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**COMPILATION OF THE RESPONSES TO THE UNCTAD  
QUESTIONNAIRE**

**SESSION III: The role of competition policy in promoting economic  
development.**

# COMPILATION OF THE RESPONSES TO THE UNCTAD QUESTIONNAIRE

## SESSION III: The role of competition policy in promoting economic development.

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## Austria

1. *Please provide us with case examples of decisions (taken over the last 5 years) by the competition authority of your country, which have contributed either directly or indirectly to the achievement of the objectives of competition laws and the mission of the competition authority of your country.*

*In such cases, please elaborate on how such decisions contributed to the following:*

- (a) Development of economic sectors*
- (b) Increased investment (domestic and foreign)*
- (c) Increased trade (exports and imports)*
- (d) Enterprise or private sector development*
- (e) Consumer welfare*
- (f) Policy making by government*

Examples:

Excessive Pricing: Remedies for the Jet Fuel Market at Vienna International Airport

Following comprehensive investigations (for details see Annual Report 2006/2007) the FCA opened a proceeding concerning excessive pricing of the oil and gas corporation OMV in the jet fuel market at the Vienna International Airport (VIE) with the Cartel Court, the decision making body in antitrust matters.

The FCA aimed at imposing structural remedies able to address the two main competition issues:

- OMV controls - on the site of its refinery (in 7 km distance from the airport) - the only viable supply alternative: rail transport. Furthermore, the sole storage facilities linked to the rail discharging installations as well as the pipeline to the airport are part of the refinery installations of OMV.
- The control of the supply chain mentioned above together with the joint control of the hydrant installations under the airfield (FSH) enables OMV to closely monitor all the supply of the competitors.

To speed up the procedure, the FCA discussed intensively appropriate remedies with OMV. Finally, OMV agreed. After the commitments were subjected to a market test, the Cartel Court imposed three structural remedies on OMV in April 2008. (For details:

[http://www.bwb.gv.at/BWB/Aktuell/vie\\_omv\\_04042008.htm](http://www.bwb.gv.at/BWB/Aktuell/vie_omv_04042008.htm))

1. The whole alternative supply chain from the railway discharging facility to the airfield has to be opened to all interested parties in a clear, transparent and foreseeable manner. As all these installations are imbedded into the refinery, a detailed technical annex for the conditions of use was elaborated and is integral part of the remedies.
2. OMV has to disinvest its share of FSH; a trustee is mandated with the disposal.
3. OMV has to prevent the information flow concerning the supply of competitors between its logistics units and its jet fuel sales unit.

#### Hydrant installations under the airfield (FSH)

The FCA also investigated a possible price abuse of FSH. Its hydrant installations constitute an essential facility as no other means exist to deliver the jet fuel into the airplane. It is therefore comparable to other essential parts of airport infrastructure. In the end the FCA decided not to file an application with the Cartel Court as competition problems could be solved by other means:

1. By its investigations the FCA initiated a change in the law governing airport infrastructure: as of January 2008 hydrant installations became subject to regulation.
2. The regulator (Ministry of Traffic) almost finalised the administrative procedures to which the FCA contributed its extensive cost calculations.

#### ORF / ÖSV Ski World cup media rights

Since 2002 TV and radio broadcasting activities have been liberalized in Austria. ORF - the former public law broadcaster - still has considerable market power particularly with regard to TV advertising markets. ÖSV - the national association of regional and local skiing clubs - is marketing media rights relating to Austrian Ski Worldcup events. In 2001 ÖSV and ORF concluded an agreement conferring to ORF the exclusive right of transmission of all Austrian Ski World Cup events via TV (and partly as well on radio) for the seasons 2002/3 until 2011/12. Competitors had no opportunity to participate in tender procedures. In 2006 the FCA informed ORF and ÖSV that several clauses of the contract were considered to violate Art. 81 EC and started negotiating on commitments. In July 2006 a formal procedure at the Cartel Court under §§ 26, 27 Cartel Act was opened by the FCA. In February 2008 the Cartel Court made the commitments agreed upon by decision binding on ORF and ÖSV. As part of the commitment the parties agreed to abolish exclusivity granted by the treaty concluded by ORF and ÖSV in 2002/3.

ÖSV agreed to tender pay TV rights, parallel TV news coverage and rights for radio transmission for the seasons 2008/9 to 2011/12. The commitments contain also basic rules for the tendering procedure for all media rights concerning Austrian Ski World Cup events for five seasons after 2011/12 (e.g. a no single buyer rule for TV transmission rights).

2. *Please send to us copies (by email or by web links) of (i) sectoral or macro-level studies assessing the state of competition in your country and (ii) studies assessing the impact and effectiveness of competition laws and policy in your country.*

We do not have studies specifically indicating the effectiveness of competition law in our country.

However, sector inquiries have been carried out in the grocery sector and in newly liberalised markets in the energy sector (in cooperation with the energy regulator), regarding electricity and gas, and the fuel market. The trigger for the latter sector inquiry was similarities in prices and price movements and complaints voiced by automobile clubs and consumer protection associations.

You find them under the following links:

[http://www.bwb.gv.at/BWB/English/groceries\\_sector\\_inquiry.htm](http://www.bwb.gv.at/BWB/English/groceries_sector_inquiry.htm)

<http://www.bwb.gv.at/BWB/English/electricity.htm>

<http://www.bwb.gv.at/BWB/Aktuell/Archiv2006/buend.htm>

In spring 2008 the FCA started an investigation into the Austrian gasoline retail markets (pump prices). Taking into account the scarcity of resources FCA did not intend to cover all the features of these markets but concentrated its efforts on specific issues. In July 2008 FCA published a First report:

([http://www.bwb.gv.at/BWB/Aktuell/spritpreis\\_23072008.htm](http://www.bwb.gv.at/BWB/Aktuell/spritpreis_23072008.htm)) which covered two topics:

- 1- Do Austrian pump prices follow Platts notations in an asymmetric order?
- 2- Can variance screen tests give indications for tacit collusion on the Austrian market?

The FCA built up (with the help of auto-touring associations) a huge data bank covering on average 1700 (out of approximately 2500) gasoline stations over a period of five years.

For gaps in the data series the estimations could only be based on the period September 2004 to March

2008. The result of the econometric estimations pointed to a lagged response (of approximately 2 days) of Austrian prices if Platts notations go down in comparison to the reaction to an upward movement of Platts notations.

1-Using the average price data the European Commission publishes weekly for Diesel as well as Super95 prices, the FCA tried to apply a variance screen test. The calculations were based on the time span January 2000 to May 2008 for fifteen member states. The calculation exercise was done with net as well as with gross prices; as statistics the variation of first differences as well as the variation coefficient of prices were applied. To summarize, the variance screen test showed no reliable results: The ranking of several member states differed significantly if net or gross prices were used and depended also on the type of statistics. The investigation is still in progress.

3. *Please elaborate on any special features that the competition law and policy of your country may contain that were designed to address specific development objectives on the part of government or to address special development conditions in your country.*

*Examples:*

*a. Features addressing public interest objectives*

*b. Exemptions with specific objectives (industrial policy, Small and medium-sized development, informal sector, black markets)*

*c. Special programs for minority groups, certain interest groups or specific sectors.*

There are no specific features except for a provision safeguarding media diversity, the impediment of which can be a ground for prohibition of mergers.

## Azerbaijan

1. *Please provide us with case examples of decisions (taken over the last 5 years) by the competition authority of your country, which have contributed either directly or indirectly to the achievement of the objectives of competition laws and the mission of the competition authority of your country.*

*In such cases, please elaborate on how such decisions contributed to the following:*

- (a) Development of economic sectors*
- (b) Increased investment (domestic and foreign)*
- (c) Increased trade (exports and imports)*
- (d) Enterprise or private sector development*
- (e) Consumer welfare*
- (f) Policy making by government*

The competition policy is an integral part of economic policy in the Republic of Azerbaijan. Implementation of competition authority's powers relieves to create favorable condition for free entrepreneurship and fair competition, demonopolize of economy and improvement of competition, to prevent and eliminate of monopoly activity of market participants, conclusion of contracts (agreements) by them which limit the competition and their concerted activity, to prevent and eliminate of unfair competition in ownership activity, formulate pricing of goods on competition basis in the market and free choice of consumers.

2. *Please send to us copies (by email or by web links) of (i) sectoral or macro-level studies assessing the state of competition in your country and (ii) studies assessing the impact and effectiveness of competition laws and policy in your country.*

Analyses of efficiency and impact of competition legislation and policy are placed in web-sites ([www.economy.gov.az](http://www.economy.gov.az) and [www.consumer.gov.az](http://www.consumer.gov.az)) periodically.

3. *Please elaborate on any special features that the competition law and policy of your country may contain that were designed to address specific development objectives on the part of government or to address special development conditions in your country.*

*Examples:*

*a. Features addressing public interest objectives*

*b. Exemptions with specific objectives (industrial policy, Small and medium-sized development, informal sector, black markets)*

*c. Special programs for minority groups, certain interest groups or specific sectors.*

Adopted state programmes on socio/economic development of regions, regular monitoring on purpose of prevention of artificial overvaluation to secure competitiveness of foodstuffs and vegetables which have specific weight in consumer basket are examples of such activities aimed to economic development goals in competition legislation and policy.



## Benin

1. *Prière de nous fournir des informations sur les exemples de décisions rendus par les autorités de concurrence de votre pays, qui ont contribué soit directement ou indirectement à atteindre les objectifs fixé par la législation nationale ou ceux de l'autorité nationale de concurrence.*

*Dans ces circonstances prière d'insister sur la manière dont de telles décisions ont eu une influence sur les points suivants. :*

- (A) *Le développement des secteurs d'activités économiques*
  - (B) *L'accroissement des investissements nationaux et étrangers*
  - (C) *L'accroissement du commerce (les importations et exportations)*
  - (D) *Le développement des entreprises et du secteur privé*
  - (E) *Le bien être des consommateurs*
  - (F) *La politique gouvernementale*
2. *Prière de nous envoyer (i) les copies des études sur l'état de la concurrence dans votre pays, (ii) les études sur l'évaluation de la mise en application effective du droit et de la politique de la concurrence dans votre pays.*
  3. *Prière de nous donner des indications sur les points spécifiques de votre loi sur la concurrence qui sont relatives au développement, notamment :*
    - a. *Les points spécifiques qui traitent des questions relatives à l'intérêt public.*
    - b. *Les exemptions spécifiques et leurs justifications (la politique industrielle, les petites et moyennes entreprises, le secteur informel, les marchés noirs).*
    - c. *Un programme spécial pour les minorités, certains groupes d'intérêt ou secteurs spécifique.*

Au Bénin, l'autorité actuelle chargée des questions de concurrence est sous la tutelle du Ministère du Commerce. Aucune décision n'a été rendue par cette dernière.

Points spécifiques du projet de loi sur la concurrence relatifs à :

### **a- l'intérêt public**

Dans le cadre de l'intérêt public, le projet de loi portant organisation de la concurrence en République du Bénin a prévu un titre VI comportant quatre (04) articles qui traitent : **DE LA SECURITE DU CONSOMMATEUR**. Il s'agit des articles ci-après :

**Article 50** : Les produits et les services doivent, dans des conditions normales d'utilisation ou dans d'autres conditions raisonnablement prévisibles par le professionnel, présenter la sécurité à laquelle le consommateur peut légitimement s'attendre et ne doivent pas porter atteinte à la santé des personnes.

**Article 51** : Les produits ne satisfaisant pas à l'obligation générale de sécurité prévue à l'article 50 ci-dessus sont interdits ou réglementés par arrêté du Ministre chargé de la Concurrence ou conjointement avec le ou les Ministres concernés, pris après avis du Conseil National de la Concurrence.

**Article 52** : En cas de danger grave ou immédiat, le Ministre chargé de la Concurrence et le ou les Ministres concernés peuvent suspendre par arrêté pour une durée nécessaire à l'éradication du danger, la fabrication, l'importation, l'exportation, le stockage ou la conservation, la mise sur le marché à titre gratuit ou onéreux d'un produit. Ils peuvent aussi faire procéder à son retrait en tous lieux où il se trouve ou sa destruction lorsque celle-ci constitue le seul moyen de faire cesser le danger. Ils ont également la possibilité d'ordonner la diffusion de mises en garde ou de précautions d'emploi ainsi que la reprise en vue d'un échange ou d'une modification ou d'un remboursement total ou partiel. Ils peuvent dans les mêmes conditions suspendre par arrêté la prestation d'un service.

**Article 53** : le Ministre chargé de la Concurrence et le ou les Ministres concernés peuvent adresser aux fabricants, importateurs, distributeurs ou prestataires de services des mises en garde et leur demander de mettre les produits et services qu'ils offrent au public en conformité avec les règles de sécurité.

- Ils peuvent prescrire aux professionnels concernés de soumettre au contrôle d'un organisme habilité, dans un délai déterminé et à leurs frais, leurs produits ou services offerts au public quand, pour un produit ou un service déjà commercialisé, il existe des indices suffisants d'un danger ou quand les

caractéristiques d'un produit ou d'un service nouveau justifient cette précaution.

- Lorsqu'un produit ou service n'a pas été soumis au contrôle prescrit en application du présent article, il est réputé ne pas répondre aux exigences de l'article 50 ci-dessus sauf si la preuve contraire en est rapportée.

#### **b- les exemptions spécifiques**

Les exemptions spécifiques prévues par le projet de loi sur la concurrence ont trait d'une part à la vente à perte et d'autre part au refus de vente. Les raisons qui justifient cette disposition sont celles-ci :

##### **- Vente à perte**

L'interdiction de la vente à perte n'est pas applicable :

- aux produits périssables à partir du moment où ils sont menacés d'altération rapide ;
- aux ventes volontaires ou forcées, motivées par la cessation ou le changement d'une activité commerciale ;
- aux produits dont la vente présente un caractère saisonnier marqué, pendant la période terminale de la saison des ventes et dans l'intervalle compris entre deux saisons de ventes ;
- aux produits qui ne répondent plus à la demande générale en raison de l'évolution de la mode ou de l'apparition de perfectionnements techniques ;
- aux produits dont le réapprovisionnement s'est effectué ou pourrait s'effectuer en baisse, le prix effectif d'achat étant alors remplacé par le prix résultant de la nouvelle facture d'achat ou par la valeur de réapprovisionnement ;
- aux produits dont le prix de revente est aligné sur le prix légalement pratiqué pour les mêmes produits par un autre commerçant dans la même zone d'activité.

##### **- Refus de vente et conditions discriminatoires**

- Le refus de vente se justifie dans les cas suivants :
- l'indisponibilité matérielle ou juridique du produit ;
  - la quantité demandée est anormale au regard des besoins de l'acheteur ou de la capacité de production du fournisseur ;
  
  - la demande est manifestement contraire aux modalités habituelles de livraison du vendeur par exemple en ce qui concerne le conditionnement, les horaires de livraison, les modalités de paiement ;
  - le demandeur tente d'imposer son prix ;
  - le demandeur pratique systématiquement le prix d'appel sur les produits du fournisseur ;
  - le demandeur est de mauvaise foi, c'est-à-dire qu'il a l'intention de nuire au fournisseur ;
  - le demandeur ne présente pas de garantie suffisante de solvabilité ;
  - la loi réserve la commercialisation à des personnes déterminées (cas des médicaments par exemple) ;
  - le demandeur n'est pas jugé qualifié par le fournisseur (cas de la concession commerciale exclusive et de la distribution sélective) ;
  - les motifs d'ordre politique, de sécurité, de santé ou de morale publique.

L'appréciation des motifs politiques relève de la compétence de l'Etat.  
En ce qui concerne le secteur informel et les marchés noirs, le projet de loi n'a pas prévu d'exemptions spécifiques.

## **Brazil**

1. *Please provide us with case examples of decisions (taken over the last 5 years) by the competition authority of your country, which have contributed either directly or indirectly to the achievement of the objectives of competition laws and the mission of the competition authority of your country.*

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All CADE's decisions have contributed either directly or indirectly to the achievement of the objectives of our competition law. When settling a case CADE always look forward to promote the development of the Brazilian economy, including making our country more attractive to foreign investments. Besides, the consumer welfare is one of main concerns of CADE's decisions, especially because a decision which does not take into account its consequences to the citizens can not be legitimate. In this sense, we mention the following cases as examples:

### **2007**

#### **The Vigilant Cartel**

##### **Administrative Proceedings No. 08012.001826/2003-10**

**Plaintiff:** Secretariat of Economic Law (ex-officio)

**Defendants:** Rota-Sul Empresa de Vigilância Ltda.; Vigilância Antares Ltda.; Vigilância Pedrozo Ltda.; Protege Serviços de Vigilância Ltda.; Vigilância Patrulhense S/C Ltda.; Vigitec; ASSEVIRGS-Associação das Empresas de Vigilância do Rio Grande do Sul; Delta Serviços de Vigilância Ltda.; Angra Log. De Segurança S/C Ltda; EBV-Empresa Brasileira de Vigilância; EPAVI-Empresa Portoalegrense de Vigilância Ltda.; J.M. Guimarães Empresa de Vigilância Ltda.; MD Serviços de Segurança Ltda.; Mobra

Serviços de Vigilância Ltda; Protevale Vigilância e Segurança Ltda; Reação Segurança e Vigilância Ltda; Rudder Segurança Ltda; Segurança e Transporte de Valores Panambi Ltda; Seltec Vigilância Especializada Ltda; Sênior Segurança Ltda; Sindi-Vigilantes do Sul; Vigilância Asgarras S/C Ltda; Secure Sistemas de Segurança Ltda., and 29 individuals.

**Summary:** CADE concluded on September 19, 2007, that companies providing security guard services in the State of Rio Grande do Sul engaged in a hard core cartel to take part in public and private bid processes together with their trade associations. They were deemed to be infringing Brazilian antitrust law (Articles 20, I, and 21, I and II, of Law No. 8,884/94).

This case is of greater importance because it was the first case judged based on a leniency agreement. CADE considered that it was duly performed, as stated by SDE, and upheld it, thus granting full immunity to the beneficiaries.

Moreover, the Council strongly relied on concrete evidence brought by the applicants for leniency as well as audio records of telephone conversations and documents collected in dawn raids.

As to the relevant markets adopted by CADE, they were not only bidding processes of security guard services in the State of Rio Grande do Sul but also each of the biddings investigated. The market has been found to possess characteristics which foster concerted practices such as high entry barriers, low number of companies, homogeneity of the services and presence of trade associations.

Concerning the functioning of the cartel, CADE found that since 1990 the companies had engaged in concerted practices, dividing contracts among themselves and adopting predatory pricing to combat companies trying to break the cartel rules.

Seized evidences showed that the parties held regular meetings at the association's headquarters (SINDESP), in restaurants and even at barbecue parties in order to organize

the outcomes of bids for public tenders and the amount the recipient of the contract should quote. Furthermore, the bid-rigging participants tried to manipulate the requirements that a company had to meet in order to qualify to participate in public tenders.

Besides, CADE considered that the trade associations and the security guards labor union collaborated in the practices by notifying labor irregularities of companies which were not part of the cartel to the Labor Government Officials.

Relying on the evidence, the Council considered that the parties' cooperation with each other in relation to price fixing and bid rigging had the purpose of preventing, restricting or distorting the competition process. As a result, sixteen companies and three associations were unanimously condemned. Also, eighteen companies' top managers and heads of the trade association and the labor union were also found guilty by the majority of the Council. Five companies and its managers were held innocent for insufficient proof.

CADE imposed a fine of 15% of companies' gross revenues for the year 2002 plus an increase of 5% for the leaders, which included the Trade Association. The managers were charged a fine of 15% to 20% of the respective companies' penalty.

The criteria used in fixing the amount were the gravity of the infraction, the degree of harm following article 27 of Law No. 8,884/94 and case law, especially the crushed rock cartel condemned in 2005. Consequently, the amount of penalties rose up to BRL 40 millions (approximately USD 20 millions).

In addition to that, companies were prohibited to take part in bidding processes sponsored by the government and to engage in contracts with official financial institutions for the period of five years. The decision had to be published in a major newspaper at Rio Grande do Sul State, at the expenses of the convicted trade associations and labor union. CADE's decision was sustained by the a quo judge.

## **2008**

## **The Maritime Hoses Cartel**

### **Administrative Proceedings No. 08012.010932/2007-18**

**Plaintiff:** Secretariat for Economic Law (Secretaria de Direito Econômico – SDE) ex officio

**Defendants:** 1) Bridgestone Corporation; 2) Dunlop Oil and Marine Ltd.; 3) Kleber (Trelleborg Industrie S.A.); 4) ITR Oil and Gas Division/Pirelli (Grupo Parker Hannifin); 5) The Yokohama Rubber Co. Ltd.; 6) Manuli Rubber Industries SpA; 7) Sumitomo Rubber Industries, K.K.; 8) Hewitt-Robins; 9) Goodyear do Brasil Produtos de Borracha Ltda.; 10) Pagé Indústria de Artefatos de Borracha Ltda.; 11) Flexomarine S.A.

**Executives:** 1) Massimo Nebiolo; 2) Antônio Carlos Araes; 3) Maria Lúcia Peixoto Ferreira Leite Ribeiro de Lima; 4) Sílvio Rabello; 5) Charles Gillespie; 6) Jacques Cognard; 7) Christian Caleca; 8) David Brammar; 9) Bryan Allison, 10) Peter Owen Whittle; 11) Romano Piscioti; 12) Giovanni Scodeggio; 13) Teruo Suzuki; 14) Fumihiko Yazaki; 15) Hajime Kojima; 16) Yukinori Honda; 17) Kota Kusaba; 18) Kazuki Kobayashi.

**Summary:** On August 27, 2008, CADE entered into a settlement (Plea Agreement on Conduct Case – “TCC”) with Bridgestone Corporation to suspend, in relation to this company, an administrative proceeding opened to investigate the existence of an international cartel in the worldwide market for maritime hoses. Under the TCC, Bridgestone undertook to pay a fine in the amount of R\$1.5 million and to collaborate with the investigations in progress. In addition to these undertakings, Bridgestone expressly acknowledged its participation in the conduct investigated. This is the first TCC signed in a cartel case which originated from a leniency agreement, and it is the first time that a company signing a TCC has expressly acknowledged its participation in the conduct. Following the signature of such agreement, other two defendants also settled the case with CADE (Manuli and Trelleborg), providing for cooperation, payment of pecuniary contribution and admission of guilt.

## **2008**



## **AMBEV's bottle**

### **Administrative Appeal No. 08700.002874/2008-81**

**Apellant:** Companhia de Bebidas das Américas – AMBEV

**Summary:** In 2008, AMBEV, a company which detains the main brands of the commercialized beers in Brazil, launched a 630mL bottle. Its competitors filed a complaint arguing that the new bottle would affect the common 600mL glass bottle exchange program with the beer retailers and that it would artificially raise the production costs of AMBEV's rivals, ultimately harming the market and consumers. In sum the practice would allow a slumber of the current position of AMBEV in market.

SDE decided to open a file to investigate the matter and issued an interim measure prohibiting AMBEV of commercializing the new bottles until a final decision was reached.

AMBEV appealed to CADE and the Council partially reformed SDE's preventive decision, by allowing AMBEV to commercialize the new bottles in some regions and, at the same time, creating a temporary bottle exchange program that transferred most of the exchange costs to AMBEV, until the investigations are over and a final decision is rendered.

## **2009**

### **“Tô Contigo”**

### **Administrative Proceeding No. 08012.003805/2004-10**

**Plaintiff:** Primo Schincariol

**Defendants:** Companhia de Bebidas das Américas - AmBev

**Summary:** In 2004, the Secretariat of Economic Law initiated an Administrative Proceedings against AmBev, a company which detains the main brands of the commercialized beers in Brazil, to investigate if its loyalty program called “Tô Contigo” could produce anticompetitive effects in the market.

In accordance with the advertisements of the Program, the sale shops could earn points, depending on the amount and type of beers acquired, and they could later be exchanged for gifts. Thus, in a formal point of view, the Program “Tô Contigo” would be a simple linear program of awarding. However, inspections and market researches showed that AmBev demanded exclusiveness of the sale shops as a requisite to participate in the Program.

At the end of the investigation, SDE concluded that the Program “Tô Contigo” had an anticompetitive potential, as it reduced the degree of contestability of the market and artificially increased the barriers of entrance. Thus, in March 2007, the process was sent to CADE with suggestion of conviction for abuse of dominant position.

After some complementary instructions, in July 2009, CADE convicted AMBEV for the practices appointed in articles 20, I and IV, and 21, IV, V, and VI, of Law No. 8,884/94. It was imposed, among other sanctions, a fine of 2% of companies’ gross revenues of 2002, in the value of R\$ 352,693,696.52, (US\$ 205,6 million) which is recognized as the biggest fine in the Council’s history.

### **Unimed-HCAA**

#### **Administrative Proceeding No. 08012.008853/2008-28**

**Applicants:** Hospital de Caridade Dr. Astrogildo de Azevedo e Unimed Santa Maria – Sociedade Cooperativa de Serviços Médicos Ltda.

**Summary:** Unimed Santa Maria offers health plans, medical and hospital services in Santa Maria, RS. The Charity Hospital Dr. Astrogildo de Azevedo (HCAA) is active in the medical and hospital services and supplies health plans (Carimed) in the same city. In this city, both parties dominate almost all the relevant markets affected. The transaction between the parties produced structures close to monopoly in some of the relevant markets affected, as shown in the table below. Moreover, the transaction has also promoted a vertical integration between them.

Market Shares (%): Santa Maria, RS - 2006

Parties	Individual/family health plan (%)	Collective health plan (%)	Medical and hospital services (%)
Unimed Santa Maria	77,3	87,8	----
HCAA	21,0	9,4	75,1
Unimed Hospitals	---	---	24,9
Total	98,3	97,2	100,0

Source: BCPS, 2009.

The first issue examined by SEAE was the elucidation of the transaction, since the information produced by the parties in the application form had several mistakes. Based on a new methodology for defining the relevant market in the health plans sector, and also in the health care sector, it was possible to demonstrate the possibility of the exercise of market power in those affected sector by this transaction.

This methodology is a redefinition of the product dimension and the geographical dimension, as set out in the Working Document 46/SEAE/MF – “Determination of the Relevant Markets in the Health Insurance Sector.”

Furthermore, with the introduction of a new methodology to investigate the likelihood of the exercise of market power, in which were stressed some necessary conditions for effective rivalry, it was found that this probability was not negligible.

Therefore, SEAE has assessed some issues related to the possible economic efficiencies generated by the transaction, and it concluded these did not exist, according to information provided by applicants, and also that the efficiencies could be achieved otherwise than by transaction under the new methodology.

On this transaction, SEAE suggested some sanctions against the parties for various offenses committed by them.

On July 22, 2009, the Council agreed to disapprove the transaction and to punish the parties for deceitfulness, following the new methodology established by SEAE. According to CADE, "The resulting high concentration, difficult entry into the sector, the absence of rivalry in the markets affected, and also because it did not generate any efficiency, it imposes the disapproval of the concentration act."

2. *Please send to us copies (by email or by web links) of (i) sectoral or macro-level studies assessing the state of competition in your country and (ii) studies assessing the impact and effectiveness of competition laws and policy in your country.*

The Brazilian Competition Policy System (BCPS) was subject to an OCDE Peer Review, very recently, in February 18, 2010, during the OECD Global Forum on Competition.

The assessment regarding our Peer Review was overall favorable to the BCPS (Brazilian Competition Policy System). In its conclusion the Report of the 2010 OECD Peer Review mentioned that "The 2005 Report detailed the progress that the BCPS had made since the beginning of the decade, and the system has continued to build on those achievements".

The report indicated some strengths and weaknesses and made recommendations to the BCPS. The assessment recognized the significant improvements of the BCPS anti-cartel program which became more active and effective, as well as the development of its anti-cartel investigative skills, making full use of the tools available to it – dawn raids, the leniency programme, inspections (visits to business offices with notice) and computer forensic techniques. The second achievement appointed by the assessment was the implementation of a fast track merger review process that now applies to as many as 70% of the mergers notified to the BCPS, freeing resources for other work, notably the anti-cartel programme, and benefiting the business community by speeding the approval of their transactions. The fast track process now has another beneficial effect, that of paving the way for premerger notification.

The OCDE Peer Review on Competition Law and Policy in Brazil can be found in our website through the link:

[http://www.cade.gov.br/upload/2010PeerReview\\_ingl%C3%AAs.pdf](http://www.cade.gov.br/upload/2010PeerReview_ingl%C3%AAs.pdf)

In regard to studies assessing the impact and effectiveness of competition laws and policy in Brazil, there are no studies concerning this matter. Although, it is important to highlight that Brazil is co-Chair in the Agency Effectiveness Working Group (AEGW) of the International Competition Network (ICN). Currently, CADE's work in the ICN is oriented to the elaboration of a Guide on Agency Effectiveness, that will encompass the following chapters: (i) Strategic Planning and Prioritisation (already finished); (ii) Effective Project Delivery (in development); (iii) Effective Knowledge Management (to be initialized soon); (iv) Human Resources Management (to be initialized soon); (v) Ex-post Evaluation (to be initialized soon); (vi) Communication and Accountability (to be initialized soon).

This guide is being elaborated through a series of exchanges on information and experiences between the members of ICN. The aim of this permutation is to identify the adoption of good practices which increase agencies' effectiveness, and make some recommendations regarding these practices, when possible.

3. *Please elaborate on any special features that the competition law and policy of your country may contain that were designed to address specific development objectives on the part of government or to address special development conditions in your country.*

*Examples:*

- a. Features addressing public interest objectives*
- b. Exemptions with specific objectives (industrial policy, Small and medium-sized development, informal sector, black markets)*
- c. Special programs for minority groups, certain interest groups or specific sectors.*

There are no special features provided for the Brazilian Antitrust Law 8,884 regarding the above mentioned objectives. Brazil's competition law has implicit in its scope the pursuit for the public interest and development. One example of such aspect is the following:

according to Brazil's competition law, Performance Agreement (TCD) shall "take into consideration the extent of international competition in a certain industry and their effect on employment levels, among other relevant circumstances".

## Burkina-Faso

1. Prière de nous fournir des informations sur les exemples de décisions rendus par les autorités de concurrence de votre pays, qui ont contribué soit directement ou indirectement à atteindre les objectifs fixé par la législation nationale ou ceux de l'autorité nationale de concurrence.

Dans ces circonstances prière d'insister sur la manière dont de telles décisions ont eu une influence sur les points suivants. :

- (G) Le développement des secteurs d'activités économiques
  - (H) L'accroissement des investissements nationaux et étrangers
  - (I) L'accroissement du commerce (les importations et exportations)
  - (J) Le développement des entreprises et du secteur privé
  - (K) Le bien être des consommateurs
  - (L) La politique gouvernementale
2. Prière de nous envoyer (i) les copies des études sur l'état de la concurrence dans votre pays, (ii) les études sur l'évaluation de la mise en application effective du droit et de la politique de la concurrence dans votre pays.  
Prière de nous donner des indications sur les points spécifiques de votre loi sur la concurrence qui sont relatives au développement, notamment :
    - a. Les points spécifiques qui traitent des questions relatives à l'intérêt public.
    - b. Les exemptions spécifiques et leurs justifications (la politique industrielle, les petites et moyennes entreprises, le secteur informel, les marchés noirs).
    - c. Un programme spécial pour les minorités, certains groupes d'intérêt ou secteurs spécifique.

### 1)-Quelques décisions de la CNCC

#### a) **AVIS n° 002 du 13/02/2008 relatif à, la flambée des prix des produits de grande consommation**

BURKINA FASO  
-----  
MINISTERE DU COMMERCE  
DE LA PROMOTION DE  
L'ENTREPRISE ET DE  
L'ARTISANAT  
-----  
COMMISSION  
NATIONALE DE LA

#### **SESSION DU 13/02/2008**

La Commission nationale de la concurrence et de la consommation (Burkina Faso) en abrégé la CNCC, régulièrement réunie en session extraordinaire du mercredi treize février deux mille huit tenue à son siège, sis au numéro 107 de la Rue5-39, Koulouba secteur 5 de Ouagadougou, sous la présidence de Madame OUEDRAOGO/ KIBORA Victoria, en présence des commissaires ci-après :

CONCURRENCE ET DE LA  
CONSOMMATION

**RG n°01** du 12/02/2008  
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**AVIS n° 002** du 13/02/2008

**Objet de la saisine:**

Projets d'Arrêtés sur :

- la fixation de la liste des produits et biens soumis au régime des prix fixés ;
- la détermination du prix de revient licite ;
- la fixation des taux de marques des marchandises et des produits d'importation ;
- l'obligation d'établir une fiche de décomposition de prix.

- COULIBALY Dihizou\*
- SOMDA Georges
- TRAORE Ibrahim,
- LENGANI Emmanuel Mamadou
- PARE André
- SANDOUIDI Alfred ;

Et avec l'assistance de l'instructeur COULIBALY Adolphe, tenant la plume pour le compte du Secrétariat permanent de la CNCC ;

A donné l'avis dont la teneur suit, concernant une requête formulée par :

Monsieur le Ministre du commerce, de la promotion de l'entreprise et de l'artisanat, 01 BP365 Ouagadougou 01 Tél. 50 32 47 86 à 99 ;

***I- RECEVABILITE DE LA REQUETE ET PROCEDURE  
SUIVIE***

Par correspondance n°08-139 datée du 12/02/2008 et reçue le même jour au Secrétariat permanent de la CNCC, Monsieur le Ministre du commerce, de la promotion de l'entreprise et de l'artisanat, ci-après désigné le requérant, a sollicité un avis relativement à des projets d'Arrêté;

Conformément à l'article 3 de la loi n°033-2001/AN du 04/12/2001 modifiant la loi n°15/94/ADP du 05/05/1994 portant organisation de la concurrence au Burkina Faso, le requérant qui a capacité, qualité et intérêt pour agir en justice, est habilité à saisir la CNCC;

Dès lors, il devient possible d'examiner la requête dans son ensemble et une session extraordinaire à cet effet a été programmée pour le 13/02/2008;

Au jour dit, la CNCC qui, pour plus d'éclairage avant sa délibération, fit appel à un technicien du commerce en la personne de Monsieur HIEN Ansomwè Ignace, Inspecteur régional des affaires économiques du Centre, vida sa saisine ainsi qu'il suit :

**II- OBJET ET CONTEXTE DE LA SAISINE**

1°) L'objet de la saisine

Quatre projets d'Arrêté du Ministre du commerce de la promotion de l'entreprise et de l'artisanat constituent l'objet de la saisine dont la finalité est de recueillir à leur sujet l'avis de la CNCC. Il s'agit :

- du projet d'Arrêté portant fixation de la liste des produits et biens soumis au régime des prix fixés ;
- du projet d'Arrêté portant détermination du prix de revient licite



d'une marchandise ou d'un produit importé et du prix de vente sortie usine des produits de fabrication locale ;

- du projet d'Arrêté portant fixation des taux de marques de marchandises et de produits d'importation ;
- du projet d'Arrêté portant obligation d'établir une fiche de décomposition de prix.

## 2°) Le contexte de la saisine

La lettre de saisine indique que c'est conformément à l'article 1<sup>er</sup> alinéa 3 de la loi n°15/94/ADP portant organisation de la concurrence au Burkina Faso, et en application de l'article 3 du décret n° 2003-615 du 26/11/2003 portant réglementation des prix des produits, biens et services soumis à contrôle, que lesdits textes sont élaborés.

En effet, il résulte de la première base légale invoquée, la possibilité pour le Ministre du commerce, d'adopter « des mesures temporaires contre des hausses excessives de prix, lorsqu'une situation de crise, des circonstances exceptionnelles ou une situation anormale du marché dans un secteur économique donné les rendent nécessaires ».

Or, les récentes hausses des prix des produits de grande consommation, constatées par ailleurs dans le Rapport technique sur la hausse des prix n° 08-19 du 11/02/2008 de l'Inspection générale des affaires économiques versé au dossier de la présente cause à la demande de la CNCC, laissent apparaître que certaines augmentations de prix entre décembre 2007 à nos jours ont atteint 117%, pour le lait en poudre 25 kg, 8% pour le lait concentré 170 g, 18% pour le fût d'huile 200 l, 24,7% pour l'huile en bidon de 20 l, et de 48% pour l'huile en carton, par exemple. Ledit rapport qui constate qu'il y a « crise », n'occulte cependant pas le fait qu'en partie, la hausse de ces prix se justifie par des paramètres économiques extérieurs, à savoir par exemple la hausse des prix fournisseurs, l'augmentation des frais de transport liée à l'augmentation de la facture pétrolière, la levée des subventions de certains produits comme le lait en Europe, la baisse des productions de riz en Asie liée aux intempéries, la réduction des surfaces exploitées pour le blé (farine de froment) au profit d'autres cultures, etc. Et que l'autre partie de cette hausse de prix est liée à certains facteurs intérieurs comme la spéculation, lesquels créent une situation anormale du marché, et basculent la hausse dans l'excès.

C'est pourquoi, dans ce contexte de crise, la CNCC estime que les mesures réglementaires envisagées par le Ministre du commerce, et dont la finalité est une surveillance des prix, sont admissibles.

### **III- APPRECIATION DE L'OBJET DE LA SAISINE ET RECOMMANDATIONS**

#### 1°) L'appréciation de l'objet de la saisine

Les différentes observations ci-après seront prises en compte et surlignées en jaune, dans le fichier informatique joint au présent avis.

a- L'observation commune aux quatre projets d'Arrêté.

Cette observation concerne l'entête des projets d'Arrêté, et précisément la liste des visas. En plus des visas qui y figurent déjà, trois (03) autres visas sont à prendre en compte à savoir :

- le visa du Traité de l'Union économique et monétaire ouest africaine (UEMOA).

**Justification légale de la nécessité de ce visa :** selon l'article 76-c du Traité de l'UEMOA, l'un des objectifs de l'Union est d'instaurer un marché commun. Pour ce faire, il a été adopté entre autres mécanismes, des règles communes de concurrence, lesquels sont dorénavant d'application exclusive en la matière. Or, les mesures réglementaires envisagées, ont des implications quant à la protection du consommateur (dont la réglementation est laissée au Droit d'origine national) mais aussi quant au libre jeu de la concurrence (qui est réglementé par le Droit communautaire UEMOA).

**Emplacement de ce visa dans l'entête :** dans la hiérarchie des textes, le Traité vient immédiatement après la Constitution, celle-ci étant le texte suprême dans l'ordonnement juridique de chaque Etat.

- le visa de la décision du Conseil des ministres.

**Justification légale de la nécessité de ce visa :** selon l'article 1 alinéa 3 de la loi n° 15/94 suscitée, c'est sur décision du Conseil des ministres, que le ministre qui a la charge du commerce est habilité à adopter des mesures temporaires contre les hausses excessives de prix. La régularité formelle des mesures réglementaires envisagées, impose donc la décision du Conseil des ministres, et l'indication en entête que cette formalité a été suivie. A défaut de ce faire, l'Arrêté peut être annulé pour vice de forme.

**Emplacement de ce visa dans l'entête :** au regard de la justification légale de sa nécessité ci-dessus, c'est juste après le visa du texte qui organise la concurrence au Burkina Faso, qu'il doit être inséré et juste avant le visa du texte qui prévoit un régime de prix fixés.

- le visa de l'avis de la CNCC.

**Justification légale de la nécessité de ce visa :** selon l'article 2 de la loi n° 2002-605 du 26/12/2002 portant composition, attribution et fonctionnement de la CNCC, toutes les questions concernant la concurrence et la consommation doivent lui être soumises. Dans le cas d'espèce, les mesures réglementaires envisagées concernent la concurrence et la consommation, et elles vont soumettre certains produits à un régime de prix fixés, conformément au décret 2003-615 du 26/11/2003 suscité dont l'article 3 impose de recueillir l'avis de la CNCC. La régularité formelle des mesures réglementaires

envisagées, commande donc que leur entête vise cet avis.

**Emplacement de ce visa dans l'entête** : ce visa clôture la liste des visas, puisque c'est au regard de tous les autres visas qui sont autant de bases légales que la CNCC qui est tenue de statuer en Droit, donne son avis.

b- Les observations spécifiques à chaque projet d'Arrêté

- Concernant le projet d'Arrêté portant fixation de la liste des produits et biens soumis au régime des prix fixés.

Article 4. Il y a lieu d'indiquer **la durée maximale de six (6) mois** de la mesure envisagée, conformément à l'article 1 de la loi 15-94 du 05/05/1994 suscitée, et ce pour une meilleure information des destinataires.

- Concernant le projet d'Arrêté portant détermination du prix de revient licite d'une marchandise ou d'un produit importé et du prix de vente sortie usine des produits de fabrication locale.

Article 4. A compléter comme suit : « ... sont chargés chacun en ce qui le concerne de l'exécution du présent arrêté qui sera enregistré, publié selon la procédure d'urgence, et communiqué partout où besoin sera.

Ouagadougou le..... ».

- Concernant le projet d'Arrêté portant fixation des taux de marques de marchandises et de produits d'importation.

Article 1. Il y a une faute d'orthographe à corriger : « .....fixant la liste des marchandises et services soumis à la réglementation des prix, les taux de marques.... »

Article 4. Il y a lieu d'indiquer **la durée maximale de six (6) mois** de la mesure envisagée, conformément à l'article 1 de la loi 15-94 du 05/05/1994 suscitée, pour une meilleure information des destinataires.

L'Annexe. L'intitulé exact de l'Annexe est « ... portant fixation des taux de marques des marchandises et produits d'importation ». Il y a lieu de supprimer donc dans l'intitulé « ... soumis à la réglementation des prix ».

- du projet d'Arrêté portant obligation d'établir une fiche de décomposition de prix.

Article 6. Il y a une faute d'orthographe à corriger. « ... de vente au détail constitue une infraction assimilée à la pratique de prix illicite... »

## 2°) Les recommandations

La présente requête offre à la CNCC l'occasion de formuler deux recommandations à l'endroit de l'Etat burkinabé :

- **Première recommandation** : L'article 6.3 du Règlement UEMOA n° 2 /2002 du 23/05/2002 consacre à la Commission de l'UEMOA de veiller à ce que les Etats membres « s'abstiennent de toutes mesures

susceptibles de faire obstacle à l'application dudit Règlement et de ses textes subséquents ». Par conséquent, la CNCC recommande à l'Etat burkinabé d'informer la Commission de l'UEMOA, de l'adoption des mesures réglementaires de sauvegarde ci-dessus, au regard de la situation exceptionnelle actuellement vécue.

**- Deuxième recommandation.**

L'Arrêté portant fixation des taux de marques de marchandises et de produits d'importation ne va produire tous ses effets escomptés que si dans la pratique, il y a une différenciation bien précise des niveaux de la distribution. C'est pourquoi pour faciliter cela, la CNCC recommande à l'Etat burkinabé d'adopter une législation sur les différents niveaux (grossistes, demi-grossiste et détaillants) de la distribution.

Et ont signé le Président et le Secrétaire permanent.

**b- Affaire SONAPOST- STAFF**

BURKINA FASO  
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**SESSION DU 16/01/2009**

MINISTRE DU  
COMMERCE DE LA  
PROMOTION DE  
L'ENTREPRISE ET DE  
L'ARTISANAT  
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COMMISSION  
NATIONALE DE LA  
CONCURRENCE ET  
DE LA  
CONSUMMATION

**RG n°01 du**  
15/01/2009  
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**Décision n°001 du**  
**16/01/2009**

**Objet de la saisine:**

Requête aux fins  
d'injonction de  
cessation de pratiques  
anticoncurrentielles.

La Commission nationale de la concurrence et de la consommation (Burkina Faso) en abrégé la CNCC, régulièrement réunie en session ordinaire du vendredi seize janvier deux mille neuf tenue à son siège, sis au numéro 107 de la Rue5-39, Koulouba secteur 5 de Ouagadougou, sous la présidence de Madame OUEDRAOGO/ KIBORA Victoria, en présence des commissaires ci-après :

- COULIBALY Dihizou
- SOMDA Georges
- TRAORE Ibrahim
- LENGANI Emmanuel Mamadou
- PARE André
- TAPSOBA Franck
- OUEDRAOGO Nabasom Salif
- SANDOUIDI Alfred ;

Et avec l'assistance des membres du Secrétariat Permanent dont COULIBALY Adolphe, DABIRE M. Basile, COULIBALY Abdoulaye, COMPAORE Serge Eric, KOLOGO Pahouindé tenant la plume pour le compte dudit Secrétariat ;

A rendu la décision dont la teneur suit, concernant une requête formulée par :

Monsieur OUEDRAOGO Boureima Adama, Directeur de la Société de Transport Aoréma et Frères en abrégé la STAF, représenté par Maître Yembi M. SIMPORE, Avocat à la Cour, sis cité 1200 logements, Rue 14-68, villa 783, côté sud du Centre Médical Saint Camille 01 BP 6771 Ouagadougou 01, Tél 50-36-22-31 Burkina Faso ;

Contre,

La Société Nationale des Postes, en abrégé la SONAPOST, 01 BP 6000 Ouagadougou 01, Tél 50-30-64-20/23 ;

### ***I- RECEVABILITE DE LA REQUETE***

Par correspondance datée du 12 février 2008 et reçue le même jour au Secrétariat permanent de la CNCC, Monsieur OUEDRAOGO Boureima Adama, représenté par Maître Yembi M. SIMPORE, ci-après désigné le requérant a sollicité une décision auprès de la CNCC concernant une affaire relative aux pratiques anticoncurrentielles et qui l'oppose à la SONAPOST ;

Conformément à l'article 3 de la loi n°033-2001/AN du 04/12/2001 modifiant la loi n°15/94/ADP du 05/05/1994 portant organisation de la concurrence au Burkina Faso, le requérant qui a capacité, qualité et intérêt pour agir en justice, est habilité à saisir la CNCC; Dès lors, il devient possible d'examiner la requête et à cet effet, une session ordinaire a été programmée pour le 16/01/2009;

Au jour dit, la CNCC vida sa saisine ainsi qu'il suit :

### **II- OBJET DE LA SAISINE**

L'objet de la saisine consiste pour la CNCC de rendre une décision par rapport au comportement de la SONAPOST à l'égard de la STAF. En effet, cette dernière a été sommée par la SONAPOST de cesser sans délai les activités de courrier dans ses auto gares au motif qu'elle jouirait d'un monopole postal au Burkina Faso ; monopole qui lui aurait été accordé par le KITI n° AN V-0354/FP/TRANS du 03 août 1988 portant étendue du monopole postal au Burkina Faso. Corrélativement à cette interdiction, la SONAPOST avait procédé à la saisie des courriers destinés aux clients dans les auto gares de la STAF. Cette dernière a dû payer la somme de un million cinq cent trente sept mille deux cents (1 537 200) francs CFA représentant l'amende contre la restitution desdits courriers.

Au regard de tous ces comportements et conformément à l'article 2 du décret 2002-605 du 26 décembre 2002 portant composition, attributions et fonctionnement de la CNCC, toutes les questions concernant la concurrence et la consommation au Burkina Faso doivent lui être soumises. Par conséquent, la CNCC est compétente pour connaître de telle affaire. Cependant, sa compétence quant au traitement sur le fond de l'affaire dépendra de l'appréciation de la pratique en cause.

### **III- APPRECIATION DE L'OBJET DE LA SAISINE**

En rappel, la pratique mise en cause par le requérant est relative au

monopole que dit détenir la SONAPOST dans les activités de courrier au Burkina Faso conformément aux dispositions du KITI sus-cité.

En effet, il convient de souligner que conformément à l'article 6 de la loi 15/94/ADP du 05 mai 1994, portant organisation de la concurrence au Burkina Faso <<est prohibée..., l'exploitation abusive par une entreprise ou groupe d'entreprises d'une position dominante sur le marché intérieur ou une part substantielle de celui-ci ;...>>.

En partant de cette disposition, il ressort que depuis 1994, le législateur burkinabé a interdit les situations de monopole détenu par les entreprises en consacrant le principe de la libre concurrence. Il a d'ailleurs, à travers l'article 78 de cette loi, abrogé tous les textes antérieurs contraires notamment le KITI ci-dessus cité qui accordait un monopole à la SONAPOST.

De même, le traité constitutif de l'UEMOA en son article 88 et l'article 4 du règlement n° 02/2002/CM/ UEMOA du 23 mai 2002 relatif aux pratiques anticoncurrentielles à l'intérieur de l'UEMOA, interdisent les abus de position dominante au sein de l'UEMOA.

Cependant, du point de vue de la compétence, l'article 4, alinéa 1 du règlement n° 03/2002/CM/UEMOA du 23 mai 2002 relatif aux procédures applicables aux ententes et aux abus de position dominante à l'intérieur de l'Union, donne compétence à la Commission de l'UEMOA de connaître les actions relatives aux pratiques anticoncurrentielles dont les abus de position dominante.

#### **IV. CONCLUSION**

Au regard de tout ce qui précède, et conformément à l'article 3, alinéa 3 de la directive n° 02/2002/CM/UEMOA relative à la coopération entre la Commission et les structures nationales de concurrence des Etats membres pour l'application des articles 88 ;89 et 90 du traité de l'UEMOA qui dispose que << les structures nationales de concurrence sont chargés de recevoir et de transmettre à la commission... les plaintes des personnes physiques ou morales...>> en matière de pratiques anticoncurrentielles, une procédure devra donc être engagée pour acheminer l'affaire à la Commission de l'UEMOA.

Et ont signé la Présidente et le Secrétaire Permanent.

## **Bhutan**

1. *Please provide us with case examples of decisions (taken over the last 5 years) by the competition authority of your country, which have contributed either directly or indirectly to the achievement of the objectives of competition laws and the mission of the competition authority of your country.*

*In such cases, please elaborate on how such decisions contributed to the following:*

- (a) Development of economic sectors*
- (b) Increased investment (domestic and foreign)*
- (c) Increased trade (exports and imports)*
- (d) Enterprise or private sector development*
- (e) Consumer welfare*
- (f) Policy making by government*

Not Applicable in the absence of Legal Framework and the Authority for enforcement of Competition law

2. *Please send to us copies (by email or by web links) of (i) sectoral or macro-level studies assessing the state of competition in your country and (ii) studies assessing the impact and effectiveness of competition laws and policy in your country.*

No Study has been conducted on state of competition in our country till date.

3. *Please elaborate on any special features that the competition law and policy of your country may contain that were designed to address specific development objectives on the part of government or to address special development conditions in your country.*

*Examples:*

- a. Features addressing public interest objectives*
- b. Exemptions with specific objectives (industrial policy, Small and medium-sized development, informal sector, black markets)*
- c. Special programs for minority groups, certain interest groups or specific sectors.*

We are yet to undertake a comprehensive study to ascertain the important features in the Competition Law for the Country.

## Canada

1. *Please provide us with case examples of decisions (taken over the last 5 years) by the competition authority of your country, which have contributed either directly or indirectly to the achievement of the objectives of competition laws and the mission of the competition authority of your country.*

*In such cases, please elaborate on how such decisions contributed to the following:*

- (a) Development of economic sectors*
- (b) Increased investment (domestic and foreign)*
- (c) Increased trade (exports and imports)*
- (d) Enterprise or private sector development*
- (e) Consumer welfare*
- (f) Policy making by government*

Competition motivates companies to innovate, reduce costs and become more efficient, which leads to lower prices, better products and services, and greater choice for consumers. Conversely, anti-competitive conduct, such as conspiracies and abuse of dominance, can lead to increases in prices and reductions in consumer welfare, as consumers must pay higher prices, forego or purchase fewer products and services, or purchase less desirable substitutes. The following cases contributed to the development of economic sectors, increased domestic investment, enterprise or private sector development and consumer welfare by terminating and deterring anti-competitive conduct, thereby fostering competition. They have also promoted the retention by Canadian firms of strong incentives to continue innovating and working toward greater efficiencies, as they respond to competitive discipline in the market.

### Criminal cases

#### *Information Technology Services*

In February 2009, charges were laid against 14 individuals and 7 companies accused of rigging bids to obtain Government of Canada contracts for information technology



services. To date, 2 individuals have pleaded guilty in this case.<sup>1</sup> Charges remain outstanding against the remaining 12 individuals and 7 companies, and the matter is proceeding to trial.

The publicity generated by this case in the media, and outreach activities directed toward major public procurement agencies immediately following the laying of charges, has increased the public procurement community's awareness of the importance of combating bid-rigging. The Bureau took advantage of this opportunity to expand its educational initiatives and, in particular, to increase collaboration with government departments.

#### *Air Cargo*

In 2009, five air cargo carriers pleaded guilty to fixing air cargo surcharges for shipments on certain routes from Canada and were sentenced to pay fines totalling more than \$14.6 million. While the investigation continues into the alleged conduct of other air cargo carriers, the Bureau has benefited greatly from cooperation under its Leniency Program. This program creates incentives for parties to address their criminal liability by cooperating with the Bureau in its ongoing investigation and prosecution of other alleged cartel participants.

#### *Retail Gasoline*

In June 2008, charges were laid against 13 individuals and 11 companies accused of fixing the retail price of gasoline in three local markets in the province of Quebec. To date, 8 individuals and 5 companies have pleaded guilty to conspiracy charges, and fines totaling over \$2.7 million have been imposed. 4 individuals have been sentenced to terms of imprisonment totaling 44 months. Bureau investigators conducted surveillance of retail gasoline prices, used wiretaps, conducted searches and engaged the immunity and leniency programs to gather evidence during the two-year investigation.

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<sup>1</sup> One individual was fined \$25,000 and the other fully cooperated with the Bureau's investigation and made a \$5,000 donation to charity. In addition, prohibition orders were issued against the companies of these two individuals.

### *Carbonless Paper Sheets*

In January 2006, three paper merchants pleaded guilty to two counts of conspiracy in the carbonless paper sheet markets in the provinces of Ontario and Quebec. Commercial printers use carbonless sheets in the manufacturing of forms and receipts. Each company was sentenced to pay fines of \$12.5 million each for taking part in the domestic conspiracy. The court also issued prohibition orders against the companies. In addition, key personnel involved in the conspiracy were removed from their positions in the paper merchant business.

### Civil cases

#### *Canadian Real Estate Association*

In February 2010, the Bureau filed an application with the Tribunal seeking an order prohibiting the Canadian Real Estate Association (“CREA”) from imposing rules on its members that limit consumer choice and prevent innovation in the market for residential real estate services.

The Bureau determined that CREA’s rules restrict the ability of consumers to choose the real estate services they want, forcing them to pay for services they do not need. The rules also prevent real estate agents from offering more innovative service and pricing options to consumers. This case is ongoing.

#### *Canada Pipe*

In 2002, the Bureau applied to the Tribunal for an order prohibiting Canada Pipe Company Ltd. from engaging in anti-competitive acts. The Bureau alleged that Canada Pipe was abusing its dominant position in the market for cast iron pipe, fittings and mechanical joint couplings for drain, waste and vent applications in Canada. The company’s loyalty program required its clients to purchase all their drain, waste and vent products exclusively from Canada Pipe in return for substantial rebates. The Bureau argued that the loyalty program locked in Canada Pipe’s customers and reduced competition from potential entrants and existing competitors.

In February 2005, the Tribunal dismissed the Bureau's application on the grounds that Canada Pipe's loyalty program was not anti-competitive and had not substantially lessened or prevented competition. The case was appealed to the Federal Court of Appeal, which issued certain legal clarifications and assigned the matter back to the Tribunal for re-determination.

In December 2007, the Bureau reached a consent agreement with Canada Pipe, which was registered with the Tribunal. Canada Pipe agreed to implement a new rebate program that does not require distributors to buy exclusively from Canada Pipe in order to qualify for discounts and rebates.

The Bureau's actions in the Canada Pipe case ensured that the market for cast iron pipe, fittings, and mechanical joint couples remained open for entry and expansion by competitors, thus providing competitive discipline to Canada Pipe and increasing consumer welfare. The Canada Pipe case also played an important role in developing and clarifying the legal interpretation of various provisions and tests found in the Act.

### Merger cases

#### *Ticketmaster/Live Nation*

In January 2010, the Bureau reached a consent agreement with Ticketmaster Entertainment, Inc. and Live Nation, Inc. that resolved competition concerns raised by their proposed merger. Ticketmaster was the largest provider of ticketing services in the world, while Live Nation was the largest promoter of live events globally. Prior to entering into the proposed merger, Live Nation had intended to enter the Canadian ticketing services market. Following a detailed review, the Bureau concluded that the parties' proposed merger raised serious competition concerns, as it prevented Live Nation's entry into the market. It would also have raised barriers that would have deterred other companies from entering.

Under the terms of the consent agreement, Ticketmaster was required to sell its subsidiary ticketing business, Paciolan, to a buyer approved by the Commissioner. It was also required to license its ticketing system for use by Anschutz Entertainment Group

(AEG), the second largest promoter of live events in Canada and the United States, and Live Nation's principal competitor. Ticketmaster is forbidden from retaliating against any venue owner who might choose to use another company's ticketing or promotional services, and is subject to restrictions on anti-competitive bundling.

#### *Pfizer/Wyeth*

In October 2009, the Bureau reached a consent agreement with Pfizer Inc. and Wyeth, requiring, among other things, that, as a condition of approving their merger, the companies divest certain animal pharmaceutical and vaccine products to Boehringer Ingelheim Vetmedica, Inc. Additionally, Pfizer was required to amend the terms of its existing arrangement with Paladin Labs Inc. governing the distribution, marketing and sale of Pfizer's human pharmaceutical product, Estring, in Canada, to ensure continued competition in the supply of hormone replacement therapy products.

#### *Suncor/Petro-Canada*

In July 2009, the Bureau reached a consent agreement with Suncor Energy Inc. and Petro-Canada, requiring that, as a condition of approving their proposed merger, they divest 104 retail gas stations in southern Ontario and sell storage and distribution network capacity in the Greater Toronto Area for 10 years.

In particular, the companies were required to sell gas stations in markets in which the Bureau concluded that the merger would have had lessened competition substantially. The companies were also obligated to sell, on an annual basis, approximately 1.1 billion litres of terminal storage and distribution capacity, to be used for wholesale distribution during a 10-year period at the companies' terminals located in the Toronto area. The merged company was also required to supply 98 million litres of gasoline each year, for 10 years, to independent gasoline marketers. These measures addressed the Bureau's conclusions that the merger would otherwise likely lessen competition substantially.

### *XL-Lakeside*

In February 2009, the Bureau decided not to challenge the acquisition by XL Foods Inc. of the beef-packing plant operated by Lakeside, the Canadian subsidiary of Tyson Foods, Inc. The Bureau's investigation of the transaction included interviews with over 50 industry participants in western Canada, and examined documentation and information from all major industry participants provided pursuant to formal court orders.

The Bureau determined that the primary concerns raised by industry participants were not related to the transaction, but rather to the possibility that the Lakeside plant in Brooks, Alberta would close if the transaction did not proceed, and to recent U.S. mandatory country-of-origin labelling legislation. Industry participants confirmed that U.S. packers purchased substantial volumes of slaughter cattle, but were concerned that U.S. packers may adopt more rigorous labelling requirements for beef products.

The Bureau publicized its intention to closely monitor the industry and reassess the competitive impact of the transaction following the outcome of U.S. labeling measures, and U.S. packers' response to these measures.

### *Superior Propane*

In May 2008, the Bureau reached a consent agreement with Superior Plus L.P., resolving the Bureau's competition concerns arising from Superior's proposed acquisition of certain assets of Irving Oil Limited and Irving Oil Marketing Limited.

The Bureau had concluded that the transaction would likely result in an insufficient level of remaining competition and significant barriers to entry in certain markets. The parties claimed that efficiencies to be gained from the transaction would outweigh any anti-competitive effects. While the Bureau agreed that efficiency gains would likely arise from the transaction, it appeared unlikely that such gains would be sufficient to offset the substantial lessening or prevention of competition.

To resolve these concerns, the Bureau worked with the parties to design a remedy that would address its competitive concerns in the affected markets.

\* For additional details on any of the aforementioned cases, please visit the Bureau's website at <http://competitionbureau.gc.ca>.

2. *Please send to us copies (by email or by web links) of (i) sectoral or macro-level studies assessing the state of competition in your country and (ii) studies assessing the impact and effectiveness of competition laws and policy in your country.*

In past years, the Bureau has conducted a number of market studies analyzing specific competition issues within the market under scrutiny.

In 2007, the Bureau published a study on self-regulated professions. The study offers a detailed examination of the manner in which regulation affects competition in self-regulated professions in Canada. The study can be found at: <http://competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/02523.html>.

In 2007 and 2008, the Bureau released two reports on competition in the generic drug sector. The Bureau initiated this project in response to several studies that found the price of prescription generics to be high in Canada, as compared with other countries. The reports can be found at: <http://competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/02495.html> and <http://competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03026.html>.

In July 2007, the Canadian Ministers of Industry and Finance announced the creation of a specialized Competition Policy Review Panel to review Canada's competition and foreign investment policies and to make recommendations to improve Canada's competitiveness in an increasingly global marketplace. The report was issued in June 2008, and provided the basis for many of the amendments that were introduced to the *Competition Act* in 2009. The report can be found at: [http://www.ic.gc.ca/eic/site/cprp-gepmc.nsf/eng/h\\_00040.html](http://www.ic.gc.ca/eic/site/cprp-gepmc.nsf/eng/h_00040.html).

3. *Please elaborate on any special features that the competition law and policy of your country may contain that were designed to address specific development objectives on the part of government or to address special development conditions in your country.*

*Examples:*

- a. Features addressing public interest objectives*
- b. Exemptions with specific objectives (industrial policy, Small and medium-sized development, informal sector, black markets)*
- c. Special programs for minority groups, certain interest groups or specific sectors.*

The Act contains specific exemptions for certain collective bargaining activities, including the formation of unions, agreements between fishermen and processing firms, arrangements between securities underwriters and issuers or vendors, and agreements between teams and leagues engaged in amateur sport.

The Act's provisions with respect to merger review and civil competitor collaborations both contain a framework for the assessment of efficiency gains. In particular, efficiency gains are likely to be brought about by a proposed transaction or an agreement are considered against the anti-competitive effects that are likely to result from the proposed transaction or the agreement. Specifically, where it is demonstrated that the cognizable cost savings and other benefits brought about by such efficiency gains are greater than and offset any anti-competitive effects that are likely to result from the proposed transaction or the agreement, no order is to be issued.

In some instances, Canadian statutes have exempted certain industries from the application of the Act. Subject to certain conditions, the *Canada Transportation Act* excludes the application of the Act to provisions addressing rates, tariffs and services for railway transportation, obligations under international treaties on air services, and Government measures to address extraordinary disruption. The *Farm Products Agencies Act* excludes the application of the Act to arrangements between an agency and a person engaged in production or marketing of a regulated product, where the agency has the requisite authority. Subject to certain exceptions, the *Shipping Conferences Exemption*

*Act* excludes the application of the Act from conference or interconference agreements regulating rates or conditions of service in liner shipping.

Other exceptions are designed to address Canada's balance of trade. Similar to provisions existing in other jurisdictions, the Act contains a limited exception for export cartels. This defense for export agreements is designed to enhance export trade by facilitating coordination between competing firms. Moreover, when assessing whether an anti-competitive transaction or a reviewable agreement is saved by the efficiencies defense, the Tribunal considers whether efficiency gains will result in a significant increase in the real value of exports or a significant substitution of domestic products for imported products.

Certain banking arrangements are also governed by their own criminal conspiracy regime, which includes a number of exceptions. This special regime also allows the Minister of Finance to certify an agreement for the purposes of financial policy, and to allow a bank merger on public interest grounds.

The Minister of Transportation may also certify certain classes of mergers falling within his or her jurisdiction, thereby preventing the Tribunal from issuing an order on the grounds that it is an anti-competitive agreement or merger.

With respect to conduct that is regulated by another federal, provincial or municipal law or legislative regime, a regulated conduct defense may apply so as to exempt an agreement from the application of the Act.



**The Intergovernmental Group of Experts requested the secretariat to prepare, for the consideration of the Sixth Review Conference, an updated review of capacity-building and technical assistance, taking into account information supplied by member States. Accordingly, member States are requested to provide the secretariat with information on technical cooperation activities and advisory and training services in the area of competition policy in order to enable it to prepare the updated review. In particular, information is requested on: (a) technical cooperation provided or planned by States and international agencies, bilaterally or multilaterally, with identification of priorities and the potential for providing this assistance; (b) bilateral or multilateral assistance received by States; and (c) technical assistance requested by developing countries and countries with economies in transition, identifying specific competition law and policy areas or issues that they wish to receive priority attention.**

The Bureau has provided technical assistance to foreign jurisdictions for a number of years. Since 2009, the Bureau has engaged in technical assistance and capacity building exercises with the following jurisdictions:

Australia

- A Senior Bureau Officer provided technical assistance on the subject of cartel investigations to the Australian Competition and Consumer Commission (April 15 to May 31, 2009).

Brazil

- The Bureau hosted an employee of the Council for Economic Defence for a one-month internship with the Mergers Branch (November 16 to December 16, 2009).

Chile

- The Bureau hosted six employees of the Fiscalía Nacional Económica (FNE) for a two-week internship with the Criminal Matters Branch (January 25 to February 5, 2010).
- A Senior Bureau Official provided training/advice to cartel investigators from Chile's FNE

(September 7, 2009).

### China

- The Bureau hosted a delegation from the Anti-Monopoly Bureau for a one-day study visit to discuss issues relating to the Bureau's merger enforcement and investigative techniques. The meeting involved representatives from the following branches: Mergers Branch; Economic Policy and Enforcement Branch; and Legislative and International Affairs Branch (May 15, 2009).
- The Bureau hosted a delegation from the Anti-Monopoly Bureau and other organizations for a one-day study visit to discuss issues relating to the Bureau's merger review process. The meeting involved representatives from the following branches: Mergers Branch; Economic Policy and Enforcement Branch; and Legislative and International Affairs Branch (November 13, 2009).

### Russia

- In its role as Co-Chair of the International Competition Network's Cartel Working Group, Subgroup 2 on Enforcement Techniques, the Bureau assisted Russia's Federal Antimonopoly Service in organizing a cartel seminar. The Bureau's efforts included: development of the agenda, presentations by a Senior Bureau Officer and investigation training (May 19- 20, 2009).

### Tanzania

- The Bureau hosted a delegation from the Fair Competition Tribunal (FCT) for a half-day study visit. Functions and operations of competition are new areas for regulatory oversight in Tanzania. The purpose of this visit was to build capacity to increase the efficiency of Tanzania's tribunal by learning from the experience of representatives of the Bureau (August 21, 2009).

## Costa Rica

1. *Favor proporcionar ejemplos de decisiones (adoptadas en los últimos 5 años) de parte de la agencia de competencia o la autoridad encargada del tema en su país, que hayan contribuido ya sea directa o indirectamente al logro de los objetivos de las leyes de competencia y la misión de la autoridad en su país*

*En tales casos, se agradece describir la forma en que las decisiones han contribuido a los siguientes aspectos:*

- (a) Desarrollo de sectores económicos*
- (b) Fomento de la inversión (doméstica y extranjera)*
- (c) Incremento del comercio (exportaciones e importaciones)*
- (d) Desarrollo empresarial o del sector privado*
- (e) Bienestar del consumidor*
- (f) Políticas públicas*

La política de competencia es parte integral del sistema de regulación económica, que interactúa con otras políticas relacionadas con el nuevo orden económico, con el crecimiento, la competitividad, el medio ambiente y los consumidores. En este sentido, la política de competencia impulsada por la Comisión para Promover la Competencia constituye un instrumento de política económica, que contribuye a un desarrollo armonioso y equilibrado de las actividades económicas, a la búsqueda de un crecimiento sostenible, a la generación de empleo, y a una mejor calidad de vida de la sociedad, desde el punto de vista económico y social.

Ahora bien, en el caso de economías en transición, como es el caso de Costa Rica, la política de competencia se convierte en un mecanismo para alcanzar exitosamente la transición hacia una verdadera economía de mercado. Es en ese sentido, que las decisiones adoptadas por el Órgano de competencia; en términos del análisis y valoración de las normas, las conductas, los procedimientos, las barreras institucionales y otras restricciones a la libertad de comercio e industria, han contribuido y contribuyen al desarrollo económico y social del país:

Así se ejemplifica como la política de competencia ha incidido en los diferentes factores que señala este apartado, en el siguiente sentido:

***a) Desarrollar los sectores económicos;***

La Administración Arias Sánchez, incorporó en el Plan Nacional de Desarrollo (PND) “*Jorge Manuel Dengo O., 2006-2010*”, como prioridades de su Gobierno dos premisas relacionadas con el Sector de Economía, Industria y Comercio.

Primero, la consolidación institucional de las instancias relacionadas con la política de competencia en aspectos de promoción, prevención y protección de la competencia y libre concurrencia de cara a la reducción de la pobreza y la competitividad sostenible en el país. En segundo lugar, el fortalecimiento de la institucionalidad y la rendición de cuentas, frente a los retos que se avecinan en términos de la apertura de mercados y de las relaciones multilaterales de comercio. En especial, para facilitar el acceso de las pequeñas y medianas empresas productoras, a los mercados. En este sentido, la competencia efectiva ha sido una de las premisas básicas del actual Gobierno para lograr la sostenibilidad y viabilidad de los mercados en el corto, mediano y largo plazo.

Aunado a lo anterior, la aplicación de los principios y normas constitucionales que se configuran en la Ley No. 7472, ha dado como resultado la posibilidad de fomentar las políticas de competencia, permitiendo alcanzar la meta prevista y un amplio conocimiento de la composición de algunos mercados investigados.

Respecto a los casos investigados sólo en el 2009, se emitieron 62 resoluciones en áreas o sectores estratégicos como: administración de los fondos de pensiones complementarias, estacionamientos públicos en el Área Metropolitana, bebidas alcohólicas, tarifas emitidas por colegios Profesionales; derechos conexos; productores de frijol, entre otros.

Se atendieron también, una gran cantidad de consultas, opiniones y otras gestiones relacionadas con la tutela efectiva de la Ley No. 7472, como por ejemplo el Proyecto de Ley de Eliminación

del Arancel a la Harina de Soya, Expediente Legislativo No.17079; la solicitud de criterio técnico por parte de la Superintendencia de Telecomunicaciones (SUTEL) en relación con procedimiento administrativo por prácticas anticompetitivas; el Proyecto de Ley Código Municipal, Expediente Legislativo No. 17.420, solicitado por la Comisión Permanente Especial de Asuntos Municipales; el Proyecto de Ley N° 17210, Ley Reguladora del Mercado de Tarjetas de Crédito y Débito; la solicitud de opinión de la Comisión de Asuntos Económicos en relación con el Proyecto de Reforma Integral a la Ley N° 7472; entre muchos otros.

***b) Aumentar la inversión (nacional y extranjera);***

La implementación y el fortalecimiento de la política de competencia, el accionar de sus instituciones y la aplicación de instrumentos de trabajo han permitido hacer efectivos los compromisos sectoriales suscritos por el Gobierno, en el periodo 2006-2010.

Así las cosas, una de las prioridades y áreas estratégicas a nivel institucional ha sido potenciar la inversión utilizando la política de competencia como instrumento para impulsar la competitividad y el sector productivo y comercial del país. Especialmente, tomando como eje transversal las políticas de comercio exterior, que complementan los objetivos de acceso de los productos costarricenses en otros mercados, como ejemplo el mercado europeo y la consolidación del país como centro de atracción de inversiones.

Esta condición de garantizar un mejor clima de inversión y atraer mayor competitividad depende del dinamismo de los mercados y de cómo en estos interactúen las fuerzas de oferta y demanda, libres de toda conducta anticompetitiva o de otras restricciones y barreras que afectan el acceso de nuevos competidores. Lo anterior, por cuanto al contar con mercados transparentes se fomenta e incentiva una mayor inversión en el mundo empresarial y una mejor calidad de vida y bienestar para la sociedad civil, en general.

Claro está, que la mayor contribución e incidencia de la política de competencia en el crecimiento de la inversión extranjera del país, se logra creando nuevas y mejores oportunidades de negocio

que armonicen con las relaciones multilaterales de comercio. ¿Qué mejor forma de garantizar ese ambiente sino es a través de Tratados, Acuerdos y Convenios multilaterales de Comercio en los que se encuentran implícitos el tema de competencia y otros temas subyacentes, como los suscritos recientemente o en proceso de suscripción, con China, Singapur, Europa y otros países?

Al respecto, se pueden citar esos casos porque con el proceso de negociación, aprobación y debida ratificación de un Acuerdo de Asociación, como el que actualmente se negocia con la Unión Europea (AACAUE), este contribuirá con mayor flujo de inversión al país y del Istmo Centroamericano, al tener como socio comercial a uno de los bloques de mayor impacto en las relaciones de comercio a nivel mundial.

El proceso de negociación del Tratado de Libre Comercio entre Costa Rica y Singapur, cuyo texto contiene un Capítulo de Competencia que enmarca los principios del proceso de competencia, las asimetrías de información y las distintas regulaciones existentes, entre ambos países.

De singular importancia también, ha sido y será la ratificación dada por Costa Rica al Tratado de Libre Comercio con los Estados Unidos (CAFTA-DR), el cual marca un hito en la historia del país, con el rompimiento de monopolios que en su momento fueron creados por leyes especiales y por su tenaz implicación en la configuración de un nuevo marco legal que sustenta la apertura de los sectores de Telecomunicaciones y Seguros a la competencia, cuyo impacto dinamizará estos sectores en el mercado local y el acceso de mayores operadores y alternativas de servicios para los consumidores; a su vez, oportunidades de empleo para los y las costarricenses.

También la cooperación que se ha gestado a través de Convenios de Entendimiento con otras agencias de competencia para establecer actividades de asistencia técnica, intercambio de información y otras medidas conjuntas; contribuyendo de una u otra forma con el desarrollo del país y de las misma agencia de competencia.

Sin dejar de lado, una mayor afluencia de mecanismos de integración como los que se propician en un mediano y largo plazo en el marco de la Unión Aduanera Centroamericana y como miembros del Grupo de Trabajo en Política de Competencia a nivel Centroamericano, y otros

foros donde se potenciarán acciones tendientes al desarrollo de una Política de Competencia para cada país y la Región.

***c) Aumentar el comercio (exportaciones e importaciones);***

Otro tema vinculado a este engranaje de factores exógenos y endógenos, reviste de especial interés como las disposiciones tomadas por COPROCOM trascienden la esfera del comercio. Especialmente, cuando se trata de emitir opinión sobre medidas regulatorias que son contrarias a la filosofía y fines del artículo 46 de la Constitución Política y de la Ley de Promoción de la Competencia y Defensa Efectiva del Consumidor, por ser temas relacionados con lineamientos, procedimientos y otras actividades vinculadas a la compra, almacenaje, proceso, empaque, industrialización, comercialización, exportación e importación de productos vulnerables para el sector consumo y para la balanza comercial.

Así por ejemplo, en los últimos años la Comisión ha vertido criterio sobre leyes vinculadas con productos como: arroz, azúcar, frijoles, café, entre otros; ante situaciones de mercado que podrían conducir a conductas anticompetitivas, según los postulados de la Ley No. 7472.

Particularmente, cuando se ha tratado de la creación o modificación de sus marcos normativos tal como: En el mercado del arroz: Proyecto de Ley de La Corporación Arrocera Nacional, Expediente Legislativo No. 13628; Proyecto de Ley de reforma a la Ley 14756 – Conarroz; Proyecto de Ley No. 15213, “Reforma del Artículo 57 de la Ley de Creación de la Corporación Arrocera Nacional No. 8285”; Proyecto de Ley de creación del Fondo Nacional de Estabilización Arrocerero; Proyecto de Ley No. 15.862 Modificación del Artículo 37 de la Ley de Creación de la Corporación Arrocera Nacional. En el mercado de Frijol: El Proyecto de Ley No. 15.548 Ley de Creación de la Corporación Frijolera Nacional; Proyecto de Creación de una Corporación Avícola. En el mercado de Fruta de Palma: Proyecto de Ley “Creación de la Corporación Nacional de la Palma Aceitera Conapalma. En el mercado de Azúcar se realizó un estudio del mercado del azúcar. En el mercado de café se ha visto casos relacionados con medidas consistentes en la conveniencia de establecer una regulación de precios del café y otros estudios sobre la comercialización del café, además de evacuar consultas que competen a las

organizaciones que regulan estos sectores de actividad económica y sobre las leyes especiales que los amparan.

Se citan los anteriores ejemplos debido a que son de interés público y los criterios emitidos han tenido un punto en común, cuando se ha tratado el tema de precios, al advertir enfáticamente que el artículo 5 de la Ley No. 7472 establece que la regulación de precios procede en los siguientes supuestos: En situaciones de excepción y en forma temporal. En el caso específico de condiciones monopolísticas y oligopolísticas de bienes y servicios, mientras se mantengan esas condiciones y el precio mínimo de salida del banano para la exportación. De lo contrario no se justificaría la imposición de una medida regulatoria consistente en la fijación de precios.

La Comisión ha reiterado en sus criterios que lo establecido en el artículo 6 de la Ley N° 7472, eliminó toda licencia o autorización para el ejercicio del comercio. No obstante, las autorizaciones para importar o comercializar productos en los proyectos de Ley carecen de fundamento, si no se establecen claramente los parámetros y los criterios técnicos por los cuales se requiera la medida. En otras palabras, si los criterios técnicos no tienen mayor sentido, o bien carecen de parámetros claros podrían llegar a convertirse en barreras de entrada para los agentes económicos que participan en un mercado. Así por ejemplo, en el mercado de arroz no se observaron particularidades que ameritarán el establecimiento de este tipo de regulaciones en comparación con muchos otros bienes de consumo básico. Todo lo contrario, se dictaminó que los cambios que requería el mercado del arroz, en beneficio del consumidor y del mercado, tenían que ver con la reducción permanente de aranceles, al permitir el ingreso de productos con aranceles más favorables.

Asimismo, se consideró la posibilidad de incorporar en los proyectos de ley, normas que establecieran prohibiciones y sanciones previstas en lo referente a los excedentes exportables y que no ocasionaran problemas desde un punto de vista de competencia. Por otra parte, en algunas de sus opiniones la Comisión ha determinado que el establecimiento, distribución y adjudicación de cuotas de importación es contrario a lo indicado en el artículo 6 de la Ley 7472, en tanto elimina todas las restricciones que no sean arancelarias y cualesquiera otras limitaciones cuantitativas y cualitativas a las importaciones y exportaciones de productos, salvo los casos



señalados taxativamente.

Esto por cuanto, el establecer cuotas podría limitar a los agentes económicos a una determinada cantidad de producción o comercialización del producto que conlleva a una restricción de las fuerzas de oferta y demanda, debido a que se podrían fijar en forma arbitraria y discrecional, sin que realmente se respeten los principios de transparencia y libre participación entre los agentes que concurren en el mercado.

En general ésta Comisión se ha manifestado totalmente en desacuerdo contra la mayoría de los Proyectos de Ley, al pretender introducir serias distorsiones al proceso de competencia de forma que podían alterar gravemente el libre funcionamiento del mercado.

***d) Desarrollar la empresa o el sector privado;***

La labor de la Comisión para Promover la Competencia, también ha sido fortalecer el proceso de tutela mediante la promoción de una cultura de competencia tanto en el sector privado como en el público. Lo anterior no sólo para que los empresarios y consumidores conozcan y aprovechen los beneficios de un sistema competitivo, sino también para fortalecer el sistema de rendición de cuentas y el desempeño de la Comisión desde la óptica de los empresarios, comerciantes e industriales, entre otros sectores; no obstante resta mucha labor por hacer en ese sentido.

En este mismo sentido, la Comisión siempre ha procurado ser una institución transparente poniendo al alcance de diferentes agentes económicos la información sobre el accionar de la Comisión y de los dictámenes que han sido rendidos por la Comisión. Pero falta por desarrollar aún más una cultura de competencia sostenible que identifique éstos sectores con los beneficios que provee la rivalidad entre los agentes económicos como un mecanismo para preservar su negocio en el mercado y la satisfacción de los clientes. Es decir, aliados que vayan a crear sinergias entre todos, tal que los agentes económicos conozcan los alcances, cometidos y principios que la Ley No. 7472 y que son instrumentos que deben verse como factores exógenos que influyen en el entorno empresarial y en cualquier reforma que se realice a la legislación de competencia, para beneficio del interés común.

Es ineludible el vínculo y la armonía que debe existir entre competencia y competitividad para lograr mayor productividad, empleo e inversión. Más aún, cuando la política industrial debe utilizar la política de competencia como un instrumento complementario en sus esfuerzos por proveer mayor competitividad a las pequeñas y medianas empresas; en condiciones de mercado transparentes y libres de restricciones.

En ese sentido, esta labor es un reto pese a los escasos recursos con que se dispone para apoyar más a estos sectores productivos en especial las pequeñas y medianas empresas para que hagan valer sus derechos.

***e) Lograr el bienestar de los consumidores;***

El consumidor es toda persona física o jurídica que adquiere, disfruta un bien o la prestación de un servicio, para satisfacer sus necesidades de manera que es el destinatario de los beneficios promovidos por la libre competencia. Siendo estos beneficios, por lo general, protegidos por una estrategia adecuada de protección al consumidor que consiste en garantizarles que los bienes y servicios que se producen o comercialicen se adapten a las normas de conducta éticas y que impidan prácticas comerciales abusivas por parte de los agentes económicos que participan en el mercado.

En razón de lo anterior, toda acción preventiva o de protección del proceso de competencia y libre concurrencia se ejerce mediante la tutela y aplicación de la Ley No. 7472, con el propósito de proteger y beneficiar al consumidor; garantizándole: ***su soberanía y la libertad de escogencia.***

Siempre que se garanticen estos dos principios, se estarán brindando mejores condiciones de mercado para los consumidores, como: mayores alternativas y variedad de productos, precios más

bajos; entre otros beneficios. Situación que obliga ineludiblemente a los productores y comerciantes a buscar mejores oportunidades de negocio, a rivalizar en precios, a mejorar la calidad del producto, a innovar, etc; sin que los consumidores se vean obligados o forzados a negociar o a aceptar condiciones que impongan los agentes económicos durante su giro comercial.

El hecho de que los consumidores dispongan de alternativas de consumo condiciona el comportamiento de las empresas, ya que, si éstas ofrecen producto en condiciones menos satisfactorias que el resto de los competidores, el cliente podrá optar por acudir a otro proveedor que le ofrezca las mejores condiciones. Por ello, ante la competencia las empresas se ven obligadas a moderar sus precios, a mejorar sus productos, y a ofrecer un mejor trato a sus clientes.

Precisamente esa mayor competencia en el mercado permite una gama de posibilidades de elección y alternativas para el consumidor, según sus necesidades, ingresos, gustos y preferencias, acceso al mercado, entre otros factores. A su vez, es una situación que estimula la innovación entre las empresas y favorece el dinamismo de los mercados.

***f) Elaborar las políticas a nivel gubernamental.***

La etapa en la que converge actualmente el país, de cara a la transición de un nuevo Gobierno a partir de mayo del 2010; materializará la política de competencia conforme a los lineamientos que establece el Plan de Gobierno de la Presidenta electa Laura Chinchilla, como el mecanismo económico fundamental para garantizar que la operación de los mercados beneficie, en última instancia, a las y los consumidores. En razón de que la competencia promueve la innovación, presiona los precios a la baja y genera incentivos para mejorar la calidad de los servicios.

Considera el nuevo Plan de Gobierno que es un deber del Estado promover la competencia y evitar, en lo posible, que acuerdos entre productores, concentraciones de mercado u otros mecanismos semejantes reduzcan la intensidad de dicha competencia.

Así las cosas el Gobierno en el periodo 2010-2014 se ha comprometido a la tarea de emprender acciones, en términos de la política de competencia dirigidas a:

- 1) Fortalecer la Comisión para Promover la Competencia con el propósito de mejorar la atención de los casos que conoce y optimice la iniciativa para realizar investigaciones de oficio.
- 2) Ejecutar una agenda de investigación que permita generar un mayor impacto en la economía y las y los consumidores.
- 3) Mejorar las herramientas de investigación y sanción, con el propósito de aumentar la efectividad de la Comisión para Promover la Competencia para detener las prácticas anticompetitivas.
- 4) Establecer un régimen de fusiones y adquisiciones que permita a la Comisión para Promover la Competencia controlar adecuadamente aquellas operaciones que generen efectos negativos a la competencia.
- 5) Eliminar las excepciones a la legislación de la competencia, con el propósito de aplicarla de manera transversal a todos los sectores de la economía.
- 6) Profundizar los vínculos con los reguladores sectoriales, con el propósito de detectar las prácticas en los distintos mercados.
- 7) Revisar las regulaciones existentes y emitir lineamientos que permitan aumentar la transparencia y la predictibilidad de las actuaciones del órgano de competencia.

En definitiva, a una asignación de recursos más eficiente, estimulando la inversión y el crecimiento económico e imponiendo una férrea disciplina en los mercados que frene el crecimiento de los precios; para que los agentes económicos se beneficien de la introducción de competencia, de tasas de crecimiento económico más elevadas y de mejores ingresos per cápita.

2. *Se agradece enviar copias (vía correo electrónico, sitios de Internet relevantes) de (i) los estudios sectoriales o de la situación a nivel macro, que permitan evaluar el estado de la competencia en su país, así como también (ii) estudios que permitan evaluar el impacto y la eficiencia de las leyes y política de competencia en su país.*

a) los estudios sectoriales o a nivel macro en que se analice la situación de la competencia en su país;

Para ilustrar esta labor sectorial se pueden citar estudios o perfiles realizados en el último año sobre el mercado de frijol, bebidas alcohólicas y el de redes y telecomunicaciones. Tales sectores económicos fueron analizados con un doble propósito. Por una parte, analizar la estructura del mercado de cada sector estratégico. Por otro lado, investigar posibles prácticas anticompetitivas en los mercados que se identificaron vulnerables, tales como el Mercado del frijol; el Mercado de bebidas alcohólicas; Telecomunicaciones y Redes; siendo sus principales propósitos los siguientes:

*Mercado de Frijol:* Se investigó este mercado para determinar posibles prácticas anticompetitivas entre los productores nacionales agremiados a Cámaras, Asociaciones y la Federación Nacional de Productores de Frijol, en el proceso de compra y venta de frijol. Sin embargo, no se encontró ningún indicio de que los agentes económicos investigados hayan realizado o aplicado alguna acción para imponer condiciones, estandarizar los precios, limitar la oferta de producto o realizar una única oferta. En ese sentido, se determinó también otras situaciones inherentes a la problemática del sector, en términos de producción, costos de insumos, manejo de cosecha, factores climáticos, asistencia técnica, el precio del producto en el mercado internacional, las importaciones de frijol a precios inferiores y la concentración de la compra del grano en unos pocos industrializadores, entre otros aspectos que inciden en la oferta y la demanda del producto.

*Mercado de Bebidas Alcohólicas:* Se realizó una investigación en el sector, específicamente en el

tema de patentes para determinar la posible existencia de prácticas anticompetitivas. Lo anterior, por cuanto en Costa Rica todo establecimiento para vender licores debe contar con una patente para su funcionamiento; siendo la Ley sobre la Venta de Licores No. 10 del 7 de octubre de 1936, la que regula las licencias para las ventas de licores. En ese sentido, es un sector que se investigó por su misma naturaleza y por existir una empresa que cuenta con 182 patentes de su propiedad, de las cuales, al menos 140 estaban siendo utilizadas por clientes en calidad de préstamo. No obstante, la Comisión luego de valorar aspectos de legalidad determinó que se realizará una nueva investigación ampliada a la comercialización y distribución de la cerveza en todo el sector.

Telecomunicaciones y Redes: Se trabajó conjuntamente con la Superintendencia de Telecomunicaciones (SUTEL) el Reglamento de Acceso, Construcción y Uso Compartido de Redes de Telecomunicaciones Disponibles al Público; tal que del análisis realizado no se observaron normas que afecten la competencia y libre concurrencia en el mercado. Por el contrario, se debe resaltar que las disposiciones del Reglamento buscan promover la competencia y libre concurrencia en el mercado de las telecomunicaciones, y para ello resulta indispensable que los propietarios de la infraestructura brinden acceso en condiciones razonables a quienes requieran de ésta. Es por ello que se consideró importante que se incluya en el Reglamento, como uno de los principios que lo guían, la promoción de la competencia y libre concurrencia en la prestación de los servicios de telecomunicaciones

b) estudios que analicen las repercusiones y la eficacia de las leyes y políticas de la competencia en su país.

Entre los estudios que analizan las repercusiones y eficacia de las leyes y políticas de competencia del país se encuentran varios, entre éstos la Revisión de Expertos donde se realizó el examen inter-pares por parte de la UNCTAD resultando el documento *“Políticas y Legislación de Competencia en Costa Rica: Revisión por homólogos”*

Otros estudios relevantes, se han configurado en términos de la necesidad de reformar la normativa de competencia (Ley No. 7472); ante las debilidades observadas en el actual régimen legal e

institucional, a saber: la presencia de importantes excepciones al ámbito de cobertura de la ley, la falta de un mecanismo de control preventivo de fusiones y adquisiciones, la falta de algunas herramientas investigativas claves, el escaso poder disuasorio de las multas, la falta de mayor independencia institucional respecto de la administración de Gobierno y la falta de mecanismos formales de cooperación con las autoridades de la región, entre muchos otros aspectos.

3. *Se agradece explicar en detalle cualquier aspecto de la ley y política de competencia de su país que haya sido diseñado con el fin de atender objetivos específicos de desarrollo de parte del gobierno o condiciones especiales relacionadas con el desarrollo de su país.*

*Ejemplos:*

- a. Aspectos relacionados con objetivos de interés público*
- b. Exenciones con objetivos específicos (política industrial, desarrollo de pequeñas y medianas empresas, sector informal, mercado negro)*
- c. Programas especiales de atención a los grupos minoritarios, ciertos grupos de interés o sectores específicos.*

### ***Características que persigan objetivos de interés público;***

En el marco general sobre el cual actúa el Estado, es posible encontrar normas de rango constitucional relativas, unas a la intervención del Estado, otras a las garantías individuales de los empresarios y otras a las garantías económicas de los consumidores, destinatarios finales de la actividad productiva de los empresarios.

Las garantías constitucionales implícitas en el artículo 46 constitucional califica como prohibidos los monopolios de carácter particular y como de ***“interés público”*** la acción del Estado tendiente a impedir toda ***“práctica o tendencia monopolizadora”***, establece como norma de principio la libertad de comercio, de competencia y libre concurrencia; que armonizan con los demás principios establecidos en la misma Constitución Política.

En razón de lo anterior, esta característica primordial de rango constitucional es la que sustenta la facultad que tiene la Ley No. 7472 “Ley de Promoción de la Competencia y Defensa Efectiva del Consumidor” para que la Comisión para Promover la Competencia actúe en defensa de los

intereses de todos los productores, los consumidores nacionales y los compromisos internacionales del país. Por ello, la tutela del interés público versa sobre el bienestar común.

***Exenciones con objetivos específicos (política industrial, desarrollo de empresas pequeñas y medianas, sector informal, mercados negros);***

Existen las siguientes excepciones a la aplicación de la Ley No. 7472 en el tema de competencia y libre concurrencia: a) agentes prestadores de servicios públicos en virtud de una concesión, en los términos que señalen las leyes para celebrar las actividades necesarias para prestar esos servicios, de acuerdo con las limitaciones establecidas en la concesión y en regulaciones especiales; b) los monopolios del Estado creados por ley, mientras subsistan por leyes especiales para celebrar las actividades expresamente autorizadas en ellas, en áreas como: destilación de alcohol y su comercialización para consumo interno, distribución de combustibles, distribución eléctrica y de agua, y c) las municipalidades, tanto en su régimen interno, como en sus relaciones con terceros. (Artículo 9 y 72 de la Ley y Artículo 29 del Reglamento).

***Programas especiales para grupos minoritarios, ciertos grupos de interés o sectores específicos.***

La gestión institucional según los indicadores<sup>2</sup> de gestión y las acciones realizadas en el 2009 se materializaron mediante la ejecución de resoluciones y estudios en sectores de interés, así como, mediante la realización de actividades de difusión para promocionar la cultura de competencia, en especial las Pequeñas y Medianas Empresas (PYMES).

Los resultados cuantitativos de esta labor se plasman en el siguiente cuadro:

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<sup>2</sup> Conforme a los instrumentos de evaluación del Área de Evaluación y Seguimiento del Ministerio de Planificación Nacional y Política Económica.



<b>Cuadro N° 5</b>				
<b>Institución: Ministerio de Economía, Industria y Comercio</b>				
<b>Cumplimiento de las Metas de los Indicadores</b>				
<b>al 31 de Diciembre de 2009</b>				
<b>Descripción del Indicador</b>	<b>Meta Programada</b>	<b>Meta Alcanzada</b>	<b>Resultado</b>	<b>Fuente de Datos</b>
Número de sectores estudiados	3	3	100%	Registros de la Unidad Técnica de Apoyo
Número de Pymes capacitadas	30	75	250%	Registros de la Unidad Técnica de Apoyo
Número de manuales actualizados	2	2	100%	Registros de la Unidad Técnica de Apoyo
Número de resoluciones	62	62	100%	Registros de la Unidad Técnica de Apoyo

**Fuente:** Informe de Evaluación Anual. Ejercicio Económico 2009.

Sin embargo, la difusión sobre los alcances y el contenido de la Ley distan de la realidad, por

cuanto la creación de una cultura de competencia es esencial para que coadyuve con una verdadera cultura de competencia y una mayor observancia de la Ley en términos preventivos y para que las condiciones del entorno sean apropiadas para el desarrollo preventivo de agentes económicos cuya actuación sea contraria a la Ley, en su lugar para que su actividad se desarrolle en un ambiente de competencia y libre concurrencia.

## Croatia

1. Please provide us with case examples of decisions (taken over the last 5 years) by the competition authority of your country, which have contributed either directly or indirectly to the achievement of the objectives of competition laws and the mission of the competition authority of your country.

*In such cases, please elaborate on how such decisions contributed to the following:*

- (a) Development of economic sectors*
- (b) Increased investment (domestic and foreign)*
- (c) Increased trade (exports and imports)*
- (d) Enterprise or private sector development*
- (e) Consumer welfare*
- (f) Policy making by government*

In general, all decisions taken by the CCA contributed or aimed to contribute to the promotion of efficient implementation of the competition law. More specifically, the examples of cases are described further below.

(d) Enterprise or private sector development- In the abuse of dominance case *HUVEL, Zagreb vs. HDS-ZAMP*, in its decision from 3 November 2009, the CCA established that HDS-ZAMP (collective society) since 1 January 2006 onwards abused its dominant position by charging different rebates to levy payers through application of dissimilar conditions to equivalent transactions which are not objectively justified. Hence, it ordered cessation of such abusive practice by the HDS-ZAMP and prohibited any further activities of the undertaking in question which may prevent, restrict or distort competition through abuse of a dominant position. Finally it ordered HDS-ZAMP to collect private copying levy under the equal conditions to all levy payers as of the receipt of CCA's decision. This decision lead to the equal treatment of undertaking when paying rebates regardless of their membership in certain association, and thus, to further development of private undertakings on that relevant market.

\*More detailed summary of this case can be found in separate document attached to this

questionnaire as well as additional examples of the CCA cases.

(e) Consumer welfare-In most of the CCA cases establishing prohibited agreements-cartels, the aspect of the consumer welfare is present while the seizure of the cartel activity should lead again to market based prices which are more convenient for the consumers and to the greater choice of products. Please, refer to the separate document attached to this questionnaire for examples of the CCA cartel cases.

2. *Please send to us copies (by email or by web links) of (i) sectoral or macro-level studies assessing the state of competition in your country and (ii) studies assessing the impact and effectiveness of competition laws and policy in your country.*

There are no macro –level impact assessment studies prepared due to the lack of resources of the CCA. However, on annual basis the CCA prepares sectoral studies for retail in groceries, predominantly food, beverages and sanitary products sector for the purpose of daily work (there many merger cases in this sector). Additionally, in last couple of years some other sector inquires have been done in specific sectors, such as food supply chain sector, insurance sector, media sector, pharmaceuticals, audit services sector, accounting services sector, telecom sector, transport sector, travel/tour operators sector and utilities sector (postal and courier services).

The mentioned studies are only available in Croatian language.

3. *Please elaborate on any special features that the competition law and policy of your country may contain that were designed to address specific development objectives on the part of government or to address special development conditions in your country.*  
*Examples:*
  - a. *Features addressing public interest objectives*
  - b. *Exemptions with specific objectives (industrial policy, Small and medium-sized development, informal sector, black markets)*
  - c. *Special programs for minority groups, certain interest groups or specific sectors.*

The only exception envisaged could be found in the Article 4 of the current Competition Act referring to the services of general economic interest. This exception provides that the Competition Act shall also apply to legal and natural persons entrusted pursuant to special

regulations with the operation of services of general economic interest, or which are by exclusive rights allowed to undertake certain business activities, insofar as the application of Competition Act does not obstruct, in law or in fact, the performance of the particular tasks assigned to them by special regulations and for the performance of which they have been established (the same rule applies in the EU competition law).

In addition, competition in banking sector is at the moment under competence of the Croatian National Bank, however this will also come under competence of the CCA after Croatia becomes the EU Member State.

## Cyprus

1. *Please provide us with case examples of decisions (taken over the last 5 years) by the competition authority of your country, which have contributed either directly or indirectly to the achievement of the objectives of competition laws and the mission of the competition authority of your country.*

*In such cases, please elaborate on how such decisions contributed to the following:*

- (a) Development of economic sectors*
- (b) Increased investment (domestic and foreign)*
- (c) Increased trade (exports and imports)*
- (d) Enterprise or private sector development*
- (e) Consumer welfare*
- (f) Policy making by government*

Not Applicable. The Commission for the Protection of Competition is best suited to answer this question.

2. *Please send to us copies (by email or by web links) of (i) sectoral or macro-level studies assessing the state of competition in your country and (ii) studies assessing the impact and effectiveness of competition laws and policy in your country.*

Unfortunately, such studies are not available in the English language and have been carried out for internal use by the Ministry.

3. *Please elaborate on any special features that the competition law and policy of your country may contain that were designed to address specific development objectives on the part of government or to address special development conditions in your country.*

*Examples:*

- a. Features addressing public interest objectives*

Features addressing public interest objectives:

- A restrictive agreement or a category of agreements may be permitted (exempted) and declared valid by law and become effective if the following requirements concur:
  - (a) It contributes, with a reasonable participation of consumers, in the resulting benefit, in the development of production or distribution of goods or in the promotion of technical or financial development;

(b) It does not impose on the enterprises concerned additional restrictions unless they are absolutely necessary for the achievement of the above mentioned purposes; and

(c) it does not permit the enterprises, to which the agreement relates, the possibility of eliminating competition from a substantial part of the market of the product concerned.

• The following shall not fall within the provisions of the competition law:

(a) Agreements relating to wages and terms of employment and working conditions,

(b) Enterprises which either carry out services of general economic interest or are state monopolies and for which the application of the law would impede the fulfilment of the mission assigned to them by the State.

*b. Exemptions with specific objectives (industrial policy, Small and medium-sized development, informal sector, black markets)*

Exemptions with specific objectives are only block exemptions which apply also in the European Union's single market provided they fulfill certain agreements. These are:

- Categories of vertical agreements and concerted practices
- Categories of vertical agreements and concerted practices in the motor vehicle sector
- Categories of specialisation agreements
- Categories of research and development agreements
- Categories of technology transfer agreements
- Certain categories of agreements, decisions and concerted practices in the insurance sector
- Certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia)
- Agreements on the production and trade in agricultural products
- Technical cooperation in the air transport sector
- Road transport sector agreements
- Maritime conferences in sea transport

*d. Special programs for minority groups, certain interest groups or specific sectors.*

Not Applicable

## Ecuador

1. *Favor proporcionar ejemplos de decisiones (adoptadas en los últimos 5 años) de parte de la agencia de competencia o la autoridad encargada del tema en su país, que hayan contribuido ya sea directa o indirectamente al logro de los objetivos de las leyes de competencia y la misión de la autoridad en su país*

*En tales casos, se agradece describir la forma en que las decisiones han contribuido a los siguientes aspectos:*

- (a) Desarrollo de sectores económicos*
- (b) Fomento de la inversión (doméstica y extranjera)*
- (c) Incremento del comercio (exportaciones e importaciones)*
- (d) Desarrollo empresarial o del sector privado*
- (e) Bienestar del consumidor*
- (f) Políticas públicas*

La Agencia de Competencia del Ecuador, por su reciente creación, únicamente ha entendido una resolución final, el caso –Seguro Obligatorio de Accidentes de Transito- SOAT, en el cual se inicio una investigación preliminar. Se considero que la reforma del Reglamento sujeto de investigación que determinaba los valores de las primas de seguro de vehículos a motor ya no podían ser revisada por desaparición de la norma reglamentaria investigada.

2. *Se agradece enviar copias (vía correo electrónico, sitios de Internet relevantes) de (i) los estudios sectoriales o de la situación a nivel macro, que permitan evaluar el estado de la competencia en su país, así como también (ii) estudios que permitan evaluar el impacto y la eficiencia de las leyes y política de competencia en su país.*

En la página Web del Ministerio de Industrias y Productividad: <http://www.micip.gov.ec>, en la parte pertinente a Competencia y Defensa del Consumidor, consta el Item –Estudio de Mercado-.



3. *Se agradece explicar en detalle cualquier aspecto de la ley y política de competencia de su país que haya sido diseñado con el fin de atender objetivos específicos de desarrollo de parte del gobierno o condiciones especiales relacionadas con el desarrollo de su país.*

*Ejemplos:*

- a. Aspectos relacionados con objetivos de interés público*
- b. Exenciones con objetivos específicos (política industrial, desarrollo de pequeñas y medianas empresas, sector informal, mercado negro)*
- c. Programas especiales de atención a los grupos minoritarios, ciertos grupos de interés o sectores específicos.*

La legislación de Competencia en Ecuador la constituye la Decisión 608 de la Comunidad Andina, que se aplicara a través del Decreto Ejecutivo 1614 de 2009. Esta normativa andina se aprobó considerando únicamente aspectos relacionados con objetivos de interés público en la región y no aspectos particulares de cada país.

## Ethiopia

1. *Please provide us with case examples of decisions (taken over the last 5 years) by the competition authority of your country, which have contributed either directly or indirectly to the achievement of the objectives of competition laws and the mission of the competition authority of your country.*

*In such cases, please elaborate on how such decisions contributed to the following:*

- (a) Development of economic sectors*
  - (b) Increased investment (domestic and foreign)*
  - (c) Increased trade (exports and imports)*
  - (d) Enterprise or private sector development*
  - (e) Consumer welfare*
  - (f) Policy making by government*
2. *Please send to us copies (by email or by web links) of (i) sectoral or macro-level studies assessing the state of competition in your country and (ii) studies assessing the impact and effectiveness of competition laws and policy in your country.*
  3. *Please elaborate on any special features that the competition law and policy of your country may contain that were designed to address specific development objectives on the part of government or to address special development conditions in your country.*

*Examples:*

    - a. Features addressing public interest objectives*
    - b. Exemptions with specific objectives (industrial policy, Small and medium-sized development, informal sector, black markets)*
    - c. Special programs for minority groups, certain interest groups or specific sectors.*

There is no research in Ministry of Justice on assessing the practicability and prevalence of existing trade competition law in Ethiopia.

There are provisions in the commercial code, Civil Code and Criminal Code of Ethiopia regarding the trade competitions. And there is Proclamation named Trade mark Registration and Protection Proclamation No 501/2006 which designed to protect the reputation and good will of business persons engaged in manufacturing and distribution of goods as well as rendering services by protecting trade marks to avoid confusion between similar goods and services, to guide customers choice and protect their interests and to the advancement of national economy particularly on the

trade and industrial development.

The objectives that provisions dealing with trade competitions in the commercial code, Civil code and criminal code are to advance the economic development of the country by creating healthy trade competition to escalate trade activities and create environment for investment activities.

## Finland

1. Please provide us with case examples of decisions (taken over the last 5 years) by the competition authority of your country, which have contributed either directly or indirectly to the achievement of the objectives of competition laws and the mission of the competition authority of your country.

*In such cases, please elaborate on how such decisions contributed to the following:*

- (a) Development of economic sectors*
- (b) Increased investment (domestic and foreign)*
- (c) Increased trade (exports and imports)*
- (d) Enterprise or private sector development*
- (e) Consumer welfare*
- (f) Policy making by government*

With regard to the achievement of the objectives of competition law and the mission of the competition authority the decision of the Supreme Administrative Court in the asphalt cartel case and the decision of the Market Court in the timber cartel case are of importance. The two court decisions are major decisions for anti-cartel policy in Finland.

In 2009, the Supreme Administrative Court found that a national asphalt cartel operated in Finland during 1994-2002, and all the biggest actors of the field took part in it. The Supreme Administrative Court imposed competition infringement fines for a total of EUR 82.55 million. In 2007, the Market Court had imposed fines of total of EUR 19.4 million on the asphalt companies. The amount of the fine proposed by the FCA was roughly EUR 97 million. The Market Court's decision was appealed by the FCA and six asphalt companies to the Supreme Administrative Court. The FCA's appeal to increase the infringement fine was approved almost as such. The appeals made by the asphalt companies were dismissed.

The press releases are available in English at <http://www.kilpailuvirasto.fi/cgi-bin/english.cgi?luku=news-archive&sivu=news/n-2009-09-29>; <http://www.kilpailuvirasto.fi/cgi-bin/english.cgi?luku=news-archive&sivu=news/n-2007-12-19>.

In 2009, the Market Court found that the forestry companies Metsäliitto Cooperative, Stora Enso Plc and UPM-Kymmene Plc were guilty of forbidden national price cooperation and exchange of information in the purchase of timber during 1997-2004. In 2009, the Market Court imposed competition infringement fines for a total of EUR 51 million. The amount of the fine was the

same as proposed by the FCA. UPM-Kymmene was exempted from the infringement fine because it disclosed information on the cartel and assisted in investigating the matter. Metsäliitto also assisted in investigating the matter due to which its infringement fine was reduced by 30%.

The press release is available in English at <http://www.kilpailuvirasto.fi/cgi-bin/english.cgi?luku=news-archive&sivu=news/n-2009-12-03>.

With regard to the development of economic sectors, the FCA has intervened with competition restraints related to critical bottleneck products particularly in the web infrastructure fields where the infrastructure needed for accessing the market is typically governed by the competitor. For example in the **telecommunications market**, the FCA has made several investigations on the broadband market. The competitors' possibilities to use the local networks have improved due to the investigations in a large part of the country.

In 2004, the FCA made a proposal to the Market Court on the imposition of an infringement fine to Lännen Puhelin in the matter of a price squeeze. According to the proposal, Lännen Puhelin has refused to grant access to the regional network governed by Lännen Puhelin on conditions whereby competitors, too, could have offered broadband connections to consumers at a profitable price. In 2008, the FCA received the Market Court decision in which the Court established that Lännen Puhelin has a dominant position in the broadband wholesale market, but unlike the FCA, it held that the company had not abused its dominance. The FCA has appealed the matter to the Supreme Administrative Court. The case is still pending at the Court. The case has particular relevance, because it defines how the Competition Act is applied in the lease of the fixed network in the broadband market and access into the Internet in the telecoms market more generally.

The press release is available in English at <http://www.kilpailuvirasto.fi/cgi-bin/english.cgi?luku=news-archive&sivu=news/n-2004-10-27>.

In 2007, the FCA made four proposals to the Market Court on the imposition of an infringement fine in cases involving the discriminatory discounts systems of subscriber lines. The largest amount of fines was proposed to Oulun Puhelin for abuse of dominant position. Oulun Puhelin has favored its own service operator in the rents it collected for its subscriber lines. The conduct complicated the competitor's access into broadband, corporate service and fixed subscriber lines market. Smaller infringement fines were proposed to three other telecoms companies for abuse

of dominant position. During the FCA's investigations, the companies cancelled their discriminatory discount systems. The entry of competitors to the market was facilitated when the price of the subscriber lines decreased and the pricing principles of the network leases became similar to those of the service operator governing the network. The cases are a signal to the market that abuse may be punishable even if the competition restriction was cancelled during the FCA's investigations. Cancelling the restraint may, however, reduce the amount of the infringement fine.

The press releases are available in English at <http://www.kilpailuvirasto.fi/cgi-bin/english.cgi?luku=news-archive&sivu=news/n-2007-05-25>; <http://www.kilpailuvirasto.fi/cgi-bin/english.cgi?luku=news-archive&sivu=news/n-2007-10-24>.

In May 2009, the FCA issued its decision in case Elisa concerning the broadband market. The case was closed when Elisa lowered the network rental fee it collected from customers to remove the competition problem. By renting the network, competitors now have the chance to access the broadband market in Elisa's fixed network. In the context of the Elisa case, the FCA defined how to make a price squeeze assessment in the broadband market. On the basis of this, the FCA submitted guidelines which seek to ensure that the fixed-network operators will not apply pricing practices which restrict competition.

The press release is available in English at <http://www.kilpailuvirasto.fi/cgi-bin/english.cgi?luku=news-archive&sivu=news/n-2009-09-03>.

In the **energy market**, the FCA's aim is to safeguard fair and equal entry conditions for both domestic and foreign undertakings. The tools used include intervention with detected competition restraints and influencing the development of legislation and regulation. In competition control, examples include the investigations on the national grid tariffs of electricity, the aim of which is to ensure that there are no elements of foreclosure or discrimination in the pricing of the national grid.

The FCA has also sought to pinpoint competition restraints related to the public regulation and standards of construction and to show initiative in removing them. The special investigations on the **construction sector** were finished in the summer of 2008 and the results were published in the FCA's publication series (FCA's Reports 1/2008: Functioning of the construction market — problem areas and possibilities for promotion.)

The report is available in Finnish at <http://www.kilpailuvirasto.fi/tiedostot/rakennusprojektin-loppuraportti.pdf>.

With regard to the achievement of the objectives of competition law, the FCA finds that the following two court decisions contain an important message to the trade organizations. The decisions signal to the trade organizations that they cannot fix prices or otherwise involve themselves in the pricing of their members.

In 2009, the Market Court found that Suomen Kodinkonehuoltojen liitto (the Association of Finnish Household Appliance Maintenance) was guilty of price-fixing in 1997-2003 and imposed a competition infringement fine to the association. As regards the infringement, the Market Court's decision corresponds to the FCA's proposal. The amount of the fine imposed by the Market Court was lower than proposed by the FCA. The FCA had also proposed to the Market Court that it would impose a fine for the member companies in the board of the association. In this regard, the FCA's proposal was dismissed. The matter is pending at the Supreme Administrative Court.

In 2009, the Market Court found that Suomen Hiusyrittäjät ry (Finnish Hairdressers and Barbers) had issued unlawful price recommendations to its members in 2000-2006 and imposed a competition infringement fine to the trade association. The Market Court's decision corresponds to the FCA's proposal.

2. *Please send to us copies (by email or by web links) of (a) sectoral or macro-level studies assessing the state of competition in your country and (b) studies assessing the impact and effectiveness of competition laws and policy in your country.*

In 2008, the FCA published the first Competition Survey. The survey contains a summary of the theoretical basis of competition, reports on the meaning of competition in maintaining economic development and reviews of competition in telecommunications, the electricity market, water and sewage construction and the environmental business. The survey provides a good basis for discussion on competition and the importance thereof, and decision-making, and its input is particularly important in the economic crisis at hand.

The survey is available in Finnish at: <http://www.kilpailuvirasto.fi/tiedostot/kilpailukatsaus-24-11-2008.pdf>.

In 2008, the Ministry of Employment and the Economy commenced an external evaluation of the FCA, the aim of which was to evaluate how the FCA's objective has been met and how the social impact of its operations has developed during the past 10 years. The report which was finished in 2009 (The Ministry of Employment and the Economy's reports, Competitiveness 6/2009) gives a positive account on the FCA's activities. According to the evaluation, the FCA has succeeded in its task and its operations have had a positive impact on society.

The report is available in Finnish with English summary on page 53 at [http://www.tem.fi/files/21926/TEM6\\_09.pdf](http://www.tem.fi/files/21926/TEM6_09.pdf).

3. *Please elaborate on any special features that the competition law and policy of your country may contain that were designed to address specific development objectives on the part of government or special development conditions in your country.*

*Examples:*

- (a) Features addressing public interest objectives;*
- (b) Exemptions with specific objectives (industrial policy, small and medium-sized enterprises' development, informal sector, black markets);*
- (c) Special programmes for minority groups, certain interest groups or specific sectors.*

Finland is in the process of amending the Competition Act. The current Competition Act came into force on 1 September 1992 and subsequently, has been subject to many amendments. In 2007, the Ministry of Employment and the Economy appointed a working group to assess the need to amend the Competition Act. In 2009, the group submitted its report to the Minister proposing new competition legislation.

According to the proposals, the most harmful competition restrictions would be more severely sanctioned. It is suggested that fines would be calculated in accordance to the Commission Guidelines. Fines would remain administrative in nature also in the future. The provisions on compensation for damages are proposed to be altered to better enable victims of competition infringements, including consumers, to benefit. One proposal includes strengthening the possibility to prioritize and to focus investigations on the most harmful cases. The group suggests that FCA's investigative powers be improved for instance to provide for inspections of private premises. The leniency system would become more predictable and better motivate companies participating in cartels to contact the FCA. The proposals also foresee changes in merger control such as a change from the currently used



dominance test to the SIEC-test.

The report is available in Finnish with English summary on page 207 at <http://www.tem.fi/files/21617/TEM4.pdf#page=207>.

The press release is available in English at <http://www.kilpailuvirasto.fi/cgi-bin/english.cgi?luku=news-archive&sivu=news/n-2007-06-19>.

## Germany

1. Please provide us with case examples of decisions (taken over the last 5 years) by the competition authority of your country, which have contributed either directly or indirectly to the achievement of the objectives of competition laws and the mission of the competition authority of your country.

*In such cases, please elaborate on how such decisions contributed to the following:*

- (a) Development of economic sectors*
- (b) Increased investment (domestic and foreign)*
- (c) Increased trade (exports and imports)*
- (d) Enterprise or private sector development*
- (e) Consumer welfare*
- (f) Policy making by government*

The objective of the German ARC is to safeguard the competitive process. Thereby, the ARC is based on the idea that a free competitive process will also contribute to the enhancement of other policy objectives such as the improvement of consumer welfare, development of economic sectors, increased investment, increased trade, etc.

As the ARC does not stipulate specific policy goals, it is hard to identify single decisions which have contributed to the achievement of the ARC's objectives. The Bundeskartellamt believes that all of its decisions have – at least in the long run – contributed to safeguard the competitive process. Recent decisions include:

### Cartels:

B11-18/08 – Fine proceedings against coffee roasters on account of price fixing

English case summary available at

[http://www.bundeskartellamt.de/wEnglisch/download/pdf/Fallberichte/B11-018-08-Kafferoester\\_engl.pdf?navid=30](http://www.bundeskartellamt.de/wEnglisch/download/pdf/Fallberichte/B11-018-08-Kafferoester_engl.pdf?navid=30)

B1-200/06 – Fine proceedings against manufacturers in the German clay roof tile sector

English case summary available at

<http://www.bundeskartellamt.de/wEnglisch/download/pdf/Fallberichte/B1-200-06-E.pdf?navid=30>

Antitrust:

B10-16/08 to B10-56/08 - Abuse proceedings from 2008 against gas suppliers (“2008 gas price proceedings”) – examination by the Bundeskartellamt of commitments offered by suppliers and gas price developments

English case summary available at

<http://www.bundeskartellamt.de/wEnglisch/download/pdf/Fallberichte/B10-016-056-08--E.pdf?navid=34>

Merger:

B2-46/08 – Merger between Nordzucker AG, Braunschweig and Danisco Sugar A/S, Copenhagen, Denmark

English case summary available at

<http://www.bundeskartellamt.de/wEnglisch/download/pdf/Fallberichte/B2-46-08-E.pdf?navid=39>

- 2. Please send to us copies (by email or by web links) of (a) sectoral or macro-level studies assessing the state of competition in your country and (b) studies assessing the impact and effectiveness of competition laws and policy in your country.*

Sector inquiries to assess the state of competition

Over the past years, the Bundeskartellamt has initiated a series of sector inquiries, not all of which have yet been completed and their results published. Inquiries, which have been (partially) completed and their results published include sector inquiries in the milk, advertising, gas transport and fuel markets. The results can be downloaded from (in German only):

<http://www.bundeskartellamt.de/wDeutsch/publikationen/SektoruntersuchungW3DnavidW2662.php>

An English overview of the interim results of the sector inquiry into the milk markets can be downloaded from:

[http://www.bundeskartellamt.de/wEnglisch/download/pdf/10-006\\_Sektoruntersuchung\\_Milch-E.pdf](http://www.bundeskartellamt.de/wEnglisch/download/pdf/10-006_Sektoruntersuchung_Milch-E.pdf)

Studies assessing the impact and effectiveness of competition law and policy

So far, the Bundeskartellamt has not yet published any such studies.

*3. Please elaborate on any special features that the competition law and policy of your country may contain that were designed to address specific development objectives on the part of government or special development conditions in your country.*

*Examples:*

- (a) Features addressing public interest objectives;*
- (b) Exemptions with specific objectives (industrial policy, small and medium-sized enterprises' development, informal sector, black markets);*
- (c) Special programmes for minority groups, certain interest groups or specific sectors.*

N/A

## Hungary

1. *Please provide us with case examples of decisions (taken over the last 5 years) by the competition authority of your country, which have contributed either directly or indirectly to the achievement of the objectives of competition laws and the mission of the competition authority of your country.*

*In such cases, please elaborate on how such decisions contributed to the following:*

- (a) Development of economic sectors*
- (b) Increased investment (domestic and foreign)*
- (c) Increased trade (exports and imports)*
- (d) Enterprise or private sector development*
- (e) Consumer welfare*
- (f) Policy making by government*

The Hungarian Competition Act is based on the principles of market economy. The Competition Act is based on Article 9 of the Constitution of the Republic of Hungary, which recognizes and supports the right to enterprise and the freedom of competition in the economy. According to the interpretation of the Constitutional Court, the Constitution protects economic competition even against state restrictions if these restrictions do not serve the establishment of market economy.

The GVH is the main guard of competition in Hungary. The most essential features and organisation of the GVH have basically remained the same since its establishment. Being sound in its activities and law enforcement practice for 20 years, following pre-determined and transparent principles, therefore regarded as an authentic competition authority promoting the constitutional state, the GVH serves fair competition for the benefit of consumers.

The role of the GVH in the functioning of market economy is, by increasing long term consumer welfare and hereby competitiveness for the benefit of the public, to ensure that competition law provisions within its competence prevail on the market, to support competition with all the legal instruments available, or where competition is not possible or does not bring the best results, to foster state regulations which would create competition or substitute it.

All decisions and all activities of the GVH (competition law enforcement, competition advocacy and the development of the competition culture) aim to fulfil the abovementioned role.

2. *Please send to us copies (by email or by web links) of (a) sectoral or macro-level studies assessing the state of competition in your country and (b) studies assessing the impact and effectiveness of competition laws and policy in your country.*

Ad (a): The summaries of sectoral inquiries of the GVH in English may be found at [http://www.gvh.hu/gvh/alpha?do=2&st=2&pg=146&m5\\_doc=4249&m170\\_act=4](http://www.gvh.hu/gvh/alpha?do=2&st=2&pg=146&m5_doc=4249&m170_act=4).

Ad (b). The GVH and since its foundation in 2005 the Competition Culture Centre regularly has surveys made on how familiar is the Hungarian society with the GVH, the competition law and the proceedings of the GVH. These surveys are published on the website of the GVH in Hungarian:

[http://www.gvh.hu/gvh/alpha?do=2&st=1&pg=54&m5\\_doc=6364&m90\\_act=17](http://www.gvh.hu/gvh/alpha?do=2&st=1&pg=54&m5_doc=6364&m90_act=17).

3. *Please elaborate on any special features that the competition law and policy of your country may contain that were designed to address specific development objectives on the part of government or special development conditions in your country.*

*Examples:*

- (a) *Features addressing public interest objectives;*
- (b) *Exemptions with specific objectives (industrial policy, small and medium-sized enterprises' development, informal sector, black markets);*
- (c) *Special programmes for minority groups, certain interest groups or specific sectors.*

The Hungarian Competition Act is sectorally neutral; it is not featured by exemptions favouring special sectors.

## Japan

1. *Please provide us with case examples of decisions (taken over the last 5 years) by the competition authority of your country, which have contributed either directly or indirectly to the achievement of the objectives of competition laws and the mission of the competition authority of your country.*

*In such cases, please elaborate on how such decisions contributed to the following:*

- (a) Development of economic sectors*
- (b) Increased investment (domestic and foreign)*
- (c) Increased trade (exports and imports)*
- (d) Enterprise or private sector development*
- (e) Consumer welfare*
- (f) Policy making by government*

### **[Evaluation of Enforcement of the AMA in FY2008]**

For the cases involving violations of the AMA in FY2008, (i) legal measures were adopted in 17 cases, (ii) various and strong-impact cases in the diverse fields of trade were processed, and (iii) the final and conclusive amount of surcharge levied per entrepreneur was the largest in the history at that time.

Since the objective of dealing strictly and quickly with violation of the AMA has been achieved, these measures can be evaluated as being effective.

It is estimated that consumer interest worth at least JPY 407.9 billion was saved by adopting these legal measures.

2. *Please send to us copies (by email or by web links) of (a) sectoral or macro-level studies assessing the state of competition in your country and (b) studies assessing the impact and effectiveness of competition laws and policy in your country.*

N/A

3. Please elaborate on any special features that the competition law and policy of your country may contain that were designed to address specific development objectives on the part of government or special development conditions in your country.

Examples:

- (a) Features addressing public interest objectives;
- (b) Exemptions with specific objectives (industrial policy, small and medium-sized enterprises' development, informal sector, black markets);
- (c) Special programmes for minority groups, certain interest groups or specific sectors.

As the answer to this question, we would like to explain exemption system of the AMA (mainly concerning to the above (b)).

## **1. Exemption provided by the AMA**

### **(1) Exemption to the exercise of rights under IPR laws**

Article 21 of the AMA prescribes *“the provisions of this Act shall not apply to such acts recognizable as the exercise of rights under the Copyright Act, Patent Act, Utility Model Act, Design Act or Trademark Act.”*

Concerning this provision, the JFTC has compiled a guideline and has clarified this provision.

That is, any act that may seem to be an exercise of a right cannot be “recognizable as the exercise of the rights” provided that it is found to deviate from or run counter to the intent and objectives of the intellectual property systems, which are, namely, to motivate entrepreneurs to actualize their creative efforts and make use of technology, in view of the intent and manner of the act and its degree of impact on competition.

### **(2) Exemption to certain partnerships**

Article 22 of the AMA provides the exemption to partnerships.

However, to receive such an exemption, the partnership must fulfill each condition as follows.

- (i) The purpose of the partnership is mutual support among small-scale entrepreneurs or consumers
- (ii) The partnership is voluntarily formed, and the partners may voluntarily participate in and



withdraw from the partnership

- (iii) Each partner possesses equal voting rights
- (iv) If distribution of profits among partners is contemplated, the limits of the distributions are prescribed by laws and regulations or in the articles of partnership

Also, in the cases where (i) unfair trade practices are employed, or where (ii) competition in any particular field of trade is substantially restrained, resulting in unjust increases of prices, the exemption shall not apply.

### **(3) Exemption to RPM of published works**

Article 23, paragraph (4) provides the exemption to resale price maintenance of published works.

“Published works” are confined to books, magazines, newspapers, records, music tapes and music compact discs.

This exemption shall not apply to the case where (i) the said act tends to unreasonably harm the interests of general consumers, or where (ii) it is committed by an entrepreneur who sells the said commodity against the will of the entrepreneur who produces the said commodity.

## 2. Exemptions by other laws

As of FY2008, exemptions by other laws are as follows.

Name of law	Content of cartel	Number of transactions*
Insurance Business Act	Concerted action by nonlife insurers on certain insurances	4
Act on Non-Life Insurance Rating Organization of Japan	Calculation of base rate of certain insurances	2
Act on Securing of Liquor Tax and on Liquor Business Associations	Regulation on facility, container and other method of sales	0
Act on Coordination and Improvement of Environmental Health Industry	Restriction on fare, price, method of business, etc.	0
Export and Import Transaction Law	Agreement on price, volume, quality, design, etc. in export and import transaction	0
Road Traffic Act	Joint management to secure roots for life, etc.	3
Civil Aeronautics Act	[Domestic] Joint management to secure roots for life	0
	[International] Agreement regarding transport connection, fare, and others for increase of convenience of public	438
Marine Transportation Act	[Coastal Shipping] Joint management to secure roots for life, etc.	6
	[Overseas Shipping] Agreement regarding fare, fee, other condition of transportation, etc.	476
Coastal Shipping Associations Act	Adjustment of fare, fee, other condition of transportation, number of use and retention of ships, etc.	1

\* The number of transaction is in FY 2008.

**Sectoral or macro-level studies assessing the state of competition in Japan, etc.**

**1. Sectoral or macro-level studies assessing the state of competition in Japan**

	Title (URL)	Published date
1	<b>Fact-finding survey on Animation Industry (Overview)</b> ( <a href="http://www.jftc.go.jp/e-page/pressreleases/2009/January/090123.pdf">http://www.jftc.go.jp/e-page/pressreleases/2009/January/090123.pdf</a> )	Jan. 23, 2009
2	<b>Report on the Fact Finding Survey on Textbook Distribution (Summary)</b> ( <a href="http://www.jftc.go.jp/e-page/pressreleases/2007/August/070803.pdf">http://www.jftc.go.jp/e-page/pressreleases/2007/August/070803.pdf</a> )	Aug 3, 2007
3	<b>Fact-finding Survey on Representations concerning Short-term Language Training Programs in Foreign Countries (Summary)</b> ( <a href="http://www.jftc.go.jp/e-page/pressreleases/2006/December/061219.pdf">http://www.jftc.go.jp/e-page/pressreleases/2006/December/061219.pdf</a> )	Dec. 19, 2006
4	<b>Report on Distribution of Pharmaceuticals (Overview)</b> ( <a href="http://www.jftc.go.jp/e-page/pressreleases/2006/September/060927.pdf">http://www.jftc.go.jp/e-page/pressreleases/2006/September/060927.pdf</a> )	Sept. 27, 2006
5	<b>Report on the Medical Equipment Distribution (Overview)</b> ( <a href="http://www.jftc.go.jp/e-page/pressreleases/2005/Dec/051227.pdf">http://www.jftc.go.jp/e-page/pressreleases/2005/Dec/051227.pdf</a> )	Dec. 27, 2005
6	<b>Report on the Advertisement Industry (Overview)</b> ( <a href="http://www.jftc.go.jp/e-page/pressreleases/2005/Nov/051108.pdf">http://www.jftc.go.jp/e-page/pressreleases/2005/Nov/051108.pdf</a> )	Nov. 8, 2005

**2. Studies assessing the impact and effectiveness of competition law and policy in Japan**

	Title (URL)	Published date
1	<b>Evaluation of JFTC Policies in FY2009</b> ( <a href="http://www.jftc.go.jp/e-page/pressreleases/2009/July/090722.pdf">http://www.jftc.go.jp/e-page/pressreleases/2009/July/090722.pdf</a> )	July 22, 2009
2	<b>Evaluation of JFTC Policies in FY2008</b> ( <a href="http://www.jftc.go.jp/e-page/pressreleases/2008/August/080825.pdf">http://www.jftc.go.jp/e-page/pressreleases/2008/August/080825.pdf</a> )	Aug. 25, 2008

## Kenya

1. *Please provide us with case examples of decisions (taken over the last 5 years) by the competition authority of your country, which have contributed either directly or indirectly to the achievement of the objectives of competition laws and the mission of the competition authority of your country.*

*In such cases, please elaborate on how such decisions contributed to the following:*

- (a) Development of economic sectors*
- (b) Increased investment (domestic and foreign)*
- (c) Increased trade (exports and imports)*
- (d) Enterprise or private sector development*
- (e) Consumer welfare*
- (f) Policy making by government*

The main objective of the Kenyan competition law is to encourage and promote competition in the Kenyan economy. This has the effect of leading to, among others; economic efficiency which in turn leads to economic development, innovation by market players through research and development and creation of employment, provision of a variety of goods and services at lower prices, enhanced competitiveness of domestic firms against international players, export promotion and supply. The ultimate beneficiary from promotion and protection of competition by the Authority is the final consumer.

The following are examples of cases which the Authority handled which sought to achieve its objectives;

### **i) Brookside Dairy and Spinknit Dairy Limited**

#### **Introduction**

Brookside Dairy Limited and Spinknit Dairy Limited were involved in the packaging and distribution of milk and milk products. The transaction involved acquisition of 100% of the issued share capital of Spinknit Dairy Limited by the shareholders of Brookside Dairy Limited in exchange of shares in Brookside Dairy Limited by the shareholders of Spinknit Dairy Limited by way of a share-swap. The firms merged to compete with Kenya Cooperative Creameries, a

government parastatal. The transaction was approved by the Minister as it falls under the legal jurisdiction of merger/takeover.

The decision to approve the transaction was arrived at after it met the criteria as set out in section 30 of the Restrictive Trade Practices, Monopolies and Price Control Act, Cap 504. The decision contributed to the following:

Through the merger, there was to be enhanced competition which led to improved efficiency in milk procurement, processing and distribution. This also reduced the incidence of consuming adulterated milk from the informal sector.

The resultant merger's aim was to invest in milk powder production which had been previously and solely done by KCC. This had a positive effect of creating strategic reserves of milk powder to ensure the country copes during drought.

Kenya is one of the largest Sub-Saharan Africa dairy producers. As a result of the consolidation of the two companies' products and resources, they were to be able to expand the demand for their products outside their domestic markets. The firms were able to penetrate the COMESA region.

The resultant economies of scale and utilization of the available infrastructural facilities existing for both companies, was likely to lead to the strengthening of the sector to compete more favorably with Kenya Cooperative Creameries, a government parastatal which had been a monopoly.

Through enhanced competition and efficiency gains, the producer prices went up increasing the welfare of the farmers. The gains above translated into higher quality milk products and lower consumer prices.

## **ii) Post Bank and Western Union**

### **Introduction**

The case involved exclusivity clause between Post Bank and Western Union in money remittance. Money remittance is in two levels: local; where money is transferred within national boundaries and international; remittance where money is transferred across countries. Western Union Financial services International (Western Union) connects all its agents through a central computer database located in the United States of America. This permits customers to instantly transfer cash electronically to individuals or companies anywhere in the world.

Kenya Post Office Savings Bank is mandated to offer savings and payment services to Kenyans. It offers money transfer mainly for Kenyans in the Diaspora through agency agreement with Western Union.

The agency Agreement between Post Bank and Western Union was in contravention of Cap 504 as it contained; i) price fixing whereby Post Bank was forced to charge recommended rates contained in the Western Union Rate Schedules; ii) Post Bank was not allowed to operate a similar money transfer service during the tenure of the Agreement or a year after the expiration or termination of the Agreement.

The Authority supported Post Bank in doing away with restrictive clauses from the contract. A new contract was signed which gave Post Bank the flexibility of offering other remittance services.

The removal of the exclusivity clause enabled Post Bank to engage in other competitive remittance services. Competition in the sector was enhanced as a wider range of remittance services was made available to the consumer.

Kenyans in the Diaspora were able to transfer money back home freely with various options of

choice. This led to increase in the remittances from abroad which was further used for economic development.

The charges on sending money through Western Union became affordable resulting to increased remittances.

2. *Please send to us copies (by email or by web links) of (a) sectoral or macro-level studies assessing the state of competition in your country and (b) studies assessing the impact and effectiveness of competition laws and policy in your country.*

Copies of the sector studies can be accessed through our 2008-2009 Annual Report which is under our web link; <http://www.treasury.go.ke/>

No studies have been undertaken. After many years of enforcement of competition law, the Commission came to the realization that Cap 504 has inherent weaknesses. In addressing these weaknesses, a review of the current law is on the process. The Competition Bill 2009 is in the final stages of legislation.

3. *Please elaborate on any special features that the competition law and policy of your country may contain that were designed to address specific development objectives on the part of government or special development conditions in your country.*

*Examples:*

- (a) *Features addressing public interest objectives;*
- (b) *Exemptions with specific objectives (industrial policy, small and medium-sized enterprises' development, informal sector, black markets);*
- (c) *Special programmes for minority groups, certain interest groups or specific sectors.*

i) Features addressing public interest objectives

The features that address the public interest objectives are included under sections 23 and 30 of Cap 504. Under these criteria, the Commissioner in formulating a recommendation to the Minister shall have due regard to the following;

➤ Effects on Employment

When firms merge, rationalization of operations makes employee lay offs a likely consequence. However, if the transaction leads to a substantial reduction of employment especially in areas where there are no duplications, the applications may be approved upon firms undertaking to cushion employees from such redundancies.

➤ Expansion/ promotion of Exports

Mergers and takeovers that are likely to lead to promotion of exports are given favourable consideration in cases where the proposed transaction compromises competition and employment.

➤ Unwarranted concentration of economic power

The aim of discouraging unwarranted concentration of economic power is to bring on board the small and medium enterprises in the production, distribution and supply of services. This has the effect of containing those firms which might abuse their dominance.

ii) Exemptions with specific objectives

The Kenyan law captures exemptions under section 5 of the Act but does not deal with specific objectives. Section 5 allows trade practices which are sanctioned by parliamentary authority and those associated with the licensing of participants in certain trades and professions by agencies of the government with the authority of parliament.



## Mauritius

1. *Please provide us with case examples of decisions (taken over the last 5 years) by the competition authority of your country, which have contributed either directly or indirectly to the achievement of the objectives of competition laws and the mission of the competition authority of your country.*

*In such cases, please elaborate on how such decisions contributed to the following:*

- (a) Development of economic sectors*
- (b) Increased investment (domestic and foreign)*
- (c) Increased trade (exports and imports)*
- (d) Enterprise or private sector development*
- (e) Consumer welfare*
- (f) Policy making by government*

The Competition Act became fully operational on the 25th November 2009, and the Commission has since then launched four investigations. At this stage, no final decision has been taken by the Commission on any cases and the investigations are still on-going.

2. *Please send to us copies (by email or by web links) of (a) sectoral or macro-level studies assessing the state of competition in your country and (b) studies assessing the impact and effectiveness of competition laws and policy in your country.*

Not applicable.

3. *Please elaborate on any special features that the competition law and policy of your country may contain that were designed to address specific development objectives on the part of government or special development conditions in your country.*

*Examples:*

- (a) Features addressing public interest objectives;*
- (b) Exemptions with specific objectives (industrial policy, small and medium-sized enterprises' development, informal sector, black markets);*
- (c) Special programmes for minority groups, certain interest groups or specific sectors.*

### **a) Features addressing public interest objectives**

Where the Competition Commission is reviewing a non-collusive or other vertical agreement, a merger situation or a monopoly situation, and where such review leads to a finding by the

Commission that there are adverse effects for competition, it is bound to take under consideration before deciding on any remedial action:

- o whether there is any off-setting public benefits; and
- o to what extent such off-setting benefits must be taken into account in determining the remedial action.
- o Whether the benefits are likely to be shared by consumers and business in general.

***“public benefits”*** include:

- o the safety of goods and services”
- o the efficiency with which goods are produced, supplied or distributed or services are supplied or made available;
- o the development and use of new and improved goods and services and in the means of production and distribution; or
- o the promotion of technological and economic progress.

**b) Exemptions with specific objectives (industrial policy, small and medium-sized development, informal sector, black markets)**

Two products are exempted from the application of the Competition Act: Petroleum Products and Liquid Petroleum Gas. Both products are imported by the Government through the State Trading Corporation and the Liquid

Petroleum Gas is highly subsidised by the Government for social considerations.

In addition, the followings agreements are also exempted from the application of the Act:

- (1) Any practice of employers or any agreement by which employers are parties in so far as it relates to the remuneration, term or contributions or employment of employees.
- (2) Any agreement in so far it contains provisions relating to the use, license or assignment of rights under or existing by virtue of laws relating to copyright, industrial design, patents, trade-marks or service marks.
- (3) Any practice or an agreement approved or required under an international agreement to which Mauritius is a party.

***c) Special programs for minority groups, certain interests groups or specific sectors.***

None

***(ii) Technical Assistance:***

Provide medium to long term internship for CCM employees, with well established competition agencies for the purpose of capacity building for the newly set up Competition Commission of Mauritius

Funded participation in international competition seminars and conferences to develop competition expertise of CCM staff

Organise case study based seminar to enhance investigative techniques

Develop a manual on legal procedures for investigating restrictive business practices

develop infrastructure in the form of a competition library

establish an infrastructure for monitoring information on matters relating to anti-competitive agreements

***(iii) Model Law on Competition:***

At this stage the CCM has no proposal for the redesigning or update of the model law.

***(ix) Voluntary Peer Review***

We are willing to participate in the peer review process.

## Netherlands

1. *Please provide us with case examples of decisions (taken over the last 5 years) by the competition authority of your country, which have contributed either directly or indirectly to the achievement of the objectives of competition laws and the mission of the competition authority of your country.*

*In such cases, please elaborate on how such decisions contributed to the following:*

- (a) Development of economic sectors*
- (b) Increased investment (domestic and foreign)*
- (c) Increased trade (exports and imports)*
- (d) Enterprise or private sector development*
- (e) Consumer welfare*
- (f) Policy making by government*

All NMa decisions contribute in some way directly or indirectly to achieving the objectives of the Dutch Competition Law and our mission statement, which is ‘making markets work’.

Every second year the NMa determines its Agenda wherein it states its priority sectors for the following two years. Priorities are based on sector analyses made by sector specific experts (program managers), an economic detection model (developed in consultation with the Chief Economist’s Office) and in dialogue with NMa stakeholders. Priority sectors for 2010-2011 are: healthcare, financial and business services and the manufacturing industry. These priority sectors are based on the idea that, given the NMa’s finite resources, some sectors have an increased likelihood for restrictions of competition and therefore require specific attention.

Besides making decisions the NMa gives advocacy to the different ministries of the Dutch government and guidance to the different industries. Our sector studies also provide knowledge for both government and the industry.

The NMa’s work thus generally contributes to all topics mentioned below. Here we will give a short example per topic.

In such cases, please elaborate on how such decisions contributed to the following:

- (a) Development of economic sectors; Energy regulation, Transport industry, particularly air passenger transport, but also freight transport industry. Our Monitor Financial Sectors (MFS) examined the lending system for small and medium-sized enterprises.
- (b) Increased investment (domestic and foreign); The influence of regulation on investment decisions of energy enterprises (is being carried out at this moment).
- (c) Increased trade (exports and imports); freight transport industry, banks and insurances.
- (d) Enterprise or private sector development; The NMa's work can prevent exclusion, for example by the involvement of the NMa in a new Payment Services Covenant. This Covenant made sure that new entrants were not excluded and the Payments market could develop itself.
- (e) Consumer welfare; Undertakers, Supermarkets, Estate agents. All the work the NMa carries out contributes to consumer welfare.
- (f) Policymaking by government; insights gained both from cases and sector studies can be used by the NMa in its advocacy efforts. Examples of sector-studies are studies in schoolbooks (2006), childcare (2008) and the small and medium-sized enterprises lending system (2009)

2. *Please send to us copies (by email or by web links) of (a) sectoral or macro-level studies assessing the state of competition in your country and (b) studies assessing the impact and effectiveness of competition laws and policy in your country.*

### **Sectoral or macro-level study assessing the state of competition in the Netherlands.**

Publication of The Social and Economic Council of the Netherlands (SER):

*Towards a more social European market economy: rethinking the Rhineland model*

<http://www.ser.nl/nl/actueel/toespraken%20van%20de%20voorzitter/20090514.aspx>

### **study assessing the effectiveness of competition laws and policy in the Netherlands.**

Sideren, Jarig van and Ron Kemp, 'The economic effect of competition law enforcement: the case of the Netherlands', in: *The Economist*, 2008.



economist 2008  
sinderen kemp.p...

Don, Henk, Ron Kemp and Jarig van Sinderen, 'Measuring the economic effects of competition law enforcement', in: *The Economist*, 2008.



economist 2008  
don.pdf (90 kB)...

Kalbfleisch, Pieter, Jarig van Sinderen and Jan Kees Winters, 'The Dutch Trust and Antitrust policies', in: A. Abbott, P. Schultheiss, D. Evans et al., *Trustbusters: Competition Policy Authorities Speak Out*. Competition Policy International, 2009.



Trustbusters -  
What Competitio...

3. *Please elaborate on any special features that the competition law and policy of your country may contain that were designed to address specific development objectives on the part of government or special development conditions in your country.*

*Examples:*

- (a) Features addressing public interest objectives;*
- (b) Exemptions with specific objectives (industrial policy, small and medium-sized enterprises' development, informal sector, black markets);*
- (c) Special programmes for minority groups, certain interest groups or specific sectors.*

There are no exceptions made for special objectives or minority groups. Under Dutch Competition Act, there are no sectors excluded from the application of national competition rules. However, sections 11 and 16 of the Dutch Competition Act exclude certain agreements. The prohibition of agreements which may prevent, restrict or distort competition on the Dutch market shall not apply to:

- i) Agreements involving undertakings entrusted with the provision of services in the public economic interest;
- ii) Collective labour agreements;
- iii) Agreements within an industry or sector between one or more employers' organisations and one or more employees' organisations that pertain exclusively to pensions and
- iv) Agreements or decisions by organisations of practitioners of a profession that pertain

exclusively to participation in an occupational pension scheme.

In the Netherlands, the de minimis rule is contained in article 7 of the Netherlands Competition Act. Under article 7, the prohibition on anticompetitive agreements does not apply to cases where: no more than eight undertakings are involved and the combined turnover does not exceed € 5,500,000 (for agreements concerning goods) or € 1,100,000 in all other cases.

Or the combined market share of the undertakings is no greater than 5% of the relevant market and the relevant turnover during the previous calendar year was no more than € 40,000,000.

In the Netherlands, the de minimis rule is under constant political pressure, especially by political parties that have a strong interest in protecting small and medium-sized enterprises. The original rule related only to the number of companies involved and their turnover. This was modified in October 2007, introducing an extra escape from the prohibition on cartels, for undertakings with a small market share. Already prior to this change, debate had risen about extending the exemption and a proposal to this end is pending before parliament.

Liberalisation of the Dutch health sector has meant a wave of mergers in the healthcare industry and these healthcare cases are very politically sensitive. At the close of 2007, the Minister came under considerable political pressure to introduce a stricter test for healthcare mergers. Ultimately, the change introduced halved the collective turnover threshold for healthcare mergers, from 113 million 450 thousand euros to 50 million euros. The individual turnover threshold was lowered from the normal 30 million euros to just 10 million euros. The lower thresholds are applicable from 1 January 2008, for a period of five years.

## Pakistan

1. Please provide us with case examples of decisions (taken over the last 5 years) by the competition authority of your country, which have contributed either directly or indirectly to the achievement of the objectives of competition laws and the mission of the competition authority of your country.

*In such cases, please elaborate on how such decisions contributed to the following:*

- (a) Development of economic sectors
- (b) Increased investment (domestic and foreign)
- (c) Increased trade (exports and imports)
- (d) Enterprise or private sector development
- (e) Consumer welfare
- (f) Policy making by government

The ultimate goal of competition law in Pakistan is to achieve consumer welfare. This is attained by ensuring free competition in all spheres of commercial and economic activity. The Competition Commission of Pakistan was established in November 2007. In the two and half years since its formation, the Commission has taken action against various cartels and curbed monopolistic behaviour by dominant players. Below is a brief of some of the important orders passed by the Commission, which aimed to protect consumer interests by curtailing anticompetitive practices in the economy.

However, the impact of these actions taken by the Commission on the development of economic sectors, private enterprises and trade can not be gauged as most of the cases decided by the Commission are *sub-judice* before the superior courts.

Case Examples of Decisions Taken over the last 3 years:

The following paragraphs summarize some of the actions taken by the Commission in the 2½ years of its existence.

### **2007-08**

#### • Banks Case

Several major banks were adjudged guilty of cartelization with respect to a savings account, thereby depriving customers of lower-income strata of competitive returns on their savings.

After conducting hearings, an Order was passed by the Commission and a total penalty of Rs.205



million (2.4 million USD) was imposed against seven major banks and the Pakistan Banking Association.

These banks and the Association filed an appeal before the Appellate Bench of the Commission, which, upon review, upheld the order. Appeal against the CCP order has been filed before the Supreme Court of Pakistan, where it is currently pending.

<http://cc.gov.pk/Downloads/Final%20PBA%20Order%2010.06.09.pdf>

## **2008-09**

### **• Cement Case**

The possibility of cartelization by cement companies and their association goes back to the early 1990s. However, it was only after the promulgation of the Ordinance that the Commission was able to move decisively in the matter and gather evidence using the powers granted to it under sections 34 and 35 of the Ordinance, dealing with *power to enter and search premises* and *forcible entry*, respectively.

The evidence gathered by the Commission from the office of the Association revealed that members fixed quotas with respect to production and supply of cement in order to maintain the desired and targeted price level. Each company's production capacity was capped and this capacity was much less than the actual capacity that the individual undertaking was capable of producing. As a result of cartel, the general public could not get the commodity at competitive price.

After conducting a number of hearings, an Order was passed by the Commission and a total penalty of Rs.6.3 billion (7.4 million USD) was imposed. An appeal against the CCP order was filed before the Supreme Court of Pakistan, where it is currently pending.

[http://cc.gov.pk/Downloads/Cement%20\(final%20order\)%2027-08-2009.pdf](http://cc.gov.pk/Downloads/Cement%20(final%20order)%2027-08-2009.pdf)

### **• Bahria University Case**

One of the recognized educational institutions in Pakistan, Bahria University had made it mandatory for all its incoming students to purchase laptops imported by the University. The Commission found this practice of the University as tie-in, proscribed under section of the Ordinance. However, the university apologized for its conduct and agreed to give a rebate to the students who had already purchased laptops from the university. In view of this positive response

of the University, the Commission did not impose any penalty on the University.

<http://cc.gov.pk/Downloads/order/Bahria%20University.pdf>

- Cartelisation by Newspapers

After conducting an inquiry based on a story in the media, the Commission confirmed that the *All Pakistan Newspaper Society* (APNS) had set the minimum price to be charged by the newspapers and had entered into an agreement with the *All Pakistan Akhbar Farosh Federation* (Hawkers Association) whereby the Federation would not distribute any newspaper that did not adhere to the price guidelines.

During the hearing, both APNS and Hawkets Association admitted their culpability in the matter and provided undertakings stating that they will not indulge in anti-competitive practices. No penalties were imposed in the corrective order passed by the Commission.

<http://cc.gov.pk/Downloads/APNS%20Final%20Order.pdf>

- Cartelisation by Professional Services: Institute of Chartered Accountants Case

The Institute of Chartered Accountants of Pakistan (ICAP) was fined for fixing a minimum level of remuneration that by its members could charge for conducting the audit of companies. The purpose was that the companies (customers of such services) may get the audit services at a competitive rate rather than an already fixed charge out rates which nevertheless amounts to a burden on the shareholders ultimately.

After a hearing, an Order was passed by the Commission, and an appeal was filed before the appellate bench of the Commission. On review, the appellate bench upheld the order and imposed a penalty of Rs.1 million (11,765 USD) and also an additional penalty of Rs.300,000 (3,530 USD) per day if the terms of the Order were not complied with. An appeal has been filed before the Supreme Court of Pakistan, where it is currently pending.

[http://cc.gov.pk/Downloads/ICAP%20Final%20Order%20\(11-3-09\).pdf](http://cc.gov.pk/Downloads/ICAP%20Final%20Order%20(11-3-09).pdf)

- Stock Exchanges Case

After determining anti-competitive effects of circulars/notices issued by three Stock Exchanges for fixing a price floor for securities in a hearing, penalties of Rs 9 million (0.1 million USD) were imposed on the Exchanges in the Commission's Order for affecting entry and exit of traders between August and December 2008.

Fixing of a price floor for securities by the stock exchanges was preventing competitive bidding -

the very essence for which stock markets are established. Further, the subsequent creation of private market disadvantaged the buyer and sellers as they could not procure at competitive prices and lead to asymmetric information for buyers and sellers. Price floor setting virtually created a barrier to exit for the investors who wanted to sell their securities at a price less than the prices fixed but could not find the buyers at or above the prices fixed, and created a barrier to entry by preventing investors from purchasing securities at market prices by imposing artificial minimum prices. Imposition of the price floor severely restrained the choice of buyers and sellers as to the price, at which they wish to conduct transactions, and altered the saving and investment behaviour of market agents and had unquantifiable adverse effects on the entire economy. The decisions put a restraint on the right of alienation of security dealers, as they had no option to dispose off securities but on the floor of stock exchange.

Hence, the Commission's order helped in safeguarding the interests of the buyers and sellers of securities in the stock exchanges, contributing towards economic development of the country. The Karachi Stock Exchange filed an appeal before the appellate bench of the Commission, which, upon review, upheld the order. An appeal has been filed with Supreme Court of Pakistan, where it is currently pending.

<http://cc.gov.pk/Downloads/KSE%20Order%2018March.pdf>

## **2009-10**

### **• PIA Rescheduling/Cancelling of Tickets Case**

Pakistan International Airlines adopted a policy to charge a fee for rescheduling of domestic reservations within 48 hours of flight based on a percentage of air fare that amounted to price discrimination among passengers holding reservations on a particular flight and in a particular cabin.

In its corrective order, the Commission directed to implement a non-discriminatory re-scheduling fee structure and it was also ordered that a passenger who wishes to reschedule his/her flight to an immediate preceding flight be allowed to do that without any charge. Further, in view of PIA's cooperation and understanding, the Commission adopted a lenient stance and exonerated PIA from any penalty.

<http://cc.gov.pk/Downloads/PIA%20Rescheduling->

[cancellation%20Order%20%5B8%20Dec%202009%5D.pdf](#)

2. *Please send to us copies (by email or by web links) of (a) sectoral or macro-level studies assessing the state of competition in your country and (b) studies assessing the impact and effectiveness of competition laws and policy in your country.*

Following are the links for the (i) sectoral or macro-level studies assessing the state of competition and (ii) studies assessing the impact and effectiveness of competition laws and policy in the country.

Banking Competition Assessment Report:

<http://www.cc.gov.pk/downloads.htm>

State of Competition Report:

<http://www.cc.gov.pk/Downloads/State%20of%20Competition%20Report%202008.pdf>

3. *Please elaborate on any special features that the competition law and policy of your country may contain that were designed to address specific development objectives on the part of government or special development conditions in your country.*

*Examples:*

- (a) *Features addressing public interest objectives;*
- (b) *Exemptions with specific objectives (industrial policy, small and medium-sized enterprises' development, informal sector, black markets);*
- (c) *Special programmes for minority groups, certain interest groups or specific sectors.*

Section 29 of the Competition Ordinance, 2010 allows the Commission to take steps that focus on the promotion of competition through advocacy methods, namely:

- (a) Creating awareness and imparting training about competition issues and taking such other actions as may be necessary for the promotion for a competition culture;
- (b) Reviewing policy frameworks for fostering competition and making suitable recommendations for amendments to the Competition Ordinance and any other laws that affect competition in Pakistan to the Federal Government and Provincial Governments;

And

- (c) Holding open hearings on any matter affecting the state of competition in Pakistan or affecting the country's commercial activities and expressing publicly an opinion with respect to the issue.

## Peru

1. *Favor proporcionar ejemplos de decisiones (adoptadas en los últimos 5 años) de parte de la agencia de competencia o la autoridad encargada del tema en su país, que hayan contribuido ya sea directa o indirectamente al logro de los objetivos de las leyes de competencia y la misión de la autoridad en su país*

*En tales casos, se agradece describir la forma en que las decisiones han contribuido a los siguientes aspectos:*

- (a) Desarrollo de sectores económicos*
- (b) Fomento de la inversión (doméstica y extranjera)*
- (c) Incremento del comercio (exportaciones e importaciones)*
- (d) Desarrollo empresarial o del sector privado*
- (e) Bienestar del consumidor*
- (f) Políticas públicas*

Entre los principales casos que han sido resueltos por la autoridad de competencia en los últimos cinco años se encuentran

- (i) De oficio contra la ASOCIACION DE EMPRESAS DE TRANSPORTE URBANO DE PASAJEROS – ASETUP y SAN JOSE LUIZ DIAZ LEON (en adelante ASETUP)
- (ii) DISPRA E.I.R.L y GROUP MULTIPURPOSE S.R.L contra CLOROX DEL PERU S.A. y QUIMPAC S.A. (en adelante GROMUL)
- (iii) De oficio contra la ASOCIACION PERUANA DE EMPRESAS DE SEGURO – APESEG y otros (en adelante, APESEG)

### ASETUP

En Agosto 2008, el sector José Luiz Díaz León (en adelante, el señor Díaz), Presidente de la Asociación de Empresas de Transporte Urbano de Pasajeros (en adelante ASETUP), efectuó declaraciones que fueron difundidas mediante diversos medios de comunicación masiva, en las cuales indicaba que los precios de transporte de los tramos urbano, interurbano y directo de Lima y Callao debían incrementarse.

Aun esta conducta, la Comisión decidió iniciar un procedimiento administrativo sancionador, luego del cual sancionó con 186.1 UIT a ASETUP y 18.61 UIT al señor Díaz de acuerdo a los artículos 1 y 11.2 del DL 1034 por la comisión de prácticas colusorias horizontales en la modalidad de recomendaciones anticompetitivas, destinadas a incrementar los precios de los pasajes del servicio de transporte urbano de pasajeros en Lima Metropolitana y Callao.

La decisión de la Comisión fue impugnada, y la actualidad el procedimiento se encuentra

pendiente de ser resuelto por el Tribunal.

#### GROMUL

En este caso, Quimpac S.A (en adelante, Quimpac), única empresa productora de hipoclorito de sodio (insumo necesario para la fabricación de lejía) en el Perú, celebró un contrato de distribución exclusiva con Clorox S.A. (en adelante Clorox), empresa productora de lejía, en virtud del cual esta última sería la única empresa competidora de Clorox deseaba adquirir hipoclorito de sodio debería comprarlo a Clorox, la cual vendía dicho insumo a precios muy superiores a los que los adquiriría de Quimpac.

La Comisión inició un procedimiento administrativo sancionador con la finalidad de investigar dicha conducta, encontrado a ambas empresa responsable por infringir los artículos 3 y 6 del Decreto Legislativo 701, consistente en la implementación de restricciones verticales en la modalidad de acuerdos de distribución exclusiva en la distribución de hipoclorito de sodio, y sancionándolas con una multa equivalente a 325.93 UIT a cada una. La imputación de cargos fue confirmada por la Sala, quedando el monto de la multa reducido en 81048 UIT para cada una de las empresas.

#### APESEG

La Comisión sancionó por infracción contemplada en los artículos 3 y 6 literal a) del Decreto Legislativo 701 a diversas personas jurídicas y naturales, dedicadas a la comercialización de seguros vehiculares y a la asociación que les agrupaba (Asociación Peruana de Empresas de Seguro – APESEG) con multas que ascendían en total a 3396.9 UIT. Lo anterior debido a que dichas personas habían acordado la fijación de primas y deducibles mínimos de los seguros vehiculares denominados enlatados (producto básico y completo)

Por medio de esta resolución, la Comisión pretendió desincentivar esta clase de conductas en el mercado de seguros vehiculares, de manera que los agentes que intervienen en este mercado de seguros compitan en el precio para lograr atraer la preferencia de los consumidores, la cual genera una reducción de las primas que pagan los consumidores, aumentando el bienestar de estos últimos.

Respecto de los casos expuestos, corresponde señalar que aunque no se han realizado estudios o

informes sobre el impacto de estas decisiones, los pronunciamientos de la autoridad de competencia han tenido una importante difusión en el mercado a efectos de desincentivar la comisión de conductas anticompetitivas.

2. *Se agradece enviar copias (vía correo electrónico, sitios de Internet relevantes) de (i) los estudios sectoriales o de la situación a nivel macro, que permitan evaluar el estado de la competencia en su país, así como también (ii) estudios que permitan evaluar el impacto y la eficiencia de las leyes y política de competencia en su país.*

Respecto a estudios sectoriales en cuales se analice la competencia, existen diversos documentos.

Entre los cuales, respecto al año 2009 se remiten los siguientes

- (i) Observatorio de mercados – Mercado de Pesca
- (ii) Observatorio de mercados – Mercado de Entidades Prestadoras de Salud
- (iii) Observatorio de mercados – Mercado de Fertilizantes
- (iv) Observatorio de mercados – Mercado Avícola

De otro, cabe indicar que no existen estudios que analicen las repercusiones y la eficacia de las leyes y políticas de la competencia en nuestro país.

3. *Se agradece explicar en detalle cualquier aspecto de la ley y política de competencia de su país que haya sido diseñado con el fin de atender objetivos específicos de desarrollo de parte del gobierno o condiciones especiales relacionadas con el desarrollo de su país.*

*Ejemplos:*

- a. *Aspectos relacionados con objetivos de interés público*
- b. *Exenciones con objetivos específicos (política industrial, desarrollo de pequeñas y medianas empresas, sector informal, mercado negro)*
- c. *Programas especiales de atención a los grupos minoritarios, ciertos grupos de interés o sectores específicos.*

La legislación sobre libre competencia en el Perú permite que se excluya de su ámbito de aplicación a aquellas conductas que se realicen en ejecución de un mandato legal. Así, de acuerdo al artículo 3 del DL 1034, se encuentren fuera de la aplicación de dicha norma aquellas conductas que sean consecuencia de lo dispuesto en una norma legal.

En aquellos casos, la autoridad de competencia podrá emitir informes con relación a tales conductas para evaluar sus efectos sobre el bienestar del consumidor.



## Portugal

1. *Please provide us with case examples of decisions (taken over the last 5 years) by the competition authority of your country, which have contributed either directly or indirectly to the achievement of the objectives of competition laws and the mission of the competition authority of your country.*

*In such cases, please elaborate on how such decisions contributed to the following:*

- (a) Development of economic sectors*
- (b) Increased investment (domestic and foreign)*
- (c) Increased trade (exports and imports)*
- (d) Enterprise or private sector development*
- (e) Consumer welfare*
- (f) Policy making by government*

The Portuguese Competition Authority's (PCA) mission is to assure the enforcement of competition rules in Portugal, on the basis of respect for the principle of the market economy and that of free competition, taking into consideration the efficient functioning of the markets, the effective allocation of resources and the interests of the consumer.

According to its Statutes, the PCA has three sets of powers: sanctioning powers, supervisory powers and regulatory powers. All three sets of powers are used for the fulfillment of PCA's mission.

In the context of its sanctioning powers, the PCA has issued many antitrust decisions, namely imposing fines or remedies in order to address competition concerns identified in the market, stemming from agreements/concerted practices between undertakings, decisions of associations of undertakings and abuses of dominant positions.

Among those decisions, we may point out decisions directly related to large consumption goods, such as the decision on the "salt cartel" (confirmed by the Courts) and the "bread cartel" (confirmed in 1st instance). Furthermore, the PCA has developed an intense activity regarding liberal professions and the fees charged to clients, also having a direct impact on consumer welfare. Three public professional associations have been sanctioned in order to cease imposing minimum fees for services provided by doctors, dentists and veterinarians.

Moreover, the PCA has dealt with serious infringements on competition regarding cartels in public procurement procedures, such as in hospital supply of medical devices (blood reagent strips for diabetes) and collective meals for schools, hospitals and other public services.

The PCA has also extensively used its supervisory/regulatory powers, under which it has carried out many market studies and sector inquiries. These studies have identified competition concerns in various markets and usually include a set of recommendations addressed to the competent bodies. In this way, the PCA's activity has led to significant legislative changes promoting development of the economy and fostering consumer welfare.

Just to name a few of such studies and recommendations, due to PCA's advocacy efforts, the propriety of pharmacies has been liberalized (currently, non-pharmacists may own a pharmacy). More recently, PCA recommendations to increase consumer mobility and competition in the electronic communications sector had the result of facilitating unlock of mobile phones and termination of contracts. In February 2010, the PCA concluded a completed the *Study on Consumer Mobility in the Electronic Communications Sector*. As a result of the study, the PCA recommended a set of measures seeking to foster competition in the electronic communications markets, focused on the mobility-restricting factors identified in study. In June 2010, Decree-Law No. 56/2010, of 1 June, was published, establishing limits to fees charged by operators for unlocking mobile phones, as well as for termination of contracts.

2. *Please send to us copies (by email or by web links) of (a) sectoral or macro-level studies assessing the state of competition in your country and (b) studies assessing the impact and effectiveness of competition laws and policy in your country.*

The following is a list of market studies completed by the Portuguese Competition Authority within the past four years. Unless otherwise noted, all documents are available in English.

- Report on Wholesale Electricity Pricing During the Second Semester of 2007 (Available in Portuguese only)

[http://www.concorrencia.pt/download/AdC\\_Relatorio\\_Grossistas\\_Energia\\_Electrica\\_2007.pdf](http://www.concorrencia.pt/download/AdC_Relatorio_Grossistas_Energia_Electrica_2007.pdf)

- A Primer on Payment Cards  
<http://www.concorrenca.pt/Download/PCAFINALJuly2005.pdf>
- Study on Competition Policy in the Portuguese Insurance Sector: Econometric Measurement of Unilateral Effects in the CAIXA/BCP Merger  
[http://www.concorrenca.pt/download/WP07\\_Seguros\\_Marc\\_Ivaldi\\_12.05.20051.pdf](http://www.concorrenca.pt/download/WP07_Seguros_Marc_Ivaldi_12.05.20051.pdf)
- Analysis of the Liquid Fuel and Bottled Gas Sectors in Portugal (Available in Portuguese only)  
[http://www.concorrenca.pt/download/AdC\\_Relatorio\\_Combustiveis\\_Liquidos\\_Gas\\_Engarrafado\\_em\\_Portugal\\_Marco2009.pdf](http://www.concorrenca.pt/download/AdC_Relatorio_Combustiveis_Liquidos_Gas_Engarrafado_em_Portugal_Marco2009.pdf)
- Presentation to the Government of the Recommendations on Pharmaceuticals  
<http://www.concorrenca.pt/en/Content.asp?ID=746>
- Reform of the Legal Framework for Notaries' Activities, with a View to Promoting Competition in Notary Services  
<http://www.concorrenca.pt/en/Content.asp?ID=1252>
- Annual Reports on the Monitoring of the Electronic Communications Market (produced in 2004, 2006 and 2009 and available only in Portuguese)  
<http://www.concorrenca.pt/Download/Relatorio.pdf>  
[http://www.concorrenca.pt/download/II\\_Relatorio\\_Acompanhamento\\_Telecoms\\_2006.pdf](http://www.concorrenca.pt/download/II_Relatorio_Acompanhamento_Telecoms_2006.pdf)  
[http://www.concorrenca.pt/download/AdC\\_Relatorio\\_Mercados\\_Comunicacoes\\_Electronicas\\_2008.pdf](http://www.concorrenca.pt/download/AdC_Relatorio_Mercados_Comunicacoes_Electronicas_2008.pdf)
- Cost and Demand of the Portuguese Telecom Sector  
[http://www.concorrenca.pt/download/cost&demand\\_characteristics\\_of\\_Portuguese\\_Telecom\\_Sector\\_Greene.pdf](http://www.concorrenca.pt/download/cost&demand_characteristics_of_Portuguese_Telecom_Sector_Greene.pdf)
- Broadband Benchmark for Portugal  
[http://www.concorrenca.pt/Download/050715\\_ADL\\_Broadband\\_Benchmark\\_Report\\_public.pdf](http://www.concorrenca.pt/Download/050715_ADL_Broadband_Benchmark_Report_public.pdf)
- Liberalization of the Postal Sector (Available in Portuguese only).

[http://www.concorrenca.pt/download/relatorio\\_final\\_postal.pdf](http://www.concorrenca.pt/download/relatorio_final_postal.pdf)

- Consumer Mobility in the Electronic Communications Sector (Available in Portuguese only).

[http://www.concorrenca.pt/download/20100129\\_Relatorio\\_mobilidade\\_comunicacoes\\_electronicas.pdf](http://www.concorrenca.pt/download/20100129_Relatorio_mobilidade_comunicacoes_electronicas.pdf)

- Mobile Communications in Portugal – Price Increase of 2.5% in March, 2009 (Available in Portuguese only).

[http://www.concorrenca.pt/download/AdC\\_Relatorio\\_Comunicacoes\\_Moveis\\_2010.pdf](http://www.concorrenca.pt/download/AdC_Relatorio_Comunicacoes_Moveis_2010.pdf)

In the coming months the Portuguese Competition Authority also plans to publish an economic analysis of relations between food suppliers and large retailers. The report from this study will be forwarded to you once it is published.

3. *Please elaborate on any special features that the competition law and policy of your country may contain that were designed to address specific development objectives on the part of government or special development conditions in your country.*

*Examples:*

- (a) Features addressing public interest objectives;*
- (b) Exemptions with specific objectives (industrial policy, small and medium-sized enterprises' development, informal sector, black markets);*
- (c) Special programmes for minority groups, certain interest groups or specific sectors.*

In Portugal, competition policy is envisaged as a key factor to promote international competitiveness of the Portuguese economy, including the quality of its legislative framework and the effectiveness of its enforcement by the regulatory authorities and the competent courts.

Regarding specific objectives (other than competition), an extraordinary appeal is foreseen in merger control on the grounds of fundamental national economic interests. According to Article 34 of the Statutes of the Portuguese Competition Authority (approved by Decree-Law No. 10/2003, of 18 January), notifying parties of a merger may appeal to the member of the Government responsible for the economy, who may, with a duly justified decision, authorize a merger prohibited by the Portuguese Competition Authority whenever the resulting benefits to fundamental national economic interests exceed the inherent disadvantages for competition. This ministerial decision authorizing an otherwise prohibited merger operation may contain conditions

and obligations that mitigate its negative impact on competition.

Furthermore, under Article 3 of Law No. 18/2003, of 11 June, national competition law is applied in a way so that it may not constitute an impediment in law or in fact to the fulfillment of the particular mission entrusted to undertakings legally charged with the management of services of general economic interest or which have the nature of legal monopolies, which are, as any other undertaking, subject to the provisions of the Portuguese Competition Act.

Finally, national competition law also acknowledges the importance of free speech and diversity of opinions. In merger control procedures involving media undertakings, a negative opinion of the Sector Regulator regarding the merger on grounds of free speech and diversity of opinions is binding to the Portuguese Competition Authority, under Article 57 of the Competition Act (Law No. 18/2003, of 11 June).

## République Centrafricaine

1. *Prière de nous fournir des informations sur les exemples de décisions rendus par les autorités de concurrence de votre pays, qui ont contribué soit directement ou indirectement à atteindre les objectifs fixé par la législation nationale ou ceux de l'autorité nationale de concurrence.*

*Dans ces circonstances prière d'insister sur la manière dont de telles décisions ont eu une influence sur les points suivants. :*

- (M) Le développement des secteurs d'activités économiques*
- (N) L'accroissement des investissements nationaux et étrangers*
- (O) L'accroissement du commerce (les importations et exportations)*
- (P) Le développement des entreprises et du secteur privé*
- (Q) Le bien être des consommateurs*
- (R) La politique gouvernementale*

N/A

2. *Prière de nous envoyer (i) les copies des études sur l'état de la concurrence dans votre pays, (ii) les études sur l'évaluation de la mise en application effective du droit et de la politique de la concurrence dans votre pays.*

N/A

3. *Prière de nous donner des indications sur les points spécifiques de votre loi sur la concurrence qui sont relatives au développement, notamment :*
  - a. Les points spécifiques qui traitent des questions relatives à l'intérêt public.*
  - b. Les exemptions spécifiques et leurs justifications (la politique industrielle, les petites et moyennes entreprises, le secteur informel, les marchés noirs).*
  - c. Un programme spécial pour les minorités, certains groupes d'intérêt ou secteurs spécifique.*

N/A

## Singapore

1. *Please provide us with case examples of decisions (taken over the last 5 years) by the competition authority of your country, which have contributed either directly or indirectly to the achievement of the objectives of competition laws and the mission of the competition authority of your country.*

*In such cases, please elaborate on how such decisions contributed to the following:*

- (a) Development of economic sectors*
- (b) Increased investment (domestic and foreign)*
- (c) Increased trade (exports and imports)*
- (d) Enterprise or private sector development*
- (e) Consumer welfare*
- (f) Policy making by government*

Singapore's competition policy seeks to maintain and enhance efficient market conduct and promote overall productivity, innovation and competitiveness of markets in Singapore. CCS's decisions against cartels signal that CCS is serious about enforcement against such anticompetitive activity.

In 2009, CCS issued an infringement decision against an express bus association and its members for price fixing in bus services from Singapore to Malaysia and Southern Thailand for two years, between 2006 and 2008. CCS found that the coach operators had agreed to fix the minimum selling prices of coach tickets sold, as well as impose fuel and insurance charges (FICs) to mark up ticket prices. CCS imposed a financial penalty of S\$1.69 million on the infringing parties. In 2008, CCS issued an infringement decision against six pest control companies for collusive tendering (Bid-rigging) for termite treatment and control services.

All of CCS's case decisions are available at: <http://www.ccs.gov.sg/PublicRegister/index.html>

2. *Please send to us copies (by email or by web links) of (a) sectoral or macro-level studies assessing the state of competition in your country and (b) studies assessing the impact and effectiveness of competition laws and policy in your country.*

CCS commissioned a study to better understand the state of competition in the retail mall rental space market in Singapore. A summary of the study can be found at:

<http://www.ccs.gov.sg/NR/ronlyres/0B35E9F6-04CD-42C2-9F8C-C454C1217602/22346/SummaryReportforRetailSpaceMarketStudyFinal.pdf>

3. *Please elaborate on any special features that the competition law and policy of your country may contain that were designed to address specific development objectives on the part of government or special development conditions in your country.*

*Examples:*

- (a) Features addressing public interest objectives;*
- (b) Exemptions with specific objectives (industrial policy, small and medium-sized enterprises' development, informal sector, black markets);*
- (c) Special programmes for minority groups, certain interest groups or specific sectors.*

CCS's enforcement of competition law is consistent with international best practices. Various industries have been excluded from the Competition Act. These include sectors such as energy and telecommunications. These sectors were excluded as they were at varying stages of transition from a monopolistic to a more competitive environment. The exclusion of these sectors from the Competition Act does not mean that competition law is not applicable, as their respective regulatory frameworks do contain provisions pertaining to competition matters. There is thus no need to subject these industries to an additional layer of regulation in the form of generic competition laws.

The Act also excludes activities conducted by the government, statutory body, or persons acting on their behalf. These activities have been excluded so as not to fetter the discretion of the Government in the performance of its policy-making and public functions. Their exclusion does not affect the efficacy of our competition laws, whose primary object is to regulate the conduct of market players.

There are other exclusion provisions in the Act, for example, where there are compelling reasons of public policy.



## Surinam

1. *Please provide us with case examples of decisions (taken over the last 5 years) by the competition authority of your country, which have contributed either directly or indirectly to the achievement of the objectives of competition laws and the mission of the competition authority of your country.*

*In such cases, please elaborate on how such decisions contributed to the following:*

- (a) Development of economic sectors*
- (b) Increased investment (domestic and foreign)*
- (c) Increased trade (exports and imports)*
- (d) Enterprise or private sector development*
- (e) Consumer welfare*
- (f) Policy making by government*

The Commission was established in January 2008 and has not yet conducted a hearing

2. *Please send to us copies (by email or by web links) of (a) sectoral or macro-level studies assessing the state of competition in your country and (b) studies assessing the impact and effectiveness of competition laws and policy in your country.*

No such studies are yet available.

3. *Please elaborate on any special features that the competition law and policy of your country may contain that were designed to address specific development objectives on the part of government or special development conditions in your country.*

*Examples:*

- (a) Features addressing public interest objectives;*
- (b) Exemptions with specific objectives (industrial policy, small and medium-sized enterprises' development, informal sector, black markets);*
- (c) Special programmes for minority groups, certain interest groups or specific sectors.*

Art.181 of the Treaty establishes a *de minimis* rule under which the Commission may grant exemptions where the impact of a conduct on competition and trade in the CARICOM Single Market and Economy (CSME) is minimal. Article 183 allows the Conference on Trade and Economic Development (COTED) to suspend or exclude the application of competition rules to specific sectors or enterprises "in the public interest"

The Treaty contains provisions addressing such matter as small and medium size enterprises etc. but these are to found in Chapters other than the competition chapter (Chapter VIII).

## South Korea

1. *Please provide us with case examples of decisions (taken over the last 5 years) by the competition authority of your country, which have contributed either directly or indirectly to the achievement of the objectives of competition laws and the mission of the competition authority of your country.*

*In such cases, please elaborate on how such decisions contributed to the following:*

- (a) Development of economic sectors*
- (b) Increased investment (domestic and foreign)*
- (c) Increased trade (exports and imports)*
- (d) Enterprise or private sector development*
- (e) Consumer welfare*
- (f) Policy making by government*

The Monopoly Regulation and Fair Trade Act, an antitrust law of Korea, is aimed to prevent abuse of market dominant position and excessive concentration of economic power, and regulate unlawful cartels and unfair business practice. This intends to promote fair and free competition, foster creativity in corporate activities and protect consumers, which in turn leads to balanced development of the national economy. The Korea Fair Trade Commission (KFTC) is also fully committed to its mission – promote fair and free competition and enhance consumer welfare.

Almost all case decisions made by the KFTC have contributed either directly or indirectly to the achievement of the objectives of the MRFTA and the mission of the KFTC. The following is explanation on KFTC's decisions which particularly have big impact on the national economic development and consumer welfare.

- (1) Market Dominance Abuse of Two Airlines (March 11, 2010)

### **【Summary】**

In this case, the KFTC decided to sanction Korea's two largest airlines - Korean Air lines Co. and Asiana Airlines Inc - for abusing their dominant position in the airline market by hindering the market entry and business operation of low-cost carriers (LCCs). Also, the Korean Air was charged with restraining discounts of flight tickets sold through travel agents. The KFTC imposed corrective order and a combined surcharge of 11 billion won (about \$9.25 million).

### **【Anti-competitive Practices】**

First, the two airliners restrained travel agencies from selling flight tickets of LCCs by threatening them that they would be allocated fewer seats during the peak season or for major routes or given smaller price discounts, or suffer from other disadvantages if they did business with LCCs. For travel agents, securing flight seats for popular routes or peak seasons and price discounts are crucial factors for attracting customers. Based on the recognition, the two airliners used provision of flight seats and discounts as leverage to hamper business between travel agencies and discount carriers. Consequently, LCCs had difficulty selling their tickets through travel agents for major routes, such as domestic tickets bound for Jeju Island and international tickets bound for Japan, Southeast Asia or Hawaii.

Second, Korean Air offered royalty rebates to major domestic travel agencies to exclude its competitors from the market. This rebate system, the so called “volume incentive”, was to provide rebates for travel agencies on the condition that they would raise the share of Korean Air tickets to the certain level of their total sales to limit sales of its rival companies. Korean Air also inhibited ticket discounts for customers by prohibiting travel agents from using rebate proceeds to lower ticket prices.

### **【Expected benefit in economic development】**

The corrective measures taken by the KFTC in this case are significant in that they are aimed to correct anti-competitive practices of the two big airliners with dominant position in the market where monopoly structure has been deeply entrenched.

The KFTC has been making earnest effort to improve market entry regulations since 2009 based on the recognition that the urgent task for the Korean economy to join the ranks of the advanced is to shift into pro-competitive market structure by overhauling entry regulations which weaken the national competitiveness. Against this backdrop, corrective measures against exclusion of LCCs by major airlines are expected to accelerate advancement of the airline industry where the KFTC is striving to improve pre-existing entry regulations as its one of the top priorities in competition policies.

Also, the corrective measures will increase competition in the airline market by improving

business condition for budget carriers so that they can better compete with their rivals.

As for customers, since the practice to impede discounts of flight tickets are now prohibited, it is expected that **various airlines services will be offered at reasonable prices**, thereby **enhancing consumer welfare**.

## (2) Price Fixing of Air-Cargo (May 26, 2010)

### 【Summary】

This is the case where the KFTC sanctioned 21 airlines from 16 countries for conspiring to introduce fuel surcharges and continue to raise surcharge rates for air cargo to and from Korea between 1999 and 2007. The KFTC found that the cartel conspiracies for shipments of four routes, outbound shipments from Korea, inbound shipments to Korea from Hong Kong, Europe and Japan, seriously affected the Korean Market. For this price fixing cartel, the KFTC imposed a total fine of about 120 billion won (about \$100 million) and corrective order.

### 【Damage from airfreight cartel】

The cartel scheme, which lasted up to seven years and involved 21 airlines from 16 countries, affected the relevant turnover by about 6.7 trillion won (about \$5.6 billion). Given that airfreight accounted for 25% of the total export cargo (based on the 2009 export value), the cartel conspiracy is believed to have **significantly harmed export competitiveness of the domestic industries**. And price fixing of inbound routes to Korea is also thought to have adversely affected the domestic market as **the increase in prices resulted from the cartel was passed onto consumers or reflected in import prices**.

### 【Expected benefit in economic development】

The measures by the KFTC in this case rooted out longstanding cartel in the airfreight market, thereby providing consumers with further protection and boosting export competitiveness of domestic industries. As for consumers, price burden will be alleviated **with price cuts of products** imported by air. Moreover, **export competitiveness will ultimately be enhanced** as air transport is used in high percentage for shipping major exports such as semiconductors and

electronics including mobile phones.

(3) Qualcomm's abuse of market dominance (July 23, 2009)

**【Summary】**

The last case is market dominance abuse of US-based Qualcomm Incorporated (hereinafter "Qualcomm"). Qualcomm faced corrective order and a surcharge of 260 billion won (about \$208 million) for abusing its dominant position by charging discriminatory royalties and offering conditional rebates.

**【Anticompetitive practices】**

Qualcomm, a dominant firm in CDMA technology licensing and modem chip/RF chip markets based on its own original CDMA technology, excluded its competitors to maintain its market dominance through the following practices. First, when licensing its CDMA technology to mobile handset makers, Qualcomm charged discriminatively high royalties for using non-Qualcomm modem chips. Second, for the sale of its CDMA modem chips/RF chips to mobile handset makers, Qualcomm offered rebates on condition that they should meet the great portion of their requirement with Qualcomm chips. Lastly, when licensing its CDMA technology to mobile handset makers, Qualcomm made sure by contract that it would continue to get 50% of the patent royalties it garnered for its technology even after the concerned patent expired or became invalid.

The KFTC found that Qualcomm's unfair business practices of charging discriminatory royalties and providing conditional rebates had virtually become barriers to entry to the Korean modem chip market by its competitors including VIA(Taiwan) and EoNex(Korea). As a result, Qualcomm was able to maintain its high market share close to a monopoly for more than a decade. Although Via and EoNex tried to supply chips to LG and Samsung in 2004 and 2005, they failed to secure significant amount of market share.

**【Expected benefit in economic development】**

As new entrants' entry to the Korean modem chip/RF chip market, which has been blocked by Qualcomm's behavior, would be facilitated, the concerned market would see more diverse

products and more vigorous competition. And reduction in purchase prices and expanded choices for product components, which can be achieved through active competition, will enable mobile handset makers to better respond to changes in the global market. In short, the KFTC' measures against Qualcomm will **develop Korea's manufacturing industry of modem chip/RF chip and mobile handsets, which will boost export in the sector.**

Also, more vigorous competition in Korean mobile phone component market would ultimately **benefit Korean consumers with more choices for mobile phones at cheaper prices.**

*1. Please send to us copies (by email or by web links) of (a) sectoral or macro-level studies assessing the state of competition in your country and (b) studies assessing the impact and effectiveness of competition laws and policy in your country.*

(i) Sectoral or macro-level studies assessing the state of competition

The KFTC conducts both sectoral and macro-level studies to assess the state of competition in Korea and publishes reports on the results.

As for sectoral analysis, the KFTC has been publishing annual competition policy report on major industries since 2008. The report examines market structure, the state of competition and relevant institutions by industries to suggest regulations with potential to lessen competition, the likelihood of legal violations, consumer complaints and examples of antitrust cases. So far, the report has covered seven industries - aviation, internet portal service, non-life insurance, film, oil, pharmaceuticals and gas. (For more details, refer to the attached file (written in Korean))

On the other hand, the KFTC carries out macroeconomic analysis of market structure and publishes the result every two years. The analysis includes overall market concentration, market concentration of specific industries and products, market structure of large business groups, etc. The latest analysis result, which was released in November, 2008, revealed market structure and concentration by using 「2004-2006 Statistics on Mining and Manufacturing Industries」 of Statistics Korea, CR3 and HHI numbers. The KFTC plans to unveil this year's analysis of market structure based on 2006-2008 data in November.

The following is the analysis result of market structure of 2004-06, which was announced in 2008

## **A. Analysis Result and Assessment**

The analysis suggested that market concentration examined by industries and products and concentration of large business groups had been lowered overall between 2004 and 2006, which demonstrates that the Korean economy is gradually shifting into more competitive structure. The overall market concentration, however, indicated modest growth, a result from relatively high growth of large export-oriented companies.

The analysis also showed the need for thorough examination and strong monitoring on markets of the industries with entrenched monopoly structure which posted significantly high gross profit margin despite slow growth and low share of R&D investment as market dominance is likely to be exercised in those industries. Moreover, it was indicated that industries where large business groups had a presence showed relatively high market concentration and that higher market share of large business groups resulted in higher market concentration of the concerned industries. This raises the need keep to a check on unlawful support by large business groups.

## **B. Summary**

### **<Overall Market Concentration<sup>3</sup>>**

Overall market concentration, which remained low after 1980, dropped after dramatic increase in the Asian financial crisis of 1997 but has been on the modest increase since 2002. Between 1999 and 2001, overall market concentration fell with active business start-up in the information and communications sector, spin-off of large companies and growth of venture companies. But it started to increase again after 2002 when the “venture boom” subsided and export-oriented large companies showed relatively strong growth.

Here are the changes in overall market concentration of the top 100 companies.

- based on gross output: 45.0%('04) → 45.5%('05)→ 45.7%('06)
- based on product output: 46.4%('04) → 46.8%('05)→ 47.1%('06)

### **<Market Concentration by Industries<sup>4</sup>>**

Market concentration assessed by individual industries has continued to show a decrease except in 1997 Asian financial crisis.

- Market concentration based on gross output  
(simple average): 42.3%('04) → 42.3%('05)→ 41.6%('06)
- Market concentration based on product output



Studies assessing the impact and effectiveness of competition laws and policy

In December, 2007, the KFTC requested an independent research institute to assess the impact of antitrust enforcement of the KFTC on consumer welfare. Under the study, “effect analysis model” was developed by type of violations to measure contribution of the KFTC’s antitrust enforcement to consumer welfare. The study estimated that consumer welfare improvement from KFTC’s law enforcement was worth about 4.87 trillion won (about \$4.15 billion). In the following will be explained briefly methods of the analysis.

**【What Was Analyzed】**

The study measured the effect of enforcement on consumer welfare only in the enforcement areas to which the MRFTA is directly applied. Therefore, subcontracting, adhesion contracts, labeling and advertisement, installment transaction, electronic commerce, franchise transaction and other areas which the KFTC is in charge of but enforced by laws other than the MRFTA were excluded.

Moreover, among those subject to direct enforcement of the MRFTA, only the cases handled by the KFTC for its anti-competitiveness were included in the scope of analysis. That was because it is virtually impossible to assess consumer benefits in a case where the KFTC carries out enforcement on the grounds of unfair transaction.

In some cases, KFTC’s enforcement activities which clearly benefited consumers were also excluded if the benefits cannot be quantitatively measured. As a result, Compliance Program, numerous awareness-raising campaigns, education programs and international exchange activities were not analyzed.

Lastly, only the cases which were subject to measures above corrective order through the Committee decision were included in the analysis.

**【Basic Assumption】**

In the study, the effect of law enforcement was measured with a focus on how enforcement increased consumer welfare rather than overall welfare. In addition, deterrent effect and unease of violators as well as dynamic effects of enforcement on, for example, efficiency, innovation and productivity were not evaluated.

### 【Hypothesis Used for Estimation】

In principle, consumer benefits were assessed based on information collected in the course of an investigation, but, when information was not sufficient, hypothesis was formulated on the basis of antitrust cases of foreign jurisdictions and applied conservatively.

When there was a need to consider inflation, Consumer Price Index was used to assess consumer benefits in real value of 2007. And social discount rate was set at 5.5%, the standard Korea Development Institute uses as of 2007 in a feasibility test of public investment projects. Seriousness of anti-competitiveness was decided in proportion to the size of surcharges imposed. In the case where the relevant turnover was not made public in the Committee proceedings, the average of the lower 30% relevant turnover suggested in other cases was used.

### 【Type of anticompetitive behavior】

- 1) Type 1: Competition restriction that lessens the number of suppliers
- 2) Type 2: Competition restriction resulted from collusive acts
- 3) Type 3: Competition restriction that increases costs of competitors
- 4) Type 4: Purchase made under coercion

### 【Calculation Method】

Consumer benefits from antitrust enforcement of the KFTC were calculated as follows;

- Annual Profit = **relevant turnover X estimated price increase rate (estimated consumer loss ratio)**
- Total Consumer Benefit = current value of annual profit generated throughout the **expected period of time** where the concerned violation occurs

Depending on type of violations and information given, the scope of relevant turnover affected by anticompetitive acts (turnover of companies involved vs. total market turnover), calculation method of estimated price increases and the estimated time period in which anticompetitive behavior could have lasted without enforcement were different. They were calculated in the

following manner;

**1) Period of Antitrust Violation**

	<b>Anticompetitive Behavior</b>	<b>Calculation Method of Violation Period<sup>7</sup></b>
Type 1	Corporate merger, etc.	2 years
Type 2	Unlawful collusive act, etc.	<ul style="list-style-type: none"> <li>➤ <b>6 years if:</b> violation continues for seven years or less, or there is no data available on violation period</li> <li>➤ <b>1.4 X (violation period) – 3.5 years if :</b> violation lasts for 7 years or more</li> </ul>
Type 3	Cost increase for competitors	<ul style="list-style-type: none"> <li>① case-by-case decision , or</li> <li>② Method of Type 2 applies, if there is no basis for decision</li> </ul>
Type 4	Coerced purchase	<ul style="list-style-type: none"> <li>① case-by-case decision, or</li> <li>② Method of Type 2 applies, if there is no basis for decision</li> </ul>

## 2) Relevant Turnover

	<b>Anticompetitive Behavior</b>	<b>Detailed Classification</b>	<b>Calculation Method of Relevant Turnover<sup>8</sup></b>
(1)	Corporate merger		Market turnover before merger
(2)	Unlawful collusive acts	General cartel schemes	Relevant turnover of conspiring companies
		Bid rigging	① Relevant turnover of conspiring companies, or ② Value of the project rigged / market share of winning bidder
(3)	Prohibited acts of business associations		① Relevant turnover of related companies, or ② Annual loss = annual budget of business association
(4)	Transaction under coercion		Value of coerced purchase
(5)	Other violations		Relevant turnover of the market where anti-competitiveness is caused ☐ Sum of relevant turnover, if anti-competitiveness is caused in parts of a market or two or more markets
(6)	No data available		① Average of the lower 30% turnover calculated in (1),(2),(3), or (4)+(5), or ② Average of the lower 30% turnover suggested in other cases to which the same legal provision is applied.

### 3) Price Increase Rate (or Consumer Loss Ratio)

	Detailed Classification	Calculation Method of Price Increase Rate (or Consumer Loss Rate <sup>9</sup> )
Type 1	Merger	$\min \left[ 0.01, \frac{0.1(H_A - H_B)}{(1 - H_B) + 0.1(1 - H_A)} \right]$ <p><b>H<sub>A</sub></b>: HHI after merger,  <b>H<sub>B</sub></b>: <b>HHI before merger</b> (HHI ≤ 1)</p>
	Case 1 (Non-price exclusionary practice)	<p>① For market-dominating company or in the case of concerted act            – <b>0.1 × (sum of market share of violators)</b></p> <p>② For other companies            – <b>0.05 × ( <math>\frac{\text{surcharge ratio}}{\text{surcharge ceiling}}</math> )</b>            – 0.01, if only corrective order is imposed            – 0.05, if prosecution complaint is filed</p>
	Case 2 (Exclusion through purchase)	<p>– <b>0.05 × ( <math>\frac{\text{surcharge ratio}}{\text{surcharge ceiling}}</math> )</b>            – 0.01, if only corrective order is imposed            – 0.05, if prosecution complaint is filed</p>
	Case 3 (Exclusion through internal loss)	total consumer loss = Max (consumer loss in Case 1, current value of losses caused by violators)
Type 2	Unlawful Concerted Act	Increase rate calculated in the investigation or 10%

Type 3	Case 1 (Available comparative data)	<p>① If price data is available</p> $\frac{P_{\text{after}}^* - P_{\text{before}}^*}{\frac{P_{\text{after}}^* + P_{\text{before}}^*}{2}}$ <ul style="list-style-type: none"> <li>- <math>P_{\text{after}}^*</math> : weighted average price after violation</li> <li>- <math>P_{\text{before}}^*</math> : weighted average price before violation</li> </ul> <p>② If turnover of relevant market decreases while price does not rise</p> <p>Consumer loss ratio</p> $= \frac{\text{decrease rate of turnover in relevant market}}{\text{conversion rate}}$ $\text{conversion rate} = \frac{\text{virtual market turnover decrease}}{\text{average turnover} \times 0.1}$ $\text{virtual market turnover ratio} = \frac{\text{turnover decrease of competitor}}{\text{market share of competitor}}$
	Case 2 (Unavailable comparative data, Companies of similar type)	<p>Consumer loss ratio = <math>\frac{\text{turnover decrease of competitor}}{\text{conversion rate}}</math></p> <ul style="list-style-type: none"> <li>- turnover decrease = virtual value of turnover – actual value of turnover</li> <li>- Virtual value of turnover = 0.5 X (actual value of turnover + turnover value excluding the affected companies' turnover X adjustment coefficient)</li> </ul>
	Case 3 (Others)	<ul style="list-style-type: none"> <li>- <math>0.05 \times \left( \frac{\text{surcharge ratio}}{\text{surcharge ceiling}} \right)</math></li> <li>- 0.01, if only corrective order is imposed</li> <li>- 0.05, if prosecution complaint is filed</li> </ul>

Type 4	<p>① <math>0.5 \times [\max(0, \text{ additionally paid price}) + \text{ loss ratio converted into cash value}]</math></p> <ul style="list-style-type: none"> <li>- Additionally paid price = price paid in coerced transaction – price of similar products (0, if there is no price hike or data available)</li> <li>- Loss ratio converted into cash value is 20%, if there is no data available</li> </ul> <p>② Case 3 of type 3 applies, if coerced purchase price is incalculable.</p>
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**【Conclusion】**

The study assessed consumer benefits from law enforcement of the KFTC for 192 cases subject to corrective order, surcharge imposition and prosecution complaint between January 1, 2005 and June 30, 2007 among 1,783 cases excluding those that do not satisfy the abovementioned assumptions. It was estimated that consumer benefits worth of 4.87 trillion won (about \$4.15 billion) were created from the KFTC’s enforcement. The following is detailed information on the generated consumer benefits.

<b>Type of Violation</b>	<b>Number of Cases</b>	<b>Consumer Benefit</b>
Merger	8	\413.9 billion (\$353 million)
Unlawful concerted act	75	\3.76 trillion (\$3.2 billion)
Prohibited act of enterprisers organizations	58	\138.2 billion (\$118 million)
Market dominance abuse	16	\340.7 billion (\$290 million)
Unfair transaction practice & Resale price maintenance	35	\220.5 billion (\$188 million)
<b>Total</b>	<b>192</b>	<b>\4.87 trillion (\$4.15 billion)</b>

This research evaluated consumer benefits generated by ending anticompetitive acts. But significantly large share of benefits were found to come from deterrence effect of enforcement activities. Research of other competition agencies such as OFT(Office of Fair Trading, United Kingdom) suggested that as many as five antitrust cases were deterred as a result of enforcement against one case even in conservative estimation. Hence, the ultimate consumer benefit from the KFTC's enforcement can be estimated at about 24 trillion won (\$20.46 billion), five times what was actually calculated in this study.

#### 【Future Tasks】

This study is the first attempt to measure economic effect of the KFTC's law enforcement, which makes it particularly meaningful. It should be admitted, however, that the study has clear limitation as simple approach or arbitrary assumption was used due to lack of data available. Particularly, it was found that there is a need for empirical research on antitrust violation cases aimed to suggest realistic estimation of violation period or price hike effect.

With this in mind, the KFTC will develop an analysis model closely customized to the Korea's situation and measure effect of its enforcement on a regular basis through constant research and improvement.

3. *Please elaborate on any special features that the competition law and policy of your country may contain that were designed to address specific development objectives on the part of government or special development conditions in your country.*

*Examples:*

- (a) *Features addressing public interest objectives;*
- (b) *Exemptions with specific objectives (industrial policy, small and medium-sized enterprises' development, informal sector, black markets);*
- (c) *Special programmes for minority groups, certain interest groups or specific sectors.*

N/A



## Switzerland

1. *Please provide us with case examples of decisions (taken over the last 5 years) by the competition authority of your country, which have contributed either directly or indirectly to the achievement of the objectives of competition laws and the mission of the competition authority of your country.*

*In such cases, please elaborate on how such decisions contributed to the following:*

- (a) Development of economic sectors*
- (b) Increased investment (domestic and foreign)*
- (c) Increased trade (exports and imports)*
- (d) Enterprise or private sector development*
- (e) Consumer welfare*
- (f) Policy making by government*

Case examples 2005 – 2010

### **I. Credit Card Interchange Fees (LPC 2006/1, p. 65ff.)**

On December 5 2005, the ComCo issued a decision against several Issuers of credit cards in Switzerland for the violation of Article 5 CartA (unlawful agreements). This decision was the ratification of an amicable settlement reached between the parties and the ComCo. In the agreement, an objective, cost-based procedure for the calculation of the domestic market interchange fee (hereinafter “DMIF”), was established. The parties were also bound to abolish the Non-discrimination-Rule which stated that the price to be paid by consumers should be the same, independently of the chosen way of payment (credit card was more expensive for the merchants because of the DMIF). Furthermore, the Acquirers are now obliged to disclose (on demand) the applied DMIF towards the merchants for the respective transactions or sector. Finally, the parties agreed to limit the exchange of data between them to a level of strict necessity.

The agreement between the parties and the ComCo was limited to a period of four years. In its analysis of the effectiveness of the decision, the Secretariat of the ComCo observed that the credit card market has been growing ever since, in terms of the number and the volume of transactions as well as the number of issued cards. During this time it is estimated that the reduction of the DMIF, resulting in a reduction of the Merchant Service Charge, allowed for economies of approximately 70 to 90 million CHF for the merchants. Remarkably, in that same period of time,

the cardholder-fees also dropped, which results in an overall reduced price level and a significant increase in the number of cardholders (it was expected that the reduction of the DMIF would shift costs from the acquirers/merchants to the issuers/cardholders). The reduction in the cardholder-fees led to economies of approximately 200-250 million CHF between 2005 and 2008. The decision of the ComCo on that case may thus be considered to have contributed to consumer welfare.

Because the agreement phased out in February 2010, the ComCo prepared a follow-up document. The revised agreement, which entered into force on January 25, 2010, leaves unchanged all measures from the first agreement, except for the formula used to establish the DMIF. While all the parties to the first agreement also signed the second one, it was appealed by the companies who had entered the market only after the first agreement was concluded. At the time of writing, this appeal is still pending.

## **II. Mergers between Migros/Denner and Coop/Carrefour (LPC 2008/1, p. 129ff.; LPC 2008/4, p. 593ff.)**

The Swiss food retail market is highly concentrated. The two major supermarket chains, Migros and Coop, further increased their high market shares through mergers in 2007 and 2008, respectively. Both mergers were authorized under imposition of remedies.

In the Migros/Denner and Coop/Carrefour cases, the Secretariat of the ComCo conducted a detailed analysis of the Swiss retail market, including several external expert reports. It came to the conclusion that through the merger of Migros and Denner, a joint dominant position between Coop and Migros was established. In its Coop/Carrefour decision, the ComCo stated that the merger would strengthen this joint dominant position. In order to prevent the elimination of effective competition, the imposed conditions comprised i) several obligations to ensure that Denner remains as independent as possible and is perceived as an autonomous brand by consumers; ii) the interdiction of further takeovers by Migros or Coop in the food retail market and the obligation to notify mergers in adjacent markets; iii) measures to limit the dominance of Migros and Coop in the procurement markets (e.g. ban on exclusive supply contracts). These conditions apply for a period of three to seven years. Migros and Coop may ask for amendment or

abolition of the conditions (starting on January 1 2010) if the market should change substantially (i.e. substantial competition through foreign companies). So far, there has been no such request.

The goal of the imposed remedies is to maintain a certain competitive pressure in the food retail market. Further, the remedies aim at keeping the upstream market open for (potential) competitors. That is why the ComCo prohibited exclusive supply contracts. It is crucial that competitors of the dominant chains Migros and Coop have access to a wide variety of goods in order to become strong competitors. At the time the ComCo took its decision it was expected that the current market dominance by Migros and Coop would be weakened in the future by the expansion of the German discounters Aldi and Lidl. Both competitors have been expanding relatively fast, as the ComCo predicted in its decisions. All in all, the market entry of the German discounters has led to a reduction in the prices of many daily consumer goods.

### **III. Road Surfaces Ticino (LPC 2008/1, p. 85ff.)**

After the Secretariat had received indications from the administration and the parliament of the canton Ticino that prices for road surfacing in said canton were significantly higher than in the rest of Switzerland, it started an investigation against 17 construction companies as well as two producers of Bitumen. The investigation revealed the existence of a bid-rigging cartel, in which the firms systematically discussed and allocated all road surfacing contracts (public and private) with a value over 20'000 CHF. The allocation happened during weekly meetings and was based on an elaborate system to calculate the market share a company was 'entitled' to have. The whole system was recorded in a written convention and an account was kept on all the projects. The ComCo found this behavior to be in violation of Article 5 paragraph 3 letter a and c CartA (Horizontal price fixing agreement and Agreement on the distribution of market shares). Because the convention was applied from January 1999 to December 2004, no direct sanction could be pronounced because under the old Act on Cartels no sanctions could be imposed (the transition period after the revision of the CartA ended only in 2005).

As a direct result of the investigation, the average offer on public tenders for road surfacing

dropped about 30%. This strong decrease in prices led to important economies for the public authorities of the Ticino, that is for tax payers.

#### **IV. Termination Costs for Mobile Phone calls (LPC 2007/2, p. 241ff.)**

In its decision of February 5, 2007, the ComCo imposed the highest sanction so far on the Mobile Phone Service Provider Swisscom Mobile AG (hereinafter “SCM”), amounting to over 333 Million CHF. The ComCo concluded in its decision that, SCM has been acting unlawfully whilst holding a dominant position on the relevant market, by abusing its position on the wholesale market for incoming telecommunication services (voice telephony) into a mobile communication network in order to demand inadequate prices for the termination of these calls, which led to an exploitation of end consumers on the downstream market (violation of Article 7 CartA).

The decision was appealed by SCM and therefore reviewed by the Federal Administrative Tribunal which upheld the reasoning of the ComCo to a large extent, but lifted the sanction. That second decision was again appealed, this time by the ComCo, and is now pending before the last instance, the Swiss Federal Court.

According to studies dating from 2001 and 2005, the mobile telephony termination charges by the Swiss market leader SCM were the highest in Europe. During ComCo’s investigation SCM reduced its mobile telephony termination charges considerably (from 33.5 cents to 20 cents). Even though the decision was appealed the procedure was successful because the termination charges were reduced by more than one-third of the initial prices during the investigations, resulting in important economies for consumers.

A regularly conducted Cost-Analysis Study for Mobile services in Switzerland published by the Federal Office of Communications clearly shows that, after a period of relatively stable prices (from 2001 – 2004), costs have dropped considerably in the following two years, to the benefit of the consumers. Besides ComCo’s investigation, this development can also be attributed to a surge of innovation (e.g. flat-rate tariffs) and new actors on the market (e.g. pre-paid offers by Migros and Coop, the two largest consumer goods retailers in Switzerland) which led to increasing competition.

**V. Vertical price-fixing agreements (séateurs et cisailles, LPC 2009/2; Gaba and Off-List Medicines both can be found at [www.weko.admin.ch](http://www.weko.admin.ch))**

According to Article 5 paragraph 1 CartA, all agreements that *eliminate* competition are unlawful, while agreements which *severely restrict* competition can be justified on grounds of economic efficiency. Article 5 paragraph 4 CartA represents a legal presumption that effective competition is eliminated in the case of agreements between undertakings at different levels of the production and distribution chain regarding fixed or minimum prices, and in the case of agreements contained in distribution contracts regarding the allocation of territories to the extent that sales by other distributors into these territories are not permitted.

In the above mentioned cases, the ComCo investigated against companies in different sectors (pruning tools, toothpaste and medicines and against erectile dysfunction). The first case concerns a resale price maintenance (hereinafter “RPM”) between Felco, a producer of séateurs and hedge shears, and the retailer Landi, which operates stores for agricultural consumer goods throughout Switzerland. In the decision, the presumption of Article 5 paragraph 4 is reversed, however, the ComCo finds a violation of Article 5 paragraph 1 CartA: The RPM led to severe restriction of competition which could not be justified by legitimate business reasons. The case was brought to terms with an amicable settlement between the parties and the ComCo.

In the second case, the Swiss discount retailer Denner filed a complaint because it could not import the toothpaste Elmex from Gebro, an Austrian license holder of the producer of Elmex, Gaba. The licensing and distribution agreement between Gaba and Gebro explicitly forbade Gebro active and passive sales into other countries. The ComCo found that the provision represented an unlawful ban on parallel imports according to Article 5 paragraph 4 CartA. As in the first case, the legal presumption of Article 5 paragraph 4 CartA was overturned, due to the combination of intra- und interbrand competition. Likewise, the clause was found to be in violation of Article 5 paragraph 1 CartA and could not be justified. Both companies were sanctioned: Gaba has to pay 4,8 million Swiss francs, while Gebro, because of its dependence and weak negotiating position, has only been charged with a symbolic fine of 10'000 Swiss francs. The decision has been appealed and is pending in the Federal Administrative Court.

Following the toothpaste case, the prices of Elmex in Switzerland decreased up to 20%.

The third case concerns the pharmaceutical sector. Off-List medicines are those medicines in Switzerland which do not figure on the list of pharmaceutical specialties (SL) established by the Federal Office of Public Health. Only medicines from the SL are covered by the mandatory social health insurance. The costs of Off-List medicines are borne by consumers and the prices should be determined by market mechanisms. The ComCo opened an investigation in regard of the recommended retail prices that Pfizer AG, Eli Lilly SA and Bayer AG published for their respective erectile dysfunction drugs Viagra, Cialis and Levitra. These recommendations were integrated into the databases of e-mediast AG. This database is used for supply chain management and it makes various product information available to distributors, pharmacies and self-dispensing doctors. The ComCo estimated that the recommendation, provided a majority of sellers keeps to it, would have the same effect as agreed fixed prices, thus creating a vertical price-fixing agreement between the pharmaceutical companies and the pharmacists and self-dispensing doctors. On the relevant market for orally applied drugs against erectile dysfunctions the only important intrabrand competition characteristic was the retail price. Interbrand competition was hindered by the fact that all three drugs can only be bought with a prescription by a medical doctor. He chooses the drug and the patient/consumer is bound by that choice, for he will not get any other than the prescribed substance in the pharmacy. The ComCo concluded that the presumption of the elimination of effective competition cannot be overturned. In conclusion, the three pharmaceutical companies Pfizer, Eli Lilly and Bayer were found to have violated article 5 paragraph 4 CartA; no justification on grounds of economic efficiency could be asserted. The fines cumulatively amounted to over 5 million CHF. The decision was appealed and pending in the Federal Administrative Tribunal.

These three cases were ComCo's first decisions regarding vertical restraints. They are important examples of the ComCo's efforts to reduce the comparably high price level in Switzerland that affects all Swiss consumers. In order to achieve this aim, the authorities focus on agreements which restrict or ban parallel imports into Switzerland and vertical price fixing agreements. The cases presented above are likely to have a signaling effect on all actors on the Swiss market and to foster voluntary compliance with cartel regulations, and they may therefore contribute to decreasing prices in different sectors of the economy.

2. *Please send to us copies (by email or by web links) of (a) sectoral or macro-level studies assessing the state of competition in your country and (b) studies assessing the impact and effectiveness of competition laws and policy in your country.*

In 2003, at the occasion of the last revision of the Swiss Cartel Act, an article was introduced in the Cartel Act providing for an evaluation of the implementation of the Act and the effectiveness of measures taken under it. An evaluation was thus launched in 2007 and conducted in 2007/2008 by an Evaluation Group under the direction of a Steering Group composed of independent experts and representatives of the ComCo, its Secretariat and the State Secretariat for Economic Affairs. The results of the evaluation and the recommendations of the Evaluation Group were compiled in a report that was presented to the FDEA on December 5th, 2008.

The evaluation process included a number of studies that dealt *inter alia* with the effects of the Cartel Act on the economy, the effects of the instruments introduced in the Cartel Act in 2003 (direct sanctions, leniency program, dawn raids and opposition proceedings), the duration, results and number of proceedings, the institutions, international cooperation, concentrations and vertical agreements.

The evaluation report as well as related studies and analyses are available (in German) at:

<http://www.weko.admin.ch/dokumentation/00216/index.html?lang=de>

English and French summaries of the evaluation are available on Comco's website:

<http://www.weko.admin.ch/dokumentation/00216/index.html?lang=en>

<http://www.weko.admin.ch/dokumentation/00216/index.html?lang=fr>

3. *Please elaborate on any special features that the competition law and policy of your country may contain that were designed to address specific development objectives on the part of government or special development conditions in your country.*

*Examples:*

- (a) Features addressing public interest objectives;*
- (b) Exemptions with specific objectives (industrial policy, small and medium-sized enterprises' development, informal sector, black markets);*
- (c) Special programmes for minority groups, certain interest groups or specific sectors.*

The Cartel Act applies in principle to all sectors of the economy. However, Article 3 (1) CartA reserves provisions that exclude certain goods or services from competition on a market, in particular provisions that establish an official market or price system and provisions that entrust certain enterprises with the performance of public interest tasks, granting them special rights. Such provisions exist for instance in the field of agriculture, energy, telecommunications and health. In addition, the Cartel Act does not apply to effects on competition that result exclusively from laws governing intellectual property. However, import restrictions based on intellectual property rights do fall under the Act. In this regard, it can be noted that Switzerland applies the principle of international exhaustion in the field of trademarks and copyrights, whereas patent rights follow the principle of regional exhaustion limited to the EEA (except for products whose price is set by the State).

The Cartel Act applies to both public and private enterprises, and SMEs are not exempted. However, in 2005, the Competition Commission issued a Communication on agreements having a limited impact on the market, which specifically targets SMEs. The Communication sets certain conditions under which an agreement is deemed justified on grounds of economic efficiency in case of agreements aiming at improving the competitiveness of SMEs, insofar as they only have a limited effect on the market.

Finally, according to the Cartel Act, the Government may, in exceptional cases, authorize agreements affecting competition and practices of enterprises having a dominant position that have been found unlawful by the competition authority, or mergers that have been prohibited by the competition authority, if they are necessary in order to safeguard compelling public interests. However, the Swiss Government has so far never made use of this possibility.



## Syria

1. *Please provide us with case examples of decisions (taken over the last 5 years) by the competition authority of your country, which have contributed either directly or indirectly to the achievement of the objectives of competition laws and the mission of the competition authority of your country.*

*In such cases, please elaborate on how such decisions contributed to the following:*

- (a) Development of economic sectors*
  - (b) Increased investment (domestic and foreign)*
  - (c) Increased trade (exports and imports)*
  - (d) Enterprise or private sector development*
  - (e) Consumer welfare*
  - (f) Policy making by government*
2. *Please send to us copies (by email or by web links) of (a) sectoral or macro-level studies assessing the state of competition in your country and (b) studies assessing the impact and effectiveness of competition laws and policy in your country.*
  3. *Please elaborate on any special features that the competition law and policy of your country may contain that were designed to address specific development objectives on the part of government or special development conditions in your country.*

*Examples:*

    - (a) Features addressing public interest objectives;*
    - (b) Exemptions with specific objectives (industrial policy, small and medium-sized enterprises' development, informal sector, black markets);*
    - (c) Special programmes for minority groups, certain interest groups or specific sectors.*

As we pointed out earlier that the recent (the latter half of 2009) and is now in the process of incorporation and the completion of technical staff and management of the commission and management of the commission and increase the expertise of staff and the Authority proposals for the decisions of an economic nature such as

- Re-impose tax (called dhamima which protects the products) in the face of the imports of the private sector for barley and maize were subsequently reduced the fee from 3500 Syrian pound to 1000 Sp for maize and 2000 Sp for barley contributed to this procedure to reduce production costs and impact on the reduction of the selling price to the consumer as well as created competitive environment for poultry products in the region.

- SCC has completed the case which related to the Public Establishment for Damascus International Fair and Exhibitions in the terms of exclusivity and protection.

Output application of the provisions of competition law

- Increase production
- Increasing the innovation, invention, development
- Increase income and improve the standard of living
- Guarantee the production of goods at the lowest cost possible.
- Introduction of new products and new processes in production
- The lowering of prices
- Encourage investment
- Contribute to reduction of corruption

## Tunisie

1. Prière de nous fournir des informations sur les exemples de décisions rendus par les autorités de concurrence de votre pays, qui ont contribué soit directement ou indirectement à atteindre les objectifs fixé par la législation nationale ou ceux de l'autorité nationale de concurrence.

Dans ces circonstances prière d'insister sur la manière dont de telles décisions ont eu une influence sur les points suivants. :

- (S) Le développement des secteurs d'activités économiques
- (T) L'accroissement des investissements nationaux et étrangers
- (U) L'accroissement du commerce (les importations et exportations)
- (V) Le développement des entreprises et du secteur privé
- (W) Le bien être des consommateurs
- (X) La politique gouvernementale

- L'affaire n° 81162 du 17 septembre 2009 ( auto-saisine) ou la pratique incriminée est celle d'une entente entre la fédération nationale des agences de voyages et des compagnies aériennes sur la fixation d'une grille sur les frais de dossiers suite à l'adoption du régime de la commission zéro, le conseil de concurrence a :
  - infligé des amendes dont le montant total est de 300mille de DT (166 mille euros)
  - enjoint les compagnies à cesser la pratique et à publier par voie de presse un extrait de la décision.
  - Dans cette affaire et pour la première fois le conseil de la concurrence a utilisé la procédure de la clémence en exonérant la fédération nationale des agences de voyages de la totalité de la sanction.
- L'affaire n° 71154 du 31 décembre 2009 (saisine émanant du ministre du commerce et de l'artisanat) ou la pratique incriminée est celle d'une entente horizontale entre trois entreprises fabricantes de couches bébés. Cette entente portant sur l'augmentation des prix de vente, et la répartition du marché. et une entente verticale entre ces entreprises et leurs distributeurs portant sur la fixation des prix de gros .Dans cette affaire le conseil de la concurrence a:
  - infligé des amendes dont le total du montant est d'un million de DT
  - enjoint les compagnies a cesser la pratique et de publier par voie de presse un extrait de la

décision.

- L'affaire n°81176 du 11 décembre 2009 (émanant de deux entreprises concurrentes agissant dans le secteur des services aéroportuaires) ou la pratique incriminée est celle d'une entente ayant pour objet et pour effet de limiter l'accès au marché à d'autres entreprises et à la concurrence. Dans cette affaire le conseil de la concurrence a:
  - infligé des amendes dont le total du montant est de cent trente mille de DT (72 mille euros)
  - enjoint les compagnies à cesser la pratique et à publier par voie de presse un extrait de la décision.

L'examen des décisions des autorités Tunisienne de concurrence révèle que la démarche poursuivie vise à garantir le respect du libre jeu de la concurrence pour servir le développement, ils ont souvent mis en relief les effets secondaires des pratiques anticoncurrentielles néfastes à l'économie et aux consommateurs.

Ainsi, ils ont toujours considéré que ces pratiques sont la négation même de l'économie de marché, puisque l'entente et l'abus de position dominante en particulier, aboutissent souvent à la fixation des prix, comme dans l'économie dirigée, sauf que cette détermination n'est pas le fait de l'Etat, mais le résultat de la volonté d'opérateurs qui contrôlent le marché. Ces pratiques portent préjudice aux intérêts des consommateurs qui sont privés d'une partie de leur richesse, en la transférant contre leur volonté, aux auteurs des infractions à la concurrence (affaire n° 71154 du 31 décembre 2009);Elles causent aussi des pertes aux deniers publics, notamment lorsqu'il s'agit d'ententes dans le cadre des marchés publics. De même, ces pratiques incitent les entreprises qui imposent leur volonté sur le marché à se désintéresser de l'efficacité économique, alors qu'elles devraient œuvrer pour la diminution des coûts et investir dans les nouvelles technologies pour améliorer la qualité de leurs produits. Ainsi, elles constituent un obstacle au développement, dès lors qu'elles engendrent l'augmentation des prix de certains produits de première nécessité comme les matériaux de construction, aboutissant au ralentissement, voire l'arrêt de certains projets et de ce fait, accroissent le chômage. Par ailleurs les pratiques anticoncurrentielles peuvent même mettre en échec la politique sociale de l'Etat, dans la mesure où très souvent le taux de croissance réalisé par une économie ne peut se traduire, à cause de ces pratiques, par une

augmentation du pouvoir d'achat des consommateurs, étant donné que les gains découlant des efforts consentis par toutes les composantes d'une société, vont être accaparés par les seuls auteurs de ces pratiques.

Les autorités tunisiennes de la concurrence, ont toujours affirmé que la concurrence n'est pas une fin en soi, mais un moyen pour atteindre l'efficacité et servir, l'intérêt du consommateur. De même, la préservation de l'intérêt général, peut toujours justifier des exceptions et des dérogations au principe de la libre concurrence (décision de non autorisation d'une opération de concentration dans le secteur de raffinage des huiles de graine) .D'autres impératifs de nature politique, sociale ou culturelle, comme la promotion de l'emploi, l'amélioration de la compétitivité ou la protection du petit commerce doivent être pris en considération.

2. *Prière de nous envoyer (i) les copies des études sur l'état de la concurrence dans votre pays, (ii) les études sur l'évaluation de la mise en application effective du droit et de la politique de la concurrence dans votre pays.*

N/A

3. *Prière de nous donner des indications sur les points spécifiques de votre loi sur la concurrence qui sont relatives au développement, notamment :*
  - a- *Les points spécifiques qui traitent des questions relatives à l'intérêt public.*
  - b- *Les exemptions spécifiques et leurs justifications (la politique industrielle, les petites et moyennes entreprises, le secteur informel, les marchés noirs).*
  - c- *Un programme spécial pour les minorités, certains groupes d'intérêt ou secteurs spécifique*

### **Caractéristiques particulières du droit et de la politique de concurrence en Tunisie :**

#### **a) caractéristiques concernant des objectifs d'intérêt public :**

La loi tunisienne sur la concurrence comme celle de certains pays en développement renferme différents types de dispositions relatives à l'intérêt public à savoir :

- L'exclusion du régime de la liberté des prix, les biens, produits et services de

première nécessité ou afférents à des secteurs ou zones où la concurrence par les prix est limitée soit en raison d'une situation de monopole ou de difficultés durables d'approvisionnement soit par l'effet de dispositions législatives ou réglementaires.

- les mesures temporaires prises par le ministre chargé du commerce contre des hausses excessives des prix motivées par une situation de crise ou de calamité, par des circonstances exceptionnelles ou par une situation de marché manifestement anormale dans un secteur déterminé, peuvent être prises par arrêté du dont la durée d'application ne peut excéder six mois.
- Le contrôle des fusions, la loi précise que tout projet ou opération de concentration de nature à créer une position dominante sur le marché intérieur ou une partie substantielle de ce marché, doit être soumis à l'accord du ministre chargé du commerce.
- Les conditions de contrôlabilité est l'une des conditions suivantes:

- 30% des ventes, achats ou toutes autres transactions sur le marché intérieur pour des biens, produits ou services substituables, ou sur une partie substantielle de ce marché.

- un chiffre d'affaires global réalisé par ces entreprises sur le marché intérieur dépasse un montant de 20millions de dinars.

#### **b- les exemptions ;**

La loi relative à la concurrence et aux prix interdit les pratiques anticoncurrentielles .toutefois, elle prévoit des exemptions sous des conditions précises.

L'exemption est une procédure par laquelle l'autorité de la concurrence reconnaît que l'accord, ou la pratique, considéré comme restrictif de concurrence, peut néanmoins être autorisée compte tenu du contexte et du caractère nécessaire de l'accord, malgré la restriction de la concurrence.

L'article 6(nouveau) de la loi sur la concurrence et aux prix dispose que : « Ne sont pas considérées comme anticoncurrentielles, les ententes et les pratiques dont les auteurs justifient qu'elles ont pour effet un progrès technique ou économique et qu'elles procurent aux utilisateurs une partie équitable du profit qui en résulte.

Ces pratiques sont soumises à l'autorisation du ministre chargé du commerce après avis du conseil de la concurrence ».

Selon le paragraphe 1 de l'article 6 (nouveau) de la loi sur la concurrence et aux prix deux conditions sont nécessaires :

1ère condition : progrès technique ou économique,

2ème condition : procurer aux utilisateurs une partie équitable du profit qui en résulte.

La réunion des conditions prévues à l'article 6 nouveau de la loi sur la concurrence et aux prix ne donne pas automatiquement le droit de se prévaloir de l'exemption, l'autorisation du ministre chargé du commerce est une formalité nécessaire.

Le deuxième paragraphe de l'article 6 prévoit que : « Ces pratiques sont soumises à l'autorisation du ministre chargé du commerce après avis du conseil de la concurrence ».

### **c- programmes spéciaux à l'intention de groupes minoritaires, de certains groupes d'intérêts ou de certains secteurs :**

Le tissu économique tunisien se caractérise notamment par la prépondérance des PME qui ont une importance économique et sociale (Emploi, innovation technologique, etc.)

Le législateur a octroyé aux PME plusieurs privilèges et ce afin de promouvoir leur contribution au développement économique

La loi n° 2007-69 du 27 décembre 2007, relative à l'initiative économique vise l'accélération du rythme de création d'entreprises et la diversification du tissu économique pour réaliser les objectifs nationaux dans les domaines de la croissance, l'investissement, l'encouragement du travail indépendant, la promotion de l'emploi et la création des PME. L'art 25 de cette loi dispose qu'il soit réservé aux petites entreprises un pourcentage des marchés publics

Le cadre légal relatif aux marchés publics a connu lui aussi plusieurs modifications visant la promotion des PME, des artisans et des entreprises créées dans le cadre de l'essaimage :

- L'article 19 bis nouveau du décret n° 2008-561 du 4 Mars 2008 modifiant le décret portant réglementation des marchés publics dispose : L'acheteur public réserve annuellement aux petites entreprises un pourcentage dans la limite de 20% de la valeur prévisionnelle des

marchés de travaux, de fournitures de biens et de services et d'études.

- Est réservée aux artisans tels que définis par la législation et la réglementation en vigueur, la participation aux travaux liés aux activités artisanales dans les projets publics, sauf cas d'impossibilité.
- Décret n° 2009-2861 du 5 octobre 2009, portant fixation des modalités et conditions de passation des marchés négociés de fournitures de biens et services avec les entreprises essaimées : Mesures encourageant les entreprises créées dans le cadre de l'essaimage ;

Le décret relatif aux marchés publics prévoit l'obligation de recours à l'appel d'offres et à titre exceptionnel et dans des cas précis à la consultation ou aux marchés négociés.

Pour promouvoir les entreprises créées dans le cadre de l'essaimage, le décret leur accorde la possibilité de conclure des marchés négociés pour l'approvisionnement en produits ou services pour une période de quatre années à partir de la date de leur création et ce dans le cadre du pourcentage réservé annuellement aux petites entreprises.



## Turkey

1. *Please provide us with case examples of decisions (taken over the last 5 years) by the competition authority of your country, which have contributed either directly or indirectly to the achievement of the objectives of competition laws and the mission of the competition authority of your country.*

*In such cases, please elaborate on how such decisions contributed to the following:*

- (a) Development of economic sectors*
- (b) Increased investment (domestic and foreign)*
- (c) Increased trade (exports and imports)*
- (d) Enterprise or private sector development*
- (e) Consumer welfare*
- (f) Policy making by government*

We believe the decisions taken by the TCA contribute to the achievement of the objectives of competition laws and the TCA's mission either directly or indirectly. However, the TCA has not undertaken any empirical studies investigating the contribution of some selected cases to the achievement of certain objectives of competition law such as the ones mentioned above. Moreover, such studies are quite often regarded to be controversial, as it is difficult to dissociate the effect of competition law implementation on the achievement of a certain objective from those of some other factors that also contribute to the same objective. Therefore, we think it may be misleading to pinpoint some case examples of the TCA's decisions for the purposes of this questionnaire.

2. *Please send to us copies (by email or by web links) of (a) sectoral or macro-level studies assessing the state of competition in your country and (b) studies assessing the impact and effectiveness of competition laws and policy in your country.*

(i) In 2008, the TCA completed a market study to assess the state of competition in the liquid fuel market. A summary of the mentioned "Liquid Fuel Sector Report" is available in English at <http://www.rekabet.gov.tr/dosyalar/faaliyetraporu/falrap21.pdf> (para. 68 and onwards).

Moreover, the TCA has completed several other market studies such as those studying the state of competition in the intercity passenger (road) transport market, credit card market, automobile insurance market and market for courses for obtaining driver's license. However, these market

studies are not available in English.

Furthermore, there are ongoing market studies in the banking, pharmaceuticals, coal and natural gas markets.

3. *Please elaborate on any special features that the competition law and policy of your country may contain that were designed to address specific development objectives on the part of government or special development conditions in your country.*

*Examples:*

- (a) Features addressing public interest objectives;*
- (b) Exemptions with specific objectives (industrial policy, small and medium-sized enterprises' development, informal sector, black markets);*
- (c) Special programmes for minority groups, certain interest groups or specific sectors.*

Article 1 of the Competition Act provides that its objective is to prevent agreements, decisions and practices preventing, distorting or restricting competition in markets for goods and services, and the abuse of dominance by the undertakings dominant in the market, and to ensure the protection of competition by performing the necessary regulations and supervisions to this end. The reasoning of Article 1 of the Competition Act overtly states that “... *the purpose of this [Competition] Act is for the State to ensure the protection of competition through the necessary legal arrangements.*” Finally, the general reasoning of the Competition Act states that the Competition Act has been prepared for the “... *provision of the creation of sound markets, encouragement of entrepreneurs, efficient distribution of limited country resources, and their use in the most efficient manner ...*”. Taking into account the aforementioned, it will not be wrong to say that the fundamental objective of the Competition Act in Turkey is the protection of competition itself and therefore the competitive process.

The Competition Act excludes no industry or economic activity completely or partially from its enforcement. However, two exceptions should be taken into account.

First of all, in 1999, the Banking Law was amended to include a provision that mergers and acquisitions would be excluded from application of the Competition Act where sectoral share of the total assets of the banks involved did not exceed 20%. Although the exception covered only those mergers and acquisitions (involving banks in financial distress realized by the Savings

Deposit Insurance Fund administrated by Banking Regulation and Supervision Agency), its scope was widened to cover the entire banking sector in 2001 in order to expedite the process of mergers and acquisitions after the economic crisis in Turkey the same year. The rationale for this is rapid restructuring in the banking sector as the problems in this sector were the main cause of the economic crisis.

Secondly, the Competition Act is not applicable to conduct authorized by another specific act according to Turkish legal system. For instance, the Competition Board, in one of its decisions<sup>10</sup>, where it was alleged that fixing of the minimum fee levels by Union of Chambers of Certified Public Accountants and Sworn-in Certified Public Accountants of Turkey (TÜRMOB) violated the Competition Act, decided that no proceedings could be initiated under the Competition Act as Act No. 3568 authorised TÜRMOB to fix the minimum fee level.

On the other hand, **the failing firm defense** may act as a means to address public interest objectives apart from economic efficiency in the TCA's practice. First thing that should be said about the failing firm defence is the fact that the Competition Act does not include any clause about it. The Competition Board considers "failing firm defense" as reflecting the social dimension of competition law in addition to other dimensions<sup>11</sup>. In a recent decision<sup>12</sup> involving failing firm defense, while considering whether it was inevitable that the relevant assets would exit the market or the market share of the failing undertaking would be acquired by the acquirer, the Competition Board considered that authorization of the transaction would lead to positive social benefits in favor of the employees compared to the case where the transaction would be blocked. In case the transaction was blocked, there would be serious problems caused by the fact that the employees would lose their jobs and could not receive their severance pays. On the contrary, in case the transaction was authorized, the social distress would be avoided. However, it should be mentioned that these social aspects of the transaction was only minor considerations compared to competitive analysis carried out within the comprehensive legal and economic assessments in the decision. Another important characteristic of the decision is that the Competition Board excluded the plurality of media within the context of freedom of information and expression and limited its legal and economic assessments within the framework of the

## Competition Act.

The most recent decision<sup>13</sup> of the Competition Board where the failing firm defence was argued overtly mentioned that negative social impacts could only be taken into account where it could be proved that the transaction would not have any negative impact on competition. Moreover, the decision expresses that negative social impacts should not be decisive in authorizing a transaction if the transaction creates or strengthens a dominant position. Nevertheless, the decision also considers the fact that the number of those people, who could possibly lose their jobs in case of denial of authorization for the transaction, would not create serious social problems.

In another decision<sup>14</sup> concerning creation of a joint venture in enamelled magnet wire market, importance of scale size in terms of international competition was taken into account by the Competition Board among other factors. It was considered that the scale size of the national producers was small compared to foreign undertakings and large scale size was important to be able to find large customers especially in Europe and to meet their demand. Therefore, the ability to meet the demands of large customers especially in Europe, which was not possible with the existing capacities of the parties to the joint venture, was considered by the Competition Board among other benefits to be obtained via the transaction.

The Council of State, the supreme administrative court which is the court of first instance against decisions of the Competition Board, takes into account public interest in its assessments. For instance, in one its decisions (2001/355 E. 2003/4245 K.), it has ruled that the relevant assessment to decide whether a discriminatory conduct constitutes abuse of dominant position should include, among others, public benefit considerations. In the decision, it was ruled that charging TV stations discriminatory prices for highlights of football matches aimed to make the highlights available to all sections of the society and therefore was in line with the public benefit. Therefore, it was ruled that there was no abuse of dominant position under the Competition Act.

On the other hand, the Competition Act does involve an **exemption** regime, although this exemption regime aims at specifying how the Competition Act is to be applied to certain conduct

satisfying certain conditions rather than providing a procedure or an authority that excludes certain conduct or sector from the application of the Competition Act as will be explained below.

The Competition Act enables the TCA to exempt anti-competitive agreements, concerted practices and decisions in case all the conditions listed below are satisfied

- a) Ensuring new developments and improvements, or economic or technical development in the production or distribution of goods and in the provision of services,
- b) Benefitting the consumer from those mentioned in (a),
- c) Not eliminating competition in a significant part of the relevant market,
- d) Not limiting competition more than what is compulsory for achieving the goals set out in (a) and (b).

It could be said that other public policy concerns such as the protection of the environment may be taken into account in assessments under (b). For instance, in one decision<sup>15</sup>, the Competition Board took into account that a system to gather waste automobile batteries for disposal as required by the regulations of the Ministry of Environment and Forestry was compatible with the protection of environment which benefitted the entire society and that the condition (b) for exemption was satisfied. However, it should be said that the same decision does not consider other practices such as price fixing as compulsory to achieve the consumer benefit and provides that condition (d) is not satisfied. The rationale is the fact that such practices go beyond the prevention of the harm caused by waste automobile batteries.

Similarly, the TCA in another decision<sup>16</sup>, mentions that although horizontal cooperation may cause negative impacts on competition, it may also produce economic benefits such as the case concerning agreements for investments to set up recycling firms required by the relevant environmental legislation and are intended to eliminate or recycle environmental waste threatening environment and human health. The Competition Board is of the opinion that such agreements could be treated favorably during assessments for exemption.

In another decision<sup>17</sup>, the Competition Board considered joint building and operation of structures, where antennas would be placed, favorably in terms of sustainable urbanization under the exemption condition (b) requiring benefit of consumers when it was taken into account that building of antenna masts randomly in cities harmed urban fabric, affected city planning negatively and led to visual pollution.

## United States of America

1. *Please provide us with case examples of decisions (taken over the last 5 years) by the competition authority of your country, which have contributed either directly or indirectly to the achievement of the objectives of competition laws and the mission of the competition authority of your country.*

*In such cases, please elaborate on how such decisions contributed to the following:*

- (a) Development of economic sectors*
- (b) Increased investment (domestic and foreign)*
- (c) Increased trade (exports and imports)*
- (d) Enterprise or private sector development*
- (e) Consumer welfare*
- (f) Policy making by government*

The United States antitrust authorities – the Department of Justice and the Federal Trade Commission – believe that their enforcement decisions have contributed to the objective of U.S. competition law, the enhancement of consumer welfare, which in turn has helped to stimulate the overall economy. Promoting consumer welfare allows consumers to spend less to support deadweight losses to the economy and to spend correspondingly more on other goods and services. In taking enforcement decisions, the United States competition authorities consider only the goal of maximizing consumer welfare and promoting economic efficiency through the optimal allocation of resources in a competitive market context.<sup>18</sup> Other goals are advanced by other governmental authorities through the application of other statutory and regulatory schemes.

Some examples of antitrust cases that we believe have contributed significantly to our antitrust enforcement objectives are cases that both agencies have brought against anticompetitive practices in the real estate industry<sup>19</sup> and that the DOJ has brought over the years against all manner of bid rigging practices in the government contract context and elsewhere. Other specific litigations of note include, for the DOJ, cases against cartels in the air cargo.

LCD<sup>20</sup> and financial<sup>21</sup> industries, and merger enforcement actions in the dairy<sup>22</sup> and voting machine<sup>23</sup> industries, all in the last two or three years. In Fiscal Year 2009, the DOJ obtained

more than \$1 billion in criminal fines. For the FTC, the agency has taken merger enforcement action in a number of sectors, including recent activity in the oil and gas,<sup>24</sup> pharmaceutical,<sup>25</sup> consumer goods,<sup>26</sup> and funeral services,<sup>27</sup> industries. Its recent non-merger actions have been in the rental trailer,<sup>28</sup> health care,<sup>29</sup> musical instrument manufacturing<sup>30</sup> and high-technology sectors.<sup>31</sup> Each of these decisions has resulted in significant gains to consumer welfare. In one FTC oil and gas sector case, for example, an FTC monopolization case against an oil company led to consumer savings of an estimated \$500 million per year.

3. *Please send to us copies (by email or by web links) of (a) sectoral or macro-level studies assessing the state of competition in your country and (b) studies assessing the impact and effectiveness of competition laws and policy in your country.*

In the United States, the DOJ and the FTC have jointly conducted a number of market studies, and the FTC and DOJ each, independently, have prepared a number of reports and market studies in areas of their expertise. While the FTC has unique statutory authority to conduct market studies,<sup>32</sup> both agencies have been active in this area. For example, recent FTC studies include a 2009 report on the oil and gas sector,<sup>33</sup> several reports on the pharmaceutical sector,<sup>34</sup> the postal service,<sup>35</sup> and broadband connectivity.<sup>36</sup> For example, a recent FTC report on the effect of anticompetitive agreements between branded pharmaceutical manufacturers and generic drug manufacturers resulting in branded manufacturers paying generic manufacturers of lower-cost drugs to stay out of the market estimated consumer costs of approximately \$3.5 billion dollars per year.<sup>37</sup> The DOJ's work includes its 2008 report on the changing telecommunications situation,<sup>38</sup> and Joint DOJ/FTC studies in recent years have involved the real estate<sup>39</sup> and healthcare<sup>40</sup> markets and intellectual property.<sup>41</sup>

In 2007, the Congressionally-mandated Antitrust Modernization Commission issued its Report assessing the state of U.S. antitrust law as sound, and recommending certain changes for further improvement. Antitrust Modernization Commission, Report and Recommendations; see [http://govinfo.library.unt.edu/amc/report\\_recommendation/amc\\_final\\_report.pdf](http://govinfo.library.unt.edu/amc/report_recommendation/amc_final_report.pdf)



3. *Please elaborate on any special features that the competition law and policy of your country may contain that were designed to address specific development objectives on the part of government or special development conditions in your country.*

*Examples:*

- (a) Features addressing public interest objectives;*
- (b) Exemptions with specific objectives (industrial policy, small and medium-sized enterprises' development, informal sector, black markets);*
- (c) Special programmes for minority groups, certain interest groups or specific sectors.*

U.S. antitrust laws do not have such special features. Nonetheless, while the vast majority of the U.S. economy is subject to antitrust laws, there are a limited number of long-standing exemptions and immunities under U.S. law.<sup>42</sup>

However, even in areas subject to exemptions, the U.S. antitrust authorities have the inherent authority to engage in competition advocacy, in situations where goals besides competition may also be at issue, and do so regularly. The U.S. agencies' competition advocacy activities include: the submission of comments and other participation in federal and state regulatory agency proceedings, preparation of testimony and the submission of comments on a wide variety of federal and state legislative initiatives, participation on U.S. governmental policy-making task forces, the Executive Branch legislative review process, the filing of amicus curiae (or "friend of the court") briefs in appropriate private antitrust cases, publication of reports on regulated industry performance, and review of proposed federal government licensing and leasing applications.

In the past year, the FTC has filed comments with the Louisiana Legislature and the Louisiana Board of Dentistry opposing proposed legislation and administrative rules that would likely limit competition to provide dental services to poor schoolchildren;<sup>43</sup> comments with the Federal Communications Commission (FCC) about coordinating competition issues with consumer information disclosure and privacy issues;<sup>44</sup> comments to the Department of Health and Human Services about the competitive implications of certain regulatory changes;<sup>45</sup> and several comments with the Federal Energy Regulatory Commission about competition in energy

markets.<sup>46</sup> The DOJ has stepped up its efforts in the competition advocacy area with its work on agricultural issues, its work on the interagency Financial Fraud Enforcement Task Force, and its work with the Department of Transportation on issues related to antitrust immunity requests for airline alliances, *inter alia*.<sup>47</sup> Other important recent examples of the U.S. agencies' advocacy work have included joint FTC and DOJ Hearings on Competition in the Health Care Marketplace, joint DOJ and U.S. Department of Agriculture workshops to discuss competition and regulatory issues in the agricultural industry,<sup>48</sup> and comments by both agencies to the U.S. Federal Communications Commission in response to that agency's Notice of Inquiry on a National Broadband Plan for the US.

## Uzbekistan

1. *Please provide us with case examples of decisions (taken over the last 5 years) by the competition authority of your country, which have contributed either directly or indirectly to the achievement of the objectives of competition laws and the mission of the competition authority of your country.*

*In such cases, please elaborate on how such decisions contributed to the following:*

- (a) Development of economic sectors*
- (b) Increased investment (domestic and foreign)*
- (c) Increased trade (exports and imports)*
- (d) Enterprise or private sector development*
- (e) Consumer welfare*
- (f) Policy making by government*

In 2006 the competition authority of Uzbekistan started an inquiry into the postal services market, namely newspaper delivery services after receiving some complaints from small market participants and consumers of the excessive price increases, market divisions and artificial market barriers set up by two large companies. The enquiry exposed some cross shareholders in the boards of two “so called” competitors. Two companies, as it was revealed, divided up the market by the regions, increased prices and did not allow new entrants to enter the market. Authority made decisions to penalize two companies, expel the cross shareholding practices and ended an anticompetitive activity, which lead for better market condition and fair prices.

- a) This was one of the most important cases of the recent years and led to the growing awareness among public and private sector players of the watchdogs powers to break down even big national level players. Therefore we can conclude that this case has resulted in an indirect development of the country’s economy.
- b) Not available
- c) Not available
- d) Not available
- e) Lower prices increased consumer welfare
- f) Increased public awareness led to better policymaking by government.

4. *Please send to us copies (by email or by web links) of (a) sectoral or macro-level studies assessing the state of competition in your country and (b) studies assessing the impact and effectiveness of competition laws and policy in your country.*

Not available.

4. *Please elaborate on any special features that the competition law and policy of your country may contain that were designed to address specific development objectives on the part of government or special development conditions in your country.*

*Examples:*

- (a) Features addressing public interest objectives;*
- (b) Exemptions with specific objectives (industrial policy, small and medium-sized enterprises' development, informal sector, black markets);*
- (c) Special programmes for minority groups, certain interest groups or specific sectors.*

Not available.

## Zambia

1. *Please provide us with case examples of decisions (taken over the last 5 years) by the competition authority of your country, which have contributed either directly or indirectly to the achievement of the objectives of competition laws and the mission of the competition authority of your country.*

*In such cases, please elaborate on how such decisions contributed to the following:*

- (a) Development of economic sectors*
- (b) Increased investment (domestic and foreign)*
- (c) Increased trade (exports and imports)*
- (d) Enterprise or private sector development*
- (e) Consumer welfare*
- (f) Policy making by government*

### **(i) TELECOMMUNICATIONS SECTOR**

#### **(a) How decision contributed to the Development of the economic sector**

The Information Communications Technology (ICT) sector is one of the sectors that is growing rapidly in Zambia. As a way of fostering the growth and development of the sector, the Commission and other relevant stakeholders such as the Zambia Information Communications and Technology Authority and the Ministry of Telecommunications and Information Technology participated actively in the formulations of the national ICT Policy and the ICT Act which have addressed a number of issues related to the regulation of the sector including the International Gateway.

With passing of these legislations, it is envisaged that there would be increased competition in the sector for users of ICTs especially the mobile service providers. It is also likely that mobile tariffs would likely be affordable in future as the new as competition is likely to be stiffen amongst the market players which would be a benefit to the consumers.

Clear assignment of regulatory functions among regulators that may overlap in their functions as stipulated their respective legislations is vital. As for the ICT sector, the ICT Policy and Act have spelt out clear positions as to who should regulate what. The Zambia Competition Commission has been given recognition and mandate to deal with competition related issues in the sector and it is ZICTA's mandate to deal with technical and other regulatory issues related to the industry. This has eliminated the possibility of conflict between regulatory bodies.

**(b) How decision contributed to increased investment (domestic and foreign)**

Transparency in carrying out regulatory functions enhances the confidence and trust of private investment to flow in the relevant sector. This is also true for the ICT sector especially that field requires significant capital outlay.

However, in terms of how the decision contributes to increased investment on the domestic and foreign levels through the Commission's participation in the legislative processes for both the ICT Act and the Policy, the sector is likely to see increased levels of investment in the long run. This would be attributed to the fact that the sphere of regulatory functions and increased transparency emanating from the ICT Act and Policy would provide impetus to both domestic firms and Multinational companies to invest in the sector. These would likely be long term benefits.

**(c) How decision contributed to increased trade (exports and imports)**

It is not clear how the decision would lead to increased trade in terms of participation in the export and import markets. The idea for participation by the Commission in the legislative process for both the ICT Act and Policy was to realize an ICT sector that is competitive and create a transparent regulatory environment that would not only benefit the market players but also the consumer as well as making it easy for the regulatory agencies in the sector to execute their mandates effectively.

**(d) How decision contributed to Enterprise or private sector development**

As pointed out above, a transparent regulatory environment in which players and the regulators are clear of what is expected of them at any given time increases the credibility and trust of the regulator. This credibility would result in prospective and incumbent firms to marshal their investments as the law and the policy guarantee their investments. This would ultimately lead to certainty, growth and development of the sector and deliver the required benefits to the consumer.

**(e) How decision contributed to Consumer welfare**

No doubt the decision to participate in the legislative process by the Zambia Competition Commission for the ICT Act and the ICT Policy was prompted by the Commission's desire to ensure that the cost for consumers for access to ICT services was lower as competition in the relevant sector was enhanced. From a competition law point of view, increased competition is concomitant

to improved quality of service delivered to the consumer, lower prices and increased choice. This in essence translates to improved consumer welfare.

**(f) How decision contributed to Policy making by government**

The formulation of the ICT Policy and the ICT Act by Government was driven by the need to ensure that the ICT sector deliver quality services to the people, at competitive rates especially in the telecommunications sector and improve access to the ICT services. This is so because the ICT sector has been one of the critical areas that Government has identified one of the engines for economic development.

Government through the Zambia Information Communications and Technology Authority has embarked on the programme of universal access so that ICT services are accessed by the rural population. Thus, the formulation of ICT Policy and the ICT Act will help Government to develop programmes that would enhance service delivery in the ICT sector.

**(ii) RETAIL SECTOR (EXPIRED GOODS)**

The Competition and Fair Trading Act, Cap 417 of the Laws of Zambia under Section 6(1) and 12 provides for consumer protection in terms of unfair trading practices by traders on the market. Using the Competition and Fair Trading Act, The Food and Drugs Act, Cap 303 of the Laws of Zambia and the Public Health Act, the Commission in conjunction with Local Authorities, the Councils, conducted on spot inspections in major super markets four (4) provinces – Lusaka, Central, Copperbelt and Eastern Provinces.

The on spot checks were prompted by some of the complaints that the Commission had been receiving concerning continued stocking of expired consumer products in supermarkets and also that of rotten fruits and vegetables. Various products were confiscated from these supermarkets.

The various Acts that necessitated the on spot inspections are:

**(a) Competition Fair Trading Act, Cap 417 of the Laws of Zambia**

Section 12 (e) of the Competition Fair Trading Act:

“A person shall not supply any product which is likely to cause injury to health or physical harm to consumers, when properly used, or which does not comply with a consumer safety standard which has been prescribed under any law”.

**(b) Food and Drugs Act, Cap 303 of the Laws of Zambia**

**1-Section 3(b) of the Food and Drugs Act:**

“Any person who sells any food that-consists in whole or in part of any filthy, putrid, rotten, decomposed or diseased substance or foreign matter, or is otherwise unfit for human consumption; shall be guilty of an offence”.

**2-Section 6 of the Food and Drugs Act:**

“Any person who sells to the prejudice of the purchaser any food which is not of the nature, or is not of the substance, or is not of the quality, of the article demanded by the purchaser, shall be guilty of an offence”.

**3-Section 4 of the Food and Drugs Act:**

“Any person who labels, packages, treats, processes, sells or advertises any food in a manner that is false, misleading or deceptive as regards its character, nature, value, substance, quality, composition, merit or safety, or in contravention of any regulations made under this Act, shall be guilty of an offence”.

**4-Section 23 Food and Drugs Act:**

“ No person shall sell or shall prepare, keep, transmit or expose for sale, without reasonable excuse, any articles of food which is packed in an airtight receptacle if such receptacle:



- (a) is blown to such a degree that:
  - (i) there is bulging of the flat or concave sides or ends; or
  - (ii) is blown to such a degree that:
- (b) is extensively rusted; or
- (c) is damaged so that it is not airtight; or
- (d) shows evidence of having been punctured and the puncture is re-sealed.

**(a) How decision contributed to the Development of the economic sector**

While the Commission has a duty to take the supermarkets to court on the basis of selling products that are likely to cause injury to health in accordance with Section 12 (e) of the Competition and Fair Trading Act, Cap 417 of the Laws of Zambia and the Food and Drugs Act Cap 303 of the Laws of Zambia, the Commission decided to issue a warning letter to all supermarkets in the country and to other traders involved in similar trade.

As a result of the Commission's initiative in this area, supermarkets have taken measures to ensure that they sell palatable consumer products. Thus, in essence the decision by the Commission to conduct such on spot checks led to improved consumer welfare through the removal from shelves and freezers of expired and rotten products, respectively. This new development in the sector has enhanced consumer confidence that the products they are consuming are safe.

**(b) How decision contributed to increased investment (domestic and foreign)**

It is not overtly apparent as to how this decision may have contributed to increased investment at both domestic and foreign levels. However, what is apparent is that the supermarkets have put in

place stringent measures in terms of standards to their suppliers to be supplying them fresh merchandise (fruits and vegetables) that have longer shelf lives and acceptable by the consumer.

**(c) How decision contributed to increased trade (exports and imports)**

It is also not clear as to how the decision by the Zambia Competition Commission and its stakeholders may have increased trade in terms of exports and imports. Perhaps the long term effect would be that local companies supplying agricultural merchandise would adopt better methods in terms of scaling up standards for the products. This would in the long run help them even to penetrate the export markets as they products would be those that would be acceptable in the export markets.

**(d) How decision contributed to Enterprise or private sector development**

While the objective of the on spot inspection was to ensure that expired and rotten products were removed from the supermarkets, the decision would assist both the supermarkets and the suppliers to conform to some standards that are acceptable not only locally but also in the export market. Thus, the decision would likely lead to the development of the private sector in terms of developing their potential to penetrate the export markets and satisfying the domestic consumers.

**(e) How decision contributed to Consumer welfare**

Section 12 of the Competition and Fair Trading Act, Cap 417 of the Laws of Zambia, the Food and Drugs Act, Cap 303 of the Laws of Zambia and the Public Health Act are all meant to protect consumer welfare. With regard to the on spot inspections, the Commission and its stakeholders took an imported step as supermarkets and other similar traders were made aware of the dangers of selling expired products and rotten merchandise. The Commission had sent a strong warning to the traders in foodstuffs and the general public were sensitized of the need to check thoroughly the products they were buying for safety reasons. In a nut shell, it is clear that the decision by the Commission positively contributed to the enhancement of consumer welfare.

**(f) How decision contributed to Policy making by government**

There is a review of the current competition and fair trading legislation to give it more “teeth” to enable the enforcement agency to have more administrative powers to deal with the consumer-detriment acts of all businesses and punish offenders accordingly.

**(iii) BEEF SECTOR**

The Commission allowed an acquisition of assets belonging to Rumcortin (Essential Facility in the Provincial Centre of Southern Province) Meat Processors (Africa) Limited by Zambeef Products Plc. However, this transaction was authorized with conditions. Zambeef gave the following undertakings to the Commission:

- (i) In the event of a major disease outbreak and upon formal written notification relevant authority, if Rumcortin abattoir is declared to be the only SPS certified abattoir and all other slaughter facilities in the relevant Geographic area/district are close, Zambeef shall allow third party access to the Rumcortin abattoir on an objective criteria and without discrimination.
- (ii) For third party access to the abattoir in a period of disease outbreak, Zambeef will charge an access fee set at a reasonable economic and competitive rate that takes into account the prevailing rates for similar services, which rates shall be negotiated entirely between Zambeef and the third parties.
- (iii) Zambeef shall not insist on third party cattle slaughtered at the abattoir to be sold to Zambeef but shall allow the cattle owners/traders to exercise their freedom of trade.
- (iv) The first priority for slaughtered and storage of carcasses in the cold room will always be for Zambeef cattle. However, Zambeef will make efforts to consider third party slaughters and storage as provided above.
- (v) Zambeef shall appoint a senior management official within its ranks who shall be the 'Trade Practices Compliance Officer' and who shall liaise with the Commission from time to time on matters of compliance with the undertakings and/or the Competition and Fair Trading Act, Cap 417 of the Laws of Zambia.

In arriving at this decision, the Board was convinced that the undertakings would allow for effective competition in the relevant market in the event that Rumcortin Abattoir was declared the only Sanitary and Phyto-Sanitary certified abattoir.

**(a) How decision contributed to the Development of the economic sector**

From the outset, it is important to notice that the decisions that are made by a competition authority essentially should ensure that there is free and effective competition in the economy. This is the more reason that undertakings were given to the Commission by the buyer, Zambeef, of the Essential Facility.

With regard to how the decision contributed to the development of the economic sector, thus, the beef sector, the Commission envisioned a situation where by authorizing the acquisition with conditions, it would allow third parties in the Livingstone area where the abattoir is situated to continue trading in during the time when the abattoir is declared the only Sanitary and Phyto-Sanitary certified abattoir. This would inevitably ensure the growth and development of the beef sector as the owner of the essential facility will allow access to abattoir to third parties and continue with beef trading. Thus, the decision provides for continuity of beef trading in the relevant geographic area in an event of a disease outbreak.

**(b) How decision contributed to Increased investment (domestic and foreign)**

With regard to this particular case, there would appear to be no overt contribution of the decision to increased investment both at domestic and foreign. However, as pointed out, third parties would not be disrupted in terms of their beef trading activities and this assured continuity of access to the essential facility, the abattoir, would encourage them to plan ahead and perhaps expand their business portfolio through increased investment.

**(c) How decision contributed to Increased trade (exports and imports)**

Zambia is self sufficient in beef. Thus, Zambia produces enough amounts of beef that meets the local demand and therefore does not import beef from other countries neither within the region nor overseas. In the same vain, Zambia does not export beef. Thus, what is produced locally is consumed on the domestic market.

As such, the decision in the short run would encourage the growth and development of the sector and perhaps the market players may venture into the export market in the long run.

**(d) How decision contributed to Enterprise or private sector development**

Rumcortin abattoir is now owned by Zambeef which is a private firm. Zambeef is the largest beef company in Zambia and owns abattoirs and is involved in other agricultural related activities. Third parties that slaughter their cattle at Rumcortin abattoir are also private firms and individuals.

With regard to how the decision has contributed to enterprise or private sector development, the acquisition of Rumcortin abattoir by Zambeef which was none operation at the time of the takeover led to the resumption of operations at the abattoir. Further, the resumption of operations resulted into employment creation and improved activities in beef trade in the area.

Thus, the decision led to the growth of Zambeef in terms of adding another property to its abattoir portfolio. Further, the private sector trading in beef have been given an opportunity to continue trading in beef and with modern abattoir facilities.

#### **(e) How decision contributed to Consumer welfare**

Before the acquisition of the Rumcortin abattoir by Zambeef, the abattoir was none operational for a considerable period of time. However, with the coming of Zambeef, different private traders and individuals scale up their beef trading activities at the abattoir. As such, consumers were faced with different choices in terms of price.

Thus, the decision led to increased participants in the beef sector and increased competition. As such, prices went down and have tended to stabilize over time. Thus in this sense, the decision led to improved consumer welfare in terms of quality beef, choice and lower prices.

#### **(f) How decision contributed to Policy making by government**

The Government through the Office of the President has established a Ministry for Livestock Services to specifically deal with matters of livestock. While the Commission may not take sole credit for this, a number of press statements and various reports on livestock, notably the cattle industry, have been a matter of general public input which has brought about the development.

- 2. Please send to us copies (by email or by web links) of (a) sectoral or macro-level studies assessing the state of competition in your country and (b) studies assessing the impact and effectiveness of competition laws and policy in your country.*

*Find the following attachments:*

*ATTACHMENT 1 – A Study of the Retail Sector in Beef, Poultry and Dairy Sectors in Zambia*

*ATTACHMENT 2 - A Study into the Excessive Pricing of Sugar In Zambia*

*ATTACHMENT 3 – A Competition Perspective of the Telecommunications Sector in Zambia*

*ATTACHMENT 4 – Using Competition Law to Alleviate Poverty in Zambia*

[NOTE: Please an email to the ZCC Executive Director, [zcomp@zamtel.zm](mailto:zcomp@zamtel.zm) to request for electronic copies of the documents]

3. Please elaborate on any special features that the competition law and policy of your country may contain that were designed to address specific development objectives on the part of government or special development conditions in your country.

*Examples:*

- (a) *Features addressing public interest objectives;*
- (b) *Exemptions with specific objectives (industrial policy, small and medium-sized enterprises' development, informal sector, black markets);*
- (c) *Special programmes for minority groups, certain interest groups or specific sectors.*

**(i) Features addressing public interest objectives**

Zambia is coming from background of high levels of unemployment. Even after the privatization and liberalization of the economy, the county is still facing daunting challenges of unemployment. As such, certain conducts or transactions are allowed to go ahead to safeguard certain public interest consideration and employment is the most critical public interest concern that arises.

These transactions or acts are allowed under section 13 (1) of the Act which provides for allowable acts. This section of the Act reads:

**Section 13 (1): “The Commission may authorize any act which is not prohibited outright by this act, that is, an act which is not necessarily illegal unless abused if that act is considered by the Commission as being consistent with the objectives of the Act”.**

**(ii) Exemptions with specific objectives (industrial policy, small and medium-sized enterprise's development, informal sector, black market)**

The Competition and Fair Trading Act is inherently administered in tandem with Government's overall national industrial vision as may be contained in such documents as

the Industrial, Commercial and Trade Policy, as well as the applicable National Development Plan.

In terms of the SMEs, the application of the competition aspects of the law are not enforced per se owing to the fact that their effects are considered to be of the “de minimis” category i.e. negligible effects unless there is a specific case requiring intervention. The SMEs are further, for purposes of merger control, exempted from the notification process for authorization of their mergers with the Commission under Statutory Instrument 46 of 2006. However, SMEs are not exempt from unfair trading practices such as supply of defective goods, misrepresentation, passing-off, hoarding of products, supply of product likely to cause injury to the consumer, etc, which on a receipt of a report or complaint, or at its own initiative, the Commission would actually move in to deal with the matter.

On the informal sector part and black market, these are quite fragmented across the country and have posed a problem in terms of capturing relevant data and apply a legal remedy in competition terms due to the complex and even costly implementation mechanism that would have to come with such an attempt. However, like for formal SMEs, these sectors are not exempt from unfair trading practices such as supply of defective goods, misrepresentation, passing-off, hoarding of products, supply of product likely to cause injury to the consumer, etc, which on a receipt of a report or complaint, or at its own initiative, the Commission would actually move in to deal with the matter.

**(iii) Specific programmes for minority groups, certain interest group or specific sectors.**

SMEs are exempted only from merger notifications through a Statutory Instrument No. 46 of 2006.

Expressly by Section 3 of the Competition and Fair Trading Act, certain sectors and/or activities are exempted from the application of all the parts of the Act, as follows:

**Nothing in this Act shall apply to –**

- (a) activities of employees for their own reasonable protection as employees;
- (b) arrangements for collective bargaining on behalf of employers and employees for the purpose of fixing terms and conditions of employment;

- (c) activities of trade unions and other associations directed at advancing the terms and conditions of employment of their members;
- (d) the entering into an agreement in so far as it contains a provision relating to the use, license or assignment of rights under, or existing by virtue of, any copyright, patent or trade mark;
- (e) any act done to give effect to a provision of an agreement referred to in paragraph (d);
- (f) activities expressly approved or required under a treaty or agreement to which the Republic of Zambia is a party;
- (g) activities of professional associations designed to develop or enforce professional standards reasonably necessary for the protection of the public; and
- (h) such business or activity as the Minister may, by statutory instrument, specify.