Global Forum on Competition

ABUSE OF DOMINANCE IN REGULATED SECTORS

(Key issues for discussion in Sub-Sessions)

-- Session III --

This note includes the Key issues suggested FOR DISCUSSION of the case studies under review in the 3 Sub-Sessions (of Session III) of the Global Forum on Competition. The discussion of case studies will be held on Friday 18 February 2005 and start in small rooms at 9.30 am sharp.
KEY ISSUES FOR DISCUSSION IN SUB-SESSIONS

1. Issues for discussion in case studies

1. Most the cases to be discussed in Session III involve a dominant enterprise hindering rivals who must purchase an input from the dominant enterprise. The terms of the rivals’ purchase influence their ability to supply the downstream market. The dominant enterprises use a variety of methods in these cases, broadly characterised as refusal to deal (Russia, Jamaica) or to interconnect (Peru), degrading the quality of service (Zambia), and pricing with an effect similar to tying (Latvia). In another case, the dominant enterprise introduces a new service and both ties it to services in which it is dominant and charges prices that are too low (Chinese Taipei). Two other cases might be better characterised as “abuse of economic dependency” (Senegal) and “exploitative abuse” combined with asymmetric information preventing buyers from taking countermeasures (China).

1.1 General issues

2. Where there is a choice between using regulation or antitrust, what are the criteria for choosing which instrument to use?

3. Where there is no regulatory option (e.g., the conduct is not prohibited by regulation, the regulator is not capable of acting), how do competition authorities constrain themselves not to become de facto regulators over the longer term and over larger spheres of the economy?

1.3 Issues for specific cases

Zambia

4. This case study deals with a long-term concessionaire in a unique port degrading the quality of access it grants rivals who must use the port. The concessionaire also intimidates its rivals’ customers and uses information available to it in its role as port operator to its advantage.

- What are the criteria for deciding whether the Mpulungu Harbour and Port are an essential facility to which access should be mandated? Do the criteria include whether a facility’s owner is the state? Whether the unintegrated rivals have already made relationship-specific investments?

- Long-term concessions for vital infrastructure are increasingly common, but cannot exhaustively describe the concessionaire’s obligations toward unintegrated rivals. What are effective ways to ensure that concessionaires grant appropriate access to their rivals on appropriate terms?

- What is the purpose and effect of Section 3(f) of the Zambian Competition and Fair Trading Act, which exempts all matters to which the government is a party?

Chinese Taipei

5. This case deals with the introduction of a new service by the historical telecommunications monopolist, who also provides regulated access to network facilities to its rivals in the mobile telephony market.
• What are the criteria for deciding whether rivals should be given access to the new service?

• Given that different services incur different costs, but also that accounting for different costs is itself costly, what degree of de-averaging is reasonable?

**South Africa**

6. This case study deals with a request for interim relief by pharmaceutical distributors, who objected to pharmaceutical manufacturers and importers establishing a jointly owned distributor—subsequently sold to a third party—to be the unique distributor of their products.

• What evidence establishes or refutes “joint dominance” in an abuse of dominance case?

• When does exclusion from a market (not subject to regulation) constitute an offence, and when does it not?

**Senegal**

7. This case study deals with abuse of economic dependence. Some persons claim abuse of economic dependence to be a “buyers’ side” analogue to abuse of dominance. Prohibitions of abuse of economic dependence are needed, in this view, when buyers’ have too much bargaining power vis-à-vis sellers. An alternative view is that accusations of abuse of economic dependence are simply part of a private argument between parties over how to share monopoly profits jointly generated by complements, as in this case air transport and travel agent services.

• How are consumers affected by changes in the level of travel agent commissions?

• If Air France had no market power, would there be any concern about the terms it offers travel agents in Senegal?

• What market impact screens that insure that a competition authority’s economic dependency cases promote competition as well?

**Russian Federation**

8. This case study deals with the denial of access to electricity transmission by RAO UES, which is also a dominant electricity generator.

• Deciding whether to mandate access to a facility involves balancing incentives to future investments in infrastructure against the current value of greater competition, product variety and the like. Does this balance shift when the owner of a facility is the state?

• Given the externalities of electricity transmission (one transaction can raise or lower the cost of completing another transaction), there is a legitimate requirement for generators to provide information to transmission operators. How does one determine what information must be supplied? How can commercially sensitive information be credibly protected?

**Peru**

9. This case deals with a telecom company, who is the unique mobile telephony licensee in Peru outside Lima, refusing to allow its rival’s customers to “roam” using its facilities.
• Contrary to the conclusions in the case study, was this a question of network interconnection in an economic sense (even if it may not be in an engineering sense)?

• Under what conditions should network interconnection be mandated? Was this one of them?

**Latvia**

10. This case deals with the historical telecommunications monopolist pricing a bundle of services in such a way that providers of a single service—BTC rental—could not compete with the historical monopolist.

• What are the criteria for determining whether BTC rental is a relevant market?

• How does the nature of the regulation of voice telephony over public fixed-line and ISDN line lease affect the analysis of Lattelekom’s pricing?

• What pricing of a bundle including BTC rental would *not* constitute an abuse?

**Jamaica**

11. This case deals with the owner of Kingston wharves denying access to the wharves by independent stevedoring companies.

• What are the criteria for deciding whether the Kingston wharves are an essential facility to which access should be mandated?

• Who are the consumers in this case? What do consumers lose when independent stevedoring companies are denied access to the Kingston wharves?

• If integrating stevedoring reduced costs, and Kingston wharves charged a lower price to customers who used the integrated service, would this constitute an abuse?

**China**

12. This case deals with school management rolling fees for monopoly-supplied, compulsory insurance into school fees, while school management receives fees from the insurance company.

• Did the insurance company have a dominant position?

• If so, what is the offence: Is it that the school management bundled unregulated insurance with regulated school fees? Is it that the insurance company and school management agreed that management would receive a payment for the bundling of insurance and school? Is it that the school management did not disclose the insurance fees so that parents did not have the information to take counteractions, such as seeking alternative insurance cover?