

Consumers – unite against exploitation by cartels !



By Pradeep S Mehta,
Secretary General,
CUTS International

“OUR competitors are our friends, our customers are the enemy” is an actual statement made by an executive of Archer Daniel Midland, in the famous case of the lysine (a feed additive) cartel, which was caught on videotape by the FBI. As the international competition community once again gears up to observe the second World Competition Day on 5th of December this year (dedicated to the theme, Cartels and their Harmful Effects on Consumers), there is a need to reflect on measures to protect consumers from cartels and sharpen such measures to the extent possible. This would not only shake up entities that have flagrantly engaged in exploitative practices, but would also bring the average consumer closer to the process of competition reforms in the developing world.

There is need to appreciate that consumers in different countries are affected differently by cartels depending on the extent to which their economies have put institutions in place to protect them against such cartels. The World Competition Day being observed on 5th of December (in response to a global call by CUTS) for this second year allows a scope for greater discussions and dissemination of the beneficial effects of competition on the average consumer – either directly or indirectly. In effect, it is expected to result in greater public understanding and support on the issue. This year’s events should allow stakeholders to say out loud ‘No More’ to the perpetrators of cartel activities. This article urges countries, competition agencies to stand up and protect their consumers, against the harmful effects of cartels.

Indications on the ground show that developing countries



S. BENOÎT

are very prone to cartels, because they often lack effective competition regimes. For example, the latest news is the cartelisation in the cement sector. In India, recently the real estate developers body National Real Estate Development Council approached the Competition Commission of India (CCI) seeking intervention against alleged cement cartelisation hitting real estate developers. One has to wait and watch how the same is handled by CCI. In other jurisdictions too, the cement manufacturers association have been penalised along with the colluding firms. For example, the Pakistan Competition Commission imposed a fine of about \$77 million on 20 cement companies found guilty of operating as a cartel and raising prices under mutual agreement. Actions were also taken by the Egyptian Competition Commission in order to break cartel activity by referring twenty executives from Egyptian cement firms to a criminal court for conspiring to fix prices.

No effective deterrent

Across the globe, cartel activities are being penalised. Record fines of more than \$1.00bn have been levied by the UK, US and other competition authorities on

airlines on cargo freight. There are other airlines too, such as Korean Airlines, etc. BA is also facing action under the EU laws and other jurisdictions. Furthermore, the affected consumers in the US have also filed for class action damages against BA.

It is not difficult to understand why the developing countries are more prone to cartels. Firstly, firms have realised that there is a low possibility of being punished from being involved in cartel activities, given that even in countries with a competition law, sanctions are not too prohibitive. Cease and desist orders and fines that are often lower than profits from cartelisation cannot act as effective deterrents. Secondly, the probability of getting caught is very low in many other countries, given the absence of competition laws in them or limited provisions thereof.

It is therefore that we have been advocating for an International Competition Fund to be created out of fines levied by developed country authorities on international cartels, which have an impact on developing countries. For example the global air cargo cartels have affected many developing countries but have not been prosecuted in any developing country, sheerly because of a lack of capacity. Such a fund can be used to build capacity of com-

petition agencies and advocacy groups in the developing world to be able to do better and more in arresting the malaise.

For many products, the elasticity of demand is very low, which gives cartels an opportunity to raise prices and gain more revenue. Many markets are highly concentrated due to both behavioural and structural factors and this is often aided by vested interest, resulting in higher prices due to limited options for consumers. Fourthly, consumers in developing countries rarely possess the bargaining buyer power needed to force suppliers to take them seriously. Consumers are seldom united, like in other parts of the developing world, which makes it difficult for them to fight against perpetrators of cartels.

Platform for discussion

Furthermore, across many developing countries, the business associations that have been formed across many sectors provide a platform for producers to meet and discuss viability strategies. Although these associations are prohibited from discussing pricing or common business arrangements in order to prevent cartels, their discussions are rarely monitored by competition authorities or

other watchdogs. However, there are exceptions, in 2010 the Competition Commission of Pakistan (CCP) imposed a penalty of 50 million Pakistani rupees on the Pakistan Poultry Association for alleged cartelisation in the chicken and egg markets and also imposed a penalty of 23 million Pakistani rupees on the Pakistan Jute Mills Association and its ten-member mills on the charges of cartelised behaviour and other malpractices.

The prevalence of cartels in developing countries is also a cause of concern from the development and poverty alleviation perspective. The most critical sectors of the economy, such as food, health and transport are not spared, leaving consumers with no option but to pay large amounts of money for scarce goods and services.

It is within this context that calls are being made for developing countries across the world, through the World Competition Day, to strengthen their competition law enforcement processes to effectively deal with cartelisation. In countries without a competition law, consumer organisations need to team-up with parliamentarians, media and policy makers to spread the word around. Consumers have long being victims of exploitative practices of firms – and let’s say ‘No more’ this December 5th!