

Condemning air cargo cartels on World Competition Day

By Pradeep S Mehta*

On 5th December, 1980, the United Nations adopted the international standard for competition laws under what is called the *United Nations Set of Multilateral Principles and Rules for the Control of Restrictive Business Practices*, better known in the international community as the UN Set on Competition Policy. This Set has guided a large number of developing countries to draft and adopt new competition laws. From about 30 countries in 1995, today over 120 countries have adopted a new law or improved their existing competition law, and few more are in the queue.

Recently, the Set was reviewed at Geneva at the UNCTAD's 6th Review Conference on the Set in the midst of enthusiastic delegates from over 100 developed and developing countries, which was also celebrated as the 30th anniversary of the Set. To mark this anniversary, a proposal was mooted to observe 5th December the World Competition Day by the International Network of Civil Society on Competition (INCSOC), an international coalition of 164 competition practitioners, civil society organisations, researchers and legislators spread across 66 countries.

Large number of delegates at the conference supported the idea and have agreed to celebrate the World Competition Day in their own countries on Sunday 5th or Monday 6th being the next working day. Incidentally, many countries are already celebrating National Competition Days, such as European Union member states, Brazil, Zambia etc and other countries are also considering doing so. It was also agreed that the Day be used to raise awareness and rally common people around the issue of air cargo cartels which have been causing serious harm to consumers and the economy.

While cartels are most pernicious of all anticompetitive practices and are very difficult to detect and investigate for their inherently secretive nature, the task gets more difficult in aviation industry because it operates across borders. However, once one airline was caught it had a domino effect around the world.

A bit late, but the EU did act on it by slapping one of its biggest fines in history on eleven airlines totalling 799.4mn euros (\$1.1bn) for running a global cargo cartel, which manifested itself through coordinated action on surcharges for fuel and security between 1999 and 2006. Those penalised included Air France-KLM, British Airways, Cargolux, SAS, Singapore Airlines, Air Canada, Qantas, LAN Chile, Martinair and Japan Airlines. Lufthansa was pardoned because they spilled the beans.

The prosecution by the EU was not the first for most of the airlines, as earlier the US Department of Justice, had also found that some of the world's biggest airlines had conspired between 2000 and 2006 to fix cargo prices. In 2009, three cargo airlines in the US, agreed to pay fines totalling \$214mn for the same crime. In this case, 15 airlines were prosecuted and a total fine of \$1.6bn was imposed. In addition, three senior air cargo industry executives agreed to serve jail terms. This concerted practice to fix cargo rates started in 2001 and continued till February 2006. Before this, in 2008, four airlines, including Air France-KLM and Cathay Pacific, had to pay fines in the US totalling \$504mn for their roles in a criminal conspiracy to fix surcharges on air cargo shipments.

The Japanese Fair Trade Commission, in 2009, was also reported to have notified more than ten companies that they would be fined about ¥10 billion for operating a cartel for international air cargo fees. This year, the South Korean Fair Trade Commission imposed a total fine of 119,544 million won (nearly US\$100mn) on 19 airlines for their conspiracy to levy fuel surcharges and continued to raise surcharge rates for air cargo to-and-from Korea between 1999 and 2007. The South African and New Zealand authorities are also investigating similar cartels which affected their markets.

Cartels in the air cargo industry should be of concern to all stakeholders as they have a serious negative impact on efforts towards economic development and poverty reduction in developing countries. A study done for the International Air Cargo Association and Air Cargo Forum by John Kasarda and others in 2006 showed that the air cargo industry is responsible for transporting about 29.9% of all international trade, with an annual value of \$2.7tn. The study also showed that Korean Air, Lufthansa, Singapore Airlines, Cathay Pacific and China Airlines were the largest combination passenger-cargo carriers in terms of capacity. American Airlines and United Airlines were found to be providing substantial cargo service even without use of dedicated freighters, while airlines such as Lufthansa, Air France and KLM had broad geographic coverage, servicing more than 50 countries and British Airways offered cargo service to over 100 countries.

It is therefore very alarming to see that almost all the major players in the air cargo market were part of a cartel, and one shudders at the impact in terms of overcharges that consumers across the globe suffered due to the cartel.

The air cargo transport also specializes in high value to weight products (e.g. minerals), perishable goods, emergency deliveries and products requiring high security. Mostly, air lines are used by developing countries to transport either finished goods for resale or raw materials for value addition to produce finished goods. Most of these products find their way into the value chain of most finished products; hence cartelizing their transportation has serious multiplier effects on the prices of the final products.

Developing countries are not spared from the impact of the cartel as there is significant amount of air cargo trade going on in these regions, a proportion of which is handled by members of the cartel. The proportion of exports shipped by air from less developed regions such as Africa and some parts of Asia exceeds 10%.

What is therefore apparent from this is that competition authorities in developing countries also need to be in a position to join in and prosecute such international cartels once they are discovered. Being hamstrung by resources and perhaps their own weak laws, competition authorities in developing countries should innovate and use various means at their disposal in handling international anticompetitive practices. This could include initiating and enlarging informal cooperation between authorities in the countries targeted by the cartel. The first World Competition Day on December 5th should be the D-Day for launching a global crusade.

The author is the Secretary General of CUTS International and Chairman of INCSOC.