HOW FOREIGN INVESTMENT AND MULTINATIONAL ENTERPRISES (MNES) MAY CONTRIBUTE TO COMPETITION LAW ADOPTION AND ENFORCEMENT IN DEVELOPING COUNTRIES[1]

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Abstract: This paper aims to provide a different view of the relationship between Multinational Enterprises (MNEs) and competition law. Particularly, focusing on anti-cartel rules, it is submitted that MNEs may positively influence the adoption and enforcement of those rules in developing countries (DCs). This paper looks at MNEs' legal strategies when acting on developing countries that lack an effective competition law regime. On that basis, it first argues that several reasons will push MNEs towards respecting stringent anti-cartel rules and, second, it reflects on the influence MNEs may have both in the adoption of indigenous competition legal rules in those jurisdictions and in their effective enforcement.

Keywords: Multinationals, Multinational Enterprises, MNE, Transnational Corporations, TNC, Developing Countries, Less Advanced Countries, Emerging Economies, Competition Law, Cartel, Antitrust Law, Policy Transfer, Spillovers, Code of Conduct, Business Code, Compliance, Non-State Actors.

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> "*Where regulation does not exist (in form or fact), or where markets in law break down or are inefficient, other competitors will enter the field. Where these competitors can deliver a better product—rules that optimize expectations, and perhaps that are even fair, consistent, predictable and stable in a larger sense—these competitors may well displace the territorial law making monopolies of nation states*" (BACKER 2007: 1748).

Introduction

The role and influence of non-state players in the adoption and development of competition laws in developing countries has normally been understated. MNEs are non-state players that perform a relevant role in spreading business legal culture in emerging markets[1]. They assist in and promote the adoption of market related policies in developing countries[2]. The evidence of that influence covers several business-related legal areas. Most of their influence is spontaneous and indirect, and derives from their presence, their strategies and actions in those countries.

From the perspective of competition law, we tend to look to MNEs' negative face and to the effects of their participation in cartels and other anticompetitive actions in those developing countries lacking competition law, by calculating the detrimental impact of their actions in consumer welfare. Such a picture is far from complete.

This paper explores an encompassing view of MNEs and their relationship with competition laws, particularly regarding cartel behavior[3], in countries lacking an effective competition legal regime. Several arguments support the thesis that they have strong incentives to carry along with their activities and integrate with them the good antitrust and regulatory practices

[1] Although the term MNE is used in this paper, it should be considered synonymous to Transnational Corporations (TNC) which is the one used in UN documents and by part of the literature on the topic.
[2] The reference to *developing* or *emerging* countries in this paper is aimed at identifying those countries either lacking a competition legal regime or where the existing rules are not effectively enforced. The institutional settings in those countries (or rather the weaknesses or the lack of them) provide the background in which this paper constructs its main thesis and arguments.
[3] Some of the considerations made in this paper might be extended to *vertical restraints*, but several reasons (among others, lack of consensus regarding the specific actions that should be prohibited) make it doubtfully that they apply to *unilateral conduct*.

that they are required to follow in most advanced jurisdictions, therefore, without organizing or taking part in hard-core cartels .

MNEs' influence will help in silently spreading competition culture, providing a source of inspiration and stimulus to many developing countries in their way to establishing an effective competition policy. There are positive spillovers of MNEs' conduct and strategies in encouraging free competition or promoting the adoption of competition legal rules, especially on developing countries without competition regimes or where, despite existing, they are weak or ineffective, not being adequately enforced.

1. Multinational Enterprises, Global Markets and Domestic rules

MNEs are a powerful force in the current global economy. Roughly, MNEs account for a third of worldwide trade, and the economic performance of the largest MNEs is better than that of several individual countries[4].

MNEs are firms conducting business activities in more than one country. From a legal perspective, MNEs are normally organized as a network of foreign affiliates, which act under the direction of the parent company. They are the main channels through which direct investment flows in foreign countries, normally by establishing subsidiaries there. Each of the subsidiaries is incorporated and governed by the law of the countries where they have been established. Occasionally, MNEs' affiliates are formed through a partnership or joint venture with local firms.

The economic power and global reach of MNEs pose many relevant legal issues. Increasingly MNEs have to organize and plan their activities in multiple countries, and have to adapt themselves to the legal and institutional background of the several countries where they operate. Although some regulation of MNEs' business activities is increasingly international and they are able to standardize some of their legal practice globally, domestic law and legal institutions are still the most relevant sources of regulation and oversight of MNEs[5].

[4] Comparing sales and country GDPs, among the 100 largest economic organizations worldwide, 51 would be MNEs and 49 would be countries. The 10 largest MNEs have annual sales exceeding the GDP of the 100 smallest countries. See ANDERSON & CAVANAGH (2000). More than 40% of world trade consists of transfers of materials and components within MNEs.

[5] MNEs operate worldwide, and they may be inaccessible to/in the national institutions and jurisdictions where they operate. Some rules by the UN, OECD (*Guidelines for Multinational Enterprises*, 8 Nov. 2000, http://www.oecd.org/dataoecd/56/36/1922428.pdf), ICC and ILO set some guidelines and recommendations targeted at them (concerning investment, ownership and management, finance, fiscal policies, legal framework, labor, technology, and commercial policies), see HORN (1981).
For an interesting reflection on securities laws, see SOBEL (1994). See GRAHAM (2003: 948): "*business conduct that is not seen as undesirable but is nonetheless appropriately the domain of competition scrutiny or regulation*

In practice, this implies MNEs generally have to adapt to multiple legal rules or practices in each of the countries where they operate. This is an element of additional complexity which may be crucial in their organization and planning, and it is relevant on the several legal areas governing MNEs action in host countries, especially when legal rules vary in their content and requirements[6]. From business law to trade law, including competition law, MNEs have to adapt their local subsidiaries' organization to the specific legal features of the countries where they have installed.

On the other hand, MNEs may face a curious quandary when the country where they operate does not have legal rules concerning a specific issue or the rules are more lenient than those MNEs have to follow in other jurisdictions. A similar situation is faced when the existing rules are ineffective, due to lack of enforcement. In many legal areas concerning business and market operation in developing countries, there can be broad legal uncertainty either due to lack of regulation or to limitations in rule implementation or enforcement. Theoretically, it could be argued that MNEs profit from such regulatory market failure[7], adopting some kind of "legal arbitrage". Such strategy would capitalize the differences in legal rules across countries: either privileging from the regulatory vacuum or low-balling the legal rules or standards mandated in other jurisdictions. There is some evidence confirming that might have happened in the past[8].

However, several studies in different legal areas (from labor to consumer protection and environmental law) have shown it to be far from the only truth[9]. In several legal areas crucial for their business, MNEs internal Codes of Conduct standardize globally the rules and principles that govern their conduct and actions (both internally and in their relationship with third parties like customers or even suppliers), providing adequate enforcement devices to guarantee they are respected and discipline any violation[10].

In particular, regarding competition law, in which the rules and principle governing business behavior reflect a common philosophy and understanding[11], a complementary view claims

is increasingly international in scope". More specifically, concerning competition laws, see DABBAH (2003A: 4-5; 2003B: 204-206).

[6] On the higher transaction costs for multinational firms, see GUZMAN (2004: 100), however competition laws should not be considered special than any other disciplines, TREBILCOCK & IACOBUCCI (2004: 153).

[7] See BACKER (2007: 1745-1747) and MUCHLINSKI (2007).

[8] Refs.

[9] On the adoption (and effectiveness) of global labor and employment rules and standards by MNEs see SOBCZAK (2006). Concerning environmental protection, see SCHAPER (2009). It has also been showed that MNEs adopting single stringent global environmental standards have a higher market value than firms following less stringent or poorly enforced host country standards, see DOWELL, HART & YEUNG (2000).

[10] For the development and increasing relevance of MNE's Codes of conduct as source of legal obligations, see BACKER (2007: 1748-1750). They have major relevance in MNE's actions and behavior in developing and emerging countries, see for example the impact of Wall-Mart's Global Compliance Program in its supply chain abroad in GRIESER (2008:297-299).

[11] As acknowledged, for example, in Exxonmobil's Antitrust and Competition Law. Compliance Guide, 2007, 1 ("*while those laws differ in some respects, they generally address similar kinds of conduct and share a common*

MNEs have powerful incentives to comply with severe standards on this matter, either those governing in the stricter jurisdiction they operate, or developing its own antitrust guidelines or code of conduct[12].

2. Competition Law and MNEs

Competition rules provide the basic framework for free competition in markets. They forbid multilateral and unilateral business practices that distort competition, prescribing sanctions for violators. Almost every developed country has a set of legal rules governing market competition. Competition law forms part of the economic constitution of a country, guaranteeing undistorted and free competition on its markets[13].

Although there have been some attempts to harmonize competition law worldwide (mainly by the WTO)[14], competition law remains largely domestic. Only some projects of economic integration, like the EU, the ECOWAS or the Andean Community provide common rules applicable in regional areas covering several countries.

Despite the dearth of international competition rules, the number of countries that have adopted competition law has surged in the last few years[15], but there are still many jurisdictions that are free from such rules. It is true also that in some countries, though those rules exist, they are not effectively implemented[16].

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underlying philosophy", available at http://www.exxonmobil.com/Corporate/Files/news_pub_antitrust.pdf, visited 15.02.2012)

[12] See ANNEX for a sample of the internal principles, standards or rules adopted by some MNEs on this matter. Business ethics literature on codes of conduct has not detected antitrust-related prohibitions among those regularly covered by codes of conduct, this may well be due because *"some norms may be so self-evident – for instance the prohibition on killing someone in the workplace – that it need not be included in the code despite the fact that it remains valid*" –KAPTEIN (2004: 27) or because antitrust rules and standards are a more recent adition to codes. Supporting the later explanations, see DESAI (2009:10): "*the current trend is to include competition compliance provisions under the ethics heading*".

[13] ELHAUGE & GERARDIN (2007).

[14] See HOLMES (2004); JENNY (2005: 21-34); HOEKMAN & HOLMES (1999). An overview of all formal (via WTO) and informal (cooperative, mainly ICN) mechanisms for internationalization of competition policy in GRAHAM (2003).

[15] In 1996, 70 countries have adopted competition rules, comprising about 86% of world trade, see PALIM (1998:143). Since then, many others have done so, including India in 2002 (effective in 2007) China in 2007 (effective in 2008). Many countries that have had competition rules for many years, have adopted major amendments in the last few years order to strengthen their effectiveness (f. e., Brazil in 2011).

[16] See KOVACIC (1997:404).

In any case, domestic rules against anticompetitive behavior tend to have a similar substance and are inspired in common objectives and aims[17].

In particular, if the "legal arbitrage" strategy on competition rules was followed, it could be asserted that MNE would tend to participate more in cartels in jurisdictions that do not have anti-cartel rules or that do not effectively enforce them [18]. However, little evidence exists that cartel behavior by MNEs is not specifically targeted and tailored to those countries. Generally, cartels producing effects in those countries are generally part of a single worldwide cartel.

Although hypothetically anticompetitive violations by MNEs focused or centered in those jurisdictions would be possible, it is submitted here that MNEs have strong incentives to abide in accordance with the stricter competition rules from amongst all the jurisdictions where they operate.

Finally, as a by-product of MNEs' commitment or self-regulation against anticompetitive actions, they may cause a beneficial spillover in those countries lacking an effective competition regime, helping to spread competition culture and the adoption and effective enforcement of competition legal rules.

3. MNEs' anticompetitive actions in developing countries without competition legal rules

Theoretically, one could hypothesize that countries without competition law would be an "antitrust haven" for MNEs. They could pursue there all kind anti-competitive actions without concern of being prosecuted or punished. Price fixing, market sharing agreements or any other hard-core cartels, abuses of dominant position and mergers leading to anticompetitive positions in those countries would easily flourish. Lack of competition rules permits MNEs to transfer and export to those countries the practices they are not allowed to follow in their home country on in other jurisdictions [19]. Indeed, there is anecdotal evidence that

[17] Of course, this may be a broad and rough characterization, meaning that they are aimed at preventing the same kind of business practices and behavior. However, said that, they are normally legal standards (and their concrete formulation may vary a lot from country to country), as well as the specifics of their implementation.

[18] Alternatively, it may well be that the lack of coordination and information sharing among competition authorities in different jurisdictions making their prosecution harder, see EVENETT, LEVENSTEIN & SUSLOW (2001: 1240-1243).

[19] Indeed, this would be the corollary of the thesis according to which benefits to MNEs go principally to one country, while the costs (or lack of benefits) to other countries, see RUBIN (1995: 1280). See also, DABBAH (2003: 210). According to GAL (2009: 3) "*despite the potentially severe effects of anticompetitive conduct on their markets, these jurisdictions are habitually passive bearers of the effects of international anticompetitive*

anticompetitive actions might spring easier in those countries either without competition legal rules or without effective competition law enforcement[20].

However the existing evidence regarding cartels affecting developing countries refers to global cartels that produced negative effects in several countries worldwide. In general, MNEs participating in cartels were not found to have organized their actions in a way to strategically exclude any jurisdiction[21].

Admittedly, however, the effects of MNEs participation in cartels in countries without an effective competition regime have gone un-punished[22]. It is true that lack of rules and institutions policing anticompetitive actions in some countries may lead to liability avoidance in those jurisdictions, but that would rarely be a goal directly sought by MNEs. In general terms, it could be argued that MNEs do not consider that circumstance when taking part in a hard-core cartel or in any other anticompetitive action. One could assume that these practices

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conduct rather than proactive confronters of it".

[20] JENNY (2005: 10-11 and 13, 2006: 112-132) gives some examples of cartels tailoring their impact to jurisdictions without competition rules. According to CRANE (2009: 331-332) "*There is a great deal of money to be made by price fixing in other jurisdictions, including those in Latin America, that do not have nearly as aggressive anti-cartel enforcement […] In other words, the success of international anti-cartel enforcement in the US, EU and Japan may be a magnet for more cartel behavior in Latin America*." Concerning the famous vitamins' cartel, CLARKE & EVENETT (2003: 692) assert "*This article presents evidence that, after the formation of the vitamins cartel, exports from countries where the cartel conspirators' headquarters were located in those nations in Africa, Europe, and Latin America that did not have active cartel enforcement regimes tended to rise more than in those nations that had such regimes. Given that industry Studies suggest that the demand for vitamins is price inelastic, this finding is consistent with the hypothesis that the vitamins cartel raised prices more in nations without active cartel enforcement regimes*" (emphasis added). See also GAL (2010: 63; 2009:42) and MEHTA (2003:1 &3).

[21] In a similar vein, acoording to FOX (2000: 1790): "*Competition law that is helpful or harmful (however it is seen by the firm) could be a marginal incentive or disincentive to establishment in the jurisdiction; but if a firm desires to enter a market to serve the consumers there, and would probably enter apart from competition law considerations, a competition law or the lack of it is not likely to be a deterrent unless it has significant negative qualities for the firm that override the market's attractiveness*."

[22]See GAL (2010: 63); KOVACIC (2001: 295); SOKOL (2007: 55-56); LEVENSTEIN & SUSLOW (2004: 842-843) "*Given the actual and potential effects on trade that reach into the tens of billions of dollars, a natural question to ask is why these many affected countries are not seeking damages from cartel member firms in their home countries. In particular, given that the United States has the strongest laws and enforcement record against price fixing, a legal mechanism for civil suits (which most countries do not have for antitrust violations), and some of the richest companies, why is it that there are relatively few lawsuits brought by foreign companies seeking damages?*". CONNOR (2009:314-315) considers twenty-one major international cartels prosecuted by Latin American authorities during 1990-2007, when the number of *known* global cartels (detected and prosecuted by other authorities) is above eighty. CONNOR & BUSH (2010:838) say that more than half of monopoly profits made by cartelists are made in countries where antitrust enforcement is weak or nonexistent.

would be adopted when their benefits exceed the potential penalty attached to them if detected, but generally it is difficult to imagine MNEs would purposely and willfully be arbitraging on the lack of competition law. Besides, even if they managed to follow such a sophisticated strategy, as we will see next, it could prove to be shortsighted as they might not be able to eliminate the potential pernicious effects for those firms.

4. MNEs incentives to follow strict anti-cartel rules

In competition law, as many other legal disciplines regarding their business strategies and conducts in markets, MNEs have strong incentives to consider a global playing field and design a uniform and common worldwide legal strategy for all the countries where they operate. When feasible, doing so may reduce transaction costs and save resources that would be required to deal with disparate rules on different jurisdictions.

In some legal areas, like competition law, MNEs could do that either adhering to their own antitrust code or compliance manual (self-regulation) or by committing themselves to the rules of the stricter jurisdictions where they operate[23]. Committing to abide to the strictest legal rule makes sense when the alternative domestic legal rules show similar features in most of jurisdictions, as it is the case of some competition legal rules (for example, regarding hard core cartels or monopolization)[24]. Of course, such option would run against the MNE developing a disparate legal strategy for each country, in which eventually the MNE would profit from "loopholes" existing in those countries that lack an effective competition regime.

Several reasons support MNEs following this legal scheme[25]: firstly, it would diminish exposure to potential legal liability in other jurisdictions where anticompetitive actions of MNEs could be prosecuted and punished despite occurring elsewhere; secondly, several practical reasons concerning MNEs' organization and business culture point against being able to profit from anticompetitive actions in one national market without risking the bad practice spreading throughout all their organization; last but not least, the reputation of MNEs could be damaged if they behave anti-competitively in some of the markets where it operates.

[23] It could also be described as over-regulation, "*We already live in a world of International competition policy [...] firms doing business internationally face a* de facto *regime generated by the overlap of domestic regimes*", GUZMAN (2004: 99), mainly because of the extraterritorial assertion of jurisdiction (id. 104-105).
[24] See GAL (2010: 87).
[25] Overall, some of these reasons parallel those for setting and establishing a compliance program in first place, see RILEY & BLOOM (2011: 24).

4.1. Reducing liability exposure in other jurisdictions

Though we may think that due to the lack of effective competition legal rules and institutions in some jurisdictions MNEs' participation in cartels there would go unpunished[26], they always risk being prosecuted elsewhere[27]. This mainly refers to the possibility of court actions in foreign jurisdictions against MNEs for violations committed in developing countries lacking effective competition laws. There is no safe place to hide worldwide if a MNE participates in a hard-core cartel.

Therefore, occasionally, cartel victims might be able to sue MNEs for the compensation of the harm caused by their collusive actions in foreign jurisdictions. U.S. courts have always been willing to take jurisdiction over foreign antitrust damages claims whenever cartels had some nexus to the US[28]. Generally, foreigners could sue in the U.S. if they establish a cartel has also negative effects on U.S. consumers and there is some relationship between the U.S. injury caused by the cartel and the foreign arm[29]. Indeed the majority of firms prosecuted and fined by U.S. authorities for cartel behavior have been foreign companies (Switzerland, Germany, Japan, Netherlands).

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[26] *Rectius*, not punished enough, as in many jurisdictions the fines imposed only consider anticompetitive impact there. GAL (2009: 9): "*Cartel members may thus still find it profitable to engage in international anticompetitive activity so long as the benefits from cartelization are larger than the fines and damages they must incur in the few jurisdictions that enforce their laws against them.*"

[27] FOX (2000: 1794-1795). In EXXONMOBIL's ANTITRUST AND COMPETITION LAW. COMPLIANCE GUIDE, 2007, 3: "even in a country that does not have its own competition law, there may be potential antitrust risks".

[28] See, for example, U.S. Supreme Court judgment of 11 jan. 1978, *Pfizer Inc. v. Government of India*, 434 U.S. 308, 313 (1978) "*If foreign plaintiffs were not permitted to seek a remedy for their antitrust injuries, persons doing business both in this country and abroad might be tempted to enter into anticompetitive conspiracies affecting American consumers in the expectation that the illegal profits they could safely extort abroad would offset any liability to plaintiffs at home.*"

[29] The 1982 Federal Trade Antitrust Improvements Act (FTAIA) amended the U.S. Sherman Act by making it inapplicable to foreign commerce unless (1) the conduct has a "direct, substantial, and reasonably foreseeable effect" on domestic commerce and (2) "such effect gives rise to a claim" under the Sherman Act [15 U.S.§ 6a (2011)]. For a detailed critical analysis of FTAIA and its enforcement, see HUFFMAN (2007A). Nowadays, it is questionable how far would U.S. Courts go after, see judgment of the U.S. Supreme Court of July 14, 2004, *F. Hoffmann LaRoche Ltd. v. Empagram, S.A., 542 U.S. 155 (2004).* This case concerned some foreign claims arising from the vitamin cartel and it considers foreign purchasers can only sue in the U.S. if they show that their claim arises from the cartel's anticompetitive effect in the U.S. For a reading of the case that leaves the door wide open to future foreign legal actions in the U.S., see CONNOR & BUSH (2008: 850-855) and SPRINGMAN (2005). A more realistic view is given by CASEY (2005), HUFFMAN (2007B) and GAL (2010:68), the later, however, proposes unrealistic mechanism to improve the fight against global cartels (especially in developing countries and small jurisdictions). See CASEY (2005).

Moreover, liability extension among holding firms and subsidiaries (like parental liability in the EU) increase the probability (and the amount) of liability being claimed, as conducts may be imputed to parent companies for decisions taken by subsidiaries or other companies that might be considered to have been influenced by them[30].

4.2. Organizational reasons

Deciding to take part in a cartel is not a solely financial or economic decision. It has implications that go beyond the mere calculation of its potential profits or costs. Most of cartels may be very profitable for the business firms taking part in them, but despite being profitable, many MNEs' business culture will probably run against them.

Business culture of each MNE will vary, but it will likely contain a mandate in its core for its managers to be against participating in hard-core cartels. Generally, it can be affirmed that MNEs' managers are probably more organization-minded, group-oriented and less individualistic than business managers in other firms[31]. Therefore, MNEs' managers will be induced to be against the possibility of their companies engaging in cartels in those jurisdictions that do not have effective competition enforcement regimes.

If that is the case, MNEs hierarchies and structures will promote a culture against taking unnecessary antitrust risks and uncertainties. Although the industry involved and each MNE's specific structure and hierarchical organization will be very relevant in determining the type of antitrust risks most common in each case, MNEs tailoring specific cartels and other anti-competitive violations for markets without effective competition legal rules risk those practices spreading all over their organization. The decision to engage in such practices not only will make more difficult to globally plan the strategy of the business, as managers will always have to individually consider their actions for each country. Moreover, there is a substantial risk of MNEs being unable to isolate the anticompetitive practices in some countries, with the chance of propagating within its internal organization in several jurisdictions. The industry and the specific activities in which the MNE operate will be relevant to determine the impact of any potential anticompetitive actions in its organization and strategy. However, participation in hardcore cartels (price fixing, markets sharing) will probably generate similar issues for any MNE.

[30] See, for example, the recent Judgment of the EU General Court of 2.2.2012, T-77/08 and T-76/08 (*Dow Chemical v. Commission; EI du Pont Nemours and others v. Commission*) extending liability to parent firms of a 50% joint-venture.

[31] In words of RILEY & BLOOM (2011: 27), they are "*compliance oriented*" and "*compliance commitment must be built into the very marrow of the organization, so that integrity and ethical behavior become not only a business policy but a way in which business is actually done*".

Due to the relevance of these issues in the governance of many MNEs, it is not rare to see that these issues deserve specific treatment in their business conduct guidelines, ethic codes or codes of corporate governance [32]. In general, MNEs' Codes Ethics provide normative guidelines for business behavior going beyond what the law prescribes to further other ethical values[33].

Although these guidelines would normally include a broad and general reference to the compliance with the applicable laws in the jurisdictions where they operate, there will also frequently contain some clear and specific dictates regarding the critical issues of MNEs' relations with its competitors and with its customers. It may be controversial if there exist an ethical standard against cartels and other anticompetitive forms of wealth extraction by businesses [34]. Business Codes of Ethics generally include a general mandate to MNEs' employees against any agreement or understanding with rivals to fix prices, rig bids, divide markets or allocate customers. There will normally include a warning to be careful and sensible on any formal or informal contacts with any third parties concerning these issues and requiring executives and employees to report any incident to the company's general counsel[35].

Certainly, at the end, the effectiveness and compliance with internal corporate rules of conduct will depend on the specific decision-making units at different management levels. Compliance by senior management and high-rank executives will probably be certain. However, one well may doubt whether MNE's low-level managers and rest of staff will effectively comply and respect anti-cartel rules and standards, and there will always exist the risk of maverick behavior by rogue managers or sales people[36], but MNEs can establish their

[32] The U.S. Sarbanes-Oxley Act (section 406) requires SEC regulated companies to disclose if they have adopted a code of business ethics for its principal executive officer and senior financial officer. Moreover, some stock exchanges, like the NYSE, require listed corporations to have established a code of business conduct and ethics for directors, officers and employees [NYSE Section 303A10].

[33] Reportedly, variations in domestic legal rules may lead to conflicts with MNEs' business ethical standards, see regarding WALL-MART frustrated entrance in German's retail market, TALAULICAR (2009) and BACKER (2007: 1768-1773). SHUGAN (2007:3) describes how German Competition Authorities reacted against WALL-MART low-pricing policy despite being a recent entrant in the market and no proof of predatory-pricing was involved.

[34] The immorality of cartel behavior, abuses of dominant position and anticompetitive mergers seems to be clear, although the arguments for the morality of the ban on vertical restraints may be limited. See STUCKER (2006: 481-504) and ELZINGA (1998). However, considering the potential negative effects of any state interventions (by competition authorities) on consumer welfare, some authors even consider anticompetitive actions to be moral, see TUCKER (1998A, 1998B), ARMENTANO (1991). The later, rhetorically asks *"what is morally wrong with a price agreement that does not rise consumer prices and may even reduce business costs?"* (id. 71).

[35] In the same vein, they will also include rules regarding MNEs' relations with distributors, suppliers or customers, as these can also lead to anticompetitive actions, if undue and unjustified limitations or restrictions are imposed to them.

[36] DESAI (2010:17) "*In creating an antitrust programme it should be recognised that there may be personnel who act in bad faith, for which no amount of education and admonition will act as a deterrent. Sales targets and*

own auditing and enforcement systems to detect and discipline those actions[37], and it is doubtful that their conduct would be spread all-over MNE's organization.

In sum, private rules and standards embodied in MNEs' Codes of Conduct spell out clear legal obligations for them. In the antitrust realm, guidelines and recommendations to MNEs' management and staff to conduct themselves in order to prevent any kind of collusion with rival firms[38]. A clear-cut prohibition of collusion and cartel type behavior is set in most of MNEs' Codes of Conduct, which can fulfill the void of inexistent similar legal rules in some developing countries. Compliance with MNEs' internal anti-cartel and anti-collusion rules is ensured through private and self-enforcement systems.

4.3. Corporate Social Responsibility (CSR) and reputational reasons

Apart from the practical and organizational reasons just mentioned, but inextricably related to them, MNEs' social responsibility and their concern to protect their global reputation will be considerations running against the participation in cartels and other blatant anticompetitive actions in countries lacking effective competition legal rules[39]. In the same way that a MNE cannot isolate the negative effects attached to taking part in a cartel in one country, it cannot prevent it negatively affecting its global image or reputation[40].

MNEs' face calls for accountability to multiple stakeholders, their size and global operations multiplies the number of groups affected (shareholders, suppliers, employees, creditors, customers, governments), whose interest may occasionally conflict, but all of them share a consensus against cartel behavior by MNEs and its participation in other forms of collusion. Therefore MNEs need to translate this policy mandate into practice through setting adequate internal business rules and plausible compliance and enforcement systems.

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bonuses can be too much of an incentive to break the law. Indeed, some may even go to great lengths to hide their activities from in-house counsel".

[37] Including dismissal in case of non-compliance and tracking employees attendance to trade associations and other industry events, see RILEY & BLOOM (2011:33-36).

[38] Some doctrinal sectors in the business ethics literature consider that CSR might require forms of inter-firm cooperation forbidden by competition law, see COTTRIL (1990: 725)- "*You can have CSR or competition, but not both*"-and DUBBINK & VAN DER PUTTEN (2008); however, only collusive or anticompetitive forms of cooperation among rivals are considered violations of competition rules.

[39] Listing their securities in the U.S. (considered one the market with strong legal institutions in its securities regulation) has been considered to be a bonding device for foreign firms coming from jurisdiction with weak securities regulation, see SIEGEL (2005). However, see LICHT (2003)

[40] Concerning labor conditions of WALL-MART global supply chain and its global compliance program, see GRIESER (2008:308-311).

5. Possible spillovers of good practice by MNEs in DCs

MNEs are part of the army through which Foreign Direct Investment in Developing Countries take place. Their arrival to DCs' markets brings some good things. There may be positive external effects coming out of their presence and actions in those markets[41].

It is frequent that the adoption of competition rules by many countries follows the requirements set by bilateral or multilateral trade agreements[42]. In some occasions, especially when there is already FDI and MNEs presence in those jurisdictions, but competition rules have not been adopted or institutions have limited implementation and enforcement abilities, MNEs influence in competition law adoption may be more subtle or nuanced[43].

MNEs strategies and actions in jurisdictions lacking an effective competition legal regime would be indirectly contributing towards the spreading of a competition culture and, even, setting the stage for the adoption in the future of competition rules[44].

In general terms, MNEs market actions and decisions, inspired on its experience and learning in other countries, carry with themselves a competition culture and compliance with global competition rules, which can have a positive effect in host countries lacking competition laws[45]. Business firms' voluntary compliance with anti-cartel rules is the most effective way of achieving the goals and purposes of competition rules and enhancing social welfare[46]. Unconsciously hrough their actions and decisions, MNEs would be contributing to generate a public good –a competition culture-, both in terms of market entry and undistorted and free competition in markets. In that sense, MNEs activities would have a spillover-effect on DCs lacking competition rules[47].

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[41] RUBIN (1995: 1281) refers, in broad terms, to the contribution MNEs make to the development of the countries where they operate. MERTUS (2000: 554) considers that globalization may well have increase the power of MNEs in relation For an articulated theory of MNEs' knowledge spillovers in indigenous firms and markets, see SPENCER (2008).

[42] Indirectly they may be a precondition imposed by MNES to their investment, demanding a level playing field with foreign domestic firms. See, for example, regarding the access to middle east countries by EU firms, DABBAH (2007: 15), the relationship between competition laws and FDI is a complex one, and it is debatable whether they prefer a competitive environment in deciding their investment, see DABBAH (2007: 51).

[43] In general, recognizing the force of MNEs in internationalizing and harmonizing competition laws see DABBAH (2003B: 208-213).

[44] GAL (2009: 36) considers the lack of competition culture as one of the reasons explaining low enforcement of competition laws in some DCs.

[45] In general terms, considering the role of non-state actors in policy transfer (including institutions, ideologies or justifications, attitudes and ideas and even negative lessons) see STONE (2004).

[46] On the relevance for this purpose of antitrust compliance programs, see RILEY & BLOOM (2011).

[47] For an explanation of this phenomenon, generally considered in terms of performance, productivity and (foreign) market access spillovers to local firms in host countries, see BLOMSTRÖN & KOKKO (1998). Indeed, one

In such a situation MNEs' presence in DCS would generate a positive external effect, by helping in the diffusion process of competition culture that would set the stage for the future adoption of competition rules. The intensity of the spillover will depend not only on the institutional background of the host country, but also on the way the MNEs enter that market, MNEs' alliances or partnerships with host firms generally aimed at providing some support to FDI, will probably increase the spillover effects and the spread of competition culture in the host jurisdiction.

As important as the development of human capital by the lawyers and consultants involved in implementing competition law (and even preliminary to it)[48] in the countries adopting new competition rules, would be the spread of competition culture among business managers[49]. As it has been argued, MNEs help providing a competition mind-set for local managers and employees that will greatly help in spreading the virtues of competition legal rules or standards that may be adopted in the future. Furthermore, they will also greatly help in promoting compliance. Voluntary compliance by business firms is crucial in the first years following the adoption of any rule[50], and it will greatly depend on their consciousness of the competition culture and rules.

Overall, it can be argued that MNEs can be a key instrument in transmitting knowledge and experience in this area to host developing countries where they operate, and that this could help shortening the distance between MNE's and host country's institutional background[51]. Competition rules and principles followed and respected by MNEs in their actions worldwide would also guide their actions in countries lacking in that countries lacking an effective competition law regime.

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of the main features of the (foreign) market access spillovers for local firms in host countries includes obedience to basic competition rules against multilateral and unilateral anticompetitive practices (*within "knowledge of international market conditions*" or "*information on foreign market conditions*" id., 1998: 7, 8).

[48] On this regard see SOKOL (2009: 27-30). In general terms, KOVACIC (1997). Similarly, concerning the competition promotion efforts by the private sector, but ignoring that the main promotion force may be the indirect force by business firms in action, PEÑA (2009).

[49] HARTZENBERG (2007: 152) refers to the antitrust compliance program for managers of the South African MNE SOUTH AFRICAN BREWERIES that "*has assisted in raising the profile of competition policy in the private sector*".

[50] KOVACIC (1997: 451-452).

[51] The literature talks about the extent local environmental pressures may affect MNE's organization and performance in the host country, but here we are interested in looking at the influences MNEs themselves indirectly may have in local institutional environment. In a similar vein, concerning MNEs' Human resources and labor market orientations, see SAYIM (2011).

Conclusions

MNEs may have a positive impact in the adoption and enforcement of anti-cartel rules in developing countries. Generally they have been considered in a negative fashion: their participation in global cartels adversely affected developing countries markets and consumers. However, by adhering to stringent rules and standards they can ease the way for the adoption of competition rules in those jurisdictions that still don not have them, or incentivize their effective enforcement if they are not being effectively enforced -helping in extending competition culture in developing countries.

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ANNEX:

BASF Group (Germany)
Code of Conduct. Compliance Program (available at http://www.basf.com/group/corporate/en/about-basf/purpose-principles-values/code-of-conduct/index, visited 19.02.2012)

"Antitrust regulations

Our policy is to promote fair competition. Therefore employees are advised to abide by all antitrust laws and regulations. Violations are subject to sanctions and fines and may lead to the invalidity of the respective agreement.

Horizontal agreements

Agreements and concerted practices between competitors (horizontal agreements) which have as their objective or effect the prevention or restriction of competition are especially prohibited. These comprise, for example, agreements on prices, tenders, allocation of customers, terms of sale, production or sales quotas or the carving-up of geographical markets.

Not only agreements i.e., express arrangements, but also concerted arrangements resulting from a sequence of unilateral declarations (e.g., announcements of price increases aimed at triggering the same reactions from competitors) are forbidden.

In the course of contacts with competitors it must always be ensured that no information is accepted or given which permits any conclusions being drawn as to the present or future market conduct of the party providing the information.

In case of horizontal agreements the strict regulations of the European antitrust law have to be complied with globally, irrespective of possibly non-existing or less strict local regulations.

Vertical agreements

Also, many types of vertical agreements, i.e., arrangements and agreements between suppliers and customers or patent holders and licensees, are forbidden in Germany, the E.U. and the United States, although with slight differences.

These include restrictions of the customer's freedom to set prices and conditions of supply in respect to their business partners (geographical, customer or application restrictions), certain most-favored-customer clauses, exclusivity such as total requirement or exclusive supply as well as non-competition.

In many cases the admissibility and, as a result, effectiveness of a restraint depend on the duration and the intensity as well as the market position of those involved.

Abuse of a dominant market position

Due to its market position in many product areas, BASF is often subject to specific rules. In principle, the abuse of a dominant market position is prohibited in Germany, the E.U. and the United States, although with slight differences. Such abuse can, for example, be different treatment of customers without good cause (ban on discrimination), refusal to supply, selective supply, imposition of inadequate purchase/sales prices and conditions or tie-in arrangements without justification for the additional supply or service demanded.

The definition of a dominant market position as well as the limits within which a given conduct is still admissible depend on the circumstances of the individual case.

In the event of doubt in connection with antitrust regulations, the relevant legal department should be contacted at an early stage. BASF will provide regular information on issues of antitrust law".

BEMIS

Code of Business Conduct and Ethics (available at http://www.bemis.com/overview/6/business_conduct_ethics, visited 19.02.2012)

"Antitrust. *Bemis competes aggressively and legitimately, in full compliance with all antitrust laws. Antitrust laws are designed to protect competition, and Bemis expects all of its employees to adhere to these laws. Antitrust laws require that there be no agreements or understandings between competitors that affect price, terms and conditions of sale, division of markets, or any other agreements or understandings that would affect competition. Bemis employees should never have any discussions with competitors regarding price or any other aspect of competition. It is a felony to violate antitrust laws, and punishment can result in imprisonment and fines. Violation of antitrust laws can also have a devastating impact to both the Company's and the employee's business reputation.*"

EMERALD PERFORMANCE MATERIALS

Conflict Of Interest, Ethics, Compliance With Antitrust Laws (available at http://www.emeraldmaterials.com/cms/epm/micms_doc_admin.display?p_customer=FIS&p_name=INTERNET%20VERSION%20-%20COI%20ETHICS%20ANTITRUST%20-%20FINAL%208%2015%2008%20WITH%20SIGNATURE.PDF-1.PDF, visited 15.02.2012)

"***Antitrust Policy. Observance of Antitrust Laws***

Need for a Policy

The objective of antitrust laws is to keep business competition truly free. Fair competition is fundamental to the free enterprise system. Emerald Performance Materials fully supports laws prohibiting restraints to trade, unfair practices and abuse of economic power.

Antitrust laws are based on a simple principle – ***"Do NOT monopolize or unreasonably restrain U.S. trade or commerce."*** *However, the actual application of those laws is far more complicated. The antitrust laws are general and, in some respects, vague; their exact interpretation is often uncertain. Therefore, legal advice should be obtained whenever there is any doubt as to the lawfulness of any contemplated course of action of a proposed transaction. Few employees can be experts on antitrust laws, but the Company expects, and insists, that each employee learn:*

1. What actions are specifically required or prohibited by antitrust laws, and

2. To recognize areas where antitrust law problems can arise so he or she can seek advice from the Vice President of Human Resources.

Companies like Emerald, with its many varied business interests, can easily fall victim to antitrust claims. The laws are strict. The laws are enforced. The cost in both money and time in defending an antitrust charge is likely to be quite high. Even individual employees can be

subject to fines and jail terms. Employees who fail to meet their responsibilities under the antitrust laws can cause serious damage to the Company's success and reputation, and to their own careers. ***Emerald considers antitrust violations and charges very serious matters.*** *This policy is intended to help you understand the principles of competition which you and your fellow employees must follow when conducting Company business. It will also help you understand how to comply with those principles."*

INTERNATIONAL BUSINESS MACHINES (IBM)

Code of conduct for IBM's business partners (available at https://www-304.ibm.com/partnerworld/wps/servlet/ContentHandler/pw_com_jnw_code_conduct#Anti-Trust%20and%20Competition%20Laws, visited 15.02.2012)

"Anti-Trust and Competition Laws

You must fully comply with all applicable antitrust and competition laws and regulations. While these laws vary somewhat among jurisdictions, IBM's policies require, at a minimum, if you are approved by IBM to remarket products and services provided by IBM, that you do so as part of your independent business model and on terms and pricing that you set unilaterally. Furthermore, it is not permissible for you and competing IBM resellers to do or attempt to do any of the following: 1) fix or control prices for IBM offerings; 2) join together to boycott suppliers or clients; 3) divide or allocate markets or customers; or 4) coordinate competing bids."

INTEL

Code of Conduct, Nov. 2010 (available http://www.intel.com/content/www/us/en/policy/policy-code-conduct-corporate-information.html, visited 15.02.2012)

"Where the Code or company guidelines differ from local laws or regulations, we must always follow the higher standard […]

Antitrust

Antitrust laws, sometimes also called competition laws, govern the way that companies behave in the marketplace. Antitrust laws encourage competition by prohibiting unreasonable restraints on trade. The laws deal in general terms with the ways companies deal with their competitors, customers, and suppliers. Violating antitrust laws is a serious matter and could place both the company and the individual at risk of substantial criminal penalties. In all regions and countries where Intel does business, Intel is committed to competing vigorously but fairly for suppliers and customers.

To adhere to antitrust laws, we must not:

• Communicate with any competitor relating to price, any term that affects pricing, or production levels,

• Divide or allocate markets or customers,

• Agree with a competitor to boycott another business, or

• Put inappropriate conditions on purchases or sales.

Intel's antitrust policy and standards are set out in Intel Corporation's Antitrust and Competition Law Worldwide Policy and Standards. When questions arise, contact Intel Legal for guidance. When dealing with distributors, we need to follow Intel's pricing and merchandising policies carefully. The executive responsible for distribution sales and marketing for a geographic area has more particular information regarding local procedures to be followed in dealing with distributors in that area and can answer questions.
[…]
You must carefully follow special rules of conduct if you participate in or take a leadership position with an industry trade association, to avoid antitrust violation".

Lawson
Code of conduct (available at http://www.lawson.com/about-lawson/corporate-governance/code-of-conduct/antitrust-competition-laws, visited 19.02.2012).
"Antitrust (Competition) Laws
Antitrust laws (also known as competition laws) laws restrict a company from entering into agreements that would restrain competition in the marketplace. Examples of several forms of anti-competitive behavior are provided below. All Lawson employees, temporary workers, consultants, independent contractors, business partners and other representatives are expected to comply with all applicable antitrust / competition laws. When any doubt exists about the legality of any action or arrangement, the matter should be discussed with Lawson's Legal Department.
Agreements with Competitors
Formal or informal agreements with competitors that seek to limit or restrict competition in any way are often illegal. Unlawful agreements include those which seek to fix or control prices; allocate products, markets or territories; or boycott certain customers or suppliers. To ensure compliance with antitrust / competition laws, discussions with competitors regarding any of these potential agreements is a violation of Lawson policy and will subject the person to disciplinary action as well as the potential for civil liability and criminal prosecution.
Agreements with Customers and Business Partners
Formal or informal agreements between Lawson and a customer or business partner may also be considered anti-competitive and illegal. For example, Lawson may not fix the price at which an authorized reseller sells Lawson's products. All contracts with customers or business partners must be prepared and signed following the procedures described below in the Section entitled "Signing Contracts and Expenditure Commitments."
Trade Association Activity
Contact with competitors at trade shows or trade association meetings is often unavoidable. However, these contacts are not immune from antitrust / competition laws. Consequently, contact with competitors necessitated by these meetings should be as limited as possible and kept strictly to the subjects on the agenda for the lawful meeting. In addition, Lawson employee participants in trade associations should consult with Lawson's Legal Department regarding any proposed association activity that would have a potential effect on competition, such as the development of product standards or industry code of practice.

You should ask yourself:

- Are my discussions with the competitor directly or indirectly touching on pricing considerations or other terms and conditions of sale to customers?
- Could my actions be used as evidence that I unlawfully agreed upon prices or price changes with a competitor, even though no formal agreement or understanding was made?
- Does the pricing or promotional program I am formulating discriminate unfairly against others?
- Is my interaction with employees of a competitor at a trade association necessary? Are they within the scope of the lawful agenda for the meeting?

F. HOFFMANN-LA ROCHE LTD. (Switzerland)

"Corporate Integrity
Competition Law
Violating competition laws never pays
Competition laws – also referred to as antitrust laws – are designed to protect competition. They prohibit business behaviour which has the objective or the effect of preventing, restricting or distorting competition (e.g. price fixing and the allocation of markets or customers).
Roche supports all efforts to promote and protect competition, including the legitimate protec- tion of intellectual property and marketing rights. Roche respects the legitimate undertakings of its competitors, including generic and biosimilar manufacturers.
Roche has set up a comprehensive antitrust compliance programme. Employees who have to deal with competition issues in their work are expected to understand the basic principles of competition law and the importance of complying with such laws. If an answer to a specific antitrust question is not clear, employees must seek advice.
The penalties for breaching competition laws are severe. In addition to Roche's liability as a company, employees who engage in anticompetitive behaviour will be subject to severe penalties.
Despite Roche's commitment to complying with applicable competition laws, Roche may be- come the subject of an unannounced investigation by antitrust authorities (called a "dawn raid"). In case of a dawn raid, Roche will fully cooperate with the investigators.
Q I work in the Marketing Department and know a competitor is granting high rebates to customers in order to enhance its market share. Is it a
good idea to contact this competitor and agree on a cap for rebates and on allocating certain customers and markets?
A No. That would be a serious violation of competition law. Roche strictly prohibits anticompetitive behavior by its employees even in countries where it is not prohibited by law.
Q Antitrust authorities have started an investigation ("dawn raid") in the Roche company where I work. Some recent correspondence I had with a Roche competitor is making me nervous because it might be construed as evidence of anticompetitive behaviour. Should I destroy the correspondence?

A No. Under no circumstances may any documents or data which could be relevant to an antitrust investigation be destroyed (for further details see chapter "Records Management"). In the event of an investigation, Roche will fully cooperate with the authorities."

SEARS HOLDINGS CORPORATION
Code of Conduct (available at http://www.searsholdings.com/govern/code.htm#ANTITRUST, visited 15.02.2012)
"III. POLICIES. ANTITRUST
SHC is subject to complex antitrust laws designed to preserve competition among enterprises and to protect consumers from unfair business arrangements and practices. You are expected to comply with these laws at all times. Many situations create the potential for unlawful anti-competitive conduct and should be avoided. These include, for example:
COMMUNICATIONS WITH COMPETITORS. Associates may not discuss with competitors any Company pricing, plans, or other competitive marketing information, including relationships with our vendors. Additionally, associates may not make any agreements, directly or indirectly, with a competitor regarding price, terms, conditions of sale, boycotts, or market allocation.
COMMUNICATIONS WITH VENDORS. SHC encourages regular communication with our vendors, indeed, such communication is a necessity. However, associates may not make any agreements, directly or indirectly, with any vendors on the retail price of a product. While vendors may suggest retail pricing, the actual pricing on our merchandise is solely SHC's decision.
The monetary fines for antitrust violations can be high, and the cost to SHC's reputation even higher. If you have any questions about potential antitrust implications, consult with SHC's Law Department."

NOKIA
Code of Conduct (available at www.nokia.com/NOKIA...1/...Nokia/...codes/codeofethics.pdf).
"*Nokia has always recognized that its own long-term interests and those of its various stakeholders depend on strict adherence to applicable regulation, the Rule of Law and on following the highest standards of ethics. For Nokia, ethical business conduct does not mean mere minimum legal compliance. […] Nokia is strongly committed to the highest standards of ethical conduct and full compliance with all applicable national and international laws. This includes, for example, labor conditions, antitrust and promoting fair competition, prevention of bribery and corruption, good corporate governance, the protection and recognition of copyright, company assets and other forms of intellectual property*"

SHELL GROUP (ROYAL DUTCH SHELL PLC.)

General Business Principles (2010) (available at http://www.shell.com/home/content/aboutshell/who_we_are/our_values/sgbp/, visited 19.02.2012)
"Principle 2. Competition. *Shell companies support free enterprise. We seek to compete fairly and ethically and within the framework of applicable competition laws; we will not prevent others from competing freely with us*".
Code of conduct (2010) (available at http://www.static.shell.com/static/aboutshell/downloads/who_we_are/code_of_conduct/code_of_conduct_english_2010.pdf, visited 15.02.2012)
"AntItrust (CompetItIon) Law
Antitrust law protects free enterprise and prohibits behaviour that limits trade or that restricts fair competition. these laws apply to every level of business. they combat illegal practices like price-fixing, market-sharing or bid-rigging conspiracies, or behaviours that aim to achieve or maintain monopoly. Shell does not tolerate violation of antitrust laws.
Your Responsibility
You must not agree with competitors of Shell to fix price or any elements of price (such as discounts, rebates or surcharges). You must not agree with others not to compete in particular markets or for particular customers or accounts. You must not rig bids or tenders, and you must not agree with others to boycott any customers or suppliers except in connection with internationally imposed sanctions. Agreements with competitors to reduce or stabilise production, capacity or output are forbidden. You must also not agree with independent dealers or resellers to fix a minimum resale price of a product. anti-competitive behaviour will damage Shell's business and reputation For fairness and honesty. anti-competitive practices are unacceptable. They are illegal in most countries and can lead to heavy fines and imprisonment.
The Principles
Do not agree, even informally, with competitors on pricing, production, customers or markets without a lawful reason. Always get legal advice on whether a practice is lawful.
Decisions on Shell's pricing, production, customers and markets must be made by Shell alone.
Do not discuss with competitors:
– which suppliers, customers or contractors Shell deals and will deal with; or
– which markets Shell intends to sell into or on what terms Shell will deal.
leave industry meetings if competitively sensitive issues arise and ensure your departure is noticed. Report the matter to Shell legal and your Business or function compliance officer.
Tell Shell if you know of any potentially anti-competitive practices or if you are uncertain whether practices are legal or not.
Challenge yourself
Was competitively sensitive information discussed at an industry meeting (either directly or indirectly)?
Have I tried to set the resale price of my dealers or distributors?
Are our suppliers or customers involved in any anti-competitive behaviour?
Do I know what my line reports are doing? have I obtained the relevant legal advice?

UPS

Code of Business Conduct (2011, available at http://www.ups.com/content /corp/code_conduct.html, visited 19.02.2012).

*"**Antitrust/Fair Competition***

We aim to compete vigorously, aggressively, and successfully in today's increasingly competitive business climate and comply with all applicable antitrust and competition laws. The antitrust laws of countries around the world are designed to preserve a competitive economy and to promote fair and vigorous competition. We all are required to comply with these laws and regulations, which are explained in more detail in the UPS Guidelines for Antitrust/Competition Law Compliance.

These guidelines cover such areas as Dealing with Customers, Commercial Counters, Competitors, Suppliers/Vendors, Attending Trade Association Meetings, Providing Subsidiary Services, Obtaining Information about Competitors, Mergers and Acquisitions, International Business, and Writing a Document.

Fair competition standards are a matter of law in virtually every country in which we operate. We are required to comply with these laws and regulations. UPS employees and representatives involved in marketing, sales, purchasing, or contracts, or in discussions with competitors, have a particular responsibility to ensure they understand our standards and the applicable competition laws.

All management employees are expected to become familiar with the UPS Guidelines for Antitrust/Competition Law Compliance and how these responsibilities apply to their current positions.

Boycotts, Embargoes, and Restrictive Trade Practices

A boycott occurs when one person, group, or country refuses to do business with certain other people or countries. As a U.S.-based company, all UPS operations must comply with U.S. laws pertaining to boycotts. U.S. anti-boycott laws generally prohibit U.S. companies and their subsidiaries from participating in or cooperating with any international boycott, unless the boycott has been approved by the U.S. Government. Economic sanctions or trade embargoes imposed or approved by the United States are examples of boycotts with which we must comply.

These anti-boycott laws also require U.S. companies and their worldwide subsidiaries to report any requests they receive to engage in a boycott to the appropriate government entity.

We must be particularly alert for requests for information or contract terms that:

• Request information about any person's past, present, or prospective relationship with boycotted countries or blacklisted companies.

• Request information about any person's race, religion, gender, or nationality.

• Request discrimination against individuals or companies on the basis of race, religion, gender, or nationality.

All employees should report any such requests to Corporate Compliance and Ethics or Corporate Legal."