Distr.
GENERAL

TD/B/RBP/INF/32
2 June 1994

Original: ENGLISH

TRADE AND DEVELOPMENT BOARD
Intergovernmental Group of Experts
on Restrictive Business Practices

RESTRICTIVE BUSINESS PRACTICES INFORMATION

Issue No. 18

This information note is part of a series issued by the UNCTAD secretariat, in response to a request to the Secretary-General of UNCTAD by the Intergovernmental Group of Experts on Restrictive Business Practices, with a view to keeping Governments and other interested bodies or persons informed of recent major developments in the area of restrictive business practices.

I. LEGISLATIVE AND POLICY DEVELOPMENTS IN THE FIELD OF RESTRICTIVE BUSINESS PRACTICES

China adopts Law on Unfair Competition

1. China adopted 1/ a Law for Countering Unfair Competition on 2 September 1993 (entry into force on 1 December 1993). The objectives of the Law are to safeguard the healthy development of the socialist market economy, encourage and protect fair competition, stop acts of unfair competition and defend the lawful rights of operators and consumers (art. 1). For the purposes of the Law, unfair competition is defined as acts of operators which contravene the provisions of the Law, damage the lawful rights and interests of other operators and disturb the socio-economic order (art. 2). The Law establishes a general principle that, in carrying on transactions in the market, operators are to follow the principles of voluntariness, honesty and credibility, and observe generally recognized principles of business ethics (art. 2).

2. The unfair practices by operators which are proscribed include some practices that would constitute RBPs within the meaning of the Set of Equitable Principles and Rules, namely: abuse of dominant position by public utilities or other monopolies to force other operators to buy goods of designated operators so as to exclude other operators from competing fairly (art. 6); predatory pricing (art. 11); tie-in clauses (art. 12); and collusive tendering, both with other tenderers or with the party inviting the tender (art. 15).

3. Other unfair practices which are proscribed could be considered to fall within the legal fields of unfair competition, industrial property rights and/or consumer protection, namely: passing off, counterfeiting of well-known trademarks, using misleadingly similar packaging or decoration, infringement of trade names, symbols of authentification and appellations of origin, and false representations as to the quality of goods (art. 5); bribery (art. 8); misleading advertisements (art. 9); infringements of trade secrets through various means (art. 10); gifts and premiums (art. 13); and falsehoods damaging to a competitor's goodwill, its reputation, or the reputation of its goods (art. 14).

4. In addition, local governments and their subordinate departments are prohibited from abusing their administrative powers to force others to buy the goods of designated operators, to restrict the lawful business activities of other operators, or to restrict the entry of goods from other parts of the country into the local market or the flow of local goods to markets in other parts of the country (art. 7). Staff members of State organs are prohibited from supporting or covering up acts of unfair competition (art. 4).

5. For the implementation of the Act, it is provided (arts. 3, 4 and 16-20) that: the Government, at various administrative levels, shall adopt measures to stop acts of unfair competition and to create a salutary environment and conditions for fair competition; the administrative authorities for industry and commerce above the county level shall monitor and investigate acts of unfair competition, for which purpose they are given various powers; other departments shall abide by the Law's provisions in respect of other legislation falling within their competence; and the State will encourage, support and protect all organizations and individuals in the monitoring of acts of unfair competition.

6. Depending upon the specific contravention of the Act, cease and desist orders, confiscation, administrative fines, revocation of business licences or criminal proceedings may be implemented by the competent authorities; in addition, an injured party may claim damages before the courts (arts. 20-32). An appeal may be made by a party against a decision of a competent authority to the authority at the next higher level; further appeal may be made to the courts (art. 29).

Draft International Antitrust Code: a proposed GATT-MTO plurilateral agreement

7. On 20 October 1993, a Draft International Antitrust Code (Draft Code) prepared by an informal group of experts entitled "International Antitrust Code Working Group" was submitted to the Intergovernmental Group of Experts on

Restrictive Business Practices at its twelfth session, during the consultations held at that session. The Code, which seeks to establish the same competition rules at the international level as they exist under national competition legislation in many countries, was presented by its authors as "a proposed GATT-MTO plurilateral agreement".

8. The informal Antitrust Code Working Group was composed of 12 members from Germany, Japan, Poland, Switzerland and the United States. They had no political mandate and no national government or international organization was involved.

9. The Draft Code is based on five principles. Three of these principles underlie, since the adoption of the Paris Convention for the Protection of Industrial Property in 1883, the international system for the protection of intellectual property rights and protection against unfair trade practices. These three are as follows:

(1) The application of substantive (not only conflict-regulating) national law for the settlement of international cases;

(2) National treatment (i.e. non-discrimination, under national law, between nationals and foreigners). According to the authors of the Draft Code this principle works in two ways. As far as rights are concerned that are granted under a national legal system (such as a patent right), national treatment leads to non-discrimination between nationals and foreigners who wish to invoke these rights. As far as duties of conduct are concerned (such as the prohibition of unfair trade practices in art. 10 bis of the Paris Convention), national treatment leads to non-discrimination between nationals and foreigners with regard to those duties, and therefore to an "international treatment" of tortfeasors under national law (which is in conformity with minimum international standards). It is the latter way of the working of the national treatment principle that is proposed in the Draft Code.

(3) Minimum standards for the national laws, agreed upon in an international agreement.

10. As its fourth principle the Draft Code provides for procedural initiatives to be taken when necessary for the effective application of international antitrust law by an international body or agency, in addition to the parties to the agreement that are adversely affected. The authors call this principle "the principle of international procedural initiatives".

11. The fifth principle upon which the Draft is based is the limitation of the application of the other four principles to cross-border situations only.

12. As regards institutional setting and enforcement, the proposed Code provides for the establishment of an International Antitrust Authority, to be headed by a President, appointed for a six-year term, and composed of a 20-member International Antitrust Council.

13. The international authority would be allowed to bring actions against national antitrust authorities in national lawcourts if the national authority refuses to take appropriate measures, sue private persons for injunctions, exercise the right of appeal even when it is not a party to a case, be entitled to sue a party to the agreement before an "International Antitrust Panel" and assist parties in the enactment of antitrust law and in antitrust enforcement.

14. The international panel's operations would be governed by the Understanding on Rules and Procedures Governing the Settlement of Disputes and by any supplementary rules that the parties may adopt. Decisions by the panel would be legally binding and if a party's judicial decision "has been found to be inconsistent with obligations under the Code, the competent national court or other authorities would have to reconsider their decision respecting the finding of the International Antitrust Panel.".

15. The Draft Code notes that a similar form of dispute settlement with binding panel decisions for national courts exists in the United States-Canada Free Trade Agreement.

16. In the introduction to the Draft Code it is stated that, while the majority of the group urged adoption of the entire Code as it is written, some members opted for a minimal approach. They proposed the adoption of 15 principles of antitrust law, most of which are also listed in the provisions of the Draft Code, because such an approach avoids formulating antitrust provisions that would restrict nations too severely in drafting their domestic law. However, this is not a minimal approach in substance.

New Code of Conduct for Air Travel Computerized Reservation Systems

17. On 28 September 1993 2/ European Commission transport ministers agreed on a new code of conduct for airline computer reservation systems (CRS). This code, which had been approved on 9 September 1993 by the European Civil Aviation Conference (ECAC), provides for policing the deployment and use of air travel CRSs.

18. The new code is a substantially revised version of a code adopted in 1989, and it is intended to prevent airlines that own a booking system from poaching passengers from airlines that participate in it. The code was agreed upon against the background of a long-running dispute about "de-hosting" - separating ownership and use of CRS - between American Airlines and its Sabre system, and its two European rivals, Amadeus and Galileo, in which several European carriers hold shares.

19. The new code requires CRSs operating in Europe to "de-host" i.e. separate the proprietary inventory and sales systems of the airline owner of the CRS from the distribution functions the CRS offers other airlines. The code stipulates that all airlines, including CRS owners, must have access to the distribution functions of a CRS through the same type of interface on a non-discriminatory basis.

European Commission competition policy in the field of air transport

20. On 27 September 1993 3/, Karel Van Miert, the European Union Competition Commissioner, rejected suggestions that the European Commission's "Open Skies" policy for air transport liberalization should be moderated. He added that the European Commission would not accept a fare cartel or a capacity reduction cartel. He further explained that the European Commission did not intend to moderate policies on airline competition as set out in the "Third Package" of liberalization measures agreed the previous year.

21. Some airlines had been pressing the Commission to adopt a more moderate line in this area. While indicating that these airlines had failed to persuade him, the Commissioner said that their aim was apparently to set up a price cartel and the Commission could not and would not allow that.

22. Some airlines that lacked the benefit of State subsidies had criticized the Commission for being too soft on aid approved for competitors.

Canada to regulate computerized reservations systems

23. On 15 November 1993 4/ the Canadian Government's plans to regulate computerized airline reservations systems were disclosed. According to information revealed by a senior federal official in a testimony before the Competition Tribunal, draft regulations were being prepared for the end of December 1993.

24. The Tribunal was considering the application by Canadian Airlines International Ltd. (CAIL) to allow it to withdraw from a 1989 consent order that formed the Gemini computerized reservation system (CRS).

25. The official said that, among the issues under consideration by an interdepartmental committee is a regulation against display bias, the practice of giving preference on the reservation system to flights of the airline that owns the system.

Approval by EFTA'S surveillance authority of the first text on competition

26. On 12 January 1994 5/ the Surveillance Authority responsible for implementing the European Economic Area (EEA) Agreement throughout the EFTA territory adopted its first decision in the field of competition. This concerned ten notices and guidelines which clarify EEA rules of competition and are for the attention of economic operators.

27. The procedures that EFTA's Surveillance Authority will follow in examining a case coming within its competence are replicas of those the Commission traditionally applies under European Commission rules of competition. In this initial explanation, it sets out the principles that should govern (without prejudice to the interpretation that might be given by EFTA's Court of Justice) evaluation of: (i) concentrations (enterprise transfer, joint acquisitions, concentrative joint ventures); (ii) the cooperative or concentrative nature of joint ventures; (iii) exclusive distribution or purchasing agreements that benefit from exemption by category under article 53(3) of the EEA Agreement; (iv) distribution and services

agreements in the motor vehicle sector that also benefit from that type of exemption; (v) exclusivity contracts with commercial agents who are exempted; (vi) agreements, decisions and concerted practices between firms which are not considered as mergers; (vii) imports of goods from third countries which could be obstacles to trade in the EEA or could lead to unfair competition; (viii) subcontracting agreements; (ix) agreements of minimum importance which do not come under the ban on concerted practices, i.e. whose effects on competition are minimum (businesses with less than 5 per cent of the market and an annual turnover not exceeding Ecu 200 million; and (x) restrictions on competition in the telecommunications sector (concerted practices and abuse of a dominant position).

II. DEVELOPMENTS IN THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES

A. Restrictive business practices in goods and services

European Commission fines 16 big European steelmakers

28. In February 1994 6/ the European Commission imposed a record fine of Ecu 104.4 million ($117 million) on 16 of Europe's leading steelmakers for operating a cartel to supply the construction industry. The companies were found guilty of infringing all the provisions of article 65 of the European Coal and Steel Treaty, which outlaws price-fixing, market-sharing and the exchange of confidential information.

29. Karel Van Miert, EU Competition Commissioner said that this was a case "where everything that can be infringed has been infringed". He added that the Commission had levied the heaviest fines on "those who sinned repeatedly". The ringleaders in the cartel to rig prices for beams and girders, according to the Commission, were British Steel (fined Ecu 32m); Unimetal, a division of France's Usinor-Sacilor (fined Ecu 12.3m); and Thyssen of Germany (fined Ecu 6.5m). German steelmakers and British Steel said they would appeal against the Commission's decision to the European Court of Justice.

30. The names of the other companies involved in the operation and the amount of their fines in Ecu are as follows: Arbed, 11.2m; Saarstahi, 4.6m; Ferdofin, 9.5m; Preussag, 9.5m; Ensidesa, 4.0m; Aristrain, 10.6; Cockerill Sambre, 4.0m; NHM Stahlwerke, 150,000; Krupp Hoesch, 13,006; Svenskt Stal, 40; Inexa Profil, 600; Norsk Jernverk, 750; Fundia Steel, 4.

MMC to probe distribution of films

31. On 29 September 1993, 7/ in the United Kingdom, the Director General of Fair Trading (DGFT) announced that the distribution of films to cinemas had been referred to the Monopolies and Mergers Commission (MMC). The Office of Fair Trading (FTC) decided to investigate the film industry after complaints from independent cinemas that they found it difficult to obtain popular films from large distributors.

32. According to the Director General of Fair Trading, the independent cinemas' difficulties had continued despite changes made after an MMC report had been issued in 1983. The report resulted in the prohibition of "barring" - a practice under which distributors decide in advance which

cinemas have the right to show films first. The Director General added that most major companies were vertically integrated into the production, distribution and exhibition of films in cinemas, and followed practices that could lead to the exclusion of independent producers, distributors and exhibitors from the marketplace. He said that, despite the changes that had taken place, such as the emergence of multiplex cinemas, competition remained restricted to such an extent that it was appropriate for the MMC to undertake a fresh investigation.

European Commission investigating United Kingdom-Spain ferry service

33. On 11 October 1993 8/ the European Commission confirmed that a P & O ferry service was the subject of an EC competition investigation.

34. The P & O's recently introduced ferry service from the United Kingdom to Bilbao, Spain, had been under investigation for some months as the result of a complaint lodged by a competitor - Brittany Ferries. The latter, which had operated a service from the United Kingdom to Santander for the past 15 years, claimed that the P & O's new service was being subsidized by the Basque authorities. The spokesman for Brittany Ferries explained that the Basque authorities had pledged up to £5 million ($7.7 million) to P & O Ferries if they did not sell enough tickets. They could therefore operate with the knowledge that they would have a back-up if they did not reach the levels targeted. In the view of his company that was anti-competitive, and his company wanted to see the subsidy clause removed from the agreement, so that it could compete on a level playing field.

35. The spokesman for P & O stressed that what was in question was not a subsidy. It was purely a marketing agreement between P & O, its Spanish arm Golfo de Viscaya, Vaporez Suareiaz, and the Basque Government. The agreement provided that, if P & O did not reach specified traffic levels, the regional government would buy tickets for distribution to certain people in the community - the underprivileged, children, the elderly, and so on. Brittany Ferries had lodged its complaint as soon as P & O had anounced its new route from the United Kingdom to Bilbao. He added that his company had not heard anything from the European Commission recently and was awaiting a decision.

The FCO prohibits HDE from withholding supplies or purchases

36. On 13 September 1993, the Federal Cartel Office (FCO) in Germany announced that it had prohibited the Colongne-based Hauptverband des Deutsschen Einzelhandels e.V. (HDE) (the Federation of German Retailers), from urging its retailers to withhold supplies or purchases from consumer goods manufacturers who made ex-factory sales.

37. With reference to advertisements concerning ex-factory sales in newspapers, leaflets or special bargain hunters' guides, the HDE had urged consumer goods retailers first to try to "settle the matter in an amicable manner" with the suppliers who made ex-factory sales. If their efforts were not successful, the retailers were encouraged to drop the suppliers in question. Moreover, the HDE had requested enterprises in the book, newspaper and magazine wholesale trade to discontinue supplying retailers with the bargain hunters' guide.

38. The prohibited conduct of HDE was in violation of the German ban on boycott measures included in the German Act Against Restraints of Competition. 9/

Six top Japanese electronic products makers accused of bid rigging

39. On 15 November 1993 10/ investigators from Japan's Fair Trade Commission (JFTC) searched the offices of six top electronic products manufacturers in connection with bidding for large video screens installed at sports arenas and other public places. The six companies were: Mitsubishi Electric Co., Matsushita Electric Industrial Co., Toshiba Corp., NEC Corp., Fujitsu Ltd., and Sony Corp. They were searched for suspected violation of article 3 of the Antimonopoly Law, which bans restrictions of fair transactions.

40. The electronic products manufacturers and affiliated companies in question allegedly fixed the bidding prices and designated successful bidders in "dango" or "tea parties" several times over the past few years in the so-called designated competitive tenders for large video screens used by municipal governments for their sports arenas, swimming pools, boat racing courses, and other public places. Many bid-rigging cases for the screens were apparently conducted as part of municipal public works projects for those sports facilities, with the six manufacturers taking part in tea parties hosted by general contractors.

41. Spokesmen for the six manufacturers confirmed that their offices were searched by the JFTC. A Sony spokesman insisted that his company had mainly bid in stand-alone tenders for the screens only and was not in a position to be able to rig bids.

42. According to industry officials, the Japanese market for big screens varies between $95 million to $190 million annually and 20 to 30 orders are put in, mostly from the public sector. Because of a rush of public works projects now under-way, demand for big screens is expected to expand rapidly in Japan.

43. Mitsubishi, which manufactures the "Aurora" screens, commands the largest share of the market, followed by Matsushita with its "Astro Vision" Toshiba, and then Sony with its "Jumbo Tron". Outside Japan, most countries rely totally on Japanese manufacturers for large screens, according to industry officials.

JFTC proposes elimination of exempted cartels

44. On 2 November 1993, 11/ it was announced that Japan's Fair Trade Commission, in response to demands made by the United States, would propose formally to other Japanese Government agencies that all cartels that were exempt from the Antimonopoly Law and other statutes should be abolished by the end of 1995. The abolition request was expected to be proposed in a report by the Economic Reform Study Council, an advisory panel reporting directly to the Prime Minister.

45. The Ministry of International Trade and Industry (MITI) abolished 89 cartels authorized in the textile and related industries at the end of October, but this was considered to be only "the tip of the iceberg", as other cartels were reported to continue to exist. Currently, there are 25 laws and 42 legally authorized systems allowing price and production cartels. The JFTC wants to eliminate most cartels authorized under the 25 laws with the exception of the Copyright Law and a few others, particularly the so-called recession and rationalization cartels.

46. The cartels targeted for elimination by the end of 1995 by the JFTC are:

- Joint production of tobacco;
- Fishery exports promotion and prevention of excessive competition for exports;
- Fish catch controls;
- Transaction of fruits;
- Prevention of excessive competition for pearl culturing, maintenance of pearl quality, and restriction of pearl production facilities;
- Restriction of facilities for fisheries;
- Maintenance of silk cocoon prices;
- Prevention of excessive competition among liquor marketing associations and for maintenance of tax revenues;
- Rationalization of liquor merchants;
- Recession cartel for sugar price maintenance;
- Cartel for preventing excessive competition among wholesalers;
- Joint operations under the Shopping Street Promotion Guild Law;
- Insurance cartel under the Insurance Law;
- Insurance cartel under the Foreign Insurer Law;
- Vehicle operation cartel under the Road Transport Law;
- Maritime operation cartel under the Maritime Transport Law;
- Cartel for stevedores;
- Cartel under the Air Transport Law;
- Port transport cartel under the Port Transport Operators Law;

- Warehouse cartel;

- Maritime cartel and related joint operations cartel;

- Transport cartel under the Automobile Terminal Law;

- Transport cartel under the Freight Automobile Transport Law;

- Regulations on fees for secondary use of commercial music records;

- Operations stabilizations cartel by small and medium-size enterprises, related rationalization cartel, related special contracts, related joint operations;

- Export cartel under the Export Import Transaction Law;

- Domestic cartel for exporters;

- Domestic cartel for producers of export goods, related import cartel, related export and import control cartel, related trade confederations, and related designated confederations; and

- Cartel for excessive competition prevention of businesses related to environment and sanitation (restaurants, barbers, hotels, dry cleaners) and related special contracts.

United States Supreme Court clarifies rules on predatory pricing

47. On 21 June 1993, the United States Supreme Court issued an important antitrust decision, 12/ after considering claims by a cigarette company that one of its competitors had violated the Robinson-Patman Act by selectively lowering prices to predatory levels. The Court's decision seriously limits an antitrust plaintiff's ability to establish successfully such a claim for predatory pricing under either the Robinson-Patman Act or the Sherman Act. The Court also expressed scepticism about antitrust theories premised on "tacit collusion", and a willingness to set aside a jury determination of liability where such a determination is inconsistent with the Court's view of appropriate antitrust/economic theory.

48. It should be mentioned that the cigarette manufacturing industry has long been one of America's most concentrated industries. For decades it has been dominated by six firms, including Brooke Group, Inc. (formerly named Liggett Group, Inc. and called "Liggett" in the Court's opinion) and defendant Brown & Williamson Tobacco Corp. List prices for cigarettes had increased in lockstep twice a year for about 30 years.

49. In 1980, in response to declining demand and increasing excess capacity in the industry, Liggett, whose market share had declined dramatically from 20 per cent to 2 per cent introduced a line of low-price generic cigarettes.

The generics were offered to consumers at a list price 30 per cent lower than the list price of branded cigarettes, and were promoted at the wholesale level by rebates that increased with wholesale volume.

50. Brown & Williamson, whose share of the branded market never exceeded 12 per cent began losing market share to Liggett's generic cigarettes and in 1984 introduced a competitive generic. Although the suggested list price of Brown & Williamson's generic was the same as Liggett's, Brown & Williamson offered larger volume discounts to wholesalers. Liggett responded by lowering its wholesale prices. A five-round wholesale price war ensued.

51. Liggett filed suit in the Middle District of North Carolina alleging, among other things, that Brown & Williamson's wholesale volume rebates amounted to price discrimination with a reasonable probability of injuring competition, in violation of the Robinson-Patman Act. While it was undisputed that Brown & Williamson's original price was above its own costs, Liggett alleged that, by the end of the rebate war, Brown & Williamson was selling at predatory levels, and that the purpose of its actions was to punish Liggett until it raised generic prices, which would prevent further erosion of branded cigarette sales (by narrowing the price difference between generic and branded cigarettes). Any losses suffered by Brown & Williamson in generic cigarettes would be offset by future gains to be obtained by alleged "tacit collusion" among the major cigarette companies.

52. The jury ruled in favour of Liggett and awarded it $49.6 million in damages (which was trebled). The District Court, however, held that Brown & Williamson was entitled to judgement as a matter of law. It found a lack of injury to competition and stated that "tacit collusion among the major cigarette manufacturers is a dubious theory of market power".

53. The Fourth Circuit affirmed the District Court's ruling and held that "to rely on the characteristics of an oligopoly to assure recoupment of losses from a predatory pricing scheme after one oligopolist has made a competitive move is ... economically irrational". The Court granted certiorari. Although the Court did not rule out the possibility that a recoupment theory of liability for price discrimination under the Robinson-Patman Act can be viable in an oligopoly setting, it decided, 6-3, that there was insufficient evidence for a jury to consider a claim that a cigarette maker with less than 12 per cent of the domestic market was liable for predatory pricing of black-and-white-packaged generic cigarettes.

54. The Court explained that, in view of the "market realities", the evidence was inadequate to show that the defendant had a reasonable prospect of recovering its losses from below-cost pricing through slowing the growth of the generics segment, that it was likely to obtain the power to raise the prices for generic cigarettes above a competitive level, or that the alleged scheme was likely to have brought about tacit coordination and oligopoly pricing in the generic segment. The case was the first primary-line price discrimination case to reach the Supreme Court in more than 25 years.

B. Acquisition of market power through mergers, takeovers and joint ventures

European Commission investigates proposed joint venture by three steel companies

55. On 21 September 1993, 13/ the European Commission announced that it had decided to undertake an in-depth investigation under its merger control regulation into the proposed joint venture between three European steel companies. These companies are the German group Mannesmanroehren-Werke, the Valtubes subsidiary of the French group Vallourec, and Dalmine, a subsidiary of the Italian State-owned steelmaker Ilva. The main purpose of the joint venture would be to develop business in the seamless stainless steel tubes sector. They want to form a holding company to be known as DMV. They would take an equal interest in this company. All three prospective venturers are especially strong in the manufacture of welded and seamless tubes.

56. The Commission pointed out that "the notified operation constitutes a concentration, within the meaning of the Merger Regulation, since the joint venture will perform all the functions of an autonomous economic entity". It added that if the plan proceeds, the joint venture "would attain a position very close - both in terms of market share and capacity - to the market leader, the Swedish company Sandvik. Therefore "the strength of the remaining competitors, as well as the impact of the operation on the upstream and downstream markets, needs to be further investigated by the Commission to fully assess the effects on competition".

European Commission opens in-depth investigation into planned merger of Shell and Montedison in the plastics sector

57. On 8 February 1994, 14/ the European Commission decided to open an in-depth investigation into the planned merger between Shell Petroleum NV and Montedison Nederland NV in the polyolefin sector. The first phase of the procedure (a one-month preliminary inquiry) had shown that the joint venture envisaged by the two Dutch firms would have a "very strong" position on the market for polyolefins, one of the main components of plastic, especially with regard to the supply of related technologies.

58. The notified project involves the transfer of all the world interests of the parties with regard to polyolefins. They cover numerous areas, including manufacture and distribution, intellectual property rights, and research and development. "Following the concentration, the joint venture would be linked with the two leading polyolefins and polypropylene (pp) package technologies (process and catalyst) in the industry (Seripol developed by Montedison and Unipol developed by Shell and Union Carbide)", the Commission noted. The Commission‘s decision in this regard is expected to be made in the next few months.

In Germany FCO prohibits merger of central cooperatives

59. On 22 September 1993, 15/ the German Federal Cartel Office (FCO) announced that it has prohibited the proposed merger between the central cooperatives HaGe Kiel and RHG Hanover.

60. These cooperatives act as central wholesalers for their members, the local co-operatives, and as central buying and selling agencies for agricultural products and farm equipment respectively. Where there are no local cooperatives, they also function as retailers, buying agricultural products from the agricultural undertakings and supplying them with farm equipment. HaGe Kiel is active in Schleswig-Holstein and, since mid-1990, in Mecklenburg - Western Pomerania. RHG Hanover's geographical market comprises the districts of Hanover, Luneburg and Brunswick as well as the main parts of Saxony-Anhalt and Brandenburg.

61. In the FCO's view, the merger would have further strengthened the market-dominating position of HaGe Kiel and its member cooperatives as a central buyer of grain and oilseed in Schleswig-Holstein and Mecklenburg - Western Pomerania.

United Kingdom: probe of merger in submarine cable systems markets

62. On 27 October 1993, 16/ the British Trade and Industry Secretary called for a monopolies investigation of the French group Alcatel's bid for the United Kingdom company STC Submarine Cables. The probe was ordered on the advice of the Director General of Fair Trading.

63. The bid advanced by Alcatel Cable SA, part of the major French telecommunications group is valued at £600 million ($888 million). The plan had already been the subject of a preliminary investigation by the European Commission, which decided that the deal did not fall within the criteria for vetting under the EC's merger control regulation.

64. The United Kingdom Department of Trade and Industry (DTI) said that the Monopolies and Mergers Commission (MMC) had been asked to investigate and report on public interest aspects, under the provisions of the Fair Trading Act 1973. The MMC had to report to the Secretary of State by 28 January 1994.

65. According to DTI, Alcatel's move raises competitive concerns in the operation of the submarine cable systems market. STC Submarine Cables, which is owned by the Canadian group Northern Telecom, is headquartered in South London. It has a share of the long-distance submarine cables market exceeding 20 per cent. AT & T is the market leader. The total value of the market is around £7 billion ($10.4 billion).

66. Northern Telecom announced on 21 July 1993 that it had reached agreement with Alcatel Cable on the sale of STC Submarine Cables. If the deal proceeds, the combination of Alcatel Cable and the STC business would create the world's largest undersea telecommunications cable company in a fast-growing market, which is expanding at the rate of around 15 per cent annually.

Notes

1/ Information transmitted by the Government of the People's Republic of China.

2/ EUROPE, No. 6074, 29 September 1993.

3/ Anti-Trust and Trade Regulation Report, ATRR, vol. 65, No. 1635, 14 October 1993.

4/ Information provided by the Government of Canada.

5/ EUROPE, No. 6147, 13 January 1994.

6/ Financial Times, 17 February 1994.

7/ Financial Times, 30 September 1993.

8/ ATRR, op. cit.

9/ Federal Cartel Office, Press Release, 13 September 1993.

10/ ATRR, vol. 65, No. 1640, 18 November 1993.

11/ ATRR, vol. 65, No. 1638, 4 November 1993.

12/ Brooke Group Ltd. v. Brown & Williamson Tobacco Corp., No. 92-466, 1993 WL 211562,61 U.S.L.W. 4699 (United States, 21 June 1993).

13/ Bulletin of the European Communities, No 9, 1993.

14/ EUROPE, No. 6166 (new series), 9 February 1994.

15/ Federal Cartel Office, Press Release, 22 September 1993.

16/ Information provided by the Government of the United Kingdom.

- - - - -