

REGU LETTER

A Quarterly Newsletter of the CUTS Centre for International Trade, Economics & Environment covering developments relating to competition policy and economic regulations.

कट्स ✕ CUTS

Promoting a Healthy Competition Culture

While investment policy is one side of the coin, competition policy is the other. All countries have an investment liberalisation policy to actively pursue investments. However, there is a poor understanding about the need for having an effective competition policy and law in many developing countries. Most of these countries adopted reforms in the 1990s without appreciating that a strong competition policy and law is a concomitant to economic liberalisation.

An effective competition policy and law helps to govern the market-place behaviour of firms, which often engage in unfair and restrictive business practices. Most businesses, when holding a dominant position in the market, indulge in one form of abusive practice or the other to maximise their gains, even indulging in rent-seeking behaviour.

A competition law is a set of tools to deal with several types of monopolistic, restrictive and unfair trade practices of not only a big multinational but also the small shopkeeper next door.

It is a tragedy that many countries do not have a competition law at all, or if they do, it is quite ineffective. The tragedy is compounded as many countries are opposed to having a competition law because they feel that such a law will open up their market to 'marauding' foreign firms. This feeling, supported by some ignorant elements of the civil society, results from the process of study on trade and competition being done under the aegis of the World Trade Organisation.

Indeed, the study is being conducted at the behest of the richer nations, as was pushed at the Singapore Ministerial Conference of the WTO, but it is not being guided solely by them. Quite successfully, the poorer countries are able to articulate their concerns as well, including about the anti-competitive practices of the big businesses, etc. This issue has been there ever since the GATT came into being in 1948. Even when the WTO was being heralded at Marrakesh in April 1994, many developing countries voiced their concerns for having a competition policy in the international trade arena.

However, if some countries feel that the law will need to provide a level playing field to foreign investors without any protections for local enterprises, they are badly mistaken. All countries, whether rich or poor, have the right to protect domestic enterprises under their laws. On the contrary, a level playing field is to be provided to the domestic industry until they can cope with foreign competition.

The Americans protect their shipping sector by not even agreeing to liberalise it, while the Indians provide protection to the small and medium sector by providing reservations to them under particular industrial sectors. However, these policies are dynamic and change according to the changing times. The goal, obviously, is that of overall welfare.

For example, the ready-made garment industry in India was, until recently, in the small-scale sector, with the result that it was not competitive. There was competition within the sector but, being small, they could not achieve economies of scale for them to be internationally competitive. Now, the sector has been opened up to face competition. This will certainly result in lower costs, better quality and more jobs.

The WTO acquis itself provides several other examples of combating unfair competition. For example, the tool of anti-dumping, i.e. a protection to challenge the foreigner when he sells goods at a cost which is lower than what he sells at in his own country, and also causes injury to the domestic firms producing similar products. In that case, a (WTO) member country can take measures under the WTO Agreement on Anti-dumping.

Similarly, if there is an import surge, a country can use the Safeguard Agreement to raise tariffs across the board. Sometimes, these measures are misused but their existence only proves the point that a country can provide cover and a level playing field to its own firms when they are faced with unfair competition.

At another level, protectionism only breeds inefficiency. This creates unnecessary burden on the economy and the consumer, resulting in misallocation of resources. Often, this protectionism is guided by vested interests. There are sectoral lobbies to promote their interest. Unfortunately, the economy as a whole, often, does not have an advocate outside the government, unless it is captured. It is the consumer movement and the media, which has an interest in the whole economy, that is the best advocate.

The purpose of this newsletter is to provide a forum, in particular to the civil society, to understand the issues clearly and promote a healthy competition culture in the world. We welcome views from readers, which can be used for furthering the discussions in this forum.

Pradeep S. Mehta

Pradeep S. Mehta, Editor

Contents	The 7-Up Project: Shaping Competition Culture	2	Leading the Race	4	Global Policy on Competition	5	Change Take-over Code	6
	Media Hauled up	9	The Vitamin Saga	11	The New Competition Bill of India	12	Countries Reaffirm Validity of UN Competition Code	14

1

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THE 7-UP PROJECT: SHAPING COMPETITION CULTURE

The CUTS Centre for International Trade, Economics & Environment (CITEE) is implementing a two-year research project entitled "The 7-Up Project". This project involves a comparative study of the competition regimes of seven developing countries in the Commonwealth with the aim of strengthening their competition laws. It is being supported by the Department for International Development, UK. The countries selected for the project are: India, Pakistan, Sri Lanka, Kenya, South Africa, Tanzania and Zambia. The project has been launched on September 1, 2000 and has progressed considerably in its first quarter.

"Shaping Competition Culture in Developing Countries" has been defined as the mission statement while the vision statement reads as: "Towards a Healthy Global Competition Culture".

Operational Strategy

As the first step, a detailed operational strategy has been prepared. The Operational Strategy Note will act as an execution manual and a guide for the implementing team. (A copy is available on request). It is a detailed note setting out all the possible dimensions, including fall back situations, to ensure that the project is implemented without any hitch. It also includes a bar chart and a PERT chart. These management tools will enable smooth monitoring of the project. But for few expected hiccups, the project is going ahead as planned.

Identification Of Partners

For the purpose of project implementation, two partners have been identified in each of the selected seven countries. One is termed as the 'main' partner to carry out the research activities, and the other is an 'associate' partner, to carry out the advocacy activities.

Each country situation varies according to local demands. The partners were identified after a first hand assessment of their capacity, inclination and dedication and negotiations. A contract has been entered into with the partners, which spells out the sharing of project responsibility and allocation of country funds between the partners. More details of the partners are available on our website: www.cuts-india.org/7up-project.htm.

Advisory Committee

A Project Advisory Committee (PAC) has been set up to guide the project implementation. The PAC consists of:

1. Ms Taimoon Stewart, University of West Indies, Port of Spain, Trinidad and Tobago
2. Ms Merit Janow, Columbia University, New York, USA
3. Mr Robert Anderson, WTO, Geneva, Switzerland
4. Mr Philippe Brusick, UNCTAD, Geneva, Switzerland
5. Mr George Lipimile, Zambian Competition Commission, Lusaka, Zambia
6. Mr Gesner Oliviera, University of Sao Paulo, Sao Paulo, Brazil
7. Mr Cezley Sampson, Parastatal Reforms Commission, Dar-es-Salaam, Tanzania
8. Mr Shyam Khemani, Ex-World Bank, Paris, France
9. Mr Allan Asher, Consumers International, London, UK
10. Mr Phil Evans, Consumers Association, London, UK
11. Mr Rakesh Basant, Indian Institute of Management, Ahmedabad, India

12. Mr Peter Holmes, University of Sussex, UK

Of the above, Messrs Khemani, Asher, Evans, Basant and Holmes are also members of the core group of advisers, which would play a more interactive role and be known as Advisory Consultants Team (ACT). Mr Basant is the core researcher, while Mr Holmes is the nominated project overseer from DFID. Each of them are experts in the area of competition policy and law.

Preliminary Country Papers

As the first input of the project, the project partners have been asked to write and send a preliminary country paper giving a general description of their existing competition regimes and other related facts. The length of the paper will be twenty pages to be prepared as per a template prepared by CUTS. These country papers would be collated and compiled by the core researcher, delineating the commonalities, differences and typical provisions. The idea is to get a feel of the situation and also for proper orientation of the whole concept. The product will guide all the advisers as well as the partners about the situation of each country's competition regime.

Outreach

1. 7-UpDate: Two newsletters are to be published under this project. The first is a bi-monthly electronic newsletter, "7-UpDate". The launch issue has been circulated electronically in the first week of November to various partners, subscribers and e-mail list-serves. The newsletter has briefly introduced and outlined the progress of the project. It also contained few relevant and interesting news. A case study of Bhutan was carried as an indicator of what type of competition law is required in a small economy.

2. ReguLetter: A quarterly newsletter: "ReguLetter" is the second publication of the 7-Up project. It is a 16-page hard copy newsletter and would have a wider distribution than the e-newsletter: "7-UpDate". Besides, this newsletter will cover developments relating to competition policy and economic regulations. It will cover a host of news which is closely related to competition law and policy. It has been designed to outlast the 7-Up project, therefore too its coverage is beyond pure competition policy & law issues.

3. Website: A separate page on the CUTS' Website <www.cuts-india.org>, entitled "The 7-Up Project" has been designed for the purpose of the project to carry all the related information and announcements. The page has been linked

with main search engines and other relevant sites.

4. Booklets: Regular booklets, briefing papers etc., will be published on competition policy and law issues. Examples have been displayed on the backpage of this newsletter.

Launch Meeting

The Launch Meeting of the project will be held in Jaipur, India on December 20- 21, 2000. The meeting would have two components: a seminar and a workshop. The seminar would cover the global scenario such as the situation at the WTO and the 4th Review Conference on the Competition Code of the UNCTAD. It will also cover other generic as well as specific issues with respect to competition law/policy, in general, and that of select countries, in particular.

The workshop would discuss the compiled preliminary country papers and endeavour to train the partners to carry out their project responsibilities effectively. It would further adopt the plan of action, settle terms of reference with partners, finalise the questionnaire and methodology for interviews and discuss the programme schedule for the whole project and methodology thereof. Other relevant procedural matters like culling out case studies, organising national reference group meetings, etc., will also be finalised. A mock session on interviews, etc., will also be conducted during the workshop. More importantly, the launch meeting would provide an opportunity to the partners and the PAC members to interact with each other.

Project partners, PAC members, various other experts and eminent competition practitioners would attend the meeting.

Plan For The Next Quarter

After the launch meeting, the partners are expected to commence work, vis-à-vis the first phase of the project, immediately. It would require extensive fieldwork involving interviews, formation of a national reference group, etc. The first phase, on its completion, would layout the institutional framework of the competition regimes of the partner countries.

The next quarter would significantly cover the launch meeting. Following this, each partner would organise interviews and test the results at a National Reference Group meeting. In other words, the next quarter would mark the real beginning of the first phase of the project. Progress of the project will be posted on the website as well as reported through the two newsletters.

For the Sake of Shareholders

Russia's Federal Securities Commission opened an inquiry into the restructuring of Norilsk Nickel, one of the world's leading nickel producers. The move was followed by concerns raised by the minority shareholders. The restructuring will dilute the stakes of the existing shareholders when there are signs for more positive regime towards the protection of investor rights.

The first stage of the restructuring involved the purchase of the UK-based trading company Norimet by Norilsk Mining, a 62-percent controlled subsidiary of Norilsk Nickel. This was done without prior notification to shareholders. In the second stage, which is yet to happen, Norilsk Mining will buy Norilsk Nickel, the holding company. If the operation is fully completed, the company says existing stakes of shareholders will be diluted by 11.5 percent.

In another case, Gazprom, Russia's biggest gas group, has offered to buy Vladimir Gusinsky's (one of Russia's most flamboyant oligarch) commercial media business for \$300mn. But, the acquisition has been stalled by wrangling over what assets should be included. *(FT, 04.10.00 & 18.09.00)*

Take it Over: New Mantra

SSI Ltd announced the largest cross-border takeover by an Indian technology firm with a plan to buy the based AlbionOrion Company (AOC) for \$63.65mn in a cash-cum-stock deal. AOC has vertical domain expertise in telecom, health care and human services as well as insurance. Its sales are expected to grow about 30 percent in the current fiscal year.

SSI, based in Chennai, India, operates two divisions, for software development and consulting and education. AOC would now operate as a subsidiary but eventually merge with SSI.

Similarly, Melstar Information Technologies Ltd, a software-services company based in Mumbai, India, has acquired UK-based Linkhand Ltd along with its two subsidiaries – Linkhand Images and Linkhand Support – for \$6.88mn. It has also acquired the UK operations of Zurich-based ITC Consulting GmbH for \$1.5mn. *(TOI, 19.09.00 & TH, 12.09.00)*

Expanding the Network

Birla-AT&T-Tata, the merged cellular entity, have entered into a memorandum of understanding with the US-based Air Touch Vodafone (ATV) to buy out the latter's 49 percent stake in the R. P. Goenka promoted cellular circle in Madhya Pradesh, India. The acquisition is estimated at \$53.5mn.

The enterprise value of the territory is estimated at \$110mn. All the joint venture partners will hold equal stakes, without violating the norms of the foreign holding at 49 percent. The sell-off will see the exit of the fifth international cellular operator in India.

The Birla-AT&T-Tata decision to acquire 100 percent stake is part of a long-term strategy to become a corridor for the north-south and east-west operations across India. It will also have easy connections to the surrounding six states after the network is strengthened by both voice and data transmission. *(TOI, 26.09.00)*

Its Still Smoky

Glaxo Wellcome and SmithKline Beecham were forced to delay the completion of their merger for a second time as the US Federal Trade Commission (FTC) probed their hold on the smoking cessation market.

The merger of the two British companies will create the world's largest drugs firm, by market share. It may not occur until the end of this year, nearly 12 months after it was first announced.

FTC concerns centre on the fact that SmithKline's

Nicorette gum and Nico-Derm patches, until recently, controlled more than 90 percent of the US over-the-counter market for products to help people give up smoking. Furthermore, Glaxo has a prescription pill, Zyban, for smoking cessation. *(FE, 12.09.00)*

Needed, Balancing Act

Daimler-Chrysler's announcement that the international car maker's Chrysler unit had lost \$500mn in the first quarter of 2000 is a pointed reminder to the delicate balancing act needed to ensure a successful merger between the two giant corporations.



The History is littered with examples of well-intentioned mergers that never lived up to the expectations. Analysts say the devil is in the details. For every possible thing that could go wrong, e.g. clashing egos of top executives, there's an example of how the details helped

unravel a past merger.

In the late 1960s, New York Central Railroad and Pennsylvania Railroad merged, predicting a wealth of savings and operational efficiencies. But, management clashes and unco-operative labour unions drove the combined company into bankruptcy within a decade.

Mergers that cross international borders can be even more vexing, as the Daimler-Chrysler situation seems to indicate.

(TOI, 12.10.00)

Challenging the Process

WorldCom plans to appeal the European Commission's decision to block the US company's acquisition of its rival, Sprint. This proposed plan would challenge the Commission's merger review process. The appeal wouldn't resurrect the failed \$115bn deal but might make it easier for WorldCom to complete other deals in the future, a company executive said.

"We'll appeal on both procedural and substantive grounds," said the executive, who declined to be more specific because the company is still considering which aspects of the decision to appeal.

The Commission blocked the deal arguing that it would have created a dominant player in the market for top level Internet switching services. That decision marked only the 13th time in ten years that EU anti-trust regulators had blocked a merger. Also, it was the first time the

Commission blocked a merger between two non-European companies. *(WSJ, 15.09.00)*

All Over the Sky

British Airways (BA) and KLM, the Dutch flag carrier, abandoned their merger negotiations aimed at creating the world's third biggest airline. The failure threw into disarray efforts to consolidate the European airline industry and raised doubts about the future strategies of both the carriers.

The talks had failed because the two groups had been unable to agree on a structure that would give BA control so that it could consolidate KLM and form a single airline.

The Dutch group had been concerned that such control could jeopardise its international traffic rights. For KLM, the breakdown of the talks leaves an uncertain future and comes months after the collapse of its ambitious joint venture and planned full merger with Alitalia. *(FT, 22.09.00)*



Strategic Global Alliance

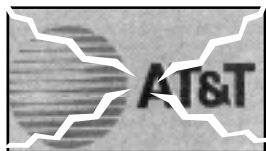
America Online (AOL), the world's largest Internet service provider, and Japan's DoCoMo, one of the world's leading mobile phone operators, have agreed to a strategic global alliance. The deal will involve DoCoMo taking a significant stake in AOL Japan, a subsidiary of the US company. It will give DoCoMo's i-mode mobile internet service a much higher profile overseas.

AOL, which has been pursuing ways to expand its reach through terminals other than PCs, will gain a strong partner. For AOL, the link is one of several alliances that are meant to take the Internet beyond the dial-up PC connection.

"This is potentially a very strong alliance between the largest provider of Internet services on PCs and the largest provider of Internet services on mobile phones," said Toshiaki Iba of Tokyo Mitsubishi Securities. *(FT, 23.09.00)*

Break-up to Boost Profit

AT&T has created a plan to break the telecommunications giant into four stand-alone businesses. Dubbed as Project Grand Slam, the plan would create separate consumer, business, wireless and broadband operations through a complex series of spin-offs and tracking stocks.



The end result could be a dramatic new business model for AT&T in which its business-services division would strike brand licensing and commercial agreements with the three other businesses.

However, it is not clear whether the proposal will gain board support or not. People familiar with the situation said AT&T, ultimately, may not decide on a four-way separation, as there are many other options on the table.

A full-blown break-up could be difficult for some board members to accept because it would reverse the company's three-year strategy of creating a full service broadband behemoth. It could also pose financial challenges, especially since AT&T is saddled with \$56bn in debt. *(WSJ, 24.10.00)*

Worry Over Game Plan

Indian commercial banks with exposures to four non-bank finance companies involved in merger talks – Alpic Finance, Srei International Finance, Apple Finance and Apple Credit Corporation – have voiced concerns over the fate of their advances and investments, once the proposed deal goes through. A number of public sector banks extended credit to these companies and invested in debentures floated by one of them. The combined liability is believed to be around \$322.6mn.

It is felt that the banks would insist on a standby guarantee from the four companies that the merged entity will fulfil all the debt obligations of the four companies.

The companies have not officially intimated their plans to the central bank. As things stand, the latter is unlikely to react to the announcement since the companies have very little public deposit liability. *(ET, 16.09.00)*

Mergers to Face Music

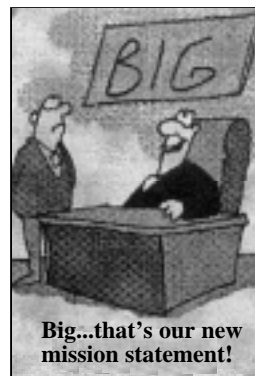
"The music business is not like selling toothpaste," says Robert Faxon, Chief Financial Officer at EMI Music Publishing. "If you're talking about substituting products, it's unlikely that Eminem (a top rapper) is a substitute for British Spears (the teenage pop idol)."

However, the company could be hard faced to convince the European Commission that the music business is different from other industries and get them to clear the \$20bn pooling of EMI's

music assets with those of Time Warner.

The Commission will also hear arguments from American Online, the Internet company, about why its merger with Time Warner should be passed. The regulator is concerned that the two deals will lead to a reduction in competition. It is worried about the fact that EMI/Time Warner will control more than half of the music publishing rights in the emerging online market. *(FT, 05.09.00)*

LEADING THE RACE



Compared to developed countries, developing countries are lagging behind in mergers and acquisitions (M&As). As in the digital, the technological and the rich-poor divides, the lag is staggering.

According to UNCTAD's (United Nations Conference on Trade & Development) World Investment Report 2000, while the total size of cross-border M&As registered a significant increase in the past 12 years, some 90 percent of the cases were carried out in the developed countries.

Automobiles, pharmaceuticals, chemicals, food, beverages and tobacco were the leading industries in the manufacturing sector in terms of world-wide cross-border M&A activity in 1999, the report said.

The nature of M&As in these industries was mostly horizontal, aiming at economies of scale, technological synergies, increasing market power, eliminating excess capacity or consolidation and streamlining innovation strategies and R&D budgets. *(TH, 06.10.00)*

Cross-border M&A: Sales by region

Region/economy	Sales				
	1990	1995	1997	1998	1999
	(\$ billions)				
Developed countries	134.2	164.6	234.7	445.1	644.6
<i>of which</i>					
European Union	62.1	75.1	114.6	187.9	344.5
United States	54.7	53.2	81.7	209.5	233.5
Japan	0.1	0.5	3.1	4.0	15.9
Developing Countries	16.1	15.9	64.3	80.7	63.4
<i>of which</i>					
Africa	0.5	0.2	1.7	0.7	0.6
Latin America and the Caribbean	11.5	8.6	41.1	63.9	37.2
Europe	4.1	6.9	21.3	16.1	25.3
Pacific	-	0.1	0.3	-	0.1
Central and Eastern					
Europe*	0.3	6.0	5.8	5.1	10.3
World**	150.6	186.6	304.8	531.6	720.1

Source: UNCTAD, World Investment Report 2000: Cross-border Mergers and Acquisitions and Development.

* Includes the countries of the former Yugoslavia.

**Includes amounts that cannot be allocated by region.

EU Hungry for More Power

Mario Monti, the EU Anti-trust Commissioner, has asked its member countries for more powers to the Commission as part of wide reform of the EU Competition Policy. These include powers



to search homes and seal rooms of members of big cartels, impose fines in case of non-co-operation with an enquiry and discretionary power to require registering of all commercial agreements. These reforms will also result in freeing resources to be deployed for speeding up investigations against big cartels.

Monti's proposal has already been approved by most of the members of the EU, except Germany. It is interesting to note that a top-ranking official of the

EU anti-trust department had resigned earlier this month in protest against the EU's unwillingness to adopt such reforms.

Business lobby in the EU had raised protest against the reforms contending that increased number of regulators and greater extent of intervention in company matters will make them almost paralysed to take immediate action against the challenges of the highly competitive global markets. This proposed de-centralisation process would only add a new layer of bureaucracy. (FT, 28.09.00)

UK to Change Law

Britain may face pressure to change its seven-month old Competition Law because of the possibility of conflicts with the European Union (EU) plans to change the way the Competition Law is enforced. Modified plans intend to free the enforcement personnel and other resources to initiate enquiries against the big-business cartels. Under the existing system, officials are only involved in the enforcement of legislation related to price fixing and market dominance.

Confederation of British Industry says that the existing Competition Law in the UK and the proposed EU reforms, such as handing over the enforcement of the EU law to national competition authority, are substantially different and they should not be adopted as they are. They may turn out to be unworkable for the UK because of different cultural and procedural practices between the regions. (FT, 10.10.00)

Monopolies to Protect Methodologies

The EU plans to cover inventions in the field of Computer Software and Business Methods under patent protection. It has issued a consultation document for flagging it off. The US is already granting such protections. Supporters of this say this will encourage innovation by giving the companies financial incentive to invest in new technology. The critics, however, say it will result in private monopoly over ideas that are freely available.

However, the patent protection for business methods may have different implications, as compared with patents in computer softwares. IBM, world's biggest patent holder for its software developments, suggests that protection for the Business Methods should be for 'technical innovations only'. IBM feels patents do not stifle innovation in software. However, they may do so in the case of business methods because the quality of patent is not very good.

In the US, Amazon.com has successfully protected its Business Method patent "1-click" against Barnes & Noble and also filed a patent application in the EU Patent Office (EPO) for it. Currently, approximately 400 business method applications are pending with the EPO. (FT, 31.10.00)

EU Rejects US Charges

The European Commission, the competition watchdog for the 15-nation EU, rejected the allegations of two US senators, Mike DeWine and Herb Kohl, that its merger review process discriminated against the US companies and favoured the European firms. DeWine is the Chairman of the Senate's judicial sub-committee on anti-trust, business rights and competition and Kohl is the sub-committees ranking democrat.

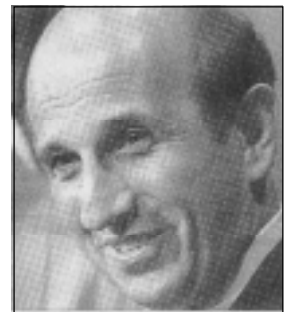
In a letter to the European Competition Commissioner, Mario Monti, the senators warned the Commission to steer clear of "protectionist sentiments". They wrote in their letter, "We are troubled by the possibility that your analysis and outcomes have been influenced in part by pan-European protectionism rather than by sound competition policy."

The Commission was quick to reject the suggestion after its decision earlier this year to block WorldCom Inc's planned acquisition of Sprint Corp and the withdrawal of a joint venture between Warner Music and Britain's EMI Group Plc in the face of the Commission's resistance. (FT, 11.10.00)

Global Policy on Competition

Joel Klein, head of the US Anti-trust Division at the Department of Justice, called for a global initiative on competition policy. He pointed out the need for a new organisation, committed exclusively to competition, to set standards and align the policy world-wide.

The "Global Competition Initiative" aimed to consider "a full range of competition policy matters of consequence to the global economy. It endorsed the dialogue directed towards greater convergence of Competition Law and analysis – starting with standardised forms and similar deadlines for decisions – and ultimately the establishment of an organisation that would act as an information centre and offer mediation and other dispute resolution capabilities.



William Rowley, Chairman of the International Bar Association's business law group, welcomed Klein's proposed organisation as a catalyst to create incentives for change in anti-trust authorities.

Klein also stressed the need for good bilateral relationship between regulators on both the sides of the Atlantic and added that there would never be perfect convergence between rules in 60 different countries with merger control world-wide. A global competition body would function like the Organisation for Economic Co-operation and Development that could set templates for regulators to adopt.

Klein said an international anti-trust body might begin as a simple working group or a committee comprised of representatives from existing international organisation such as the WTO, Organisation of Economic Co-operation and Development and the United Nations Conference on Trade and Development.

The Chief Executive of Alcan, the aluminium producer, Jacques Bougie, underlined the needs of business in getting some common standards set for merger reviews world-wide. Lord Brittan, former EU Trade Commissioner, said there would be no objection to Klein's proposal as a supplement to the WTO, but not as an alternative. (FT, 15.09.00)

Telecoms Guidelines Rejected

The US has rejected the new guidelines for the international telephone and internet connection charges approved by the International Telecommunication Union (ITU), the United Nations telecoms agency. At a standardisation conference in Montreal, ITU members endorsed a recommendation to bring accounting rates progressively closer to the costs and approved cost sharing for international internet connections.

Presently, whereas the US carriers do not charge each other for carrying internet traffic, non-US carriers pay full cost of internet traffic to and from the US-based internet sites. Many countries regard this as unfair. However, the US companies pay nothing to foreign companies for the US website access abroad.

The US says it will not apply new voluntary recommendations in its changing environments. The decision could intensify friction between the US and the other 188 ITU members.

Malcolm Lee, a State Department official, warned this recommendation could increase the US dominance over international internet traffic. If foreign carriers participate in such cost-sharing arrangements, it could increase the competitive advantage of the US carriers and discourage development of direct regional connections that bypass the US network. (FT, 11.10.00)

Change Take-over Code

The three apex chambers of commerce of India – Confederation of Indian Industry (CII), Federation of Indian Chambers of Commerce and Industry (FICCI) and the Associated Chambers of Commerce and Industry of India (Assocham) – are in unison that the domestic promoters should be provided with a level playing field vis-à-vis corporate raiders and the stipulated five percent ceiling for creeping acquisition by a promoter over a 12-month period under the SEBI (Securities & Exchange Board of India) take-over code needs to be raised upwards.

However, they have differed on their take-over defence solutions for a much-harried domestic promoter. The CII said the asymmetry between the potential raider and the promoter ought to be removed. FICCI said that the stipulation of the five per cent creeping acquisition over a 12-month period for a promoter was “discriminatory” and that it should be raised. CII said it would endorse the decisions of the FIs and foreign institutional investors that would enhance the long-term capital value.

Assocham’s view was that FIs should support existing “good managements” and not fund “hostile take-overs.” FICCI said the FIs had acquired most of their share holdings in the companies through exercise of right of conversion and should be viewed as co-promoters. The chamber maintained that a culture of hostile takeovers should not be encouraged in the country. (BL, 17.10.00)

U.K. Watchdogs Squabble

The new Chief Executive of the UK’s Independent Television Commission (ITC), Patricia Hodgson, has vowed to end the duplication of regulation and squabbling between the watchdogs by focusing on content and leaving competition issues to Oftel. The ITC, which regulates the commercial television industry, has clashed with Oftel, the telecommunications regulator, over its pronouncements on consolidation.

Broadcasters have also been infuriated by the ITC for making demands that have been at odds with the requirements made by other regulators. Hodgson and David Edmonds, who runs Oftel, have agreed to meet every six weeks to co-ordinate the activities of both the regulators. The ITC and Oftel have conducted joint work at the official level. However, the insiders say it has not been very effective.

The Government is to publish a communications White Paper this autumn with plans for legislation on the industry and

communications regulation. Whitehall officials and ministers have mooted proposals to abolish the web of regulators responsible for content and broadcasting standards and replace them with a single regulator – Ofcom. (FT, 04.09.00)

Beware! Bankers

European banking regulators are probing the \$171bn worth of new loans made to European telecommunications groups, fearing that the banks have lent too much money to the sector. Several European banking regulators have since launched enquiries and are questioning the banks they oversee.

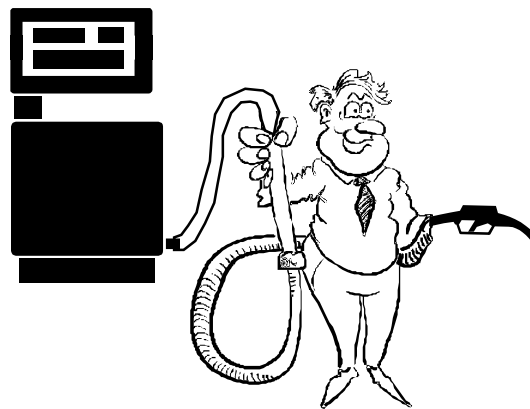
The Regulators fear that if the telecom sector is hit by unexpected financial problems, the extent of the banks’ lending could cause wider difficulties. The watchdog enquiries could result in warnings to the exposed banks to cut back lending to the telecom companies, increasing their cost of borrowing.

Telecom companies in Europe need over £100bn more to fund the estimated extra £160bn cost of building networks to run third generation mobile services. (FT, 29.09.00)

EC Looks into Fuel Pricing

The European Commission met with national competition authorities to discuss ways of ensuring adequate competition in the motor fuels market following the sharp rise in the prices. Mario Monti, the EU Competition Commissioner, said, “We are well aware that competition rules alone cannot solve all, or even most, problems in this sector.”

However, the regulators would explore how the EU and national laws could contribute to greater competition. The Commission could envisage taking action against



parallel pricing by the multinational oil companies. However, it was difficult to prove they dominated certain markets. Furthermore, any anti-trust move would have a limited effect if oil producers such as Opec had to be excluded from it.

The EU and the US regulators have no powers to act against the Opec price cartel because it is operated by sovereign states. National competition regulators have pursued price cartels in individual countries such as Sweden and Italy. Authorities in France, Germany, Spain and Denmark had launched investigations. The Commission said national authorities would discuss the pursuit of illegal cartels. (FT, 21.09.00)

Opening Telephone Monopoly in India

India said it would end the state monopoly over international calls by April 2002. According to the Communication Minister, Ram Vilas Paswan, Videsh Sanchar Nigam Ltd, the state owned telecommunications company, would be compensated for the losses resulting from ending the monopoly earlier than planned.

The Telecoms Regulatory Authority of India has recommended unrestricted entrance by the private sector into the 21 telecoms "circles" – areas roughly corresponding to states in which usually one operator has a monopoly.

The US will help India in its efforts to open its partially state-run telecommunications sector to private companies and competition, according to the chairman of the US Federal Communications Commission. *(FT, 07.09.00 & 23.09.00)*



Advertisers, a Brag ?

Complaining about the advertisers' exaggerations by consumers is becoming a major cottage industry these days. Consumers are writing, phoning or e-mailing Government agencies with complaints. At the same time, businesses rail against other businesses and ad agencies are taking ever-greater pains to avoid excessive hyperbole.

It's not hard to find advertisers exercising their bragging rights. However, it is hard to take it without a grimace or stomach-churning and many consumers wreak revenge by refusing to buy the hyped product or service.

According to the US Federal Trade Commission, exaggeration and deception are most likely to occur in radically changing industries like Computer and Internet fields rather than fully developed or stable industries. *(BL, 05.09.00)*

Online Retailers Cut Ads

According to a new survey of Internet shopping, the US online retailers have cut back sharply on expensive television advertising and turned their focus to retaining the existing customers. Boston Consulting Group said spending on traditional media had fallen from 62 percent of marketing budgets last year to 41 percent in the second quarter. The resources committed to customer retention doubled over the past six months.

The effort to improve profitability by concentrating on more efficient marketing lowered the average cost of acquiring a new customer. Customer acquisition costs, which reached \$71 in the fourth quarter as e-tailers spent millions on holiday season and ad campaigns, fell from \$45 to \$40 between the first and second quarters. *(FT, 31.08.00)*

Taipei Push on Merger Laws

Taiwan's new Vice-premier and point man on economic policy, Lai In-jaw, ordered an acceleration of efforts to ensure passage of a financial institutions merger bill into law that is intended to thin the island's over-crowded and bad loan-burdened banking sector.

A cabinet committee on economic policy ordered that securities trust companies, advisory companies and some banks be allowed to manage stock investments on behalf of their clients. Taipei has long hoped to increase the stock market role of institutional investors, currently accounting for only around 15 percent of the turnover, to calm what can be a savagely volatile market.

The committee said discretionary trading on behalf of clients would attract new investors and encourage the market's early return to "normal operations". *(FT, 10.10.00)*

US Entertainment Industry Goaded

The US lawmakers are proposing a package of incentives to goad the entertainment industry into showing more vigilance in

protecting children from violent material, though critics charge that the measures will strengthen the power of the giant US companies over the retailers and distributors.

Orrin Hatch, Chairman of the Senate Judiciary Committee, supported a measure to exempt entertainment companies that join together to stop the marketing of violent entertainment to children from being sued for violating the anti-trust laws.

Sam Brownback, a senator from Kansas and another supporter of the new measure, said it would grant the entertainment companies limited liability from the anti-trust laws if they joined together to create and enforce a "code of conduct". *(FT, 21.09.00)*

Call for Justice

The US Agriculture Secretary, Dan Glickman, encouraged the Justice Department to investigate why retail milk prices have risen over the past year while prices paid to farmers have dropped. He said he agreed with a recent General Accounting Office report that said the Department needed to hire more attorneys in the anti-trust division.

The Farm groups have criticised the Grain Inspection, Packers and Stockyards Administration (GIPSA) for failing to vigorously enforce anti-trust laws to ensure small farmers get fair prices for their cattle and pigs.

Glickman said eleven (GIPSA) offices scattered around the country have been consolidated into just three and additional 18 economists have been hired, as well as several lawyers. *(FE, 09.10.00)*



BT in the Dock

The telecommunications watchdog, Oftel, has extended price controls on British Telecommunications (BT), claiming the group was still holding back competition in the sector. The Oftel Director General, David Edmonds, said that the new controls should reduce the bills for residential customers by a total of £270mn next year. He threatened to cap BT's profit if its market share did not fall further.

The extension of price control comes as BT is grappling with a strategic review designed to reduce debts of £30bn and appease unhappy shareholders.

A group of BT's rivals have filed a formal complaint against the company with Oftel in the dispute over plans for fast Internet services in the UK. BT was accused of discriminatory behaviour in its unbundling of the local loop, under which it is obliged to let rivals install high speed Internet equipments in its exchanges.

One senior Treasury official claimed that Oftel had become a victim of "regulatory capture" – implying it was now dictated to by the privatised former state provider BT. *(FT, 22.09.00 & 28.10.00)*

MS Allies with Infosys in India

The Bangalore-based Infosys Technologies and the US-based Microsoft Corporation entered into a strategic global alliance for developing business solutions in the areas of customer relationship management, e-commerce, financial services and insurance. N.R. Narayan Murthy of Infosys and Bill Gates of Microsoft Corporation announced that the two companies would also undertake joint marketing initiatives and account planning.

The global alliance between the two IT giants would also work for developing, promoting and delivering a comprehensive portfolio of Infosys business solutions offerings and enterprise services built using the Microsoft net enterprise server platform.

Infosys offers customised software development, reengineering, package implementation, Internet consulting, application development, and offshore software services such as offshore software maintenance and establishing offshore software development centers.

Infosys has partnered with several fortune 1000 companies in building their next generation information infrastructure for competitive advantage. (TH, 15.09.00)



Illegal Trading In S. Korea

Illegal trading in South Korea's large family-run conglomerates continues unabated and criminal charges may be brought, according to Lee Namkee, the head of the Fair Trade Commission (FTC). The FTC had planned to announce the results of its investigation into illegal trading by the country's top four conglomerates, including the Hyundai and Samsung groups. "So far, we have found quite a number of cases of inside trading among the groups. Its as bad as they were back at the time of the 1997 financial crisis", he said.

The illegal practices, which include subsidies, free or low-interest loans and other forms of support among group affiliates, partly triggered South Koreans fall into the crisis. Conglomerates were able to grow their operations through inter-locking debt guarantees and other forms of financial support among their units. "Chaebols are now cleverer in funnelling funds to each other. Its unbelievable", Lee said.

The probe that began in August centres on 36 companies in the four conglomerates and is looking at the possible illegal inter-affiliate transactions. The FTC plans to strengthen the punishment of those involved in illegal practice. (FT, 22.09.00)

Post Trial Comments Defended

The judge in the landmark Microsoft anti-trust case, Thomas Penfield Jackson, has defended himself against accusations of judicial misconduct saying that the comments he made to the press after the trial's conclusion fell within the boundaries set by federal codes of conduct.

Microsoft has indicated, in filings with the court of appeals, it will argue that the judge's comments violated conduct rules and are grounds both for his dismissal from the case and the reversal of his order breaking the company into two. While the judge maintained he broke no rules, he conceded he may be thrown off the case by the appeals court, noting that Microsoft was able to get the first district court judge assigned to the case, Stanley Sporkin, dismissed. (FT, 07.10.00)

Cable & Wireless Sued

The Online telephone service provider of Georgetown, Cayman Islands, Net2Phone Inc., filed a civil suit against Cable & Wireless PLC which has blocked the Internet service in a bid to protect its legal monopoly in the British Caribbean territory.

Net2Phone of New Jersey alleged in the lawsuit filed in the Cayman Islands that Cable & Wireless wrongfully interfered with its trade and business. Net2Phone is a so-called "call-back" service that uses computers to get around the local telephone networks to offer lower fees.

According to a survey, the Cable & Wireless' telephone rates in the Cayman Islands are the highest in the Caribbean. Cable &

Wireless will continue to block access to Web sites that offer the "call back" services, according to general manager Tim Adam.

(WSJ, 02.10.00)

GE's Offer for Honeywell

United-Technologies (UTC), the US conglomerate, may raise anti-trust objections to General's Electric's \$45bn offer for Honeywell. UTC itself launched an offer for the industrial group but was outbid by GE's 11th-hour rival proposal.

George David, UTC Chief Executive, said his staff was looking into competition implications of the GE offer, which would bring together Honeywell's aerospace and avionics interests and GE's aircraft engines division – one of the main competitors of the UTC subsidiary Pratt & Whitney. "We could be expected to offer some opinion on that," David said at an interview in Boca Raton, Florida.

Announcing the take-over, Jack Welch, GE's Chief Executive, said although there was a 90-percent overlap between the businesses of the two companies, there was none in product lines. However, some anti-trust experts have suggested that approval is not a foregone conclusion.

(FT, 31.10.00)

Japan Warns APPLE

Japan's anti-monopoly watchdog, the Fair Trade Commission (FTC), said it issued a warning to the Japanese unit of Apple Computer Inc over suspected retail price fixing. The FTC in a statement said it thought Apple Japan Inc pressured retailers not to sell its iMac desktop and iBook notebook computers below the retail list prices. A Commission official, however, said no administrative penalty would be imposed.

The Commission had searched Apple Japan's headquarters in connection with the case last December. Apple Japan, however, said that it had done nothing illegal. According to an Apple spokesman, they believe their business activities did not breach Japanese laws.

(ET, 04.10.00)

Cartel in Sugar Scam in Kenya

The leader of Opposition, in Kenya, Mwai Kibaki, has described the current sugar shortage as a "mega scandal" caused by greedy individuals. The Democratic Party chairman said it was one of the worst scandals Kenyans have ever been subjected to in recent times. The Government has already allowed the Kenya Sugar Authority to import 10,000 tonnes of sugar.

Kibaki said there was overwhelming evidence that a cartel has bought all the available sugar from all the local factories ahead of the cane shortage that has forced some factories in the Sugar Belt to close down. He said that the sugar disappeared suddenly after it was bought and hoarded to create the shortage.

(East African Standard, 12.09.00)

EU Warns Airlines

The European Commission warned that the Austrian Airlines, Lufthansa and SAS must revamp their recently signed co-operation accords or they will be declared illegal. The Commission said the agreement would stifle competition on most of the routes between Austria and both Germany and the Nordic region. Therefore, it could not grant them an exemption from competition rules.

The Commission had cleared a similar bilateral deal between Lufthansa and SAS in 1997, but only after imposing some conditions on the Airlines. Austrian Airlines, together with both Lufthansa and SAS, applied in December 1999 for clearance for the two deals designed as a way for Austrian Airlines to join the Star world-wide marketing alliance of certain airlines. *(BL, 14.10.00)*

Belgians Brewing Cartels

The European Commission accused Interbrew and Alken Maes, Belgium's two largest brewers, of operating illegal cartels in EU-wide crackdown against anti-competitive practices in the beer industry by sending legal warning to Alken Maes and Groupe Danone and Interbrew with brands such as Bass, Stella Artois and Rolling Rock.

The companies have two months to present their defence in writing or ask for a hearing. If the Commission decides a cartel has been operating in the beer market, it can fine the companies up to 10 percent of their overall turnover.

The Commission said it was also investigating anti-competitive practices by major Brewers in other member states. Its raid on the Leuven headquarters of Interbrew was part of an investigation into claims that the company was abusing its position of strength in the Belgian beer market. *(FT, 03.10.00)*

Fixing Tricks and Trials

The Executives of the Archer Daniels Midland (ADM) Corporation, Mick Andreas and Terry Wilson, were caught and convicted of criminal price fixing charges. Various other top company officials, including Sidney Hulse, Marty Allsion and Reinhard Richter, made plea bargains.

The fall out from ADM's price-fixing activities also included employment lawsuits, a shareholder lawsuit, a board room shake-up and a \$25mn settlement of lawsuits stemming from the fixing of the market in Lysine.

At the centre of the storm was a young, mercurial executive named Mark Whitacre whose clandestine audio-tapes and self-

destructive thievery gave the FBI almost more than it could handle.

Inquiry into Japanese Cos.

Investigators from Japan's Fair Trade Commission (FTC) launched an inquiry into some of the country's leading construction companies on suspension of rigging bids for public works. The FTC did not disclose which companies it was targeting or the details of the investigation.

The companies are believed to be under investigation for violating anti-monopoly laws by colluding to set prices for public work projects. The enquiry comes at a delicate time because several construction companies have been asking their creditors to bail them out of huge debts.

Five companies, including Hazama, have been forgiven loans by banks in the past three years. Analysts fear that the debt-waivers are not sufficient to force them to restructure successfully. *(FT, 28.09.00)*

Suffering a Setback

PepsiCo suffered a setback in its efforts to expose allegedly unfair business practices by Coca-Cola when a Federal Judge in New York dismissed PepsiCo's anti-trust lawsuit against the Atlanta-based soft drinks group.

The US District judge, Loretta Preska, said PepsiCo had failed to produce evidence that Coca-Cola monopolised the fountain drinks business through "loyalty" contracts with independent food service distributors.

According to Judge Preska, PepsiCo has come forth with sufficient evidence to show that bottlers are unable, through price reductions, to lure significant numbers of customers into buying fountain syrup from bottlers. Earlier in Mexico, the regulators agreed to go ahead with a suit filed by PepsiCo and other soft drink makers against Coke's Mexican subsidiary, accusing it of abusive market practices. *(FT, 20.09.00)*

Cement Cartel Probe

The Department of Company Affairs of the Government of India has ordered an inquiry into a possible case of cartelisation by the cement majors in India. This job has entrusted to the director general of investigation and registration, the investigative arm of the government on trade practices. A cost audit has also been ordered to establish if the companies are charging an abnormal price from the customers.

The cement prices have gone up from a level of Rs 141 per bag in January 2000 to Rs 173 per bag during last two weeks, before deploring to a level of Rs 125 per

bag in the middle of the calendar year, particularly in the western and southern regions of India.

The cement manufacturers like Gujarat Ambuja, L&T and ACC jacked by the prices to the dealers by Rs. 20 per bag.

The government on one hand, is concerned about the sustained increase in prices by the major manufacturers as supply for the product in the current year exceeds demand by approximately four million tonnes. Several manufacturers have curtailed production in the last few month to maintain an equilibrium between demand and supply. On the other hand, the government, concerned by the falling demand, has been considering several measures including building concrete roads to shore up the fortunes of the cement units.

India is second largest cement producer in the world with installed capacity of 120 million tonnes. Production has increased five fold over the last two decades, while demand has been slackening in the several parts of India over the last few years, creating a situation of surplus production. *(ET, 30.11.00)*

Media Hauled Up

While considering the contempt petition filed by Eureka Forbes Ltd. against Parle Bisleri, the Monopolies & Restrictive Trade Practices Commission (MRTPC) has observed that, in its reply, Bisleri has denied making any press statement on the former's complaint to it.

Eureka Forbes has claimed that Bisleri has disparaged its Aquaguard brand of water purifier through misleading advertisements. It has alleged that despite the orders of the Commission, press statements were made by Bisleri



which were published in the daily newspapers. Bisleri has denied this fact.

The Commission said, this being so, the notices should be issued to both the editor of Economic Times and the reporter of Times of India, directing them to show cause as to how the statements were published. *(BL, 11.10.00)*

Demand for Damages

Morgan Stanley Dean Witter (MSDW), the US financial services group, began legal action against the European arm of the credit card network Visa. Morgan Stanley is alleging that Visa blocked it from issuing Visa cards and is demanding damages following its failure to buy the UK and Canadian arms of Bank One, a US card issuer, owing to the Visa ban.

MSDW has been competing aggressively in the UK card market since launching a card offering a cash rebate on annual spending last year. However, MSDW accused Visa of breaking the UK and European competition law and said the organisation had “discriminated against” the bank.

The other main card network, Mastercard, has already granted MSDW membership through Europay, its European arm. According to Visa, at this stage, they were not aware of any proceedings. *(FT, 28.09.00)*

Online Parts Exchange

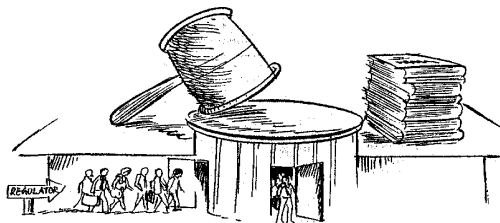
The US Federal Trade Commission is expected to approve one of the first big business-to-business Internet marketplaces, a massive online parts bazaar set up by the Big-three auto makers to give a major boost to online commerce.

The FTC started investigating the venture in March. It was concerned that such an online alliance among competitors could lead to collusion, illegal price “signalling” or other exchanges of sensitive

business data or illegal collective action by the auto-makers to suppress the prices charged by the suppliers.

The Commission is expected to approve Covisint, the new B-to-B exchange, without conditions, while delivering a warning to its backers that the Government will continue to monitor the effort as it is implemented, those close to the review said.

The FTC is expected to set more specific guidelines for what it expects from



the B-to-B exchanges in a report expected to be public soon. Susan DeSanti, FTC director of policy planning, warned that the new market-places raise traditional anti-trust problems in a new online world. *(WSJ, 12.09.00)*

Probe End-user Agreement

The Monopolies and Restrictive Trade Practices Commission of India has upbraided the Director General of Investigation and Registration (DGIR) for not carrying out complete investigation against Microsoft and its Indian subsidiary and ordered it to make an enquiry on priority basis.

A Mumbai based resident, L.J. Shah, had alleged that Microsoft’s End User

License Agreement (EULA) imposed restrictions on buyers of its software products. EULA forbids the use of software by the licensee unless the buyer acquires an access license for each computer attached to the server. The buyers are also restricted from using the software on more than one computer.

However, according to the DGIR’s preliminary investigation, Microsoft submitted that its software product was an intellectual property and not product simplicitor. *(TOI, 23.09.00)*

Probing Mobile Auction

The controversy over Italy’s auction of the third generation mobile phone licences intensified after the Italian Competition Authority said it was formally investigating whether the six groups that bid for the licenses had colluded to fix the outcome to ensure an early end to the bidding.

The Italian shareholders in Blu, Italy’s fourth largest mobile company, led by motorway group Autos-trade, have insisted that the company’s actions during the auction were legal. Blu’s shareholders launched a counter-action to prevent the Government from taking legal action.

According to some senior Treasury officials, the shortfall in auction receipts has put pressure on the Government to speed up its privatisation programme to ensure it meets the debt reduction targets pledged to Italy’s European partners. *(FT, 28.10.00)*



Prices Cut Amid Warning

The German carmaker, BMW, has become the latest manufacturer to announce far-reaching price cuts in Britain to comply with a Government order to open up the new car market. The move coincides with a Government warning that carmakers could face unlimited fines if they fail to comply with the order.

BMW’s reduction could signal a price war in the premium sector. It follows price cuts of up to 20 percent announced last week by Mercedes-Benz and similar initiatives from Saab, Alpha Romeo and Mitsubishi.

The British Government action comes as the European Commission prepares a review of the block exemption covering car retailing. The exemption due to expire in September 2002, enables carmakers to distribute cars only through captive dealers. Consumer groups have accused the manufacturers of abusing this to inflate prices in markets such as Britain and Germany. *(FT, 01.09.00)*

Fined for Recall Cover-up

A Tokyo court fined Mitsubishi Motors Corp \$37,000 – the maximum under the law – for failing to register recalls and secretly repairing vehicles in a scandal which has tarnished the image of Japan’s fourth largest auto-maker.

Police are still investigating a criminal complaint filed by the transport ministry. In August, the company admitted that it had systematically covered up customer complaints for more than 20 years and in some cases secretly repaired vehicles.

Mitsubishi Motors president Katsuhiko Kawasoe – the architect of its alliances with AB Volvo and DaimlerChrysler also got the right to raise its 34 percent stake after three years instead of 10 years as planned, raising the chances of a dramatic boardroom struggle. *(ET, 03.10.00)*

Fine for Sales Practices

The European Commission has imposed a \$37mn fine on Opel Nederland, a subsidiary of General Motors, the US car company, for preventing customers from abroad buying cars in the Netherlands.

The European Union’s Competition Commissioner, Mario Monti, said “The Commission is determined to intervene in cases where measures taken by undertakings jeopardise the proper functioning of the single market.”

A Commission spokesman said officials were examining material gathered in dawn raids on Peugeot and Renault, indicating similar sales practices. The court of justice upheld the Commission’s case against Volkswagen but on appeal reduced the fine to Euro90mn. *(FT, 21.09.00)*

The Vitamin Saga

Several leading and sophisticated pharmaceutical manufacturers of the world have been involved in one of the recent anti-competitive activities unveiled by the US anti-trust authorities. These include Swiss pharmaceutical companies Hoffman-La Roche and Lonza AG; BASF, Degussa-Huls AG and Merck KGAA of Germany; Rhone-Poulenc of France; Nepera Inc. and Reilly Industries Inc. of the USA; Daiichi



Pharmaceutical Co. and Eisai Co. of Japan, etc. Actions have also been taken against the same conspirators by the competition authorities in Canada and Australia, while the European Union is most likely engaged in unearthing the damage, which would have been caused in their territory.

These companies led a global conspiracy to fix prices of vitamins, allocate markets, supply contracts and sales volume, apart from bid-rigging at various times, which according to the US anti-trust officials, have affected more than US\$5bn of commerce in such products. According to the US investigators, the colluding companies acted as if they were working for the same company, referred to by the cartel executives as 'Vitamin Inc.'

Majority of the colluding firms have admitted their involvement in the cartel that continued for nine years from 1990 to 1999. Roche agreed to pay US\$500mn, the largest criminal fine in the US, while a former executive of Roche agreed to be jailed for four months in the US. Similarly, five executives of Lonza AG pleaded guilty and agreed to co-operate in the ongoing investigations apart from paying a fine of US\$10.5mn for their role in the conspiracy. BASF accepted a US\$225mn fine. On the other hand, Rhone-Poulenc escaped punishment and supplied much of the evidence.

Roche, one of the main beneficiaries from the collusion, reported a 31 percent increase in its net income for 1999 as a consequence of such conspiracy. It alone controls 40 percent of the world market for animal and human vitamins. Roche, together with BASF and Rhone-Poulenc, control 75 percent of the global vitamin market.

These companies were also subjected to private civil suits for damages suffered by their customers, which they agreed to settle out of court. A US judge, in March 2000, approved a US\$242mn agreement to settle claims of such customers (plaintiffs) which is less than the US\$1.05bn settlement that parties announced in November 1999. This happened because out of about 4000 original plaintiffs, a total of 224 plaintiffs, comprising 75 percent of the total vitamins purchased, decided to opt out of the collective suit to pursue claims on their own.

The product involved in the conspiracy is an intermediary product and its customers, again, are mainly businesses, ranging from drug manufactures to those involved in food or milk business. Their subsidiaries are operating in many other countries as well and their conspiracy would have cost businesses but not have been compensated for the price-rigging.

In Canada, five international companies have been slapped with fines totalling C\$88.4mn, which is being termed as the most "widespread, detailed and successful" in Canadian history. These prosecutions are part of an ongoing investigation of the world-wide vitamin industry in which there have been 24 prosecutions till May 2000. It has resulted, so far, in convictions against Swiss, German, Canadian and Japanese firms. The total criminal fines against such corporate defendants have been over US\$875mn.

Furthermore, units of the three European companies: Roche Vitamins Australia Pty Ltd. (RVA), BASF Australia Ltd. (BAL) and Aventis Animal Nutrition Pty Ltd. (AAN) have agreed to total penalties of A\$26mn (US\$14.10mn) in a case of alleged price fixing and market sharing. The case was brought by the Australian Competition and Consumer Commission (ACCC). More details are awaited from Australia, Canada and other countries.

Reverting to the US case, a separate US\$340mn settlement reflects two agreements: a US\$255mn multi-state deal and a separate US\$85mn settlement. California announced it had reached a settlement on the same issue. It was decided that twenty-three states or similar jurisdictions – including Washington, D. C. and Puerto Rico – would recover US\$225mn of the US\$255mn settlement. About US\$107mn of the multi-state joint settlement would go to charities because it is impossible to identify the final purchasers who paid a few pennies extra for bread, milk, breakfast, cereals, juices, etc., containing the vitamins. Another US\$107mn would go to wholesalers and distributors. The remainder – over US\$10mn – would be used to supplement the funds, as necessary. A large group of 43 States will recover US\$30mn to reimburse themselves for the extra cost of foods they purchased for hospitals, prisons and other institutions.

Similar issues remain unresolved for consumers in the developing world, notwithstanding the rip-off suffered by the suppliers of the finished goods. These suppliers are, again, either domestic enterprises or subsidiaries of the same foreign enterprises, which could claim damages by out-of-court settlements. However, the ultimate consumer will need to be compensated like in the USA.

International co-operation on such issues can move the whole thing forward in ensuring that global commercial crimes are checked in all countries, rather than a few.

Fleeced in a Dirty Deal?

The US regulators said they will investigate whether agreements between brand-name and generic drug manufacturers have cost the consumers millions of dollars a year by denying them cheaper medicines.

The Federal Trade Commission (FTC) said it would probe whether companies had made deals or used other strategies that delayed generic drugs from hitting the market after a patent expired. Generic drugs cost less than their brand-name counterparts.

Under a 1997 agreement, Aventis paid Andrx Corp to delay the introduction of a competing version of Cardizem CD, said the FTC, which called the payment anti-competitive.



(ET, 13.10.00)

Drug Cos Reeling

Al Gore has picked just a handful of corporate targets carefully on the campaign trail and George Bush has done very little to threaten the stereotype of business-friendly Republican standard-bearer. This is scant consolation for the picked-on pharmaceuticals companies who can be certain to rise regardless of who wins the elections.

Large pharmaceutical companies have mounted intensive lobbying efforts to see that any controls are contained. Most companies admit that senior citizens should be paying less for medicine. Their main concern is to curb the Government's involvement.



The New Competition Bill Of India

TO BEGIN WITH...

Sometime back, the Government of India decided to review its existing competition law (i.e. Monopolies and Restrictive Trade Practices Act, 1969) to suit the changed economic environment. A committee set up for this purpose recommended scrapping the MRTP Act and enacting a new law. Recently, the government published a draft Competition Bill (hereafter referred to as the Bill) in order to attract comments on the same before it is tabled in the Parliament.

Though not specifically mentioned as the object of the Bill, it endeavours to "foster and maintain competition in the Indian market so as to subserve consumer interest while protecting the freedom of economic action of various market participants and prevent practices which affect competition". The Bill seeks to achieve this object by two broad methods. First, it seeks to prohibit and otherwise regulate agreements that are not conducive to competition. Second, it seeks a role in large mergers, acquisitions, and joint ventures (referred to by the common term of 'combinations' in the Bill). The proposed law envisages the establishment of an authority to be called the Competition Commission of India (hereafter referred to as the Commission) to implement the provisions of the Bill.

The draft Bill contains ten chapters including those devoted to deal with anti-competitive agreements, abuse of dominance and regulation of combinations. This article would focus on these three areas of the Bill and highlight important provisions with respect to the same without giving any analysis or comments.

Anti-competitive Agreements

Chapter II of the Bill contains provisions with respect to anti-competitive agreements. Section 4(1) of the Bill generally prohibits collusive agreements that restrict competition in the Indian market. It says:

"No enterprise or association of enterprises shall enter into any agreement or take any decision or engage in any concerted action, in respect of production, supply, distribution, acquisition or control of goods, or the provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India."

The Section, further, becomes inclusive in nature as far as anti-competitive agreements are concerned. Importantly, it designates certain kinds of agreements *per se* as illegal. These are agreements that:

- directly or indirectly fix purchase or selling price;
- limit or control production, supply, markets, technical development or investment;
- shares markets or sources of production supply by territory, type, size of customer or in any other way; and
- directly or indirectly result in bid rigging or collusive tendering.

In order to determine whether there is an appreciable adverse effect on competition, the proposed law suggests the Commission takes into account whether the agreements:

- result in creation of barriers to new entry;
- result in forcing existing competitors out of the market;
- result in foreclosing competition by hindering entry into market;
- result in any consumer benefit or pro-competitive impact; and

- contribute to the improvement of production and distribution and promote technical and economic progress, while allowing consumers a fair share of the benefits.

However, according to the Bill, Chapter II will not:

- apply to any agreement, decision or concerted action leading to any combination such as mergers;
- restrict the right of any person to restrain any infringement of intellectual property rights granted in India or to impose such reasonable conditions as may be necessary for the purposes of protecting or exploiting such intellectual property rights; and
- restrict the right of any person to export goods from India, to the extent to which the agreement, decision or concerted action relates exclusively to the production, supply, distribution or control of goods or provision of services for such export.

Abuse of Dominance

Chapter III of the Bill is entitled 'Prohibition against abuse of dominant position'. Section 5 says no enterprise shall abuse its dominant position. The Section further says:

"... dominant position means a position of strength enjoyed by an enterprise, anywhere in the world, which enables it to operate independently of competitive pressure in the relevant market, and also to appreciably affect the relevant market, competitors and consumers by its actions." (italics added)

The proposed law envisages that in order to determine whether an enterprise enjoys

dominant position or not, one or more of the following factors may be taken into account:

- market share;
- size and resources of the enterprise;
- size and importance of the competitors;
- economic power of the enterprise including commercial advantages over competitors, which may be gauged with reference, among other factors, to product range, established trade marks, customer loyalty, vertical integration of the firm, sales or service network;
- technical advantages enjoyed by the firm, which may be judged with reference, among other factors, to patents, know-how and copyright;
- dependence of consumers;
- monopoly status or dominance acquired as a result of any statute or by virtue of a public sector undertaking;
- entry barriers, if any, which may be judged with reference, among other factors, to regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale and high switching costs for customers;
- countervailing buying power;
- market structure and size of market; and
- any other factor which the Commission considers to be relevant.

According to the Bill, abuse of dominant position having an appreciable adverse effect on competition, competitors or consumers occurs when an enterprise:

- directly or indirectly imposes unfair or discriminatory purchase or selling prices or conditions, including predatory prices;
- limits production, markets or technical development to the prejudice of consumers;
- indulges in actions resulting in denial of market access;

- makes the conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; and/or
- uses dominance in one market to move into or protect other markets.

The Commission may inquire into any action, which is anti-competitive and/or abusive of dominant position upon:

- receipt of a complain of facts which constitute such action, from any person, consumer or trade association;
- a reference made to it by the Central Government or a State (Provincial) Government; or
- its own knowledge or information.

On receipt of a complaint or a reference or its own knowledge, if the Commission is of the opinion that there exists a *prima facie* case it will direct it to the Director General (i.e. investigation wing). On the report that the DG submits to the Commission, it may, after hearing the complainant, dismiss the complaint or, if satisfied that there is a contravention, again direct the DG to hold further inquiry. Where after inquiry, the Commission finds that there is a contravention of Chapter II or Chapter III, as the case may be, it may pass an order:

- directing the enterprise or the enterprises as the case may be, involved in such agreement, decision or concerted practice or abuse of dominance, to discontinue and not repeat such agreement, decision or concerted practice or abuse, as the case may be;
- directing the enterprises involved in such agreement, decision or concerted practice, or abuse of dominance, as the case may be, to make payment of fine which shall not be more than ten percent of the average of the turnover for the last three years of each of such enterprises involved;
- awarding compensation to parties;
- directing that the agreements shall stand modified in respect thereof in such manner as may be specified by the Commission;
- directing the enterprises concerned to abide by such other orders and directions, including payment of costs, as may be given by the Commission, to subservise the purposes of this Act; and/or
- recommending to the Central Government, in appropriate cases, the division of a dominant enterprise.

Regulation of 'Combinations'

The Bill provides, for the purpose of regulation of the 'combinations' (i.e. mergers, acquisitions and joint ventures), a threshold limit in terms of assets and

turnover beyond which a person has to give notice to the Commission if s/he/it is entering into a combination. In general, the parties to a combination have to give notice, if after the consummation of the proposed combination.

- the *worldwide* assets of the combined entity exceeds rupees 5bn; or turnover of the combined entity exceeds rupees 15bn; or
- the group to which the combined entity will belong, have
- in *India* assets in excess of rupees 20bn; or turnover in excess of rupees 60bn; or
- *worldwide* assets in excess of US\$1bn; or turnover in excess of US\$3bn.

For the purposes of determining whether a combination would have an appreciable adverse effect on competition in a market, the proposed law expects that the Commission would, *inter alia*, take into account one or more of the following factors:

- the actual and potential level of competition through imports in the market;
- the extent of barriers to entry to the market;
- the level of the combination in the market;
- the degree of countervailing power in the market;
- the likelihood that the combination would result in the parties to the combination being able to significantly and sustainably increase prices or profit margins;
- the extent of effective competition remaining in a market;
- the extent to which substitutes are available in the market or are likely to be available in the market;
- the market share of the parties involved in the combination, individually and as a combination;
- the likelihood that the combination would result in the removal from the market of a vigorous and effective competitor;
- the nature and extent of vertical integration in the market;
- the possibility of a failing business;
- the nature and extent of innovation; and
- whether the benefits of the combination outweigh the adverse impact of the combination, if any.

Upon the notice of the proposed combination, the Commission will enquire whether such a combination causes, or is likely to cause, an appreciable adverse effect on competition within the Indian market. Actually the process envisaged by the Bill for this purpose constitutes following steps:

1. After receiving the notice, the

Commission will direct the parties to the combination to publish details of the combination within 10 days of its direction.

2. Submission of written objection by any person, affected or likely to be affected, to the Commission within 15 days of such publication.
3. The Commission may, within 15 days from the expiry of the period stated in step 2, call for such additional information from parties as it may deem fit.
4. The Commission, after obtaining all the information, will hold proceeding within a period of 45 days from the expiry of the period stated in step 3 and then give its decision either approving or disapproving the combination or proposing certain conditions to the parties. If, however, the Commission does not reach a decision at the expiry of a *period of 90 days* from the date of publication, the said combination shall be deemed to have been *approved*.
5. In case the Commission proposes conditions to the said combination, the parties have to intimate, within 30 days, whether they agree or not agree with the same, including further modifications to the conditions they propose. If they fail to do so by the end of the 30th day, the said combination shall be deemed to have been *disapproved* by the Commission.
6. If the Commission agrees with the modifications suggested by the parties, it would approve the said combination, subject to such modifications.
7. If the Commission does not accept the modifications suggested by the parties, then, the parties shall be given a further period of 30 days within which to signify their assent to the proposed combination, subject to such conditions as originally proposed by the Commission. If the parties fail to convey their assent by the end of the 30th day, the said combination shall be deemed to have been *disapproved* by the Commission.

In Conclusion...

Though there has been a significant improvement from the existing law, certain provisions of the Bill are still ambiguous and/or not suited to the changed scenario. We are in the process of highlighting these ambiguities and unwanted provisions. We will be making a submission before the relevant authority/forum. The draft Bill is available on our website www.cuts-india.org and we would be glad to receive comment from the readers. It will certainly enhance the quality of our submission. The Bill would soon be placed before the Parliament and, if passed, will become the law of the land. Hence, the sooner the better.



Countries Reaffirm Validity of UN Competition Code

By Philippe Brusick

The Fourth UN Conference to Review all Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (the UN Competition Code), took place in Geneva from the 25th to the 29th of September 2000. The Conference concluded its work by unanimously adopting a comprehensive resolution reaffirming the value of the Set and called upon all States to implement its provisions. The resolution also addresses recommendations to the General Assembly, inviting it to convene a Fifth Review Conference in 2005 and calls upon the UNCTAD Commission on Trade in Goods and Services and Commodities to establish a new Expert Meeting on Consumer Policy, in addition to the existing Inter-governmental Group of Experts (IGE) on Competition Law and Policy, which continues to meet annually.

Other main provisions of the resolution are addressed at the UNCTAD secretariat and contain a long-term programme of work on competition and consumer protection laws and policies.

The next meeting of the IGE on Competition Law and Policy will pay special attention to merger control action and the inter-action between competition policy and intellectual property rules.

The general orientation of the work programme is divided in four main areas, as decided earlier in the year by UNCTAD X in Bangkok (February 2000). The main lines of UNCTAD's action in the fields of competition law and policy and consumer protection are the following:

- Continuation and, resources permitting, expansion of capacity building in developing countries and economies in transition;
- Helping authorities in creating a competition culture by educating the public at large, including the private sector;
- Study of the links between competition, competitiveness and development, as well as trade-related aspects of competition; and
- In-depth study of the development impact of possible international agreements on competition laws and policy, including the possibility of special and preferential treatment of developing countries and dispute mediation mechanisms at bilateral, plurilateral and multilateral levels.

The Role of Competition in Market-oriented Economic Reforms

The results of the Fourth Review Conference have to be placed in the context of the in-depth economic reforms underway in the world economy. One of the main results of these reforms – on par with the increased reliance on market forces brought by globalisation and liberalisation – is that the issue of competition has risen to the forefront. This is because competition is an essential ingredient for the success of a market economy.

Competitive forces ensure that consumers will get the best possible quality and choice of goods and services at the lowest possible price at a given point in time (static efficiency) and force

enterprises to make use of their ingenuity and inventiveness, including research and development processes to launch innovations as rapidly as possible (dynamic efficiency). Last but not the least, except in a limited number of 'market failure' cases, the impetus of competition will ensure optimal allocation of resources throughout the economy (allocative efficiency). In order to ensure that competition really does bring benefits, however, there is a need to constantly promote and defend it, in particular to prevent competition from eventually killing competition through a 'winner takes all' syndrome, where dominant firms are able to eliminate their rivals before these can threaten the formers' position of control in a market.

In other words, while economic reforms – be it deregulation, privatisation, trade liberalisation and foreign investment liberalisation – may increase competition after liberalisation takes place, countries may see their competitive situation deteriorate unless rules are implemented in an effort to guarantee that markets remain competitive over the longer-term.

Rules are needed to keep dominant firms from killing competition through the elimination of rivals before they threaten the formers' control of market share.

Trade Distorting Effects of Anti-competitive Practices

It was this concern that the founding fathers of the GATT had in mind when they included provisions to regulate 'restrictive business practices' or companies' anti-competitive practices in Chapter V of the Havana Charter in 1946. The same reason guided the adoption of Articles 85 and 86 of the Treaty of Rome in 1957, which is at the origin of the European Union. The hypothesis is that as governmental barriers to trade are gradually reduced and eliminated, enterprises might create trade-distorting barriers to their advantage by applying anti-competitive practices.

Hence, the need for regulating enterprises' restrictive business practices. This was successfully agreed by the European Community at the sub-regional level but failed to be agreed at the multilateral level at the Havana Conference.

As is well known, the provisions aimed at reducing trade-distorting governmental measures were adopted at Havana, leading to the General Agreement on Tariffs and Trade or GATT, while the provisions on competition by enterprises were dropped. It was only at the Singapore Ministerial Conference of the WTO in December 1996 that the issue of the interaction of trade and competition policy came back to the GATT/WTO, with the decision to establish a Working Group on Competition at the WTO. While the Working Group only has a mandate to study the links between trade and competition policy and to start an educative process in this respect, some WTO members made it clear that their objective was to launch negotiations on a multilateral framework on competition at the next round of trade negotiations. The Singapore Declaration also called on UNCTAD and other organisations active in the field of competition law and policy 'to ensure that the development dimension is fully taken into account' in this WTO process.

The Role of UNCTAD in Adopting the UN Set

The preponderant role of UNCTAD in the Singapore resolution is a result of the rising participation of the developing countries and economies in transition in the international trading system. It was the concern about development priorities that led UNCTAD to launch work in the field of 'restrictive business practices' in the early 1970s, subsequently resulting in the adoption of the 'Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices', also known as the UN Competition Code. The UN General Assembly adopted the Code as a recommendation to the member states in its resolution 35/63 of 5 December 1980.

The main objective of the UN Code is the same as those of Chapter V of the Havana Charter and the Treaty of Rome stated above: 'to ensure that restrictive business practices do not impede or negate the realisation of benefits that should arise from the liberalisation of tariff and non-tariff barriers affecting world trade, particularly those affecting the trade and development of developing countries'.

The Set calls for the prohibition of anti-competitive practices among rival enterprises (cartels) at national, import, export and international levels; it prescribes the control of abuses of dominant positions of market power; invites States to adopt and effectively enforce competition legislation and to co-operate with each other in this field. It also calls upon the international community and UNCTAD, in particular, to provide technical assistance, as well as advisory and training services to the developing countries in this field. Last but not the least, it provides for 'special and preferential' treatment for development purposes.

Since 1980, UNCTAD has actively participated in capacity building of developing and other countries in the field of competition law and policy. This process has been monitored annually by the Inter-governmental Group of Experts on Restrictive

Business Practices, renamed in 1995 as Inter-governmental Group of Experts on Competition Law and Policy; as well as by Review Conferences at five year intervals, the fourth of which took place from the 25th to the 29th of September 2000.

The Outlook

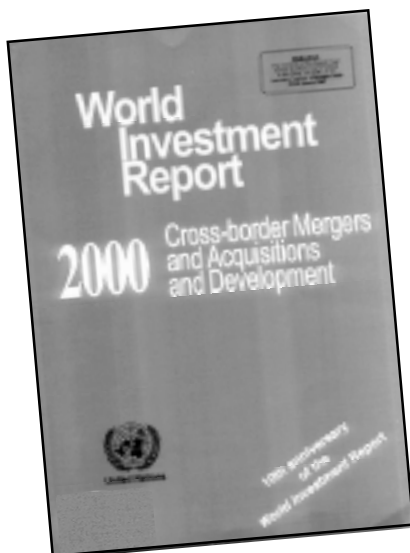
The question now is whether the WTO process in the Working Group on the Interaction between Trade and Competition Policy will eventually lead to negotiations on a multilateral framework on competition, taking into account the development dimension, as called for in the Singapore Declaration. While some trading partners consider that the UNCTAD voluntary Set of Principles and Rules is sufficient in this respect, others believe that the international trading system as embodied in the WTO Agreements, should be complemented with a comprehensive agreement on competition.

Future will tell whether what was started at the Havana Charter – but proved impossible at the time – will eventually prove possible within the WTO. In any case, as the world economy increasingly needs to take into account the development dimension, UNCTAD should continue to play an important role in the area of competition policy in the coming years. UNCTAD X explicitly summarised the issues at stake in its Bangkok Declaration, adopted in February 2000 as follows:

'... the international community as a whole has the responsibility to ensure an enabling global environment through enhanced co-operation in the fields of trade, investment, competition and finance [...] so as to make globalisation more efficient and equitable'.

(Philippe Brusick, Head of the Competition and Consumer Policy Branch at UNCTAD, contributed this article to 'BRIDGES'. The opinions expressed in this article are those of the author and do not necessarily represent an official position of UNCTAD.)

The Most Important Policy Instrument Is Competition Policy



The UNCTAD World Investment Report, 2000 addresses the question of whether the manner in which investment enters a country (in the form of a new enterprise or M&As) affects the contribution that foreign direct investment (FDI) can make to development.

The report states that acquisitionism, in particular, raises concern over impacts on employment, ownership and market structure, i.e. the ownership transfers are often accompanied by layoffs of employees and local markets can become dominated by global oligopolists whose presence would threaten local entrepreneurial and technological capacity building. Regardless of the performance of cross border M&As, it should be noted that the commercial interests of transnational corporations and the development objectives of host countries may not coincide.

FDI policies that the report draws attention for maximising positive impacts and minimising cost from cross-border M&As include: sectoral reservations, ownership regulations, size criteria, screening and incentives. The most important policy instrument, it argues, is competition policy – particularly co-operation among competition authorities at the bilateral, regional and multilateral levels.

(Bridges Weekly Digest)

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Monographs on Investment and Competition Policy

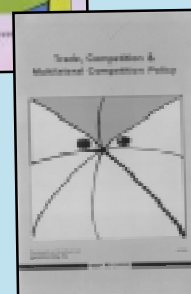
Competition Regimes Around the World

In this paper, an attempt has been made to compile, briefly, the current state of competition law in some select countries on which information is readily available. The paper steers clear of any value judgements on the design and implementation of competition law in the countries covered therein.

(42pp #2002, Rs.20/\$5).

Trade, Competition & Multilateral Competition Policy

This monograph clarifies the areas of interaction between trade and competition through case studies and shows such interactions are on the rise. It also highlights efforts being made for a multilateral competition policy after the Second World War in the form of Havana Charter. Most importantly, the paper brings forward the debate vis-à-vis multilateral competition policy that is currently taking place at various policy fora. (36pp #0005, Rs.20/\$5).



Globalisation, Competition Policy and International Trade Negotiations

This paper maps out the issues concerning multilateral competition policy from a southern perspective. It concludes that there is a need for a realistic assessment of the extent to which developing countries would be able to control MNCs under the disciplines of competition law.

(32pp #2003, Rs.20/\$5).

All About Competition Policy & Law

This monograph, meant for the advanced learner, deals with various elements of competition law and policy in a comprehensive manner. It describes various restrictive business practices (RBPs) in the market place. It further draws out interface of competition policy with economic development and foreign investment. Finally, it describes the genesis of competition law/policy and the direction it is moving in.

(70pp #0006, Rs.20/\$5).

Briefing Papers

Competition Policy in a Globalising and Liberalising World Economy

No. 4/1996

This Briefing Paper demystifies various aspects of competition policy, including its coverage, evolution and causes of spread. It further discusses the international challenge to domestic law and throws some light on the feasibility of an international competition rule.

Competition Regime in India: What is required?

No. 5/2000

This Briefing Paper, at the outset, argues for the repeal of the existing Competition Law of India, as it is not suited to the changed economic scenario. It discusses the various dimensions which the new competition policy and law should address. It endeavours to find out broadly as to what elements should be considered to shape the new competition regime for India that could be suitable for an open and liberalised economy in the long run. Furthermore, it also suggests an institutional structure that would ensure fair regulation of competition in a country as diverse as India.

Globalisation: Enhancing competition or creating monopolies?

No. 8/2000

This Briefing Paper argues for a multilateral arrangement and tries to do away with misconceptions with respect to the same. It further throws light on development dimension of such arrangement and how to incorporate such dimension to make it an equitable system. The paper argues that there is urgency for such arrangement. In conclusion, it highlights the UNCTAD's contribution towards the whole exercise.

Trade, Competition & Multilateral Competition Policy

No. 9/2000

As the title suggests, this paper clarifies the areas of interaction between trade and competition through case studies. It further points out the provisions in various agreements of the WTO acquis, which have elements of competition. Most importantly, the paper brings forward the debate vis-à-vis multilateral competition policy that is currently taking place at various fora. It analytically points out the hindrances in such a policy and highlights the need for a multilateral competition policy with the advice that the agenda must come from the South.