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Recent Competition Cases

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Executive summary

This report reviews recent important competition cases involving anti-competitive practices and mergers in developed and developing countries, including cases involving other countries or foreign firms. It appears from these cases that competition law enforcement in some developing countries is becoming stronger, as is cooperation between competition authorities from some developed and developing countries or regions. However, some of these cases also suggest that further national efforts and more advanced international cooperation would be required to take effective action against anti-competitive practices affecting international trade and economic development.

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Introduction and overview

The present report is part of a series of reports previously prepared by the UNCTAD secretariat reviewing competition cases.[1] This report has been prepared in accordance with paragraphs 9 and 12 of the resolution adopted by the 4th United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Principles and Rules for the Control of Restrictive Business Practices (TD/RBP/CONF.5/15). Paragraph 9 requests the UNCTAD Secretariat to 'take stock of anticompetitive cases with effects in more than one country, and the problems encountered in investigating the cases, to study the degree of efficiency of cooperation between competition authorities and Governments in solving them', while paragraph 12 requests the Secretariat to continue to publish certain documents on a regular basis and to make them available on the Internet, including 'an information note on recent important competition cases, with special reference to competition cases involving more than one country, and taking in account information received from member States." Furthermore, paragraph 7(c) of the agreed conclusions adopted by the last Intergovernmental Group of Experts (IGE) at its closing plenary meeting on 5 July 2002 requested the UNCTAD Secretariat to prepare for consideration by the next session of the IGE "an information note on recent important cases, with special reference to competition cases involving more than one country, taking into account information to be received from member States no later than 31 January 2003".

In accordance with the mandate, the cases reviewed in this report have been selected from material provided by some member States in response to a request for information sent out by the UNCTAD Secretariat and from other publicly available materials. Taking into account the above-mentioned terms of the mandate, and the relatively few cases involving developing countries for which it was possible to obtain information, a broad range of cases was selected for review, including those: (a) having effects upon the markets of more than one country, including a developing country; (b) involving enterprises not domiciled in the developing country where the case has been considered; or (c) cases from developed and developing countries involving issues or sectors which are relevant internationally, particularly for developing countries.

The cases reviewed in the present paper show that, in a context of globalization and liberalization, competition law and polices are becoming a key element in some developing countries' economic policies. However, the relatively small pool of cases and countries from which these samples were drawn suggests that more efforts need to be made by more countries to adopt and effectively enforce competition laws and to create or strengthen a competition culture in their markets. Some of the cases reviewed demonstrate that anti-competitive practices such as collusion, abuse of dominant position, cartels, occur in a variety of sectors and that in many instances anti-competitive practices involve a mixture of vertical and horizontal illegal actions, with an international impact. Similarly, competition authorities are increasingly called to assess the potential anti-competitive effects of mergers and acquisitions, often having an international dimension.

As the present report tends to deal with the success stories in this respect, questions might be raised as to the extent to which, and the means by which, countries with newly established competition authorities, particularly developing countries and economies in transition, would be

[1] See the 1995 report on 'Restrictive business practices that have an effect in more than one country, in particular, developing and other countries, with overall conclusions regarding the issues raised by these countries' (TD/RBP/CONF.4/6), the 1998 report on 'Competition cases involving more than one country' (TD/B/COM.2/CLP/9).

able to control such practices and assess the effects of such global mergers. National efforts by developing countries to control anti-competitive practices or mergers originating from overseas would need to be complemented by international cooperation. Despite a close scrutiny of a large number of cases having an international dimension, only few examples among the cases reviewed contain explicit information about successful international cooperation in this area that appeared to have been a critical element in resolving these cases. However, most of the anti-competitive cases or merger and acquisitions review processes with an international dimension reviewed seemed to make no or very limited use of the available instruments for international cooperation in this field. Given the inherent difficulties of investigating cross-border anti-competitive cases or mergers and acquisitions it is open to discussion whether a higher degree of international cooperation has been deemed unnecessary or, on the contrary, international cooperation has been hampered by the inexistence of effective instruments of international cooperation in the field of competition policy. It is recalled in this connection that the UN Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices provides that States should: seek appropriate remedial or preventive measures to prevent and/or control anti-competitive practices within their competence when it comes to their attention that such practices adversely affect international trade and development (para. E.4); institute or improve procedures for obtaining information from enterprises, including transnational corporations, necessary for their effective control of anti-competitive practices (para. E.6); establish appropriate mechanisms at the regional and subregional levels to promote exchanges of information on anti-competitive practices and on the application of national laws and policies in this area, and to assist each other to their mutual advantage regarding control of anti-competitive practices at the regional and subregional levels (para. E.7); and, on request, or at their own initiative when the need comes to their attention, supply to other States, particularly developing countries, publicly available information and, to the extent consistent with their and laws and established public policy, other information necessary for the effective control of anti-competitive practices (para. E.9).

1. Anti-competitive practices

1.1. Venezuela: Alleged collusion in the soft drink market[2]

Summary

Procompetencia – the Venezuelan competition agency – began its investigation of Sopresa CA, Pespicola's bottler, and company Panamco de Venezuela SA, in 1999 after supermarkets received letters from the bottlers that, as a result of their timing and similar content, led to allegations of collusive practices. Throughout the investigations, the cola bottlers have maintained that such similarities arise naturally from market dynamics. Furthermore, Sopresa and Panamco argued that the discount system played a limited role in determining prices or sales volumes. At the end of its investigations, Procompetencia fined Sopresa US$102,405 and Panamco US$180,703. On 13 March 2003 the Corte Primera de lo Contencioso Administrativo overturned the decision of Procompetencia that found Coca-Cola and Pepsi-Cola in Venezuela guilty of colluding over discount and credit terms given to supermarkets. The court held that the agency did not meet the

[2] Source: *Global Competition Review* (21 March 2003), available online at www.globalcompetitionreview.com.

required standard for a final determination. Procompetencia is reportedly planning to appeal against the ruling to the Political and Administrative Chamber of Supreme Tribunal of Justice.

Commentary

This case is significant for the difficulty to substantiate collusion over prices or other terms of commerce. The case suggests that in such circumstances it is advisable to ensure that competition authorities meet all legal standards leading to administrative decisions. However, it is difficult to further elaborate on this aspect, due to the lack of detailed information on the case. The particular case under review is also interesting for the particular mixture of alleged collusion and abuse of dominant position elements. Abuse of dominant position and concerted actions over discount selling is a typical allegation affecting the relations between producers and distributors.

1.2. Zimbabwe: Anti-competitive practices in the health care sector[3]

Summary

The Competition and Tariff Commission (CTC) of Zimbabwe has charged the Zisco Medical Benefit Society (ZMBS), a domestic company, with restrictive practices in the retail pharmaceutical services sector over the past three years. The CTC said it had reached a conclusion based on its own investigations, that ZMBS had engaged in anti-competitive practices in the course of conducting business in the Kwekwe and Redcliff areas. The Commission concluded that ZMBS abused its dominant position in the health delivery sector in the Kwekwe/Redcliff area through the highly exclusionary conduct of arbitrarily closing its accounts with most community pharmacies in the area and directing its members to use pharmacies owned by a company called Jenita Pharmaceuticals (Pvt) Limited when purchasing prescribed medicines. Evidence gathered during the investigation showed that ZMBS entered into anti-competitive agreements, in addition to violating merger control regulations.

A number of remedial orders had since been passed on the identified restrictive practices. In light of the law infringements by ZMBS, the Commission ordered ZMBS not to direct its members to use community pharmacies owned by Jenita Pharmaceuticals, or any other particular or specific pharmacies as a condition for membership. ZMBS was also ordered to amend its rules by deleting the restrictive provisions that made it compulsory for all employees of the Zimbabwe Iron and Steel Company and its associate companies to join the society. To enhance competition and ensure that competition law in the health delivery services sector would not be violated in future, the Commission also recommended that the Medical Control Authority of Zimbabwe and the Ministry of Health and Child Welfare, ensure the full enforcement of the regulations.

Commentary

The case may also be of interest to developing countries seeking to take action to benefit consumers of pharmaceuticals. Illustrative is also the need for cooperation between the competition authority and sectoral regulators, the Medical Control Authority of Zimbabwe and the Ministry of Health and Child Welfare. It is also important to emphasize that the CTC also identified other competition concerns, such as the practice of certain medical aid societies that owned and operated

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[3] Source: *The Daily News* (31 January 2003).

retail pharmacies, and the general practice in the retail pharmaceutical services sector of recommending drug resale mark-ups. Such practices may be of relevance for other developing countries.

1.3. Republic of Azerbaijan: Collusive practices in the mobile phone sector[4]

Summary

The Azerbaijani Antimonopoly Policy Department of the Ministry of Economic Development has initiated an investigation into the tariff-setting practices of the country's two existing GSM operators, Azercell and Bakcell. According to the investigation, the operators restrained competition in the market for GSM mobile telephone services by offering similar tariff packages. The evidence gathered during the investigation also suggested that the operators engaged in some form of horizontal strategy, which resulted in unlawful price-fixing practices. The Department presented some proposals to take remedial action to prevent what it considers to be anti-competitive practices by the mobile telephone operators.

Commentary

This case would also be of interest to other developing countries currently engaged in regulatory reforms and privatization of their telecom sector. While several segments of the telecom sector are natural monopolies, others might be sensitive to economies of scale leaving room for only a relatively limited number of producers in these market segments. However, as this case shows, when such conditions lead to the existence of a limited number of players in the market price-fixing practices and collusion can easily occur. Therefore, it is of key importance that deregulation and privatization in developing countries be accompanied by the adoption of competition law and creation of effective institutional linkages between competition authorities and sectoral regulators.

1.4. Brazil: Price-fixing in the petrol sector[5]

Summary

The Administrative Council of Economic Defense (CADE) has fined Sindiposto - an association of petrol stations - and its President a total of approximately US$ 105,000 after Sindiposto was found to have engaged in price-fixing by having advised its members to set prices and profit margin for fuel sales, as well as concerted price increases. According to a CADE official, cartelization attempts of the petrol sector in Brazil have been subject of more than 30 investigations by the Brazilian competition authorities out of a total of about 260 cartel investigations. According to information released by the Secretariat of Economic Law, 56% of cartel complaints relate to the petrol sector.

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[4] Source: Press Release (27 August 2001) (available online at http://economy.gov.az/HTML/press_release250802_1.html) and on the Operating Statement of 2001 (available online at http://economy.gov.az/HTML/Departments/AP/portfolio.htm) from the Department of Antimonopoly Policy of the Ministry of Economic Development, Republic of Azerbaijan.

[5] Source: OECD Annual Report on Competition Policy Developments in Brazil 2002, DAFFE/COMP(2003)10 (18 April 2003) and various press reports.

Commentary

The case is of particular interest in demonstrating the use of an industry association to set up a price-fixing arrangement. The oil distribution sector seems particularly prone to cartelization attempts not only in Brazil but also in other countries. The French Competition authority has recently investigated a similar case of price-fixing in the petrol sector. The *Conseil de la Concurrence* found that managers of various motorway petrol stations exchanged pricing information several times a week, with the request or assent of their respective oil companies. Four of the major oil companies, TotalFinaElf, BP France, Esso and Shell, have been fined €27 million (approximately US$ 31 million) for their part in the arrangement.[6] As the companies involved in anti-competitive practices in France are multinational companies with activities worldwide, it is not excluded that similar practices might have been used in other jurisdictions as well, including developing countries. For instance, a similar alleged price-fixing cartel in the petroleum sector by BP, Caltex, Mobil, Agip, Total, Jovenna, Engen, Ody's and Agro-fuel was investigated by the Zambia Competition Commission. The Commission also found that the sector association was providing a forum for cartel activities.[7]

1.5. Taiwan Province of China: Concerted Actions in CD-R Patent Licensing Arrangements[8]

Summary

The Fair Trade Commission (FTC) of Taiwan Province of China charged Royal Phillips Electronics (The Netherlands), Sony Corporation (Japan) and Taiyo Yuden Co., Ltd. (Japan) with violations of Articles 14, 10-2, and 10-4 of the Fair Trade Law. A complaint was filed against the way in which Philips, Sony, and Taiyo Yuden licensed a number of patents relating to CD-R specifications. To facilitate patent licensing to CD-R manufacturers around the world, the companies adopted a package licensing arrangement, whereby Sony and Taiyo Yuden first licensed their patent rights to Philips, and Philips then bundled the rights together for licensing to other companies.

Under the three firms' joint licensing arrangement with respect to the patented CD-R technology, Philips represented Sony and Taiyo Yuden in acting as the exclusive licensor and signing the contested form licensing agreements with the licensed manufacturers. In negotiating the royalty arrangements, Philips took advantage of its dominant position in the CD-R technology patent licensing market and of Sony's and Taiyo Yuden's names. It demanded that the licensees sign the contested licensing agreement and sought payment of royalties outright while at the same time refusing to provide the licensees with important trading information such as the specific content, scopes, or valid periods of the patents.

The FTC found that Philips was relying on its advantageous market position to compel the licensees to accept the licensing agreement and its actions were considered an abuse of its position in the market for patent licensing of the technology at issue. The practices called into question by the complaint were as follows: (1) joint licensing and package licensing by the respondents; (2) the

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[6] *Global Competition Review*, 11 April 2003.

[7] Based on *Summaries of selected cases on mergers, vertical and horizontal restraints handled under the Competition and Fair Trading Act, 1994*, Zambia Competition Commission, May 2003.

[8] Source: *Selected FTC Decisions*, Fair Trade Commission of Taiwan Province of China (available online http://www.ftc.gov.tw).

method by which the respondents set royalties; (3) blanket licensing under which the terms of some of the patents were shorter than the contractual period; (4) alleged improper tie-in sale of various patents under the blanket licensing; (5) refusal to disclose important trading information, such as details of the licensing arrangement.

In its investigation, the FTC determined that the respondents' acts of joint and package licensing, methods of setting royalties, and refusal to disclose important trading information (such as details of the licensing arrangement) violated several provisions of the Fair Trade Law. The FTC found that the respondents' arrangement constituted horizontal concerted action among enterprises at the same stage of production and/or marketing, affecting the market functions of production, trade in goods, or supply and demand of services. In the CD-R technology patent licensing market, Philips, Sony, and Taiyo Yuden was found to constitute a monopoly as defined in the Fair Trade Law of Taiwan Province of China.

After taking into consideration the impact of the unlawful acts on the functioning of market mechanisms in the markets for the technology patent licensing and associated products at issue, as well as the respondents' motives for the violation, benefits obtained thereby, and considerable business scales and prominent market standing, the FTC imposed administrative fines of NT$8 million (approximately US$ 231,000) on Philips, NT$4 million (approximately US$ 115,500) on Sony, and NT$2 million (approximately US$ 58,000) on Taiyo Yuden, and ordered the companies to immediately cease the illegal practices.

Commentary

This case shows that IPRs are not by definition outside the purview of competition policy. The case is interesting not only for its mixture of vertical and horizontal arrangements involved but also for its international dimension and the need for enhanced international cooperation on IPRs and competition policy.[9] In this particular case, the FTC investigation found that all key patents related to CD-R technology are owned by one or another of the three respondents. Any manufacture and sale of CD-R products anywhere in the world is dependent on obtaining CD-R technology patents from the respondents. As a result of these elements, the FTC claimed that the concerted actions had effects similar to a global monopoly: by giving up their separate licensing rights under the arrangement, Sony and Taiyo Yuden left prospective licensees in the position of being able to turn only to Philips for licensing, and deprived them of the opportunity to freely select their trading counterparts. The arrangement among the respondents thereby adversely affected the market function of supply and demand with respect to the patented CD-R technology at issue. According the FTC ruling, unless there is clear evidence that concerted action is beneficial to the overall economy, is in the public interest, and has been authorised by the FTC, such practices may seriously restrict market competition, impede the functioning of price mechanisms, and harm consumer rights and interests. Philips, Sony, and Taiyo Yuden failed to apply to the FTC for such an exemption, and were found to have violated the prohibition of Article 14 against concerted action.

[9] For an elaborated argument on the interactions between IPRs and competition policy, and the need for strengthened international cooperation on these issues, see *Competition Policy and the Exercise of Intellectual Property Rights: Revised Report by the UNCTAD Secretariat*, TD/B/COM.2/CLP/22/Rev.1.

1.6. United States: Dee-K Enterprises v. Heveafil et al[10]

Summary

Dee-K Enterprise filed a complaint in the United States alleging that it paid artificially high and non-competitive prices for rubber thread, as a result of a price-fixing arrangement between several Asian rubber producers, thus depriving Dee-K Enterprises to reap the benefits of free and open competition in the market. Dee-K Enterprises purchases rubber thread (also called extruded rubber thread) to manufacture elastic fabric, bungee cords, toys and other products in Southeast Asia. The initial ruling of a federal district court in March 2001 denied the existence of a "substantial effect" on the US rubber-threat market. The US Court of Appeals, 4th circuit, has further rejected allegations that a conspiracy to fix prices worldwide by three large Malaysian producers of rubber thread (Heveafil, Filamax and Latex) had a substantial effect on the US market. The jury found that there had been a price-fixing agreement reached in meetings in Asia (Malaysia and Indonesia), but did not find a 'substantial effect' in the United States.

Commentary

The case turns on a 'cutting-edge' question about the reach of the US's antitrust laws, in particular the further clarifications brought to the extraterritorial application of the 'substantial effect' doctrine in US antitrust law. A 'substantial effect' test has been required since the Hartford Fire case, which decided that plaintiffs must show that the alleged conspiracy resulted in purchasers in the US paying higher prices. The case is also of particular interest for it shows that cases having an extra-territorial dimension could presumably act as a signalling device for competition authorities from other countries in initiating investigations on the impact of the price-fixing cartels in their domestic jurisdictions.

1.7. United States: Empagran et al. v. F. Hoffman-LaRoche[11]

Summary

This case arises from private claims by foreign corporations domiciled in various foreign countries, who purchased vitamins abroad from the vitamin companies for delivery outside the United States, and were affected by the international vitamin cartel. Several vitamin producers artificially elevated the prices of a wide range of bulk vitamins, including vitamins A, B, C and E, that are sold globally for use primarily in the animal feed, food and beverage, and nutritional supplements industries. The foreign plaintiffs, along with domestic purchasers, requested compensation for the significant overcharges incurred during the period when the international cartel was operational. The vitamin companies argued that foreign plaintiffs lacked subject matter jurisdiction under the FTAIA and standing under the federal antitrust laws, an argument held by the District Court for the District of Columbia, based on the argument that the injury suffered by foreign companies lacked any direct connection to the cartel's effect on U.S. commerce. However,

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[10] Based on a joint amicus brief by the U.S. Department of Justice and Federal Trade Commission for the Supreme Court of the United States in Dee-K Enterprises, Inc. v. Heveafil Sdn. Bhd., No. 02-649 (U.S. S. Ct.), May 2003.

[11] Based on a brief for the United States and the FTC as amici curiae in support of petition for rehearing en banc, Empagran S.A. v. F. Hoffman-LaRoche Ltd., No. 01-7115 (D.C. Cir. March 24, 2003), available at www.usdoj.gov/atr/cases/f200800/200866.htm

on 17 January 2003 the United States Court of Appeals for the District of Columbia reversed the district courts' dismissals of treble-damage lawsuits by foreign plaintiffs that had allegedly paid inflated prices in foreign markets because the defendants' conduct was found to have also produced domestic effects that gave rise to antitrust claims by domestic plaintiffs.

Commentary

This case is interesting for the potential impact that could have on the future of civil cartel litigation, as a result of global price-fixing or market allocation cartels. Previous US jurisdiction held that private parties could not bring treble-damage claims under U.S. law for injuries stemming from effects occurring wholly in foreign markets. As observed by the U.S. Department of Justice (DOJ) and Federal Trade Commission (FTC) in a recent amicus brief filed at the invitation of the D.C. Circuit, these rulings imply a "sea change in the number and type of private antitrust actions permitted under the Sherman Act" because they open up a new category of treble-damage claims that foreign customers may file in friendly U.S. courts.[12] This case is of major importance in the prosecution of actions against international cartels. In many countries, private rights of antitrust enforcement are far more limited than they are in the United States, while the extent of governmental enforcement of international cartels varies. A decisive element in the ruling of the in the view of the US Court of Appeals, was the potential deterring argument of such private cartel litigation on cartel formation: if US courts are available as a means for foreign companies allegedly injured by actions of international cartels affecting the United States, this could have a significant deterring effect on the incentives of companies to get involved in international cartels.

1.8. European Union: Alleged plasterboard cartel[13]

Summary

The European Commission has fined four companies a total of €478 million (US$ 547 million) for their alleged participation in a cartel in the market for the building material plasterboard — the second-biggest fine in EC cartel enforcement history. The fine is the largest of 2002, and is surpassed only by the €855 million (US$ 978 million) total fine imposed on the members of the vitamins cartel in 2001. The Commission alleges that for six years Lafarge, BPB, and Gebrüder Knauf Westdeutsche operated a cartel to fix prices that originated in a meeting between BPB and Knauf executives in London in 1992. Lafarge joined the group later that year, while Gyproc Benelux joined in 1996. According to the Commission, the conspirators took various actions to maintain prices, including sharing information on price increases and sending data on sales forces to directors at their home addresses. BPB and Gyproc have both received leniency reductions (of 30 and 40 per cent respectively) on the strength of information provided between the start of the investigation in November 1998 and the issuing of the statement of objections in April 2001. The companies involved appealed the EC Commission decision.

Commentary

The case is significant for its relevance to developing countries and countries with economies in transition, as the construction industry is a major engine for growth, in particular in

[12] Ibid.

[13] Source: European Commission Press Release no. IP/02/1744, Brussels, 27 November 2002.

developing countries with poorer infrastructure facilities. Plasterboard is a product widely used in the building industry and by individual consumers for 'do-it-yourself' type of works. The cement industry was over the years heavily concentrated and prone to collusion. Lafarge was fined in 1994 in the cement cartel and BPB, through one of its subsidiary, was one of the companies fined in the carton board decision, also in 1994. A cartel like the one dismantled by the Commission between major global players in the plasterboard sector is likely to have an impact on other countries as well, particularly in markets where the companies were active and the threat of punitive actions less credible or inexistent (such as in developing countries with no competition law or little enforcing capabilities).

1.9. United States: Visa and MasterCard[14]

Summary

In May 2003 US credit card companies Visa and MasterCard have agreed to pay US$3 billion to settle an antitrust lawsuit. The payment ends a complaint filed in 1996 on behalf of five million US merchants and three trade associations. In their merchant contracts, Visa and MasterCard impose an "honor all cards" duty on retailers, which forces them to accept their debit cards, if they want to be able to accept their credit cards. The plaintiffs, who included Wal-Mart, Sears, Roebuck and Safeway, alleged that Visa and MasterCard exploited their market power in credit cards to force merchants to accept their debit card services. It was alleged that the tied services were being offered at an uncompetitive price, and that the card companies were attempting to monopolize the market for debit cards in the US.

Retailers alleged that this is a tying arrangement aimed at monopolizing the debit card market. They objected because the off-line debit technology utilized by Visa/MasterCard is slower, more prone to fraud, and much more expensive than the on-line ATM technology offered by various regional debit networks with whom they would prefer to deal. The settlement includes a provision to end such tying practices. Under the terms of the settlement, Visa will pay $2 billion to retailers over the next decade, and MasterCard will pay $1 billion. Both companies will also pay $25 million immediately. The settlement was made on the eve of a jury trial involving damage claims of up to $100 billion. According to the court, while American Express and Discover are effective card issuers in their own rights, they need access to banks and consumer and merchant acceptance enjoyed by Visa and MasterCard in order to achieve the scale efficiencies and to compete in new, multi-function debit/credit cards. However, Visa and MasterCard 'exclusionary rules' provided that banks willing to sign up with other competing card issuers such as American Express and Discover would not be able to become or remain members of Visa and MasterCard networks.

Commentary

The importance of the case is significant for other countries, as Visa and MasterCard are worldwide players in the credit card market, accounting for a large share of the global market. Visa and MasterCard are not-for-profit associations owned by member banks that provide authorization and settlement services for credit and charge card transactions. American Express and Discover are

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[14]Source: Based on information available from US Department of Justice (see http://www.usdoj.gov/atr/cases/indx57.htm) and various press reports.

private, non-membership corporations that issue credit and charge card in competition with Visa and MasterCard and respectively account for about 20 percent and six percent of U.S. transactions volume.

The US Department of Justice successfully challenged the so-called Exclusionary Rules adopted by both Visa and MasterCard. These rules prohibit any bank that issued a Visa or MasterCard card from also issuing the cards of American Express, Discover, or certain other competitors. In 1996, the European Commission ordered Visa and MasterCard to give up these rules in Europe, and consumers apparently benefited. Because of the market power held by Visa and MasterCard, the Exclusionary Rules foreclosed smaller, competing networks from having the banks also issue their cards, which would make them better able to compete against the two dominant firms. This raised the costs of American Express and Discover and also delayed innovation, particularly the introduction of the "smart card" and multi-function cards. It also prevented banks from competing with one another by issuing American Express or Discover in addition to Visa and MasterCard.

U.S. v. Visa is a reminder of the importance of evaluating the potential effect of exclusionary rules adopted by global joint ventures (such as business-to-business platforms) in worldwide network industries. In *U.S. v. Visa,* access to the member banks of Visa and MasterCard was deemed to be essential to the development of rival card networks, while continued access to the two “dominant” networks was deemed to be essential to banks. Similar concerns could arise in other network industries where members and customers of existing networks may be reluctant to associate with an emerging new network if the price of doing so is being eliminated from an existing, dominant, network, or if they have to pay a discriminatory price for doing so.

1.10. Republic of Senegal: Abuse of dominance position by Air France[15]

Summary

During 2001, Air France decided to reduce the commission paid to travel agents in Senegal from 9% to 7%. The *Syndicat des agences de voyages et de tourisme* of Senegal (SAVTS) filed a complaint with the National Competition Commission about the alleged anticompetitive practices and abuse of dominant position by Air France. The Commission considered that although since December 2000, resolution 814 removed the principle of fixed commission within the agreements between air lines and travel agents, Air France used its dominant position in the relevant market (passenger tickets from Senegal to France) and took advantage of the economic dependence of travel agents on Air France (between 54.79 and 86.98 per cent of the total sales of travel agents members of SAVTS were realized on Air France tickets) when it decided to reduce the commission. Under these conditions, the unilateral decision of Air France to reduce the commission paid to travel agents for the sale of its passenger tickets was found by the National Competition Commission to be in violation of article 27 of the Law no. 94-63 of 1994. The Commission ordered that unless Air France terminated the incriminated illegal practice during a delay of one month, Air France would be liable to pay a fine of twenty million francs CFA (approximately US$ 36,000).

[15] Based on Decision no. 02-D-02 of the National Competition Commission of the Republic of Senegal, 16 January 2003.

Commentary

The reduction of ticket commissions for travel agents by airlines has been a global trend, with such cases occurring in a number of other countries. In several cases (in particular in the US) the commission has been eliminated and travel agents have been forced to diversify their portfolio of activities. In the US travel agents associations have submitted numerous petitions to the Department of Transport, signaling alleged anti-competitive practices by airlines and the negative impact of 'zero commission' on the consumers. A number of similar cases between travel agents and airlines have been already investigated by other competition authorities (for instance the UK's Office of Fair Trading) or national courts (e.g. the Ryanair case in Ireland). In both cases the decision favoured the airlines. However, unlike the Ryanair case, the OFT decision suggested that travel agents are free to replace the reduction or elimination of the percentage commission with a flat fee per ticket.

An interesting path that unfortunately did not seem to be fully investigated by the National Competition Commission was the fact that the reduction in commission by Air France has been soon followed by similar reductions announced by Iberia and Alitalia. Even though, in the case under consideration, the National Competition Commission has implicitly argued that the relevant product market was passenger tickets to France, there might still be a degree of imperfect substitution between 'seamless' tickets to France sold by Air France and non-direct flights to France via Spain or Italy. Based on this imperfect substitution, one could reasonably argue that the three companies were competitors and the timing of the commission reduction for travel agents might be a sufficient reason to investigate the existence of collusion between air lines.

1.11. Republic of Korea: International Vitamin Cartel[16]

Summary

In April 2003, the Korea Fair Trade Commission (KFTC) decided to issue corrective order and impose surcharges to six vitamin producers in Switzerland, Germany, France, Japan and the Netherlands, which participated in the vitamin international cartel. The amount of surcharges reaches more than USD 3 million in total. The target companies for corrective measures and amount of surcharges lF. Hoffmann La-Roche Ltd. (Switzerland), BASF A.G. (Germany), Aventis S.A. (France, formerly Rhône-Poulenc S.A.), Eisai Co., Ltd. (Japan), Daiichi Pharmaceutical Co., Ltd (Japan), Solvay Pharmaceuticals B.V. (the Netherlands). These six companies, accounting for 90% market share in the world bulk vitamin market, agreed to allocate the sales volume and coordinate price of bulk vitamins such as vitamin A, E, B5, D3, and Beta Carotene in the global market.

Vitamins A, E and beta-carotene are important inputs for the production of foods, medicine, cosmetics and animal feed. Bulk vitamin is used in manufacturing animal feeds, medicine, foods and cosmetics. Related industries in Korea entirely rely on the import for the consumption of bulk vitamin. The related industries in Korea are assumed to import about US$185 million during the above period from the six companies. As the conspiracy affected the Korean economy throughout the 1990s, the behavior of these firms affected all Korean citizens, who were prevented from benefiting from the price reductions that would have resulted from a competitive market.

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[16] Source: KFTC Press Release, 25 April 2003.

Commentary

This is the second time for the KFTC to apply Korea's Monopoly Regulation and Fair Trade Act to anti-competitive practices of foreign businesses in overseas, following the case of international cartel of graphite electrodes. This clearly shows the KFTC's strong commitment of law enforcement against the anti-competitive practices of foreign businesses, which damage Korean companies and consumers. However, the case suggests that not only commitment but also strong capacity and significant resources are needed for a successful prosecution of international cartel, attributes that many competition authorities in developing countries are still lacking. The KFTC stated that such investigations on international cartels proved to be quite challenging for the KFTC, which had to spend "enormous effort and time" for that matter.[17] Moreover, it is open to question whether the Korean FTC would have become aware of the existence of the international cartel had the cartel not first been prosecuted by the United States and the KFTC emphasized the need for international cooperation for overcoming such investigative difficulties in the elimination of international cartels.[18]

The vitamins cartel being global in nature may have affected many developing countries, some without a competition law and the relevant institutions. This calls for bilateral, regional, and international efforts to make sure that the effects of such cartels do not continue to hurt developing countries even after such practices have been dealt with in developed countries. Thus, if an international cartel targets only markets of developing countries and/or countries with limited international enforcement capabilities, there is a risk that the cartel may go undetected and unpunished, since competition authorities do not normally take action against practices originating from their territories which have effects upon markets of other countries.

1.12. Brazil: Abuse of dominant position by McDonald's[19]

Summary

In July 2002 the Secretariat of Economic Law (SDE) of Brazil has filed a proceeding against McDonald's corporation following accusations by 28 Brazilain franchisees that the US fast-food multinational company is abusing its dominant position. The members of the Association of Independent Franchisees of McDonald's (AFIM) accuse McDonald's of including abusive, anticompetitive clauses in its contracts, concluding illegal subleases and abusing its economic power. Franchisees claim McDonald's is violating the spirit of its contracts by opening its own restaurants close to franchisees, which are consequently faced with direct competition from McDonald's outlets. The high rents charged by McDonald's — as much as 24 per cent of gross sales — are another cause of dissatisfaction among franchisees. In addition, nearly all the premises in which restaurants are located are rented directly from McDonald's. The corporation undertakes property development itself so it can ensure standardised interior and exterior layouts and choose the locations it wants.

McDonald's is reported as saying that the franchises involved in the case are having difficulty meeting the terms of their contracts and that the cases should not have been referred to the SDE or the Administrative Council of Economic Defense (CADE), as this is a private contractual matter.

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[17] See OECD DAFFE/COMP(2003)2, p.25.

[18] Ibid.

[19] Source: *Global Competition Review* (8 July 2002) and comments provided by CADE.

Commentary

This case, at a first sight, might not be regarded as an antitrust case. Usually, conflicts involving franchise contracts have little effect on inter-brand competition. However, one particular point raised by this case deserves a more careful investigation: whether McDonald's control over the locations and premises around its restaurants could be used to restrict entry of rival brands in order to eliminate potential competitors. Based on these grounds, formal administrative proceedings have been opened after the preliminary investigations and, according to the Brazilian competition law, this case will have to be judged by CADE, upon conclusion of the investigative phase.

2. Mergers

2.1. Argentina: Horizontal merger in the brewing industry[20]

Summary

The Argentinean competition body has investigated the merger between local beer maker Cervecería y Maltería Quilmes SA (Quilmes) and Brazilian brewing company Cia de Bebidas das Americas SA (Ambev), against the background of a legal debates initiated by a rival company, Cervercería Argentina SA Isenbeck, which requested a more active role in the competition approval process. The Federal Court of Appeals for Civil and Commercial Matters in Buenos Aires rejected Isenbeck's complaint, allowing the process to resume. Under the terms of the deal, Ambev obtains control of various subsidiaries in Argentina, Bolivia, Paraguay and Uruguay.

The merger approval is subject to a few conditions since, according to press reports, it was shown that the companies' brands would together command about 80 per cent of the market. The merger approval is pending, as the companies are undertaking a series of divestitures, as instructed by the competition authority. It is reported that, among the conditions imposed, companies have to divest the licence for production of the Heineken brand, and for the Bieckert, Palermo and Norte brands and recipes. The companies were also asked to give the buyer access to their distribution network for the brands for seven years.

Commentary

Conditional approval of mergers and takeovers has become an important aspect of merger analysis, and such provisions have increasingly been incorporated in competition laws of developing countries. The importance of this case lies primarily in its international dimension and in the way the competition authority seemed to have taken into account the portfolio effect[21] of the merger and the distributional aspects, in addition to the tradition market share analysis. The

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[20] Based on *Global Competition Review* (17 January 2003) and on information received from Comision Nacional de Defensa de la Competencia

[21] The portfolio effect refers usually to the anti-competitive impact of multiple brands owned by one company. Several arguments in favour and against the relevance and potential impact of portfolio effects were made in the theory and some competition authorities have adopted included portfolio effects in their investigations. For instance, it is argued that as a result of a portfolio effect a firm may offer aggregate rebates, or impose exclusive contracts on the retailers or force them to buy the complete line of products (e.g. tie-in sales, full-line forcing), increasing the potential for foreclosure. Such arguments on the use of portfolio effects in order to prevent entry and maintain monopoly positions to the detriment of final consumers have been used by the European Commission in the General Electric/Honeywell case (see case COMP/M.2220).

importance of alleged anti-competitive practices in this sector and a proliferation of mergers and acquisition are also highlighted by the existence of similar cases in other developing countries.[22] For example, in the brewing industry, the compilation of extensive portfolios of brewing and other drinks products has been motivated in part by a need to satisfy customers demands for a one-stop shop and to obtain economies of scope in distribution. Often, one of the main competition concerns in the brewing industry is that a merger would lead to not only to an oligopolistic market structure, but also to a concentration of the portfolio of leading brands in the hands of few (often one or two) players, competing against a number of weaker non-portfolio operators.

2.2 Brazil: Proposed horizontal merger in the food industry[23]

Summary

The Brazilian Secretariat of Economic Law (SDE) has issued a legal opinion suggesting that the Administrative Council for Economic Defense (CADE) approves the acquisition of Garoto by Nestlé under conditions that prevent the acquirer from exercising its market power. The transaction under discussion involves the main chocolate producers in Brazil. SDE argued that the exercise of market power by Nestlé, in case the transaction is concluded as notified, is very likely to happen. In the relevant market of liquid chocolate coating, for instance, Nestlé, after the transaction, will detain 100% of market share, whereas in the segment of solid liquid coating, the company´s participation will increase from 16,3% to 88,5%. Nestlé and Garoto are the first two options of the consumers in other chocolate products. In addition, considering that the main competitor of the applicants –the company Lacta – does not have either enough idle capacity or interest in adopting an aggressive posture towards a possible increase of prices, SDE concluded that conditions must be imposed in order for the transaction to be approved by CADE. In this manner, SDE suggested that Nestlé and Garoto provide CADE with alternatives that can prevent the exercise of market power. The companies were also asked to demonstrate economic efficiencies resulting from the transaction that may compensate the substantial reduction to the free competition.

At the time of writing, there was no final decision by CADE on the merger.

Commentary

It is important to mention the conclusion of SDE´s opinion, which, in the case under discussion, suggested that the companies themselves should present alternatives that are able and sufficient to repel the competition concerns that the Secretariat has raised. As the companies concerned have a comprehensive knowledge of the market in which they operate, it was reported that allowing companies involved to present options would make CADE´s decision more effective and beneficial to both competitors and consumers of the relevant product.[24]

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[22] See for instance the alleged anti-competitive practices in Castle Breweries Ltd. Vs. East Africa Breweries Ltd investigated by the Monopolies And Prices Commission (Kenya), the acquisition of Northern Breweries PLC by Zambian Breweries PLC, or the Takeover of Zambia Bottlers Limited by Zambian Breweries Plc reviewed by the Zambian Competition Commission.

[23] Source: *E-Alert Antitrust*, Issue no.22 (Trench, Rossi e Watanabe Advocados, December 2002), *Global Competition Review* (20 December 2002), and comments received from Administrative Council of Economic Defence (CADE).

[24] Ibid.

2.3. Colombia: Aces/Avianca airline merger[25]

Summary

Colombia's two main airlines — Aces and Avianca — will merge after the Aviation Authority overruled the prohibition imposed by the Colombian competition authority. The Superintendence of Industry and Commerce (SIC) announced its opposition to the merger last year, after an in-depth antitrust analysis found that the airlines would have a dominant position in the airline market and would therefore unduly restrict competition. However the Aviation Authority has taken a different view. The Aviation Authority said it had reached its decision after looking at the technical and commercial profile of the Colombian aviation sector and its position in the international market. It also accepted a 'failing industry' defence initially rejected by the Superintendence of Industry and Commerce. The airlines also proposed a set of undertakings, including a 'code of consumer rights'.

Commentary

This case provides a reminder that, when applying merger control provisions, some developing countries may take into account considerations of a failing-firm nature that may lead to the approval of mergers that might otherwise be considered anti-competitive. The case is also illustrative of the need of sustained cooperation between competition authorities and sectoral regulators, and harmonization of various national policy objectives. It is usually argued that mergers involving failing firms will often enhance general welfare either through increasing the efficiency of existing capacity, redeploying that capacity to socially more valued uses, or preserving jobs and having other socially beneficial impacts. Airline mergers and alliances can allow airlines to lower cost and enhance demand by rationalising the combined networks, and expanding the scope and quality of their services. On the other hand, airline mergers and alliances can reduce competition and enhance market power.

The relative balance of efficiency vs. anti-competitive effects must be a careful one and there is no simple test to ensure that the former will prevail over the latter a result of a merger. In the airline sector, various remedies to offset anti-competitive effects (for instance provisions ensuring access to computer reservation systems, access to airport facilities and an obligation to inter-line) and consideration of divestiture (e.g. the divestment of slots) or separation in cases of dominance are nevertheless useful elements that need to be taken into account during the merger investigation.

2.4. Republic of South Africa: Bayer-Aventis merger[26]

Summary

The Competition Commission has conditionally approved the merger between Bayer (Pty) Ltd, a local subsidiary of a subsidiary of Bayer AG, Germany and Aventis CropScience (Pty) Ltd (a subsidiary of Aventis CropScience Holding SA, France), providing Bayer divests itself of several of its brands of agricultural insecticides and fungicides. Bayer is a broad-based and highly diversified

[25] Source: *Global Competition Review*, 20 March 2002.

[26] Source: Decision no.44/AM/Jun02 of the Competition Tribunal, Republic of South Africa, and Media Release (11 - 9 July 2002) of the Competition Commission, Republic of South Africa.

chemical and pharmaceutical company and has four main business segments; namely healthcare, agriculture, polymers and chemicals. Aventis is a life sciences company born out of a merger in 1999 between the agriculture and pharmaceutical businesses of Hoechst and Rhone Poulenc. Aventis CropScience (ACS) is the crop protection division, which includes agrochemicals, seeds and products for non-agricultural use in public health and safety. The transaction relates only to crop protection chemicals. The crop protection products protect crops against all manners of damage that might be caused by weeds (herbicides), insects (insecticides) or fungi (fungicides). This merger forms part of an international merger that had been notified in several countries between Bayer AG and Aventis Agriculture SA (France), Hoechst AG (Germany) and SCIC Holdings LLC. In terms of this merger, Bayer will acquire the business of ACS. Pursuant to the international merger, Bayer AG will acquire the respective shareholdings of the latter corporations in Aventis CropScience Holding SA (France) which is the owner of the target firm.

One of the competition concerns explored was that new entrants would likely face high barriers to entry. The Commission examined the following market areas under the proposed transaction for product overlaps: insecticides, herbicides, fungicides and seed treatment products. Competition concerns arose in the agricultural insecticide and fungicide markets, where the divestitures of products and production is to take place. The Competition Commission found that the proposed transaction is likely to prevent or substantially lessen competition in the cereal fungicides market, fungicides for foliar treatments market, agricultural fungicides market, soil insecticides market, nematicides market, pyrethroids market and foliar insecticides market and insecticides for the control of aphids in various crops and has consequently recommended a number of divestitures by the two companies. Further, the Commission has requested the merged enterprise to discontinue third party distribution of certain products. The Competition Commission also found that the proposed transaction would create or strengthen a dominant position on the market for certain agricultural fungicides protecting cereal and fungicides for treating botrytis on grapes in South Africa.

Commentary

The importance of this case stems from the size of the two companies and their worldwide presence. Bayer ranks seventh of all agrochemical companies in terms of worldwide sales. ACS ranks fourth on the world-wide scale. Together they will become the second largest in the world with a market share of about 25%, according to the South African Competition Commission. Therefore, the effects of the proposed merger will probably be significant in other markets as well, apart from South Africa. Another interesting feature of this case is that in evaluating the effects of the proposed merger, the Commission took into account the broader objectives of competition policy for economic development and also examined public interest issues, including the impact on employment, black empowerment and international competitiveness. In this merger, the Commission notified the relevant trade union, the South African Chemical Union (SACWU), which did not file a notice of intention to participate. In its analysis, the parties notified the Commission that they expected 61 job losses to occur, but were offering skills training and placement services to ameliorate the negative effect on the economy.

2.5. European Union: Mitsui/CVRD merger[27]

Summary

Under the terms of the proposed transaction, Companhia Vale do Rio Doce (CVRD) (Brazil) and Mitsui & Co. Ltd (Mitsui) (Japan) would acquire joint control of Caemi Mineração e Metalurgia SA (Caemi). Caemi's assets principally consist of Brazilian iron ore mining company Mineração Brasilieras Reunidas (MBR) and a 50-percent stake in Canadian iron ore producer Quebec Cartier Mining Company (QCM). Mitsui already held 40% of the voting shares of Caemi.

The deal was notified for clearance in June 2001 in the European Economic Area. The Commission decided to launch an in-depth investigation, which has shown that the proposed transaction would lead to the creation, if not the strengthening, of a dominant position in the seaborne supply of iron ore pellets. The investigation revealed that the remaining competitors, principally Rio Tinto and BHP, as well as the smaller Swedish company LKAB, would not be likely to be able to effectively constrain Mitsui/CVRD/Caemi's market behaviour. For similar reasons, the Commission concluded that the operation would also lead to the creation or strengthening of a dominant position in the seaborne market for direct reduction iron ore.

The European Commission has approved the proposed acquisition after the parties offered to divest Caemi's 50% interest in QCM, thereby eliminating the "overlap" between CVRD's and Caemi's production of iron ore pellets. As a result, the commitment removed the Commission's competition concerns in relation to the supply of these products, and in relation to the supply of direct reduction ore. This conclusion has been borne out by market enquiries - addressed to competitors and customers of the merging iron ore companies - regarding both the future viability of QCM and regarding its ability to provide effective competition in the markets concerned.

Commentary

The case is interesting because, although the deal could have effects in Europe, the substantial matters are confined to Brazil (with equity ramifications in Japan, Canada, and Australia). CVRD is a diversified mining company with its headquarters in Rio de Janeiro, Brazil. It is the world´s largest iron ore producer and the leading supplier of iron ore to Europe. CVRD also has significant interests in related commercial transport infrastructure, including railways and port operations. With the acquisition of Caemi, CVRD will control all Brazilian mining companies exporting iron ore. Mitsui, based in Tokyo, is a Japanese trading concern. It has worldwide trading activities in various commodities including iron ore. Mitsui holds minority stakes in a number of iron ore mining companies, including a significant stake in the world´s second largest individual iron ore mine, Robe River in Australia. It also has a controlling stake in a small Indian iron ore producer. Caemi is the world´s fourth largest iron ore producer and holds equity investments in a number of Brazilian and Canadian mines producing iron ore as well as other metals and minerals.

The merger will have an impact on worldwide competition in the supply of iron ore, which is used almost exclusively in steel making. Iron ore transported by ship represents about 45% of all traded iron ore, and the main sources of seaborne supply are located in Brazil and Australia. Participation in the seaborne trade depends on some significant barriers to entry, as this activity requires access to specific infrastructure such as dedicated railways suitable for the transportation of very large tonnages and deep-water harbours. The competitive impact of the merger would

[27] Source: European Commission Press Release no. IP/01/1515 Brussels, 30 October 2001.

therefore have a likely impact on numerous steel producers worldwide that do not have sufficient local supplies of iron ore and are dependent on "seaborne" iron ore.

2.6. Croatia: ZABA/ UniCredito and Allianz merger[28]

Summary

The takeover of Zagrebacka banka d.d., Zagreb (hereinafter referred to as ZABA) (Croatia) by UniCredito Italiano S.p.A. (hereinafter referred to as UniCredito) (Italy) and Allianz AG (Germany) (hereinafter referred to as Allianz) has been initially prohibited by the Agency for Protection of Market Competition of Croatia. Based on comprehensive analyses carried out in the Agency, the Council for Protection of Market Competition has assessed that the takeover of ZABA by UniCredito and Allianz would mean its further growth and increase of its own sources of financing, which the Council did not consider negative from the aspect of competition. Therefore, in principle, the Council did not oppose to the takeover of ZABA by the UniCredito and Allianz, but has noticed that, should the intended takeover of ZABA be carried out, a powerful concern would be created in the Croatian market.

However, after further negotiations the merger was conditionally approved. Following a series of consultative meetings between UniCredito and Allianz, the Agency and the representatives of the Croatian National Bank, and the State Agency for Bank Rehabilitation the Council for Protection of Market Competition approved the merger, subject to UniCredito's divestiture of Splitska banka. The Agency further decided that it will consider the divestiture of Splitska banka in separate proceedings and that it shall not consider it acceptable if the potential buyer would by itself or with connected persons acquire in that way the market share in the universal banking market in the territory of the Republic of Croatia exceeding 20%. Bank Austria notifed its intention to acquire Splitska banka through its Croatian subsidiary, HVB Bank Croatia. The Agency evaluated the concentration created by acquisition of Splitska banka by Bank Austria/HVB and, as the market share condition imposed was fulfilled, approved the acquisition. Although the data which the applicant submitted to the Agency showed that HVB Group has a minority ownership connection with Allianz (and thus indirectly with UniCredito and ZARA), the Agency considered that such a connection does not imply the coordination of activities between the various banks in the Croatian market.

Commentary

The case is interesting as many developing countries and economies in transition are currently engaged in deregulation and privatization of their banking sectors. As the case included above suggests, competition authorities need to take into account the multiple linkages that are the result of global financial liberalization bypassing regulatory restrictions which used to divide the market of banking and insurance services. This case is also interesting for the way in which the competition authority balanced the various interests at stake: promotion of foreign direct investment and maintenance of competition in the banking sector. It was therefore expected that the efficiencies resulting from the concentration in question would result in benefits for the users of banking

[28] Source: information provided in the 2002 Annual Report of the Agency for Protection of Market Competition of Croatia.

services, such as a diversification of products, lower fees for banking services and other financing arrangements, or other benefits as the result of the rationalization of the business activities.

2.9. Australia: Alcoa/Reynolds merger[29]

Summary

Alcoa (USA) and Reynolds Metals (USA) are major international aluminium producers, with operations covering bauxite mining, alumina refining, aluminium smelting and processed aluminium products. In Australia, Alcoa operates three alumina refineries in Western Australia while Reynolds had a controlling stake in the Worsley alumina refinery, also in Western Australia. The ACCC conducted extensive market inquiries and these revealed that the merged entity would have controlled almost 50% of the worldwide trade in untied alumina sales.

In considering the proposed merger the ACCC liaised with European and American authorities in trying to reach an effective outcome. The Australian Competition and Consumer Commission has decided not to intervene in the proposed global merger between Alcoa and Reynolds Metals, based on the fact that Alcoa has offered undertakings to the American and European authorities to divest itself of the interest in the Worsley alumina refinery and these undertakings are sufficient to allay the concerns of the ACCC.

Commentary

The case is relevant of the benefits of international cooperation between competition authorities in merger review investigations. Such a level of concentration stemming from the Alcoa/Reynolds merger raised concerns not just for the ACCC but also for other competition authorities worldwide. The ACCC's decision to recognise undertakings given to other competition authorities as an effective remedy shows that cooperation between competition authorities can lead to streamlined outcomes and eliminates the risk of over-regulating the merger process. As more and more global mergers occur, such cooperation will enhance the way in which competition issues are resolved, streamlining the investigation process and minimizing the costs incurred by companies involved in mergers.

[29] Source: Media Release by the Australian Competition and Consumer Commission (4 May 2000).