese companies are still small, compared with multinationals in developed market economies. Moreover, China has issued piecemeal legislation aimed at reining in the investments of large foreign corporations.

Business Standard

(FT, 26.05.04 & 16.06.04)

Domestic Steel Prices Down

Thailand's Commerce Minister, Watana Muangsook, said that his Ministry has decided to temporarily lift anti-dumping tariffs imposed on hot-rolled steel imports from 14 countries for six months, to ease steel prices in the domestic market.

Watana said higher steel prices were also prompted by higher demand because of a large number of housing and infrastructure projects. It was found that some local companies were hoarding steel products to create a shortage in supply and push the prices higher.

The Thai Government imposed anti-dumping tariffs against the 14 countries in May 2003 for five years, to help protect the domestic steel industry, which suffered from excessive debt and collapse of the real-estate sector, following the 1997-98 Asian financial crisis.

(www.CACCI . org. june, 04)

OPEC Deal Eases Oil Prices

Oil prices eased below US$40 a barrel as an OPEC (Organisation of Petroleum Exporting Countries) deal to pump more crude outweighed underlying fears of political instability in top producer Saudi Arabia. US light crude fell 57 cents to US$38.71 a barrel, following an 80 percent drop when the OPEC agreed to a two-stage output increase of 2.5 million barrels a day in July and August.

The US and other oil importers have lobbied the OPEC to pump more crude, to help reduce the threat of rising energy costs restraining economic growth. The US gasoline prices have surged to a record average of US$2.064 a gallon, according to the Energy Department.

The effect on global markets of increased crude oil supply by the OPEC may be muted by the fact that the gain in oil prices is partly because the US refiners are struggling to replenish gasoline inventories, according to analysts.

(BL, 01.06.04 & ET, 04.06.04)

Foreign Cos Restricted

A recent US Supreme Court ruling restricts foreign companies from using US courts to settle antitrust disputes. The ruling reverses the decision of the US Court of Appeals for the District of Columbia to allow several foreign vitamin buyers to pursue price-fixing claims in US courts against international drug companies, including F. Hoffman-La Roche Ltd., BASF AG, and Aventis SA. The court ruled that US antitrust law governs the foreign effects of a company's anti-competitive behaviour only if it could be shown that the foreign company's behaviour in the US contributed to the harm caused overseas.

(Dow Jones Newswires, 14.06.04)

EU Anti-trust Reforms

With the arrival of 10 new member states to the European Commission (EU), the lawyers and officials involved in the European anti-trust policy are seeing things a little differently. The changes in the law concerning agreements between competitors are designed to respond to the demands of the new 25-member EU, as well as to the longer-standing problems.

Since 1962, the Commission has had power over bona fide agreements – Including ones for joint research and development, distributorships, licences and strategic alliances – and it also adjudicated on notifications. Mergers also face a different set of hurdles in enlarged Europe. The EU's hugely successful merger regulation has undergone a set of reforms that re-balance the allocation of cases between the Commission and national agencies and alter the equation for the approval or vetoing of deals.

Observers recommand that the key for making the new system work is proper resourcing of the agencies and courts. The Commission may be shaking off its former caseload, but the national agencies that are to pick up the burden do not seem to be adding any muscle.

(FT, 21.04.04 & 05.05.04)

Rules on Exemption

Following the, the new Portuguese enforcement agency intends to create greater legal certainty, by approving a new procedural regulation on individual exemption of agreements between an undertaking and the decisions of associations of undertakings.

Under the new regime, any undertaking or association of undertakings can request the Competition Authority to conduct a prior assessment in relation to an agreement or decision, with the aim of obtaining a declaration, which confirms whether the agreement or decision is compatible with the relevant provisions of the Competition Act.

(TLN, www.internationallawoffice.com, 23.06.04)

Advocacy Role of Competition Commission

Keen to resolve all the issues concerning the Competition Act, 2002, for its smooth implementation, the Government proposes to take up the task of 'competition advocacy'. This is aimed at generating increased awareness of the role of the Competition Commission of India (CCI) in the wake of the changing economic scenario.

Business Standard

The implementation of the law will be in three stages. In the first stage, the Competition Commission should initially be endowed with an advisory or advocacy role. In the second stage, the issues of anti-competitive agreements and abuse of dominant position will be taken. The issues concerning mergers and amalgamation would be addressed at the last stage.

The role of the Competition Commission set up under the Act, covers competition advocacy, prohibition of anti-competitive agreements, prohibition of abuse of dominant position and regulation of combinations (mergers and acquisitions, etc., above the prescribed threshold limit).

In fact, this is in line with what the business lobby has been asking for. For example, the Federation of Indian Chambers of Commerce and Industry (FICCI) has been holding the view that Competition Law issues should be addressed in three stages as mentioned above.

(BL, 28.06.04)

Fur Industry Faces Probe

The United States has launched a criminal probe into possible price-fixing in the global fur industry, slapping subpoenas on dozens of auctioneers, brokers and retailers in the United States, Canada and elsewhere. The investigation, launched by the US Justice Department's anti-trust squad, is focused on the thriving US$150mn a year farmed mink business, according to industry sources. Investigators are looking at all transactions dating back at least four years, sources say.

US Justice Department spokesman, Charles Miller, said anti-trust regulators are "looking at the possibility of anti-competitive practices by domestic and international fur brokers in connection with fur auctions held in the United States and elsewhere". After several years of depressed markets, the price of a mink pelt soared to a record high of about US$50. Herscovici, Executive President of the Montreal-based Fur Council of Canada, suggested that the investigation might well have been triggered by disgruntled fur farmers when prices were much lower.

This is not the first time that the auction business has been the focus of price-fixing scrutiny. In 2001, the head of art auction house, Sotheby's, was handed a year-long jail sentence and fined tens of millions of dollars for his part in colluding to set non-negotiable commission prices with rival, Christie's, the other major player in the live auction business.

(www.lists.envirolink.org/pipermail/ar-news, 16.06.04)

Physicians' Price Fixing

Doctors in New Mexico, USA can't talk to each other about what they have been offered by health plans. Nor can an agent who is representing a number of doctors discuss with them what the others have accepted from health plans. The deals must be strictly between the health plans and individual doctors.

The Federal Trade Commission (FTC), in a complaint filed earlier this year, accused South-eastern New Mexico Physicians IPA Inc. (SENM) of Roswell of negotiating on behalf of all the doctors in its group. These practices, which the FTC says began in the late 1990s, resulted in inflated heath care costs in the area and in health plans having to pay up to 250 percent more for doctors' services than they might have otherwise paid. SENM's physician members had agreed with each other and SENM that they would not deal individually, or through any other organisation, with any payer with whom SENM was attempting to negotiate, or had signed a contract jointly on behalf of the group's members. SENM's members often refused payer offers made to them individually, hindering payers' efforts to establish competitive physician networks in Roswell.

The complaint says that several health care providers might have had to pay more than necessary for doctors' services because of SENM's actions. The complaint added that, due to SENM's dominant market position, such coercive tactics had been highly successful.

(New Mexico Business Weekly, 25.06.04)

Cash Card Cartel Unveiled

The European Commission has accused nine French banks of conspiring to increase cash card charges. Groupement des Cartes Bancaires (CB), which oversees the French banking payment system, was accused of facilitating the collusive behaviour. The alleged anti-competitive agreement is designed to prevent retailers, small domestic banks and foreign banks from entering the French market. "In the Commission's view, the agreement prevents new entrants from offering consumers CB cards at a lower price and restricts technical innovation by limiting the issuance of CB cards with new functions", the Commission said in a statement. *(Reuters News, 08.07.04)*

Spanish Power Cos Fined

The restrictive practices court has imposed fines upon the three largest electricity producers of Spain. The firms were found guilty of price-fixing and abuse of a dominant position. Each company would be required to pay • 900, 000 on an average.

(Global Antitrust Weekly, Issue 293, NERA Economic Consulting)

Rubber Producers Fined

The Japanese Fair Trade Commission has imposed fines totalling ¥230mn on twelve rubber producers for fixing the price of anti-seismic rubber products used in construction of bridges.

(Jiji Press English News Service, 06.07.04)

Cost-fixing by Surgeons

Four eye surgeons have been found guilty of alleged price-fixing. The New Zealand Commerce Commission found that in early 1999, the eye surgeons had agreed on the fees they would charge for the provision of services to Mid Central Health.

(Global Antitrust Weekly, Issue 293, NERA Economic Consulting)

Modelling Cos' in trouble

Modelling companies inthe US have been charged with conspiring to set the same high fees for young women seeking work. Millions of dollars are being sought as damages through litigation involving New York modelling companies.

In defence, modelling companies state that the chances of collusion between modelling companies was very limited on the ground of the 'mutual hatred' that prevails in the modelling industry. They add that the industry is fairly transparent, and everyone knows each other's incomes. *(FT, 03.06.04)*

Alcoa Strengthens Global Position

Alcoa of the US, the world's number one aluminium producer, is interested in buying two plants from Russian Aluminium (RusAl), in a pioneering investment in the country's metal sector. News received till end June suggests that the Russian Government has delayed its decision on the US$200mn Alcoa-RusAl deal, which is currently being investigated by the Federal Anti-Monopoly Service (FAS).

Alcoa also plans to build a US$1bn aluminium smelter in Trinidad that would produce 250,000 tonnes of aluminium annually. The natural gas field of Trinidad and Tobago would be utilised to provide cheap electricity for the smelter. The plant, which is expected to start producing the metal from 2007, would be 60 percent owned by Alcoa and 40 percent by the Trinidad Government.

The above cases testify to Alcoa's efforts to maintain leadership in the aluminium industry, through overseas investments, ahead of its rival, Montreal-based, Alcan. In a statement released earlier, Alcoa Chairman, Alain Belda, said that he expected the company to have more international presence in two to three year's time. He added that the company was looking at projects in China, Brunei, Bahrain, Brazil and Canada also. *(FT, 07.05.04 & 25.05.04)*

Business Standard

NAAMSA Refutes Charges

The National Automobile Association of South Africa (NAAMSA) has strongly rejected claims made by the South African Competition Commission that the automobile industry is anti-competitive in the country. Members of NAAMSA include BMW, Daimler Chrysler, Ford Motor Company, General Motors, Nissan and Volkswagen. The association also called for a quick conclusion to the investigation to remove uncertainties in the market.

The Commission had suggested that price collusion and excessive pricing are characteristic of the South African car market. "Various statements made by the NAAMSA, as well as a pattern found to be generally used in conducting motor vehicle sales by most manufacturers and importers, create the impression that a practice of maintaining motor vehicle prices at certain proportions or levels has apparently been agreed upon", the Commission said. In an earlier investigation Toyota was fined Rand 12 mn for imposing on dealers a minimum resale price and the Commission also launched a wider investigation into suspicions that other players were also guilty.

Consumers complain that South African car importers have not passed on the effects of a strong rand by the lowering prices. The industry, on the other hand, asserts that it was forced to keep the prices stable to prevent the price of second-hand cars from sliding.

(FT, 09.05.04 & Business Day South Africa, 02.07.04)

Telefónica's Abuse of Dominance

The Spanish Court for the Defense of Competition has imposed a •57mn fine on telecommunications company, Telefónica, for abusing its dominant position in the market for fixed telephony services in Spain. This is the highest fine ever imposed by the Spanish competition authorities on an individual company. Telefónica was investigated over a complaint filed in 2000 by Astel, an association representing smaller telecommunications operators, claiming that Telefónica prevented users from accessing competing fixed telephony services.

The court found that Telefónica had run an unfair television advertising campaign, confusing users and denigrating competitors. Telefónica was accused of launching a massive mailing campaign aimed at convincing users that choosing fixed telephony services from Telefónica's rivals would affect the quality of the phone calls and the prices of the ancillary services rendered by Telefónica.

In addition to the fine, Telefónica has been ordered to send letters to all recipients of the mailing campaign, expressly indicating that choosing competing fixed telephony services implies neither a reduction in the quality of phone calls nor a price increase for ancillary services provided by Telefónica. *(TLN, www.internationallawoffice.com, 20.05.04)*

Monti to Face the Music

Sony Music Entertainment (SME) and Bartelsman Music Group (BMG) are poised to enter a merger. The European Commission has voiced significant objections to the deal. The outcome of this merger is expected not only to affect the two companies but also the record industry as a whole. It could also have a profound impact on Europe's anti-trust policy.

Mario Monti, European Union's Competition Commissioner, knows that whatever decision he takes, the Commission is likely to be sued. The likely litigators would either be Europe's independent record companies, which say they stand to be elbowed out of the market by the increased clout of the music majors, or Sony and BMG themselves, who would try to overturn a veto in the court and then revive the merger.

The Commission is facing a dilemma on the wholesale prices – wondering if they were uniform and transparent enough to allow the majors to carve up the market for themselves. Sony and BMG's rivals are frustrated that the Commission has not made more use of arguments on areas such as shelf space, cross subsidies and a potential duopoly with Universal Music. Figures from the International Federation for the Phonographic Industry show that Sony-BMG would account for 24.6 percent of the world market, bypassing Universal Music's share of 23.5 percent. *(FT, 17.06.04)*

Review of GE-Honeywell Veto

EU's controversial veto of General Electric's $43bn bid for Honeywell in 2001 is being reviewed by the European Court of First Instance, the EU's second-highest court. The case is one of the most important faced by the EC, although a final verdict on it is not due until 2005.

The Competition Commissioner's decision to block the GE-Honeywell merger even led President George W Bush to express his concern.

GE has no intention of resurrecting its merger with Honeywell. But, it is keen to reverse the Commission's decision, which could otherwise restrict the company's ability to acquire other groups in the aviation sector. *(FT, 25.05.04 & 28.05.04)*

Swedish Commission Misled

Tetra Laval of Sweden has been fined •90,000 for supplying the Commission misleading information during an investigation into the company's acquisition of Sidel of France. "The Commission's decision raises important issues of principle with regard to parties' obligations under EU merger control rules", said Joergen Haglind, Senior Vice President at Tetra Laval. The company has accused the Commission of failing to understand the nature and potential of Tetra Fast technology, which is claimed to be at the centre of the dispute. *(Reuters News, 07.07.04)*

CR Delta Violates Law

CR Delta, a Dutch supplier of bull semen, has been found guilty of abusing its dominant position in the Dutch market. The Netherlands Competition Authority held that CR Delta and its subsidiary, Holland Genetics, had tied down cattle farmers through the application of rebate schemes for the purchase of bull semen.

CR Delta is the largest supplier of bull semen to cattle farmers in the Netherlands. It has a stable market share of around 80 percent in the market for both bull semen and test semen. The nearest rival bull semen suppliers have market shares of below 10 percent.

The Netherlands Competition Authority rejected CR Delta's claim that it was meeting competition without any intent to tie down its customers with rebate systems. The Authority levied a fine of •2.6mn on CR Delta for abusing its dominant position in the market. In addition, the authority ordered CR Delta to terminate the rebate schemes within two months and inform customers of the termination.

(TLN, www.internationallawoffice.com, 27.05.04)

Takeover Battle in China

Anheuser-Busch, the world's largest brewer is set to buy Harbin Brewery, a Chinese company with a US$717mn bid following the withdrawal of rival SABMiller, the world's second largest brewer. This ends the first take-over battle between foreign companies for a big Chinese firm. Anheuser-Busch, SABMiller and other global firms such as Heinken and Interbrew are pouring money into China despite a fragmented and fiercely competitive market where a 640-ml bottle costs as little as 12 cents.

The reason for this behaviour is that global firms are counting on further consolidation and rising incomes to lift prices and profits. They also see a vast potential in a country where an average person drinks just 19 litres of beer per year, compared with 50 litres in Japan and 84 litres in the US.

Analysts said that the fierce battle between the world's two largest brewers and Harbin's high valuation could force other foreign investors to pay high prices to buy into Chinese brewers. *(FT, 03.06.04 & BL, 04.06.04)*

The Financial Times

Alstom Unhappy

The French government and the European Commission ended the strife over France's plans to bail out Alstom, the troubled engineering group, by agreeing that it would form alliances with other private companies. The bail out will make the French state, Alstom's leading shareholder, with up to 31.5 percent of its equity.

Mario Monti, Europe's Competition Commissioner, said France had promised to sell its stake in four years or within a year of Alstom regaining an investment grade credit rating. According to Nicolas Sarkozy, France's Finance Minister, the bail-out would "give at least four years to the big company to restructure its finances, conquer market share and eventually agree to industrial alliances."

In return for European Commission approval of its bail-out, Alstom says it will dispose of businesses with revenues approximately worth •1.5bn (US$1.8bn), freeze transport acquisitions for four years and create a joint venture in its hydroelectric turbine division. The text agreed by the two sides states that the "partnerships will not involve businesses controlled by the French state, in law or in fact, individually or collectively – unless by prior agreement with the Commission". *(FT, 26.05.04 & 27.05.04)*

Sony-BMG Set to Tango

BMG (Bertelsmann Music Group) and Sony Music are poised to merge with the blessings of antirust regulators, creating a clear number two to Universal in a four-house field, leaving rivals EMI and Warner Music at about half the size. Thus, the record industry is soon to be fronted by a quartet. This has also led to fresh speculation among industry executives that they will renew talks to combine, fuelling the back stage chatter about the emergence of a trio.

Few years ago, sceptics doubted that regulators would allow the music industry to shrink to five dominant players from six, when Universal planned to merge with Polygram. Going to four from five was considered out of question, when the Sony-BMG merger was announced. Now with Sony-BMG merger approved, seeing the field shrink to three is considered a step too far. Sony-BMG would hold 22.6 percent of the market. It would trail only Universal's 23.5 percent share. EMI has 13.4 percent and Warner 12.7.

European antitrust regulators, who initially had argued that there is tacit collusion among record companies on some CD prices, were ready to approve the merger.Both Sony and BMG argue that they need the merger to cut costs without slashing talent at a time when the industry is reeling from piracy and unauthorised downloading. They added that many of the apparent price similarities were due to "averaging out" and a more detailed breakdown would have revealed genuine price disparities.

(BS, 09.06.04; FT, 15.06.04 & BL, 21.06.04)

Embratel Deal Finalised

After an increasingly bitter exchange of accusations, MCI, formerly WorldCom of the US is finally set to sell Embratel, the Brazilian long-distance and international telephone company, to Telmex of Mexico. A sale would help to determine the extent of competition in Brazil's fast growing communications market and ultimately the success or failure of the privatisation process that started in 1998.

MCI opted to sell to Telmex, which had offered US$400mn, instead of accepting an offer of US$550mn from Calais, because of the risk that a purchase by Calais would be blocked by Brazil's regulators and the possibility of subsequent damage to MCI's image or even legal action. MCI's apprehensions were well-founded as Calais is presently under investigation by Brazilian anti-trust authorities for allegedly forming a cartel with Telefonica, Telemar and Brasil Telecom.

With Telmex in control, competition in the Brazilian market is expected to be strengthened. Although Embratel does not have the 'last mile' network that could enable it to compete directly for local residential services, it does offer wireless residential services that resemble mobile services. *(FT, 29.04.04)*

Telefonica's Plan in Chile

Telefonica, the Spanish telecom group raised its bet on wireless operations in Latin America with a US$1bn agreed bid for Chile's second-largest mobile phone operator - Telefonica Movil Chile (TMC). Analysts opine that Telefonica's plans to consolidate its stakes in the growing wireless sector could be replicated elsewhere, especially in Brazil, which accounts for almost half of Telefonica's clients outside Spain. It is expected that Telefonica might try to strengthen Movil in Brazil, where the group owns stakes in five regional wireless operators.

The acquisition will make Movil the dominant operator in Chile. The merged company will hold a 49 percent share of the Chilean market, where the penetration level is expected to grow from the current 50 percent.

(FT, 20.05.04)

Telefonica Moviles

Market Position	Rank
Argentina	1
Brazil	1
Chile	1
Colombia	2
Ecuador	2
Mexico	2
Panama	1
Peru	1
Uruguay	2
Venezuela	1

Source: Credit Lyonnais

Celtel Enters Kenya

Celtel, the Netherlands-based communications group that has operations in 12 African countries acquired a majority stake in Kencell, one of Kenya's two leading mobile phone companies.

During the past five years Celtel has built up operations in a dozen African countries, investing more than US$500mn in countries like Uganda, Sudan, Tanzania and the Democratic Republic of Congo. The present deal represents one of the biggest foreign investments in Kenya, east Africa's leading economy and the hub of regional transport and trade.

Celtel sees its investment drive as part of a pattern in which a few larger groups focused on Africa are asserting dominance over the continental market as European competitors concentrate on their core operations. The company said that it was seeking further expansion in West Africa.

(FT, 27.05.04)

Korean Air in Chinese Sky

Korean Air has forged an alliance with China Southern Airlines as part of its push for more access to the world's fastest-growing aviation market. Under the agreement, Korean Air passengers will have access to China Southern's 12 weekly flights between the two cities of Seoul (South Korea) and Shenyang (China), in addition to Korean air's 11 flights. Demand for flights between the two countries is on the rise on account of the growing trade and tourism activities between them.

Korean Air is also seeking to win a share of intercontinental travel to China, by establishing its Incheon base as a gateway for European and North American travellers.

However, Korean Air faces fierce competition in China from Asiana, its domestic rival. Although Korean Air is the bigger of the two airlines, Asiana has more routes to the mainland. Having a large fleet of cargo carriers, Korean air is well placed to benefit from the rapid growth in trade between China and the rest of the world.

(FT, 09.06.04)

Indian Out-sourcing Boom

The pace of expansion of the Indian outsourcing industry is being consolidated by entry of various foreign-owned call centres.

According to India Advisory Partners, figures for the first quarter (valued at US$229mn.) of mergers and acquisitions in India's rapidly growing business process outsourcing (BPO) sector in 2004 is already close to the total for 2003 (US$289mn.). Nasscom, the Indian industry's trade group, estimates that revenues from BPO have risen by more than 50 percent to US$3.6bn for the year 2003-04. *(FT, 12.04.04)*

Sandoz Acquires Sabex

Sandoz, the generics arm of Switzerland's Novartis pharmaceuticals group took a further step forward in the gradual consolidation of its diversified operation with the US$565mn acquisition of Sabex Holdings, a privately held Canadian group. Sandoz intends to expand its relatively small business in injectable drugs through this acquisition, and gain entry into Canada, which is one of the world's largest market for generics.

Christian Seiwald, Sandoz chief executive reiterated the company's plans of capitalising from the Canadian market through this deal. *(FT, 08.06.04)*

Reliance Bags Trevira

Reliance Industries of India has announced the US$100 mn acquisition of a European polyester giant Trevira, an erstwhile division of the German giant Hoechst. This acquisition is set to make Reliance the largest polyester fibre and yarn player in the world.

The Trevira acquisition not only gives Reliance an entry into Europe but also a chance to capture the market in Eastern Europe. The deal comes at a time when the rules of the game in the textile industry are set to be re-written after June 2005 when the quotas disappear almost entirely, under the new WTO (World Trade Organisation) regime.

According to Bernd Sassenrath, Chief Executive Officer of Trevira, the combination of Reliance and Trevira would create a global leader in polyester fibres and significantly strengthen Trevira's competitive position. *(BS & HT, 24.06.04)*

New Chinese Auto Policy

The National Development and Reform Commission launched a long-awaited new policy for China's fast-growing auto industry. The policy is expected to both loosen and tighten restrictions on foreign investors in the auto industry from different perspectives.

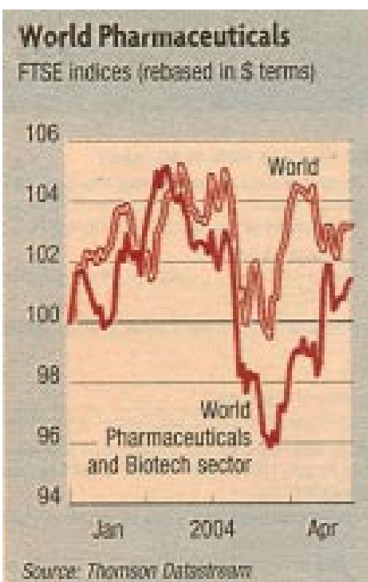
Foreign investors would be allowed to control stakes of more than 50 percent in automobile and motorcycle joint ventures (JVs) with Chinese partners "if their JVs are built in China's export processing zones and shoot at overseas markets," the new policy states. It adds that big Chinese automakers will be encouraged to team up with foreign partners to merge both domestic and foreign vehicle producers to "expand business boundaries in line with the auto industry's globalisation".

The policy also prods its carmakers to merge into fewer larger groups. China, where car production expanded to a record 1.98 million units last year, is expecting to make as many as 2.4 million cars this year.

(BL, 02.06.04 & www.chinadaily.com.cn/english, 03.06.04)

Aventis-Sanofi Stand Third

The Aventis SA Chairman, Igor Landau, said that he expects a takeover offer by French rival Sanofi-Synthelabo SA to result in the creation of the world's third largest pharmaceuticals company. According to Landau, Aventis is satisfied that the new Sanofi-Aventis has a solid future after it negotiated more than EUR 7bn in additional cash, equal representation on the new company's board of directors and strategic committees. He added that the new company has more opportunities than risks, even if it has to face some challenges.



A three-month takeover battle between Sanofi and Aventis ended earlier, when French political pressure forced the two groups into negotiations. The physical exchange of shares is expected sometime towards the end of July.

The Sanofi-Aventis combination is anticipated to dominate the market in continental Europe with a 10-11 percent share of drug sales. Aventis is the product of a merger of Germany's Hoechst and France's Rhone-Poulenc's Life Sciences Businesses. Last year it was the world's sixth largest drugs maker in terms of sales.

(FT, 06.05.04 & BL, 11.05.04)

Investor Activism on a High

Recent trends suggest that 'investor activists' are gradually assuming significant roles in influencing corporate governance in the developed world. This year, they have successfully ousted the chairman of Shell, halted a pricey acquisition at Vodafone and even stripped Michael Eisner, Disney CEO, of chairmanship in an ongoing fight for control.

This new genre of investors is essentially a cross between 'value' investors (who buy shares in sound, but undervalued, companies) and 'turnaround specialists' (who buy and fix broken firms). Investments are generally made in lagging, poorly managed public companies, using a corpus called the 'activist fund'. Subsequently, through tactics ranging from gentle persuasion to fiery proxy battles, these investors push the companies into improving their corporate governance and sell at a profit when the market notices the improvement.

Funds specialising in investor activism are estimated to manage nearly US$10bn of assets; with big names like Relational Investors (US), Active Value (UK) and Sparx (Japan). Various public pension funds, including the US's largest, Calpers, are becoming increasingly interested in such funds, for the reason that the latter provide higher possibilities of boosting returns. Nevertheless, sceptics think that shrewd investment, not activism as such, has been the engine of activist funds' performance. Especially when 'touting governance' is high fashion at the moment, their strategy may not be much more than good public relation. *(ET, 07.04.04)*

Calpers against Citigroup

Calpers, the largest US public pension fund, has targeted Citigroup Inc's Sanford Weill and Coca Cola's Warren Buffet, in attempts to change the way major US businesses are run. Calpers would withhold votes, a move that might affect re-election of both Weill and Buffet as directors of their respective companies. Similar moves could be expected from the pension fund against directors of 10 other companies, including Sprint Corp., Wachovia Corp. and P G& E Corp.

Calpers, which advocates for completely independent boards of directors, has become a leading force in corporate governance. Its actions came in the wake of investor calls for reforms, following a wave of corporate scandals in the US. "I hope the result of this is to bring attention to the real problem, that US law does not provide an adequate structure for shareholder defence," commented a governance expert on Calpers' bold bid. *(ET, 13.04.04)*

Violations Uncovered

The Dutch securities regulator has uncovered serious violations, including incorrect or unclear information in prospectuses, slack controls that risked insider trading, erroneous information regarding expenses and incorrect or outdated procedures in the operation of investment funds run by many leading financial institutions in the Netherlands, following the most expensive probe ever conducted of the US$118bn industry.

The investigation report, released by the Netherlands Authority for Financial Markets, was intended to trigger a shake-up of lax regulation and compliance in the industry and might lead to certain funds being named and shamed and investors compensated. The findings are expected to send a strong signal to other European regulators.

A commission headed by an independent Chairman will be established to draft new guidelines for the industry. In many cases, institutions have indicated willingness to reform. *(FT, 27.04.04)*

Caught on the Wrong Foot

Eliot Spitzer, New York's ambitious Attorney General, has opened an investigation into possible abuses in the insurance broking industry.

After wringing a US$1.4bn settlement out of Wall Street firms and jailing several mutual fund executives, Spitzer has now sent subpoenas to about a dozen insurance brokerages, including Aon, Willis Holdings and Marsh & McLennan – to provide information about payments they receive regularly from insurers in exchange for bringing in business. Spitzer was quoted stating that the investigation was to check whether brokers that help companies buy insurance had conflicts when accepting payments from insurance companies. The move followed a plea made by the Washington Legal Foundation, a non-profit group, to investigate these compensation arrangements.

While the investigation was still in its early stages, it could turn out to be quite sweeping and seriously impact brokers' revenues. Brokers defended themselves, stating that they "have had such arrangements with insurance companies for many years to compensate the brokers for the service they provide".

(FT, 24. 04. 04 & New York Daily News, 24. 04. 04 at www.nydailynews.com)

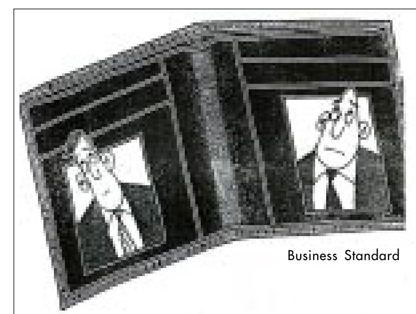
CSR Key to Investment: UNEP

In a report released by the UNEP, a group of 12 fund managers representing $1.6 trillion of assets under management, call on investors, government and business leaders to embed environmental, social and governance best practices at the heart of the world's markets.

The report was launched at the United Nations Global Compact Leaders Summit in New York, where hundreds of corporate leaders had joined ministers, heads of international NGOs, labour organizations and key UN agencies to examine the progress made in advancing the environmental, labour and human rights principles of the UN Global Compact initiative.

Speaking on the occasion, UNEP Executive Director Klaus Toepfer said, "This new report is a crucial recognition from major financial institutions that the environmental and social components of sustainable development, as well as the economic considerations, should sit at the heart of investment and capital market considerations." The report is based on 11 sector reports prepared by analysts for the UNEP Finance Initiative Asset Management Working Group.

(www.csrwire.com, 25.06.04)



Business Standard

KFTC Tough against Chaebol

South Korea's Fair Trade Commission (KFTC) proposed change in the way chaebols, the country's huge family-run business groups, used affiliated insurance companies to leverage a disproportionate level of control over their sprawling conglomerates.

KFTC, which had had those chaebols in sight since the election of the reformist Roh Moo-hyun as President last year, wanted to reduce the voting rights that insurance units control in other group companies from 30 percent to 15 percent. The plan was fiercely criticised by the chaebols, which feared that the restrictions would limit investments and expose their companies to foreign takeovers. Minority shareholders, who often complained of poor corporate governance within the chaebols, however, welcomed the proposal.

If the Parliament approves the proposal, it will tackle one of the most common ways in which the powerful Korean families maintain an iron grip over group management, such that they exercised voting rights equivalent to 35 percent, while owning only an average of 8.7 percent of the shares in affiliates, as revealed by a Korean Development Institute report.

(FT, 07. 05. 04 & 28. 05. 04)

Insider Trading at Vivendi

APPAC, an association of small shareholders, just launched a civil legal action, alleging insider trading at Vivendi Universal, following the revelation that a family trust belonging to its CEO, Jean-Rene Fourtou, took a massive undisclosed stake in a bond issue.

The purchases might not be illegal, if Fourtou could prove that he had not been in possession of inside information at the time of the US$23.6mn total investments, which greatly surprised investors by their size. The Fourtou family took 17 percent of the retail tranche, becoming one of its largest investors. AMF, the French financial market authority, is currently probing the case. The revelations and the lawsuit are embarrassing because Fourtou was brought into the media group in July 2002 to clean up the company after corporate governance scandals under his predecessor Jean-Marie Messier emerged, also with the insider trading charge.

Recent news suggested that APPAC is also planning to sue Fourtou for agreeing to a US$50mn settlement with the US Securities and Exchange Commission without consulting shareholders.

(International Herald Tribune, 17. 05. 04 & FT, 18. 05. 04)

Grey Areas in Audits

Limited inspections by the US Public Company Accounting Oversight Board uncovered 'significant' problems in the audits of America's big four accounting firms, Ernst & Young, PriceWaterhouseCoopers, KPMG and Deloitte & Touche.

William J. McDonough, Chairman of the Board, warned auditors against shortcuts and bending-to-pressure-to-please-corporate-clients strategies that had fuelled the accounting scandals of 2002. Based on the results yielded by the 2003 limited reviews, the Board, with subpoena powers and authority to discipline auditors, has already started a fully-fledged investigation of accounting firms' audit books this year.

(ET, 25.06.04)

Issues of Concern

Governance problems at Safeway and Royal Dutch/Shell were among the 'big issues' for US investors this year. Executive pay and splitting of the roles of the Chairman and CEO would be the issues that receive maximum focus, according to Jamie Heard, Vice-Chairman of Institutional Shareholder Services (ISS).

Activist shareholders would focus on companies with 'peculiar' governance structures in their forthcoming meetings, said Heard. He added that the issue of combined roles had gathered 'serious momentum', after Michael Eisner, Disney CEO, was forced to give up his position as chairman.

ISS comments coincided with the agenda of the International Forum for Active Shareowners (IFAS), a powerful network of 27 US and European institutional investors managing US$1,500bn of assets, to focus its corporate governance crusade on US companies with a CEO-Chairman combined role.

(FT, 05.04.04 & 12.04.04)

Topside Down in CSR

The world's 100-largest companies (the Fortune Global 100) had a poor record of accounting for their impact on society and the environment, said a report published by AccountAbility (an international institute for social and ethical accounting) and CSRnetwork (a corporate responsibility consultancy).

The Economic Times

The publication of the report coincided with a gathering, billed by the UN as one of the largest of its kind, of CEOs, government officials and civil society, to discuss global CSR.

The purpose of the survey was to identify companies "that have really integrated responsible business practices into their processes as a prime facet of accountability", said Mark Line, the CSRnetwork Director.

The report revealed that these 100-companies scored an average of about 24 out of 100, on a range of measure including strategy, governance and stakeholder involvement. Only 5 companies out of the lot scored more than 50 on the 100-point scale. The low-point score highlighted "how much more has to be done before an approach to accountability, aligned to long-term value creation and sustainable development, can move on", said the report.

European companies scored 31, Asian companies 25 and North American companies 16 on average. A major finding was that US companies featured heavily amongst those scoring less than 10. Inspite of the focus of the US companies on philanthropy and community involvement, a low accountability score by them re-emphasised the general weak link of the above two aspects with core business standards.

(FT, 23.06.04)

Raising Foreign Stake

Vietnam is considering lifting a 30-percent limit on foreign ownership of stocks, after a quadrupling of foreign investment in the stock market over the last year pushed their stakes close to the limit for half the bourse. Under the limit, the collective foreign ownership in a Vietnamese stock cannot be more than 30 percent.

On a similar note, pressure is growing for the state-owned Electricity of Vietnam to end its monopoly by opening the door to investment in power production and distribution systems.

Under a government plan, enterprises from different economic sectors will be invited to join different forms of investment during the next decade.

(www. vietnamnews.vnagency.com)

Accelerating Privatisation

Poland plans to speed up its stalled privatisation programme to counter its growing budget deficit, but, depending on the financial situation, intends to keep "strategic industries" in public ownership.

Poland's 2004 budget foresees US$2.3bn in privatisation proceeds, more than double over the previous year's total. Privatisation attained a high point in 2000, under the previous centre-right Government, but has fallen under the ruling ex-communist Democratic Left Alliance. The ruling party has shied away from privatising state-owned companies, but has been forced to change by the desperate need for funds.

As per the privatisation plans, most companies to be privatised are small. The Government intends to get rid of minority stakes, while planning to maintain a controlling share in most of the larger companies. *(FT, 27.03.04)*

New FDI Boom Expected

More than four out of five international location experts from around the world believe that FDI is about to take off again, following three years of continuous decline in global FDI. In 2003, FDI flows stagnated at some US$653bn, less than half the record US$1400bn made in 2000.

In a survey conducted by the UNCTAD and Corporate Location Magazine in the UK, three-quarters of corporate location of experts predict a better investment climate over the next two years and over 80 percent were optimistic for 2006-07.

Earlier, the UCTAD predicted that FDI will rebound this year in the wake of stronger global economic growth, higher company profitability, improved investor confidence and a pick-up in cross-border mergers and acquisitions. The Asia-Pacific region is seen as having the brightest FDI prospects in the short and medium terms. For Latin America, the experts are more optimistic in the short term, while for Africa, they take the opposite view. Top magnets for FDI are expected to be the booming economies of China and India, as well as the US, the world's biggest FDI recipient in 2003.

(FT, 16.04.04 & UNCTAD Press Release, 13.04.04)

Privatisation Plans Disrupted

Turkey's efforts to boost its haphazard privatisation record and meet tough budgetary targets for the year 2004 went into disarray after a court blocked the flagship US$1.3bn sale of an oil-refining group.

In early January this year, the Government had agreed to sell a 66- percent stake in Tupras refining group to a consortium, including a Russian oil company and a Turkish conglomerate. The deal was seen as a fresh start for the country's privatisation plans after years of missed opportunities. But, the transaction was controversial from the start. Critics argued that Privatisation Administration, which oversees the sale of state assets, had accepted too low a price and that the sale process lacked transparency.

The Administrative Court upheld a complaint by a union representing petroleum workers that the sale did not meet technical requirements. Earlier this year, the Government had promised a fresh start on attracting outside investment. But, legal uncertainties remain a substantial barrier that has to be overcome first. *(FT, 27.05.04)*

Privatisation in China

A host of western institutions are seeking to gain a foothold in China, ahead of the liberalising reforms the country must introduce before 2006 under its commitments to the WTO.

The US equity fund, Newbridge Capital, is set to become the first foreign investor to buy a controlling stake in Shenzhen Bank, a state-run Chinese bank. The investment will give Newbridge an 18-percent stake in the Bank. Under Chinese law, the ceiling for foreign investors is 20 percent. HSBC is also pushing to expand its presence in China, where it is planning to acquire 20 percent of the Bank of Communications. If completed, the US$1.0bn acquisition of shares in China's fifth-largest bank would be the biggest deal by a foreign institution.

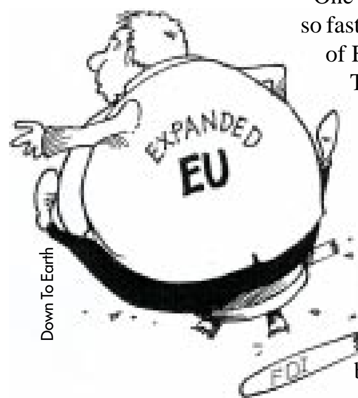
On the privatisation front, the liberalisation of Chinese businesses that were once the preserve of the state received a further boost when one of the country's largest private companies said it had secured exclusive agreements with 10 Chinese cities to distribute natural gas. While China has partially privatised its big oil companies and many of its power generators, the distribution of gas, till this announcement, had remained in state hands.

(FT, 28.05.04 & BL, 03.06.04)

Lack of FDI Diversion

Contrary to prevailing perceptions, the ten countries joining the European Union (EU) have not been diverting massive FDI (foreign direct investment) flows away from the 15 older members of the Union, as per the United Nations Conference on Trade and Development's (UNCTAD's) findings.

The report has found that, since the mid-1990s, the FDI inflows of the "accession-10" have accounted for a fraction of those of the EU-15 – a mere 3.5 percent in 2003, down from a high of 10.6 percent in 1995. The low numbers suggest a large untapped FDI potential in the accession countries.



One of the main reasons why FDI has not yet increased so fast in the accession group may be related to the nature of FDI, especially the sunk costs of existing projects. The low level of FDI might also be due to a lack of vigorous home-country measures in the 15 older member states and at the level of the Union.

Current low levels of FDI in the new EU notwithstanding, the UNCTAD believes there is a reason for hope in the medium and longer term. It is expected that, despite the lack of policy support, investors will substantially increase their presence in accession countries because it makes good business sense.

Firms from outside the EU, in particular, are likely to locate increasingly their efficiency and EU-market-seeking new FDI in the accession countries. For them, the considerations of sunk costs and home-country pressure might be less relevant. *(UNCTAD Press Release, 30.04.04)*

Taiwan to Ease Rules

Taiwan will relax restrictions on domestic companies' investments in China, in an effort to boost its financial markets, according to the island's chief economic planner. The plan could result in radical changes in the current rules that allow companies to invest in China only a small portion of funds raised in Taiwan's markets.

The rules were a part of Taipei's attempts to reduce economic dependence on the mainland, which claims sovereignty over the self-ruled island. But, the policy failed to stop corporate investment in China, while simultaneously depriving Taiwan's stock market of a huge opportunity to grow. It is alleged that firms establish dummy companies elsewhere and transfer money through other channels, just to circumvent Taiwan's regulations.

Under the plans, the administration would no longer dictate when a company could issue shares and bonds in Taipei or where it could use the funds raised.

(FT, 09.06.04)

Deregulation in Japan

The focus of deregulation in Japan is shifting from the unwinding of economic rules and regulations into changing the basic social contract that has prevailed throughout most of the post-War-period world. The deregulation process has evolved through corporate and financial sector reform into privatisation of state-operated postal services and highway corporations and is now moving into breaking the state monopoly on health, wealth and education.

Deregulation began in earnest in the early 1980s, with the partial privatisation of Japan National Railways and Nippon Telegraph & Telephone. Since then, it has spread through a wide swathe of Japanese economic life, affecting everything from air-fares to the use of cell phones and from corporate restructuring to the financial Big Bang. Under Koizumi, Japan's reformist Prime Minister, the direction of deregulation and privatisation has changed. Privatisation of the state-owned postal services became his first priority, along with that of national highway and housing corporations.

Attention is turning now to the opening of basic public services to increased competition. Deregulation panels have argued that private enterprises would not only widen the range of choice in areas such as medical, welfare and education services but also reduce costs. It is difficult to know whether such arguments will appeal to the Japanese public over those of social equity.

(BL, 05.06.04)

TIFA with US

The United States has signed Trade and Investment Framework Agreements (TIFAs) separately with five Central Asian countries and Mongolia.

The TIFA creates a US-Mongolia Council on Trade and Investment that considers a wide range of issues, including intellectual property, labour, environmental issues and enhancing the participation of small and medium-sized enterprises in trade and investment.

The United States has TIFAs with a number of countries in order to enhance trade ties and co-ordinate regionally and multilaterally, through regular senior-level discussions on trade and economic issues. Regular, ongoing dialogues established through TIFAs with other countries and regions have been very successful and have led to concrete and positive results.

(USTR Press Release, 01.06.04)

Facing Court Rulings

Foreign investors are facing a barrage of troubled rulings from Indonesia's courts.

In one instance, UK-based Prudential has appealed to Indonesia's Supreme Court to lift a bankruptcy ruling against its profitable local subsidiary.

In another instance, British agri-investor, Rowe Evans, was planning to appeal against a Sumatran court's ruling overturning its US$3.5mn purchase of an 80-percent stake in a palm oil plantation.

The rulings against Prudential and Rowe Evans are just two examples of a mounting trend in Indonesia, coinciding with a protracted election season that has left the current Government in a largely powerless caretaker role. *(FT, 19.05.04)*

Woori Privatisation

The South Korean Government has revived plans to sell a 22-percent stake, valued at US$1.2bn, in the Woori Financial Group, accelerating the privatisation of the last big South Korean bank still under state control. Woori is South Korea's third-largest financial services group.

The sale of a 22-percent stake would be an increase from the 15 percent the Government originally planned to auction. The stake is likely to be sold in small tranches to institutional investors, rather than a single strategic bidder seeking control.

The disposal would advance Seoul's efforts to retrieve US$140bn of public funds used to bail out banks during the financial crisis.

The Government has sold controlling stakes in Korea First Bank, Seoul Bank, Chohung Bank and Korea Exchange Bank since the financial crisis. Woori is scheduled for complete privatisation by early 2005. *(FT, 04.05.04)*

Privatisation Deal Blocked

The US$800mn acquisition of South Korea's Hanbo Steel by two affiliates of Hyundai Motor has been thrown into doubt after a failed bidder launched a legal action to block the deal.

AK Capital, a South Korean investment company, claimed a provisional deal it struck in 2003 to buy Hanbo had been unfairly cancelled. The company has complained that Hanbo and its receiver had sabotaged the deal. AK is pursuing its complaint through the International Chamber of Commerce (ICC), a Paris-based organisation that makes legally binding rulings on commercial disputes.

AK was the only bidder for Hanbo when it signed an MOU in 2003. Hanbo claims that its deal with AK collapsed in November 2003 because the buyer failed to secure funding. *(FT, 30.06.04)*

Emerging Investment Hotspots

Most Attractive Emerging Markets for Retailers

Country	2004 Rank	2003 Rank
Russia	1	1
India	2	5
China	3	3
Slovenia	4	14
Croatia	5	N/A
Latvia	6	19
Vietnam	7	9
Turkey	8	6
Slovakia	9	2
Thailand	10	18

Source: AT Kearney

Eastern Europe and India have emerged as the leading recipients of inward investment by global retailers in the year 2003, according to an industry survey of 30 emerging markets.

According to the AT Kearney report, rising consumer-spending power was driving rising retail investment – particularly in Russia, India and China. Most activity was taking place in food and general merchandise, as companies, including Wal-Mart, continue their international expansion.

In related news, India has emerged a star performer as a favoured offshore destination, according to a 2004 Offshore Location Attractiveness Index prepared by AT Kearney. While India topped the list of countries due to its strong mix of low costs and significant depth in human resources, China and Malaysia got the second and third slots. *(FT, 04.05.04 & 22.07.04)*

UTILITIES

Efforts to Open up Telecom

The Bangladesh Telecommunications Regulatory Commission (BTRC) having already awarded nine licenses to companies to run private fixed line networks, as a part of its efforts to open up the telecommunications sector is now set to accept bids for two mobile operator licenses in August.

The number of mobile users in the country is expected to reach a figure in the range of 6-8 million by the year 2006.

(www.inteleconresearch.com, 14.06.04)

Policy Reviewed in Ghana

In a move to improve Ghana's telecommunication infrastructure, the Government is reviewing the country's telecommunication policy. This is being done to ensure that a clear regulatory framework is defined for the sector, and to help evolve regulatory guidelines. The Ministry of Communications has embarked on this activity in the wake of the liberalisation of the sector.

(www.regulateonline.org, 18.05.04)

Ending State Monopoly

The Monopoly of state-owned Telkom Kenya in the fixed-line operating sector is set to come to an end, with a new entrant expected to enter the market soon. The pressure of international donors and businesses on the Government seems to have worked.

This is a relief for consumers who have been waiting for long periods to get connected for years.

(www.inteleconresearch.com, 30.06.04)

New Long Distance Rules

Federal Telecommunications Commission (Cofetel), Mexico's Telecommunication Regulator, issued new long-distance regulations to enhance the ability of smaller operators to compete with former monopoly, Telefons de Mexico (Telmex). A Cofetel spokesperson reiterated that the regulations aim to open the long distance market to competition.

(www.inteleconresearch.com, 22.06.04)

Thai Interconnection System

The Thai government intends to introduce interconnection charges, in case it is unable to constitute a new independent regulatory body.

Efforts to deregulate the country's telecom industry have been marred by political interferences, since state-owned operators control the industry. Experts believe that interconnection system would replace the prevalent access charge scheme and create a level playing field for competition in the Thai telecom market.

(www.inteleconresearch.com, 21.06.04)

Connectivity in West Africa

Experts feel that lack of appropriate policy, and legal and regulatory framework are the major impediments to evolving cross-border connectivity in West Africa.

It is being suggested that the Economic Community of West African States (ECOWAS) should encourage the establishment of a regional forum for regulators, policy makers and telecom operators to foster integration cooperation.

(www.inteleconresearch.com, 03.06.04)

Justified Service Cost

Telfonica is the only telecom company in Spain offering universal service on account of its dominant position and following the provision of the General Communications Law.

The cost incurred by Telefonica for provision of universal service has been held by the Telecommunications Market Commission as justified, since it did not imply a competitive disadvantage for the operator.

(www.internationallawoffice.com, 19.05.04)

Control on Fixed Wireless

Fixed wireless technology has been used in Indonesia for a couple of years now. Recently, a fixed wireless system based on the CDMA technology was introduced by private companies in some parts of the country.

In order to address emerging concerns, the government introduced regulations governing fixed wireless services. This regulation confirms that local fixed-line network operators could only operate local fixed wireless networks. The regulation also restricted the mobility of these local fixed wireless networks within a limited area.

(www.internationallawoffice.com, 09.06.04)

Watchdog Reduces Tariff

An investigation by 'Ofcom', Britain's media-to-telecom watchdog, into BT group's new tariff plans has prompted the company to cut fixed-line access fees. The tariff plan had been reported to force BT's rivals to charge customers more for line rental, and therefore was considered as anti-competitive by many. *(ET, 30.0404)*

Move to Usher Competition

In order to increase competition in the telecom sector in the country, the French Government is set to introduce new 'virtual operators'. A virtual operator is defined as one who does not own a network but buys capacity from others.

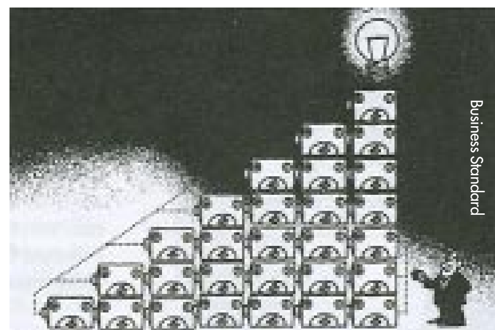
Observers anticipate that the number of mobile operators in France would double, as a result of this step. *(FT, 14.06.04)*

Unhappy US Operators

A recent US government ruling permitting local phone companies to charge higher rates for access to the their network has setback long distance operators. US long distance telephone carriers warned that they might be forced to raise consumer prices or withdraw from local phone services as a result of this decision. *(FT, 11.06.04)*

Privatisation Sparks Furore

The Electricity Generating Authority of Thailand (EGAT) has dominated the Thai power industry, restricting operations of competing firms - using political muscle. The Thai Government's recent plans to translate the utility into a listed public company had resulted in protests by the company's powerful labour union, resulting in the resignation of the Company Directors en masse. Consequently, Thaksin Shinawatra, the Thai Prime Minister, was forced to review his privatisation plans, which experts argued would affect consumers and favour a handful of private investors.


Business Standard

Environmentalists fear that transferring EGAT's hydropower plants into a semi-private profit-driven company could lead to conflicts over the scarce water resources.

Prompted by such concerns, industrialists, consumer groups, academicians and analysts are urging the Government to precede its privatisation plans by judicious reforms, through estaablishment of an independent, technically competent power sector regulator.

(FT, 02.04.04 & Asian Labour News at www.asianlabour.org)

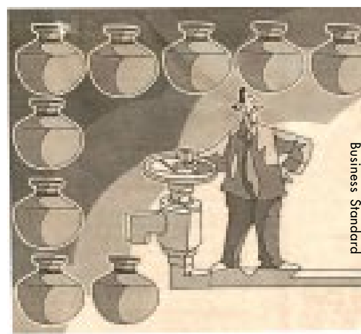
Energy Plans Criticised

A study recently commissioned by Portugal's Competition Authority reveals that the Portuguese Government's plans to restructure the country's energy sector fail to address 'severe distortions' in the electricity market that inhibit competition.

According to the plans, gas importation, distribution and supply are to be de-merged into a new company. The plan also involves realigning gas transmission activities to a different company.

The new plans launched in the backdrop of the government's decision to phase out long-term power purchase agreements is believed to deter the entry of new firms. *(FT, 19.04.04)*

Tariff to Regulate Water



The Chinese policy makers' disregard for the role of prices in balancing the supply and demand has been changing dramatically in the present reform era. Instead of a fixed-price regime, products are increasingly based on market prices. This has had a salutary impact on the economy, enhancing efficiency and stimulating demand.

However, authorities have been reluctant to rely on prices to balance supply demand for public utilities like water.

But times are changing, both the Ministry of Construction and the Beijing municipality have issued rules for rationalising water tariffs.

Analysts believe that tariff increases must be accompanied by investment in efficient technologies, structural reorientation in the authorities and the establishment of appropriate market institutions. *(FT, 23.06.04)*

FINANCIAL SERVICES

Composite Regulator for FCs

An inter-regulatory working group of the Reserve Bank of India (RBI), Securities and Exchanges Board of India (SEBI) and the Insurance Regulatory and Development Authority (IRDA) has proposed to identify 'financial conglomerates' (FCs) and put them all under the eye of a special composite regulatory agency.

The FCs would be required to report to a principle regulator and a pension fund regulator. The idea is to capture the intra-group transfers and exposures (ITEs) within each FC and its large exposure to outside counter-parties. It is being planned to set up a formal mechanism for inter-regulatory exchange of information also. *(BL, 14.06.04)*

Foreign Currency Borrowing

The State Administration for Foreign Exchange (SAFE), China's foreign debt regulator, is considering limiting foreign currency borrowing. Foreign bank executives claim that the measure on introduction would adversely impact their business in the mainland.

Zou Lin, Director of SAFE, assured that the step was taken to stem a rapid increase in China's foreign debt, and was not directed at foreign banks. He added that the move was consistent with the World Trade Organisation (WTO) principle of 'national treatment' (NT) and that foreign invested banks and domestic banks would be treated equally on the issue of overseas borrowing. *(FT, 19.06.04 & World Business at www.en.icxo.com, 16.06.04)*

CESR and SEC Converge

The Committee of European Securities Regulators (CESR) and the US Securities and Exchange Commission (SEC) have agreed to work together, a move that is anticipated to the plug lacunae in regulations.

An indicative list of issues to be discussed between the two includes market structure, mutual fund regulation, international financial reporting standards, credit rating agencies and financial analysts. *(FT, 05.06.04)*

Powers to Irish Watchdog

Ireland's new financial regulator, the Irish Financial Services Regulatory Authority (IFSRA), is to be given powers to fine and name errant institutions under draft legislation, which is now going through the Dail, the Irish Parliament.

The recent alleged sharp practice at Allied Irish Banks (AIB) - from overcharging on foreign currency transactions – have hurt the Republic's biggest bank, and raise questions about the effectiveness of regulation. The creation of IFSRA was a populist response to the public outrage at the scandals that surfaced during the elaborate Cayman Islands tax scam. *(FT, 04.06.09 & www.caymannetnews.com, 07.06.04)*

ASSORTED

Rail Sector Law Derailed

The entry into force of the Rail Sector Law in Spain has been postponed until December 31, 2004. The law on implementation would dramatically reorganise the legal regime governing state-managed rail services.

The law set under the EU Railway Infrastructure Directives, required separating the management of rail infrastructure and development of transport services.

A month before the law was set to take effect (from May 18, 2004), there was a change in the ruling political party in Spain. As had been anticipated, the new political regime of the country accentuated revisions in the Law which has resulted in this.

(TLN, www.internationallawoffice.com, 23.06.04)

Favour for Generic Drugs

A European Court of Justice's recent ruling should make it easier for generic drug manufacturers to bring competing versions of block-buster drugs to European markets. The court made its ruling in the context of a case brought by the Swiss drug maker, Novartis, against a generic drug approval granted by the UK's Medicines Control Agency (MCA).

Experts believe that the decision would have much wider implications. The decision implies that the generic versions of revised drug formulations could now be in the market up to 10 years sooner than they might otherwise have been. *(BS, 30.04.04)*

China Cuts Drug Price

China took the most aggressive measure to bring down health costs by ordering price cut of antibiotics up to 56 percent. The price cut could affect domestic companies more than foreign companies, since the price cut ordered by the government is more in case of generic drugs, as compared to foreign drugs, which are usually patented.

The National Development and Reform Commission of China informed that the price cuts were in response to public complaints about the high cost of medicines. *(FT, 02.06.04)*

Can Small Economies Benefit from a Multilateral Framework on Competition?

– *Taimoon Stewart**

To a Caribbean person, it is quite alarming that the term, "small economy" is being so loosely used as to include Canada, Australia, Israel, Singapore, and Switzerland, among others. These are large and developed economies, compared to the Caribbean and some Pacific territories, which are not just small in size of population, geographic land space, and market, but whose economies have been forged by its history of colonialism to be very different from those that are claiming the title.

A small open economy can be described as one in which there are limited human, financial and natural resources with small size of market limiting the number of business actors, scale of production and development options, and in which retention of capital is restricted by insertion into the global economy at a low level in the global product value chain, leading to severe economic vulnerability. Because these economies produce for exports and are dependent on imports for consumption needs, including basic needs, the majority of business activities in the local economy are commercial: importing, wholesaling and retailing.

It is precisely because these economies are so open and import dependent that they are very susceptible to the activities of international cartels. What little manufacturing there is depends on import of intermediate and capital goods for assembly production. While no statistics are currently available, one can surmise that the Vitamin Cartel would have extracted a significant amount of excess profits from these economies, as would have the graphite electrodes cartel. Jamaica for example, was named amongst the countries targeted by the Heavy Electrical Equipment Cartel. It is, therefore, very important that small economies are protected from international cartel activities.

The small economies of Caribbean Community (CARICOM) are highly dependent on foreign direct investment to generate growth. As such, the major export sectors, such as the extractive industries and tourism, are dominated by foreign investors. In some economies, such as Trinidad and Tobago, foreign investors have permeated diverse sectors and activities, both in producing goods and providing services. The annual income and power of most of these foreign companies far exceeds that of the governments, especially in the smaller territories. This power asymmetry incapacitates governments in their ability to discipline the transnational corporations (TNCs) resident in their countries.

Both in dealing with international cartels and with resident transnational corporations, Caribbean countries need assistance from the more developed economies, especially the home countries of the TNCs, and there is no doubt that a multilateral framework that can provide assistance in dealing with these cross border issues is not just helpful, but needed by these small economies. The proposed Multilateral Framework on Competition (MFC) in the WTO has generated a lot of controversy, however. It proposed that members prohibit hard core cartels, apply the core principles of MFN, NT, and Transparency and in due process, agree to voluntary co-operation, and submit to peer review.

Both in dealing with international cartels and with resident transnational corporations, Caribbean countries need assistance from the more developed economies, and there is no doubt that a multilateral framework that can provide assistance in dealing with these cross border issues is not just helpful, but needed by these small economies.

A question debated in the WTO was whether small open economies needed competition law, so long as there was an open competition policy. Hong Kong, China and Singapore, in particular, argued against the need for domestic competition law. Research in CARICOM countries, however, provides empirical evidence of anti-competitive conduct, particularly in the non-tradable sectors, such as import, wholesale and retail businesses, and in the provision of services in the domestic market, such as transport. So, even very small economies, such as those in CARICOM, do have non-tradable sectors that are susceptible to anti-competitive conduct.

Trade Associations were found to be fixing prices. In Trinidad and Tobago, the Baker's Association openly fixed the price of bread, rice importers met and increased the price, and announced this in the newspapers, and shipping agents, as a group, increased handling charges. Because there is no competition law, business agents are not aware of the anti-competitive nature of their actions, and are therefore very transparent in their conduct. Predatory behaviour on the part of one poultry producer caused prices to plummet, resulting in the exit of two producers (of a total of seven), and thereafter initiated a rapid increase in prices. In Belize, there was a hostile take-over of five bus companies plying the countrywide route by the sixth company in that trade, resulting in total monopoly. The monopolist then almost doubled the fare, causing riots in the streets of Belize.

CARICOM countries have very high concentrations in markets because of the need for minimum efficient scale, but also because the appropriation of resources by the colonial elite and the unequal distribution of wealth has remained a feature of the economies, as the wealth has remained in the hands of the descendants of the plantocracy through inheritance. The abuse of dominance in markets is prevalent in these countries, and in fact, is more problematic than cartel activities, since small size leads to such transparency that once the law is in place and there is public education, it would be very difficult to hide a cartel. In the tourist industry, which is the most important sector for these economies (except Trinidad and Tobago), concentration and abuse of power exist both at the local and international levels. International tour operators extract the highest profits and create barriers for smaller competitors.

Given the types of competition problems faced by small economies, these economies need both domestic competition laws and an MFC. However, unless the MFC offers meaningful and operational means to deal with international cartels and resident TNCs, these are of little use to small economies.

**University of the West Indies, Trinidad & Tobago*

Competition Scenario in Bangladesh

*–Atiur Rahman**

Introduction

By competition or antitrust policy economists usually mean intervention by public authorities for ensuring competition in the markets. The basic objectives of competition policies are designed to promote competition by preventing agreements between firms that lead to anti-competitive behaviour either through explicit cartels or through tacit collusion. Such policies also deal with monopoly power in any market and the process of business concentration such as mergers and acquisitions.

The most important purpose of competition policy is (1) to protect the consumers' interest by ensuring that they have greater choice in terms of price, quality and service and (2) to maintain a competitive environment so that an efficient allocation of resources in the domestic economy can take place, which promotes economic growth.

Competition Regime in Bangladesh

Competition regimes are often related to the development strategy of the country. At the time of independence in 1971, Bangladesh inherited a policy of very rigid import substitution industrialisation strategy, which continued to be pursued in the 1970s. The typical instruments of this inward-looking development paradigm, such as widespread quantitative restrictions on imports, high import tariffs, foreign exchange rationing and overvalued exchange rate became characteristics of Bangladesh's trade and industrial policy environment. These policies were aimed at creating a domestic industrial base in the domestic economy by protecting local firms from foreign competition. Consumers' interests were neglected as it was believed that "infant industries" will eventually grow up to become more efficient than their foreign counterparts, and in the long-run dynamic efficiency gains will outweigh the initial welfare loss.

Although the choice of import-substitution was dominated by macroeconomic concerns about the balance of payments and fiscal balance, even after a decade of highly protected trade regime both the internal and external balance situation of the country continued to worsen. Moreover, the import-substitution strategy generated a distorted incentive structure resulting in an "anti-export" bias undermining the potentials for export growth. It was against the backdrop of serious macroeconomic imbalances of the early 1980s, and the stagnating export performance that the policy of reforms for stabilisation and structural adjustment was undertaken.

Therefore, since the mid-1980s Bangladesh has been implementing trade policy reforms with inevitable consequences for the domestic competition regime. Quantitative restrictions on imports were drastically reduced from about 40 per cent of all import lines in 1987-88 to a mere 2 percent of all import lines in the1990s, tariffs were slashed from as high as 350 per cent in 1992 to as low as 40 per cent in 1999, and exchange rate restrictions were liberalised greatly with frequent adjustment in the nominal rates. Previously, domestic firms were also protected by imposing discriminatory sales taxes on imports in addition to the tariffs. With trade liberalisation the import discriminatory multiple rate sales tax has been replaced by a uniform value-added tax (VAT), which is imposed on both imports and domestically produced goods.

Like any other country, the political economy of protection is also important in establishing a suitable competition regime in Bangladesh.

The trade liberalisation measures along with the rationalisation of the tariff structure have resulted in the reduction of mean nominal protection for all tradables in the domestic economy from 89 per cent in 1989 to about 28 per cent in 1999. Similarly, the import weighted mean level of nominal protection for manufactures has declined by about 27 percentage points. Currently, Bangladesh's nominal import protection level ranks among the lowest in South Asia (World Bank, 1999). Bangladesh has also taken measures in privatising some of the publicly owned large enterprises and has offered generous incentives to attract foreign investment.

It goes without saying that the above measures have greatly reduced the protection enjoyed by domestic firms in the tradable sector of the economy. In fact, competition policy is an area of economics that has received the least attention in Bangladesh. In the following article, therefore, I point out a number of issues that might deserve serious attention in future research.

Lack of Legal Provision

There is no effective legal provision designed to protect the interest of the consumers in Bangladesh. Besides, there is no legal entity to oversee the trading practices of business firms. These tasks are complicated. On the one hand, it needs to be ensured that consumers are not cheated, and on the other hand special care should be taken so that private firms and business do not feel that regulatory powers are excessive.

Therefore, in this era of commercialisation, protecting consumers' interest will require much more than enacting laws. How the rules of the game are implemented – is the most important issue at stake.

Lack of Effective Consumers' Associations

Like any other country, the political economy of protection is also important in establishing a suitable competition regime in Bangladesh. Through their chambers, business organisations, and through their connections with bureaucrats and politicians, it is the producers (or firms) who promote their business interest. This results in pressuring the government for more protection either in the form of increased tariffs or subsidies or restricting competition. In contrast, the consumers are not organised at all and due to the lack of an effective association they cannot play any role in promoting their own interest. The existing Consumers Association of Bangladesh (CAB), has not been particularly effective in raising the concerns of the consumers. As a result, policy makers most often see strong lobbying in favour of demands for protection, but they hardly encounter

popular public demands for not granting those protective measures. Therefore, an effective competition regime should concentrate on developing consumers' associations so that debates and discussions can take place between opposing views.

Presence of State-owned Inefficient Industries

A number of large state-owned enterprises have contributed to anti-competitive behaviour in certain industries. Many of them are incurring huge losses thus creating a lot of pressure on the government budget. Textiles, jute and sugar are examples of such industries in Bangladesh.

Among the services, banking is a sector that also suffers from this problem, which has important implications for the competitive environment within the sector. In Bangladesh, nationalised commercial banks (NCBs) are burdened with bad loans and loan defaults. When private banks were allowed to operate, it was hoped that they would charge lower rate of interest on lending as they did not have to start with bad loans. But it was found that the share of the market for private banks was limited, and their access to the government's development fund restricted. Moreover, NCBs operated in such activities where private banking is absent (such as agriculture and rural development projects). This also reduced the competition between the public and private sector.

Natural Monopolies

Natural monopolies are the sectors where the government has an important role to play. But in Bangladesh, sectors such as railways, telephones, and other public utility services have generated such anti-competitive structures that not only inhibit modernisation of these services but also hinder private investment into these sectors. While in recent times the private sector has entered into the business of cellular phones, competition has been restricted to a few firms only. This allows the state owned BTTB (or Bangladesh Telegraph and Telephone Board) to continue inefficiently. Only very recently a regulatory commission has been set up for the telephone sector. Whuch, it is still in its infancy.

Within the natural monopolies, public-private sector collaboration can help improve the standard of services. This can result in increased competition as private sector firms will be involved and, consequently, consumers will benefit from improved products and services at low cost.

Regulatory Framework

A number of regulatory frameworks also act as hindrance to the promotion of an efficient and competitive market mechanism in Bangladesh.

First of all, transparency and fairness lie at the heart of the competition policy and the rule of the law concerning them must be implemented relatively quickly. An autonomous and independent, effective and efficient judicial system is one of the most essential elements for ensuring a favourable business climate for competition. Currently, the country's legal system is burdened with more than half a million cases. Such a slow and inefficient judicial system increases the costs of litigation.

Despite significant reforms in the domestic economy, Bangladesh still possesses a rather weak competition regime.

Secondly, despite liberalisation and deregulation of substantial magnitudes, the government does not allow further entry into certain industries known as reserved, regulated or over-saturated. Currently, edible oil, electric fans, corrugated iron sheets, etc. are considered to be sectors that are over-saturated. This is against the spirit of a competitive environment as the government does not know whether potential entrants could be even more productive and technologically sophisticated. If policies of the government restrict the entry of more efficient firms, the dynamic efficiency of the economy will be compromised. And, certainly, consumers will not benefit from reduced prices or better quality products or both. Besides, in the name of "over-saturated" sectors, the government might be providing protection to the inefficient firms, which would result in loss of consumers' welfare.

Thirdly, there are other sectors (e.g., telecommunication, power generation and air transport), which are gradually being opened up and some participation of the private sector is taking place. However, it has been alleged that this is being done in a non-transparent and unpredictable policy environment, resulting in increased business transaction costs and widespread rent-seeking opportunities. This does not allow the participation of efficient firms in the business and therefore society cannot experience a gain in efficiency. Moreover, when things are done in a non-transparent way, they are susceptible to change with change in the political regime. Discontinuation of policy is regarded to be the worst factor in private sector development as it hampers efficiency.

Concluding Observations

Despite significant reforms in the domestic economy, Bangladesh still possesses a rather weak competition regime. This obstructs the efficiency gains in the domestic economy. Moreover, a weak competition regime implies that the interest of the consumers is totally overlooked. Setting up of an effective regime in this regard will remain a challenging task for Bangladesh, which would require, amongst others: legal and regulatory reforms, implementation of rule of law, development of civil society groups protecting the consumers' interests, and, above all, further deregulation and liberalisation of the domestic economy.

However, there is also a danger of excessive competition, which may have adverse socio-economic implications. There is, therefore, a need for an open public debate on these issues and continuous monitoring of the impact of competition on the weaker sections of the economy (particularly on SMEs). Simultaneously, there is the need for a realistic assessment of the extent to which MNCs are following the disciplines of competition law.

Indeed, participatory governance should also be at the heart of any move to regulate competition. In fact, the government should undertake measures to significantly improve corporate (both local and multinational) governance, increase corporate transparency, prevent fraud and ensure corporate social responsibility. The World Bank and International Monetry Fund (IMF) policies should strengthen rather than undermine the ability of the Bangladesh government to undertake measures to regulate investment and corporate governance so that a more healthy competition regime develops in Bangladesh.

Unnayan Shamunnay, Bangladesh,

The author is grateful to Dr. A. Razzaque, Department of Economics, Dhaka University for his research support and co-operation.

Liner Shipping: Ancient Myths and Modern Realities

–Nicolette van der Jagt

The European Commission (EC) at last is reviewing the European Council Regulation 4056/86. This process could see the end of the anti-trust immunity for liner shipping which could, in turn, mark the end of the century-old conference system.

On December 4, 2003, the Competition Directorate General of the EC held a public hearing on the Review of the Council Regulation 4056/86, laying down detailed rules for the application of Articles 81 and 82 of the EC Treaty to maritime transport and providing for a block exemption for liner conferences. The hearing was the second (and oral stage) of a fact-finding exercise, which began with the publication of the Commission's consultation paper in March 2003.

The European Shippers' Council (ESC), the Brussels-based organisation representing the interests of the European industry as users of freight transport services, represented the shippers' interests during this hearing.

Where the Problem Lies?

Liner shipping conferences, according to the ESC, are irrelevant to shippers. In today's marketplace, liner conferences do not provide freight rate stability.

Furthermore, shipping cartels have had a numbers of deleterious effects. They have fostered mistrust between customers and providers and reduced incentives to improve operational efficiency and performance.

The ESC fears that the existing Regulation is helping maintain a cartel agreement that is being rejected elsewhere. Following court rulings and legislative changes under US competition law, customers are able to negotiate individual service contracts confidentially.

What the Shippers Argue?

There are a number of 'myths' that need to be dispelled, some of which are explained below.

Conferences do not fulfil conditions for exemptions from normal competition rules:

To ensure that supply meets demand, shipping lines today only need to co-operate with regard to the supply of vessels. Confidential ISCs (individual service contracts) apply to 80 to 90 percent of the cargo carried by containerised liner shipping lines. The Commission's evaluation of the major liner conferences' behaviour in decisions such as the TACA (Trans-Atlantic Conference Agreement) indicate that ISCs have replaced the liner conference, in commercial reality.

It follows that liner conferences neither produce any economic benefits of value to customers nor can be said to be indispensable. Liner conference price-fixing, therefore, only helps to maximise the profits of the shipping lines, by enabling them to charge prices above competitive levels.

Antitrust immunity requires regulators in all member states:

Liner conference lines often claim that the treatment of line conference cartels should be the same in the EU as it is in other parts of the world, such as the US. There is a fundamental flaw in this approach. In the US, the liner shipping industry is regulated by the Federal Maritime Commission and excluded from the application of US anti-trust law, which is enforced by the Department of Justice. In Europe, on the contrary, there is no alternative regulation, regulatory authority or agreement for the industry.

Liner shipping cartels do not benefit customers:

The very idea that price cartels are in the public interest, or benefit the customer, or the consumer, is open to widespread derision by shippers and the wider business community.

It is not to the economic benefits of shippers to know how much their transport costs will be when these transport prices are not negotiated in a normal commercial way on a one-to-one basis. It is obvious that shippers will lose business because they cannot compete in export markets in the light of high tariff for transporting their products dictated by liner conferences.

Artificially fixed transport prices mean hindrances rather than economic benefits to shippers' competitiveness. It is clear that shippers wish to be allowed to enjoy normal market forces from the evidence that 90 percent of the cargo carried today on transatlantic routes is carried under ISCs which were prohibited until 1997 in the name of 'price stabilisation'.

Recent experience has shown liner conferences to be wanting in respect of accurate forecasting of the level and the location of demand, which has resulted in capacity shortfalls on some routes and excesses on others, affecting the service performance and price.

Liner conferences do not provide stability:

Liner shipping conferences do not provide freight rate stability or economic efficiency. In the shippers' experience, it is matching supply with demand that leads to a certain stability of services, not price-fixing.

Price fixing leads to worse value for money:

Price fixing, even if in the most unlikely of events, were to work, gives conference lines a bargaining power advantage in negotiating prices with the shippers. This bargaining power would, and indeed does, inevitably result in higher prices and prices that give less value for money.

What of the Future?

Carriers and their customers should be able to conclude confidential service contracts in modern business arrangements apt for a modern industry. Shippers should always have the option of freely negotiating rates, surcharges and other terms of carriage on an individual and confidential basis with the carrier(s) of their choice, without the interference of any regulatory body or other administrative bureaucracy, such as a conference.

Any co-operative arrangements among shipping lines must be of a technical nature in order to enhance efficiency and reflect global trading patterns. The ESC views consortia and alliances as the most acceptable and preferable form of co-operation between ship owners (provided they meet the kind of provisions set out in the EC Consortia Regulation 823/2000/EC).

Abridged From
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The Norwegian Competition Law

The Norwegian economy displays a carefully crafted balance between free market activity and government intervention. The economy is the third-largest exporter of oil, which, along with natural gas, accounts for 35 percent of its total exports. In 2000, the Government privatised the fully state-owned oil company, Statoil, by selling one-third of its shares. This, along with a vast array of legislations, has further boosted healthy competition in the Norwegian markets.

Competition Laws and Institutions

Norway has a long history of competition law. It is one of the first countries in the region to have a competition legislation, which dates back to World War I. In 1917, the Price Regulation Act was introduced to tackle the problem of high prices.

The Norwegian Competition Act, come into being in 1993 & Some minor amendments were introduced in 2000. The objective of this Act was to achieve efficient utilisation of resources and stimulate necessary conditions for workable competition. The Act prohibited, amongst others, the following:

- Collaboration with regard to tenders;
- Resale price maintenance of goods and services;
- Price fixing;
- Market-sharing agreements; and
- Price labelling.

Under this Act, the enforcing body, the Norwegian Competition Authority (NCA), established on January 1, 1994, could:

- Prohibit practices that involve dominance, refusals to deal, restriction of consumers' choice, etc.;
- Intervene against acquisition of enterprises if it feels the acquisition will restrict competition;
- Grant exemptions to certain parties, anticipating leads to increased competition or efficiency; and
- Submit proposals that are aimed at strengthening competition.

There are three general exceptions from prohibitions of the Act. These are:

- Co-operation between companies of same concern or combine;
- Restrictions agreed in licence agreements involving patents and designs; and
- Agricultural, forestry and fishery industries.

On March 5, 2004, the Parliament (Stortinget) passed the new competition law, the Norwegian Competition Act, 2004. This law, which is modelled on the EU/EEA competition rules, came into force on May 1, 2004. The new Act is far stricter and contains more comprehensive prohibitions. In case of any dispute between the NCA and the EEA law, the latter prevails.

Some of the notable changes are:

- Abuse of dominance prohibited *per se*;
- Principle of leniency introduced to encourage cartel-busting;
- Notification of M&As to the NCA:
- Abuse of dominance will no longer attract criminal penalties.
- Tighter deadlines: NCA must now notify a party of any possible intervention within 25 business days, 100 business days.

The NCA has over hundred employees. The Ministry of Labour and Governmental Administration provides the framework for the NCA's activities. It is the appellate body of the NCA's decision. The responsibilities of the NCA under the new Act include:

- Enforcement of Article 53 (European Free Trade Association Surveillance Authority to grant both individual and block exemptions) and Article 54 (Prohibition of Abuse of Dominance) of the EEA agreement; and
- Provision of guidance to undertakings with respect to the interpretation, scope and application of the Act.

Other Regulatory Laws

Apart from the Norwegian Competition Act 2004, Norway also has the Marketing Control Act of 1972, which was later modified and came into force in March 2001. Some of the features of the Act are as follows:

- Prohibition of incorrect or otherwise misleading representation that may influence demand or supply of goods, services or other performances;
- Prohibit advertisements that are in conflict with the inherent equality of the sexes and those that portray men or women offensively or derogatorily;
- Restriction on the use of certain methods of communicating with the consumer, like e-mail, text messaging or facsimile without prior consent; and
- Prohibition of free riding, i.e., use of copies of distinguishing marks, advertising material, etc., of another product that may be considered as unfair exploitation and result in confusion.

Fines and infringements can be awarded to an offender under the Act.

This Act has two enforcing bodies – the Consumer Ombudsmen and the Market Council. The Market Council (MC) functions like a court of law with regard to disputes between parties and consumers' grievances in the market. It consists of nine members, appointed by the King, for a term of four years. No appeal can be filed against the MC's decision.

The Consumer Ombudsman (CO) is an independent administrative body that:

- Aims to prevent market abuses prohibited under the Marketing Control Act;
- Considers cases upon complaints from consumers and traders;
- Looks into cases brought forward by foreign authorities and organisations (listed by the EU Commission); and
- Seeks to influence traders to adhere to the regulatory framework.

An appeal against the decision of the CO may be lodged with the MC.

The Norwegian Competition Authority enforces another legislation called the Price Control Act, which, inter alia, contains measures on general price control measures. The Authority is also the appellate body for cases arising under the Rent Restrictions Act as well.

Future Scenario

The year 2004 has been quite eventful for competition in Norway. Not only was a new legislation, which aligned Norwegian Competition Law with the EEA law, introduced, but the Parliament also decided to relocate the NCA from Oslo to Bergen.

The relocation is to be completed by January 1, 2007.

The activity in Bergen commenced in the spring of 2004. A new department, called the Market Monitoring Department, has been established. It is to look into the allocation of resources within the health sector and suggest competition policy remedies to improve the sector.

From Our Readers

I received your Reguletter and found it excellent and a valuable update on world antitrust and regulatory events. Many thanks for sending it.

David G. Anderson
Allen & Overy LLP
Brussels, Belgium.

I am indeed grateful to CUTS for its capacity building support to my organisation through its various publications that I have been receiving freely for many years now. Indeed, CUTS supports to CAMON over the last three years of collaboration are too numerous to be quantified financially. On behalf of my organisation and over 100 million consumers of Nigeria, I say a BIG THANK YOU to CUTS.

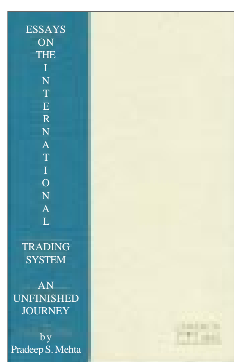
Babatunde Abiodun Adedeji
Coordinator-General
Consumer Affairs Movement of Nigeria (CAMON)
Ogun State, Nigeria.

Publications

Book

Essays on the International Trading System

An Unfinished Journey



The essays are a compilation of the range of CUTS' activities in the area of trade and development. The first part deals with trade, environment and development-related issues. The second part is devoted to trade, investment and competition.

This collection of essays presents a passionate analysis of the effectiveness of the international economic system and how economics affect the everyday life of the people in developing countries. The book offers practical suggestions on how to benefit from globalisation, without undermining it. Perhaps these writings will challenge both the trade community and 'anti-globalisers'. Advocates and opponents, negotiators and students, people from the North and the South alike will benefit from this reading.

By Pradeep S. Mehta (Secretary General CUTS International)
Published by Cameron May, London, May 2004.
Website: www.lexmercatoria. org

Newsletter

Economiquity

This is a quarterly newsletter published by the CUTS Centre for International Trade, Economics and Environment (CUTS-CITEE). It covers news and views on the international trade issues, economic and developmental issues, trade & environment, intellectual property rights, etc.

This particular issue (April-September, 04) throws light on the UNCTAD XI held at Sao Paulo, Brazil, with the cover article focusing on developed countries' increasing apathy towards it. This issue also includes a four-pager insert on WTO negotiations. It may be recalled, a major breakthrough achieved in July, at Geneva, brought the bewildered Doha Round of trade negotiations back on track.

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SOURCES

ET: The Economic Times
FT: Financial Times
BL: The Hindu Business Line
HT: Hindustan Times
FE: Financial Express
BS: Business Standard
TLN: The Legal Newsletter
USTR: United States Trade Representative

The news/stories in this Newsletter are compressed from several newspapers. The sources given are to be used as a reference for further information and do not indicate the literal transcript of a particular news/story.