UNITED
NATIONS

TD

United Nations
Conference
on Trade and
Development

Distr.
GENERAL

TD/B/RBP/100/Add.1
22 August 1994

ENGLISH
Original: ENGLISH/FRENCH/
SPANISH

TRADE AND DEVELOPMENT BOARD
Intergovernmental Group of Experts on
Restrictive Business Practices
Thirteenth session
Geneva, 24 October 1994
Item 3 of the provisional agenda

STUDIES RELATED TO THE PROVISIONS OF THE SET AND CONSULTATIONS ON RESTRICTIVE BUSINESS PRACTICES

Replies by States and regional groupings on steps taken to meet their commitment to the Set of Principles and Rules

Note by the UNCTAD secretariat

CONTENTS

Note: The terminology used is that of the submitting authority.

GE.94-53522 (E)

I. REPLIES FROM STATES

A. AUSTRALIA

[Original: English]

The Government supplied the UNCTAD secretariat with the following information:

REVISION OF LEGISLATION

Background

Australia's general competition statute is the *Trade Practices Act 1974*. The statute contains a general provision prohibiting agreements which substantially lessen competition and other provisions directed against particular agreements or conduct including primary and secondary boycotts, misuse of market power, exclusive dealing, resale price maintenance, anti-competitive price discrimination and mergers. (Although it is a national statute, it does not apply to unincorporated and State Government businesses because of Constitutional limitations.) The statute created the Trade Practices Commission as the national competition and consumer protection authority.

Amendments to the *Trade Practices Act 1974*

The following significant changes have recently been made to the statute:

- Maximum pecuniary penalties which the Court may impose has been increased from A$ 250,000 to A$ 10,000,000 (a 40-fold increase) for corporations and from A$ 50,000 to A$ 250,000 for natural persons.

- The merger test has been changed from "dominance" to "substantially lessen competition" (reverting to the test which applied between 1974 and 1977).

- Only secondary boycotts which "substantially lessen competition" are now prohibited. 1/

Other Changes

The Government has been deregulating a number of sectors of the economy as part of a significant micro-economic reform programme. Such deregulation requires the establishment of competitive structures and industry-specific legislation has been introduced in some cases involving the Trade Practices Commission. For example, in the *Broadcasting Services Act 1992* it is required to provide a report to the Australian Broadcasting Authority before a

---

1/ The prohibition on secondary boycotts introduced in 1977 also covered cases where substantial loss or damage to a business resulted - consequently it extended to prohibit conduct by labour unions unrelated to competition.

subscription television broadcast licence is allocated and in the *Moomba-Sydney Pipeline System Sale Act 1994* it will arbitrate access disputes involving a gas pipeline. 2/

National Competition Policy Review Recommendations

In October 1992 the Prime Minister, in conjunction with State Premiers and Territory Chief Ministers, established an inquiry into national competition policy which led to the National Competition Policy Report (the Hilmer Report) being published in August 1993 [the Report and Overview Report have been sent under separate cover]. This wide-ranging report has three sets of recommendations.

The first set addresses competitive conduct rules established under Part IV of the *Trade Practices Act 1974* (the Act). The Report concluded that the rules set out in part IV of the Trade Practices Act require only minor adjustment in form, recommends that they be extended to those sectors of the economy currently exempt (e.g. unincorporated businesses and State Government businesses to be covered) and found that current enforcement arrangements are generally satisfactory.

The second set, or additional policy elements, is designed to accelerate the micro-economic reform process. The Report recommends that Governments agree to a set of principles to ensure that there are no regulations (including laws and regulations) which significantly restrict competition unless they have been demonstrated to be in the public interest. New regulations which are identified as significantly restricting competition would lapse automatically after five years unless re-enacted following a public review by an independent body of the costs and benefits of the regulation. Existing regulations would be subject to review, and if retained after initial review would also be subject to review every five years. Governments should also agree to a set of principles to promote appropriate structural reform of their monopoly enterprises.

The Report proposes that a regime be established to provide a legislated right of access to certain "essential facilities" in prescribed circumstances. Excessive (monopoly) pricing by firms would be addressed by enhancing competition through removing regulatory restrictions on competition, structural reform of public monopolies or providing access to "essential facilities" and the Report recommends that a system of prices monitoring or surveillance should be available where these measures are not practicable or sufficient. Competitive neutrality concerns should be addressed systematically and in a nationally-focused manner by governments agreeing to adopt a set of principles. The overriding principle is that government businesses should not enjoy any net competitive advantage by virtue of their ownership when competing with other businesses.

The third set of recommendations deal with the implementation of the Report, and proposes institutional arrangements and considers legal,

---

2/ A majority share in the pipeline has been sold by the Government to its sole end user.

transitional and resource issues. Two new institutions are proposed. The National Competition Council would be created jointly by Commonwealth, State and Territory Governments to assist in coordinating cooperative reform and to provide independent and expert policy advice. It would provide guidance on issues associated with transition to more competitive markets and act as a check on unilateral Commonwealth action. The Australian Competition Commission would be the key administrative body, and would assume the functions of the Trade Practices Commission and Prices Surveillance Authority as well a some new responsibilities.

EXCHANGE OF INFORMATION WITH FOREIGN RBP CONTROL AUTHORITIES. NOTIFICATIONS AND CONSULTATIONS

The Trade Practices Commission is negotiating a cooperation agreement with the Commerce Commission of New Zealand. The agreement will complement an already close working relationship between the two agencies.

The enactment of the *Mutual Assistance in Business Regulation Act 1992* has been designed to enable Australian business regulators - including the Trade Practices Commission - to provide assistance to their overseas counterparts. It complements the existing scheme in place for the obtaining of, and exchange of, information between countries for purposes of criminal prosecutions.

The Trade Practices Commission has continued to maintain close informal contacts with a number of counterpart organizations in other countries. These arrangements have been established over a number of years and have included staff exchanges with New Zealand and Canada.

In March 1994 a delegation from the United Kingdom Office of Fair Trading visited Australia and held discussions with a wide range of Government and private sector organizations.

On occasions, formal requests are made by organizations of other countries for information or assistance. Recent instances have included:

- A request by Canada for information about the Trade Practices Commission’s experience with the infant formula industry.

- A request by Japan on Australia’s experience with its bilateral agreement with the United States of America.

- Two notifications by the United States of America that it proposed to seek information from Australian residents in relation to possible regulatory offences which may have been committed by others in that country.

TECHNICAL ASSISTANCE

Members of the Trade Practices Commission participated in two recent UNCTAD RBP seminars. The Commission’s Deputy Chairman, Mr. John Broome,

attended the January 1994 seminar in Kuala Lumpur, Malaysia and the former Deputy Chairman (now a part-time member) Emeritus Professor Brian Johns attended the February seminar in Fiji.

B. CYPRUS

[Original: English]

The Government stated that:

Cyprus has undertaken the obligation in accordance with the terms of the Protocol for the Custom's Union Agreement with the European Communities which entered into force on 1 January 1988, to apply the principles enunciated in Articles 85 and 86 of the EEC Treaty (which concern restrictive business practices) when carrying out its responsibilities under the Agreement (Arts. 27 and 28 of the Protocol).

In view of these circumstances, the Government has reviewed the legislative requirements. The Protection of Competition Law 1989 was enacted by the House of Representatives on 30 November 1989 and was published in the Official Gazette of the Republic of Cyprus on 8 December 1989. According to its article 43, the law was brought into force on 8 June 1990, six months after its publication.

The law,

(i) prohibits agreements between enterprises if they have the intention or effect of restricting competition.

(ii) prohibits the abuse of dominant position in any market by an enterprise or group of enterprises.

(iii) provides, however, for exemption of agreements, individually or by category, in circumstances where such agreements contribute to economic development of technical progress, without eliminating competition, and give consumers a fair share of the resulting benefit.

(iv) establishes a Commission for competition to control restrictive business practices with power to impose fines for transgressions of the Law.

(v) gives the Council of Ministers power to designate categories of agreements which may be exempted from notification to the Commission - "Block Exemption".

(vi) gives power to the public service (Ministry of Commerce and Industry) to investigate possible transgressions of the law and to maintain surveillance of the respect by enterprises of requirements imposed upon them by the Commission in regard to their business operations.

With a view to the practical implementation of the Law, the service concerned in the Ministry of Commerce and Industry has established liaison with its counterpart services in the Commission of the European Union, has made a first study visit to EU headquarters in Brussels and hopes to arrange a range of future visits.

C. JAPAN

[Original: English]

The Government transmitted the following information to the UNCTAD secretariat:

Changes in competition laws and policies adopted or envisaged

Summary of new provisions in competition laws and related legislation

The implementation of Japan's antimonopoly policy is based upon the Act Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade (Act No. 54 of 1947, hereafter referred to as "the Antimonopoly Act"), along with two other supplementary acts; the Act Against Delay in Payment of Subcontract Proceeds, etc. to Subcontractors (Act No. 120 of 1956, hereafter referred to as "the Subcontract Act"); and the Act Against Unjustifiable Premiums and Misleading Representations (Act No. 134 of 1962, hereafter referred to as "the Premiums and Representations Act").

An act to amend the Antimonopoly Act to increase the upper limit of criminal fines against firms or trade associations for offences of private monopolization, unreasonable restraint of trade (cartel activity), etc., separately from criminal fines against actual offenders such as employees, by twenty times from 5 million yen to 100 million yen took effect on 15 January 1993. Two recent amendments to the Act, the first of which was enacted in 1991 to increase the rate of surcharge calculation by four times in principle, have significantly enhanced overall deterrence against Antimonopoly Act violations.

Recent moves to review government regulatory systems and the exemption system of the Antimonopoly Act

In order to achieve specific objectives, the Government regulates, in accordance with its laws and regulations, the free economic activities of firms in regard to market entry or pricing, and also, in specific fields and under specific conditions, certain conduct by firms is exempted from the application of the Antimonopoly Act (the system of exemption from the Antimonopoly Act). However, some of these objectives have lost their raison d'être or are obstructing economic vitality and efficiency as a result of major changes in economic and other circumstances occurring since these systems were introduced.

The encouragement of deregulation from the viewpoint of giving priority to consumer interests is one of the major policy tasks the Japanese Government is addressing. At a meeting to discuss economic measures that was held by Cabinet members in September 1993, the Japanese Government decided upon a

package of emergency economic measures. In this package, concerning deregulation, a policy of relaxing 94 government regulations was set forth with an eye to reduce the substantial restrictions and burdens these regulations impose upon firms and people in general, and thereby realize a qualitative improvement in people's lives and the vitalization of the private sector. Regarding the system of exemption from the Antimonopoly Act based on individual laws, it was decided to review the system from the viewpoints of keeping it to the necessary minimum and developing a system to facilitate the review process itself, including the holding of liaison meetings among the ministries and agencies concerned. The review process is expected to be concluded by the end of fiscal year 1995.

On this basis, under the auspices of the Cabinet Councillor's Office on Internal Affairs, the first liaison meeting among the ministries and agencies concerned regarding the review of the system of exemption from the Antimonopoly Act was held in November 1993.

Furthermore, in the interim report of the Advisory Group for Economic Structural Reform (a private advisory body to the Prime Minister, chaired by Gaishi Hiraiwa, president of the Federation of Economic Organizations) published in November 1993, it was pointed out that economic regulations should be "eliminated in principle with only exceptional areas regulated" and the social regulations should also be kept to a necessary minimum, commensurate with their original purpose. The report proposed that the resale price maintenance system and cartels exempted from the Antimonopoly Act under individual laws should be abolished in principle within five years.

In the document "Regarding the Policy for Promoting Administrative Reforms Hereafter" adopted at the Cabinet meeting in February 1994, the active development of competition policy is referred to under the heading of "Encouragement of deregulation, etc.," and it is proposed that cartels exempted from the Antimonopoly Act based on individual laws should be reviewed from the viewpoint of abolishing them in principle within five years. A conclusion regarding this proposal should be reached by the end of the fiscal year 1995. The resale price maintenance system should also be reviewed from the above point of view and a review of goods designated for resale price maintenance is to be carried out with the aim of withdrawing the designation for all such items by the end of 1998.

FTC approaches

Review of government regulatory systems

The FTC has been reviewing government regulatory systems from a medium to long-term perspective on competition policy for quite some time, and has requested the ministries and agencies concerned to review their respective systems in addition to announcing the Commission's own view on the basis of a factual survey conducted in 1982 in accordance with the recommendation of the OECD Council in 1979.

The Study Group on Government Regulations, etc. and Competition Policy consists primarily of third-party experts, which the FTC has convened from time to time. The Group followed up its work in 1989 by studying the current

status of the problems posed by government regulations, and the direction of their review from the standpoint of competition policy, and published its findings in December 1993. The report presents a basic philosophy regarding the review of government regulations, including the suggestion that the requirement for demand-supply adjustment in market entry regulation and price regulation should be abolished in principle. The report also points out other problems with government regulations in specific areas, and offers ways to modify them.

Review of system of exemption from the Antimonopoly Act

The Antimonopoly Act in principle prohibits cartels by firms and trade associations, yet certain cartels are exempted from the Act if these cartels meet specified conditions provided by law. Special provisions permitting such exemptions are set forth not only in the Antimonopoly Act itself, but also separately in specific laws such as the Small and Medium Sized Enterprises Organization Act and the Export and Import Trading Act. As a rule, the formation of exempted cartels requires notification to, or authorization by, the FTC or the competent authorities.

Cartels currently exempted from the Antimonopoly Act are being reviewed by the competent ministries and agencies with an eye to reducing their number. In 1992, 60 exempted cartels were eliminated, and in 1993 another 91 such cartels were abolished, including 89 equipment restricting cartels in the textile industry under the Small and Medium Sized Enterprises Organization Act. At the end of 1993, there were 71 exempted cartels whose authorization procedures required intervention by the FTC.

The FTC intends to continue to actively promote the review of the exemption system by persuading the respective competent ministries and agencies to review such exemptions through liaison meetings among the ministries and agencies concerned.

Regarding the system of exemption pertaining to the maintenance of resale prices, over which the FTC has authority, the Commission withdrew its designation, effective from 1 April 1993, of approximately half of the cosmetics and medicines which had been designated as qualifying for such exemption. Some of the goods whose designation as exempted items was not withdrawn at that time will be removed from the exemption list by the end of 1994. Remaining items will also be reviewed, taking into account the expected situation resulting from the curtailment of the exemption list, with the aim of withdrawing the designation from all such goods by the end of 1998.

Studies related to competition policy

Research on the actual state of transactions between firms

Interest has been recently growing both domestically and abroad in Japan’s inter-company trade practices and, in particular, an appraisal is being made of the practice of continuous transactions. In view of this rising interest the FTC has conducted surveys since 1990 on the actual state of transactions between firms in specific industries from the viewpoint of competition policy. These surveys have focused on selected areas among major

industries, and covered such aspects of trade between firms as the philosophy underlying the choice of trade partners, the factors and background of continuous transactions, the relevance of stockholding to transactions, and whether such transactions are exclusive and closed to outsiders in the market.

As part of this research, the FTC selected four industries including the flat glass, passenger car, auto parts and paper industries, and starting in March 1992, carried out surveys on the actual state of transactions between firms in these industries. The findings of this research were published in June 1993.

Although these surveys uncovered no violations of the Antimonopoly Act in any of the four industries, the Commission, from the perspective of making the market more transparent and promoting fair and free competition therein, pointed our several matters which should be taken into consideration from the viewpoint of competition policy, and expected the firms concerned to make efforts at voluntary improvement.

Six months after the publication of the report, the FTC examined measures taken independently by the relevant firms in the surveyed industries, and found that they had made or were making serious efforts to improve their trade practices. The Commission will continue to observe how they implement the measures for improvement (see FTC/Japan Views No. 17 for an outline of this report).

Activities of trade associations and problems under the Antimonopoly Act

The Study Group on Trade Associations consists mainly of third-party experts, which the FTC has convened from time to time. The Study Group examined problems under the Antimonopoly Act in relation to the activities of trade associations based on the results of questionnaire surveys addressed to nationwide trade associations, organized on an industry-by-industry basis, and published its findings in March 1993. The report presented principles such as the need to ensure openness, non-discrimination and transparency in the activities of trade associations; interpretation of the Antimonopoly Act regarding such activities as restrictions on membership in trade associations, their standard and certification systems, and voluntary regulation; and concepts regarding the relationship between trade associations and public administration (see FTC/Japan Views No. 16 for an outline of this report).

Import-export restrictions and competition policy

The Study Group in International Problems Relating to the Antimonopoly Act consists mainly of third-party experts, which the FTC has convened from time to time. The Study Group examined the actual condition of import-export restrictions arising from trade friction caused by the expansion of international trade (safeguards, anti-dumping measures, voluntary export restraints, the setting of numeric targets to increase imports and problems under competition policy). Its findings were publicized in a report released in June 1993. This report, in examining import-export restrictions arising from trade friction, notes their effect on competition and consumer interests in the markets of both importing and exporting countries and the proper allocation of worldwide resources, and presents, in addition to ways of

dealing with import-export restriction measures, the basic philosophy that careful consideration must be given to maintaining competition and upholding consumer interests (see FTC/Japan Views No. 16 for an outline of this report).

D. LUXEMBOURG

[Original: French]

The Government supplied the UNCTAD secretariat with a copy of its competition legislation:

Law of 20 April 1989 amending and supplementing:

1. The Law of 17 June 1970 concerning restrictive business practices;

2. The Law of 7 July 1983 amending the Law of 30 June 1961 aimed, inter alia, at repealing and replacing the Grand-Ducal Decree of 8 November 1944 establishing a price office.

We JEAN, by the grace of God, Grand-Duke of Luxembourg, Duke of Nassau:

Having heard Our Council of State;

With the assent of the Chamber of Deputies;

Considering the decision of the Chamber of Deputies of 22 February 1989 and that of the Council of State of 28 February 1989 to the effect that there is no cause for a second reading;

Hereby enact:

Article 1. The last paragraph of article 6 of the Law of 17 June 1970 concerning business practices is repealed and replaced by the following provisions:

In the performance of their duties, the designated officials or employees shall have the widest powers of investigation. If in possession of an authorization issued by the Minister responsible for the economy, they may inspect, in situ, any book-keeping or other supporting documents. They shall be empowered to question the interested parties and any other persons in a position to provide useful information.

If necessary, they may ask the persons investigated to supply additional information, in writing, concerning specific matters.

In this case the persons concerned shall be entitled to be heard and to be assisted by an adviser.

They shall be empowered to request the assistance of the police.

Article 2. Article 9 of the Law of 7 July 1983 amending the Law of 30 June 1961 aimed, inter alia, at repealing and replacing the Grand-Ducal Decree of 8 November 1944 establishing a price office shall be supplemented by a new paragraph 4 reading as follows:

Infringements and attempted infringements of the general and individual measures and of the instructions, communiqués and notices extended by virtue of the previous two paragraphs shall be prosecuted and punished in accordance with the provisions of article 8.

E. NETHERLANDS

[Original: English]

The Government supplied the UNCTAD secretariat with the following information:

Main developments

As of 1956 the Dutch approach to competition policy is one based on the so-called abuse-principle. Cartel agreements or the conduct of dominant enterprises which violate the public interest have to be formally declared abusive in order to allow the Ministry of Economic Affairs to take individual or general measures to remove these anticompetitive practices. The legal basis for this is the Dutch Economic Competition Act (Wem).

As a result of this, in the past the enforcement of the Wem has been mainly focused on individual cases. A general ban on certain types of anticompetitive agreements has only been applied on collective resale price maintenance and resale price maintenance in certain sectors and on collusive tendering in the building and construction sector.

As from the beginning of the 1990s the Government started a major overhaul of competition policy and legislation to bring these in line with the European Union and the main member State countries. In this respect two parallel tracks are followed.

The first track implies:

- the introduction of three general prohibition decrees based on the existing Economic Competition Act. Each decree deals with a specific group of restrictive agreements. These imply prohibition of horizontal price agreements, a ban on market-sharing agreements and prohibition on collusive tendering for all sectors

- intensification of the competition policy against the abuse of market dominance

- amendments on the Wem to increase its effectiveness.

The second track to intensify competition policy will be the replacement of the existing Economic Competition Act (Wem) by a new competition act which

will be based on the principles of the European legislation towards competition: restrictive agreements and practices will be prohibited as well as the abuse of market dominance by one or more enterprises.

In the following these different tracks will be described successively. Below the application of Wem in individual cases in the period from 1 July 1992 to 30 June 1993 will be described. Furthermore the competition policy towards some general issues concludes this annual report.

First track: general prohibition decrees, competition policy against the abuse of market dominance, amendments on the Economic Competition Act

Ban on horizontal price agreements

On 27 November 1992, the Council of State recommended in favour of the general invalidation of horizontal price maintenance, on the basis of article 10 of the Wem.

Partly as a result of this, the Royal Decree of 4 February 1993, invalidating stipulations on horizontal price maintenance in competition arrangements (Statute Book 80; Horizontal Price Maintenance Decree) was passed. The Decree took effect as of 1 July 1993. In principle, the Decree prohibits all pricing arrangements, on both the purchasing and the supply side of the market; between both enterprises and practitioners of the liberal professions, regardless of whether or not such enterprises or practitioners perform similar or related functions. A number of exemptions are made, relating mainly to other national or European Community legislation. Exemption of "de minimis" cases is also included. Exemptions on this Decree will only be granted if this is required in the general interest. This criterion will be handled according to the dispensation criteria of article 85, clause 3 of the EEC Treaty. A total of 50 applications for dispensation have been submitted by 1 July 1993.

Ban on market-sharing agreements

The Economic Competition Commission, in its advisory report of 9 December 1992, is in favour of general invalidation of market-sharing agreements, on the basis of article 10 of the Wem.

The Second Chamber of Parliament has been informed on this by letter of 26 February 1993 (Second Chamber Documents II, 1992/93, 22 093, No. 9). This letter included a description of the contents of the draft Market-Sharing Agreements Decree. The Standing Second Chamber Economic Affairs Committee approved this in a debate on 27 April 1993 (Second Chamber Documents II, 1992/93, 22 093, No. 10).

The draft Order in Council is now sent to the Council of State for advice. It is expected to be in force as of June 1994.

The general invalidation of market-sharing agreements will prohibit quota agreements, capacity control agreements and agreements on market-sharing by

regions, customers, suppliers or orders. As with horizontal pricing agreements, there will be some exemptions to the prohibition on market-sharing, as well as limited scope for dispensation.

Ban on collusive tendering

On 7 December 1992 the Economic Competition Commission gave its advice on proposals for general invalidation of collusive tendering agreements, on the basis of article 10 of the Wem. The general prohibition will cover all collusive tendering agreements, regardless of the sector in which they are applied. Again, this prohibition will contain a number of exemptions and limited scope for dispensation. This Order in Council will replace the existing Construction Sector Competition Arrangements Decree (Statute Book 1986, 676) and is also intended to create a regime which answers to the objections of the European Commission to the existing Order in Council. The Economic Competition Commission endorsed these proposals in its advisory report. A description of the contents of the Order was sent to the Second Chamber by letter of 26 February 1993 (Second Chamber Documents II, 1992/93, 22 093, No. 9). The Standing Second Chamber Economic Affairs Committee approved the contents of that letter in a debate on 27 April 1993 (Second Chamber Documents II, 1992/93, 22 093, No. 10). The draft Order in Council was sent to the Council of State for advice on 15 June 1993. It is expected to be in force as of June 1994.

Intensification of policy against abuse of market dominance

By letter of 9 September 1992 (Second Chamber Documents II, 1991/92, 22 093, No. 6), the Second Chamber was notified of the outcome of a study conducted by the economic research agency NERA, with the assistance of Dutch experts, into more effective means of controlling abuses of monopoly positions. The researchers concluded that the Wem contains adequate legislation for controlling abuse of market dominance and that this has been applied with reasonable success in the past. The (preventive) effect of the enforcements was nevertheless modest. The Wem does not ban abuses as such, but allows for prohibition in individual cases of abuse. Bans therefore have to be imposed anew in each individual case. The current system does not provide for administrative fines. The preventive effect can be reinforced by aiming for greater publicity on any order on this subject. The latter point will be resolved through an amendment of the Wem, making requests for advice to, and advisory reports by the Economic Competition Commission public (see below).

Amendments of the Wem

To increase the effectiveness of the application of the Wem, the Council of State gave its recommendations on proposals to amend the Wem on 5 July 1993. The amendments involve changes aimed at increasing the effectiveness of the Act. The primary changes are an expansion of the scope of the Act to cover all practitioners of the liberal professions, improved possibilities for action against restrictions of competition which are non-binding in law, publication of requests for advice to and advisory reports by the Economic Competition Commission, the introduction of supervisory powers and increase of sanctions.

Second track: a new competition act

The intensification of competition policy is expected to be concluded with the introduction of a completely new competition legislation. This new competition act will be based on the principle of prohibition, in line with the European rules of competition: restrictive agreements and practices will be prohibited as well as the abuse of a dominant position by one or more enterprises.

Some of the main features of this new legislation will be:

- as a general rule all restrictive agreements and practices are prohibited

- in principle all general exemptions introduced by the European Commission under article 85 will be applicable under the new act

- individual dispensation may be given in some cases. The criteria of article 85 will be applied

- enforcement by criminal law will be changed in a system of administrative enforcement. Fines will be in accordance to the European antitrust fines

- an independent administrative body, acting under the political responsibility of the Minister of Economic Affairs, will be charged with the implementation and enforcement of the law, starting investigations, fining infractions and deciding on dispensation in individual cases

- abuse of dominant positions will be prohibited in accordance to article 86 of the EU Treaty.

Work is now in progress to ask the Social and Economic Council (SER) and the Economic Competition Commission their advice on this. After that the advice by the Council of State is obligatory, as on all legislation submitted by the Government to Parliament. After the advisory procedures Parliament will deal with the proposed competition law. The new competition act is expected to take effect in 1997.

Operation of national and international market forces

Competition and regulation

Wider operation of free market forces is needed to increase the dynamism of the economy. Competition policy has therefore been brought more closely into line with that of the European Commission and neighbouring countries.

The Netherlands operates an abuse system: action can be taken against competition arrangements and monopolies under the Wem, if these are deemed to conflict with the general interest. In line with adjustments which have taken place, or are taking place elsewhere in the European Community, a start has now been made on the replacement of the abuse system by a prohibition system.

The Horizontal Price Maintenance Decree (Statute Book 80) took effect as of 1 July 1993. As a result, competition arrangements which restrict free pricing are now generally invalidated and prohibited. Similar measures will follow at the end of this year for collusive tenderer's compensation and market-sharing agreements.

The urgent intensification of competition policy also requires amendment of the Wem on a number of points. The act will in future cover all practitioners of the liberal professions and non-binding agreements between businesses, including "coordinated action in practice". The possibilities for enforcement and control will also be improved. Requests for advice to, and the advisory reports of the Economic Competition Commission will be made public. These proposed amendments were submitted to Parliament in early September.

Intensification of policy is not only a question of reforming the regime, but also requires prompt handling of complaints. A review of this is presented in the annual report on the Wem (Addendum 12).

Together with the above restrictions, a completely new competition act based on the prohibition principle is now being prepared. The Social and Economic Council (SER) and the Economic Competition Commission will be asked for their recommendations on this in the autumn. It is explicitly intended that the new act should also allow scope for constructive forms of collaboration, such as partnerships in the areas of technology research and development or of distribution.

Strengthening the allocative function of the market means that more scope must be allowed for the free play of market forces. This scope is limited by agreements which regulate the behaviour of the market parties themselves (competition agreements, self-regulation) and by rules of a public nature (regulation). An intensive competition policy and restraint in legislation are therefore basic conditions for the effective operation of market forces. In other words, policy will not be effective enough if we are "tough" on business agreements in a particular sector, but at the same time ignore the restrictions of legislation and regulation on the possibilities for competition.

As a guideline for the future, this means that the consequences for the operation of free market forces must play an important role in policy in many different areas, both those which have traditionally been heavily regulated, such as the health care sector and the liberal professions, and in newer areas such as the environment. This certainly need not be at the expense of the primary objectives of policy in these areas.

F. NIGER

[Original: French]

The Government stated that:

The Republic of the Niger has not adopted a law regulating restrictive business practices. However, several legislative measures in the process of being adopted under the economic reform programme fit into this general context. These measures relate essentially to the following aspects:

- Restructuring and privatization of public enterprises;
- Establishment of conditions that favour the development and strengthening of the private sector;
- Dismantlement of the monopoly regime;
- Price liberalization through the adoption of Ordinance No. 92-025 of 7 July 1992 concerning prices and competition;
- Encouragement of foreign investment through the adoption of a new legislative code (Ordinance No. 89-19 of 8 December 1989 concerning the Investment Code in the Republic of the Niger) making it possible to grant foreign investors important facilities and guarantees;
- Liberalization of foreign trade;
- The imminent adoption of a Commercial Code (Book I has already been adopted and Books II and III are being finalized).

Other than the ordinary courts and the Directorate of Internal Trade and Prices, the Niger does not have a body specifically responsible for controlling restrictive business practices. Accordingly, reports on these practices are not available.

G. PERU

[Original: Spanish]

The Government supplied the UNCTAD secretariat with a text of its legislation:

Legislative Decree No. 701, of 5 November 1991, which provides for the abolition of monopolistic practices and practices that control or restrict free competition.

H. REPUBLIC OF KOREA

[Original: English]

The Government submitted the following report to the UNCTAD secretariat:

Changes in competition laws and policies

Summary of new provisions in competition law and related legislation

The implementation of Korea's Competition Policy is based upon "The Monopoly Regulation and Fair Trade Act" (hereinafter MRFTA), along with two other supplementary acts: "The Fair Subcontract Act" and "The Act on Regulation of Stipulation".

The MRFTA was most recently revised in December 1992 and took effect in April of 1993. This amendment is mainly designed to mitigate the economic power vested in large business concentrations.

Three major issues were addressed in the revised MRFTA: introduction of limitations on cross-debt guarantees between affiliated companies, exceptions to limitations on the amount of total investment to other companies by conglomerates, and enforcement provisions. Effective 1 April 1993, debt guarantees between affiliated companies of large conglomerates may not exceed 200 per cent of any one company's own capital. The conglomerates subject to this regulation have a three-year grace period to reduce debt guarantees that exceed the limit. The revised MRFTA expands exceptions to the limitation on the amount of total investment by conglomerates which requires the divestiture of stock holdings over 40 per cent of the net worth of the conglomerates. The MRFTA has also been revised to expand prohibition to include a wider scope of collaborative activities by trade associations and to adopt a penalty payment system to strengthen the deterrent effect of the MRFTA. The Enforcement Decree of the MRFTA was correspondingly revised in February of 1993 to limit the number of conglomerates subject to the limitations on the amount of total investment and debt guarantee to the 30 largest conglomerates in terms of assets, and upgrade the designation standards of market dominating enterprises from annual sales of more than 30 billion won to sales of more than 50 billion won.

The Fair Subcontract Act and the Act on Regulation of Stipulation were also amended in December 1992. The amendment of Fair Subcontract Act is intended to promote the balanced development of both subcontractors and prime contractors.

The revised Act on Regulations of Stipulation introduced the correction order system in order to enhance the effectiveness of the regulations on unfair stipulations and to bolster the standard stipulation system which is essential for protecting consumers.

Competition policy emphasis under the new Five-Year Economic Plan

Policy for repression of economic power concentration

(a) Gradual reduction of cross-debt guarantees

During the period of the new Five-Year Plan, the newly introduced policy on reduction of cross-debt guarantees will be effectively enforced to promote the reduction of economic power concentration. From April 1993, the Government issued restrictions on the 30 largest conglomerates limiting their ability to provide cross-debt guarantees to affiliated companies to only up to two hundred per cent (200 per cent) of its own capital, and to reduce guarantees in excess of the limit by 31 March 1996. The restriction will also require the conglomerates to prepare annual reduction plans in consultation with banking institutions to improve the customary practice of banking institutions that require redundant and duplicate guarantees.

(b) Adjustment of cross-investments

The current MRFTA provides restrictions on total stock holdings so that an affiliated company of a large conglomerate cannot own 40 per cent of its net assets or more in other domestic companies. However, investments necessary for enhancing international competitiveness such as investment for technology development is exempted from such restrictions. Therefore, there must be a balance between the competition policy to repress concentration of economic power and the industrial policy to strengthen international competitiveness. However, the Korean Fair Trade Commission also plans to review a method of lowering the limit of 40 per cent of net assets to prevent limitless diversification into unrelated businesses and to eliminate obstacles to divest unsuccessful ventures.

(c) Rational improvement of designation standards of large conglomerates

Conglomerates with total assets of 400 billion won or more have been designated as large conglomerates since 1987. Since 1993, however, the 30 largest conglomerates in terms of total assets have been designated as large conglomerate. However, in order to efficiently accomplish the goal of preventing excessive concentration of economic power, the current total assets standards are inadequate. Therefore, the designation standards will be supplemented by designating large conglomerates after taking into consideration several factors such as the number of affiliated companies, distribution of ownership, etc., in addition to total assets. Furthermore, government-invested corporations that have been excluded from being designated as large conglomerates will be included to promote equal treatment with civilian enterprises.

Creation of conditions to promote competition

(a) Development of a fair trade system that meets international standards

Recently, the competition policy has become a main issue of international negotiations. Since the international contract review system

may become a trade issue, the KFTC plans to enhance and develop the review standards of unfair trade practices in line with international standards.

(b) Development of inspection system on unfair trade practices

As alleviation of government regulation and promotion of self-control are continually in progress, there is an increasing possibility of unfair concerted practices such as price-fixing. Thus, inspection on such practices will be intensified. The KFTC plans to focus on enunciating and correcting concerted activities related to price in the service industry, concerted activities by trade association instructions, or the Government's implied administrative guidance. In addition, a monitoring system will be developed to prevent any unfair trade practices. The KFTC will consider measures to prevent any concerted bidding or unreasonable low price bidding, and it will intensify investigation and analyse market trade structure by industry and business type and customary trade practices.

(c) Establishment of the subcontracting order

In order to reinforce protection of subcontractors, the Government plans to expand the applications of the Fair Subcontract Act during the New Five-Year Economic Plan. In the case of subcontracting in manufacturing between small and medium-sized companies, revenue standards will be added to the employees standard to widen the scope of the subcontractors subject to protection. In construction subcontracting, the application of the Fair Subcontract Act will also be extended. New industrial sectors such as software the industry will be subject to the Fair Subcontract Act. Furthermore, investigation activities by its own motion would be expanded in order to inspect and correct unfair trade practices more efficiently. The Government will endeavour to establish the subcontract order through education, promotion, and extended distribution of sample subcontract agreements.

(d) Prevention of unfair trade practices in the public sector

The KFTC will monitor and correct unfair trade in the public sector, such as in government-invested enterprises, and correct irrational policies that give rise to unfair trade practices. In order to achieve this goal, the KFTC will inspect and correct any violations through annual periodic investigations of major government-invested enterprises, and publicly note any unfair trade practices in the public sector and enact guidelines for prior prevention and inspection.

Enhancement of the competition policy system

(a) Establishment and management of the MRFTA compliance programme

To encourage voluntary compliance with the MRFTA, the private sector will be encouraged to establish and manage the MRFTA compliance programme will be large conglomerates and market-dominating businesses, and in later years, the programme will be expanded to include other businesses.

(b) Organization of the fair competition committee

By organizing and managing a fair competition committee on which the Government and civilians can participate together, violations of the MRFTA can be prevented. The fair trade committee will receive feedback from industry which will be utilized toward formulating a more effective competition policy, and to support fair trade based on the initiative of the private sector.

(c) Activation of prior consultation on laws that restrict competition

In order to prevent establishment of any regulation that restricts competition in advance, the current Fair Trade Act requires the chiefs of central administrative agencies to consult with the KFTC in advance before the enactment of legislation or administrative disposition of laws that restrict competition. By supplementing detailed regulations on the consultative process and consultation topics the prior consultation process will be activated.

International cooperation

(a) Bilateral cooperation

The Fair Trade Commission of Korea took part in several cooperations with foreign countries in 1993. In June 1993 the 4th annual meeting of Korea and Japan was held in Seoul and the 5th meeting is scheduled to be held in Japan in June 1994.

This bilateral meeting started in 1990 and has contributed to promote the cooperation between two organizations in the area of competition policy. Both parties have exchanged their experiences and information on their implementation of competition law and development of competition policy.

A working level dialogue was held with United States Department of Justice (Anti-trust Division) in February and April of 1994, to discuss the revision of regulations on international agreements and provisions on the premium and advertisement. Bilateral cooperation with France was initiated by the visit of vice-president of Conseil de la Concurrence in October 1993. An advisory meeting with the Republic of China was held in April 1993 in Seoul to support the legislation of fair trade law in China.

(b) Multilateral cooperation

Korea participated in the OECD competition law and policy committee (CLP) as an observer status in July 1993 to facilitate the multilateral level of cooperation on competition policy. Korea attended the 64th CLP meeting in December 1993 and explained Competition Law and Policies of Korea to OECD countries.

I. THAILAND

[Original: English]

The Government supplied the UNCTAD secretariat with information on recent developments in legislation and in the implementation generally of its legislation:

1. To control the Restrictive Business Practices in Thailand, the Government by the Central Committee, set up under the Price Fixing and Anti-Monopoly Act, 1979, oversees all business conducts nationwide. The Office of Central Committee is located in the Department of Internal Trade. The department, however, is more favoured in using administrative measure. Whenever the contravened practices are monitored, the department will ask those entrepreneurs to stop practising such conducts. The legal measure will be used when the administrative measure could ineffectively curb the conducts. The administrative measure has been performed very well in controlling the restrictive business practices. There is no case filed against any entrepreneurs.

2. Thailand has been regulating the restrictive business practices by using the Price Fixing and Anti-Monopoly Act, 1979 for almost 20 years. Some articles of the Act appeared to be obsolete for the current circumstances. They are inappropriate to apply to currently changing economic environment. To upgrade the regulating law to have some more standard internationally and follow the government policy of free and fair trade, the Department of Internal Trade proposed two new drafts of law: the Competition Act and the Price Fixing Act. The draft of Competition Act is designed to conform to the model law drafted by the UNCTAD. There is not much changes in the draft of Price Fixing Act from its content in the Act of 1979. These two drafts are now under consideration of the government cabinet. Then they will be submitted for the Parliament’s approval. The approval of these two Acts are expected to contribute a lot of prosperity and good opportunity for doing business and investing in Thailand.

3. The department has a programme to send some officials to other countries to learn about the implementation of the competitive law. This programme is intended to exchange information and experiences between officials of the competition authorities. Moreover, the department also asks the Office of Commercial Affairs, the Royal Thai Embassy in various countries to provide information about the implementation of competitive law in foreign countries. This information will be used for studying, developing and implementing the competitive law in Thailand.

4. The Office of Central Committee of Price Fixing and Anti-Monopoly is located in the Department of Internal Trade. The department is assigned to observe and monitor the business conducts nationwide. The department is responsible to report any kind of contravene to the Central Committee to regulate the business conducts according to the law.

II. REPLIES FROM REGIONAL GROUPINGS

ORGANISATION FOR ECONOMIC COOPERATION AND DEVELOPMENT (OECD)

[Original: English]

The OECD secretariat transmitted the following report to the UNCTAD secretariat:

III. COMPETITION POLICY (DAF)

A. OBJECTIVES

Demonopolization and the creation of competitive markets is an essential element of structural reform in the CEECs and NIS. The objective of the programme is to assist with the development of appropriate competition laws and their enforcement by providing advice in the drafting of legislation and enforcement guidelines and training of competition officials in the application of new laws and concepts.

B. COMPONENTS

The programme consists of:

	Activity number	
GWP	1.2.3	Competition policy: drafting a competition law and enforcement guidelines and creating an enforcement programme
PIT Poland	12.2.3	Competition policy
NIS	20.1.4	Development of anti-monopoly programmes: preparation of anti-monopoly laws, regulations and guidelines
NIS		Technical Assistance to the Russian Anti-Monopoly Office; CEECs/NIS Competition policy training seminars (activity will be reviewed separately in the chapter on training).

The programme is implemented through workshops, advisory missions and training activities. Part of the current activities are funded out of commitments made under the 1992 budget.

C. CURRENT ACTIVITIES

(a) Drafting competitions laws and guidelines

The assistance in drafting or amending the competition law began with Poland and subsequently proceeded to Russia, Lithuania, Estonia, Romania and Kazakhstan. The aim of this activity is to ensure:

- a proper separation of competition law from price controls,
- an appropriate definition of markets and market dominance,
- a distinction between horizontal and vertical restraints,
- the creation of a competition authority which is independent from other governmental departments.

This work draws on the expertise of competition agencies from OECD member countries and on the participation of experts from these agencies.

Work on the drafting of enforcement guidelines and regulation for public monopolies to the Russian competition law was undertaken in 1993. In February 1993 a seminar was held in Kiev on the legal and institutional infrastructure for competition policy in the Ukraine. The purpose was to advise the Ukrainian Government on the establishment and the enforcement powers of the Anti-Monopoly Committee. Experts from the United States, the United Kingdom, Germany, Poland and the EC Commission participated in the meeting. The advice was incorporated in a document which was transmitted to the Ukrainian Government. A follow-up meeting took place in September to advice the Ukrainian Anti-Monopoly Committee on specific aspects of competition law enforcement.

(b) Introduction into the economics of competition policy

In cooperation with the anti-monopoly offices of the transition countries, OECD is organizing a series of lectures and seminars on the economic concepts of competition policy. Participation is open to competition officials as well as academics and officials in areas related to competition policy such as privatization, regulation, trade and industrial policies. The seminars cover concepts such as economic efficiency, monopoly, market definitions, market dominance, horizontal and vertical restraints, merger review and international anti-trust cooperation. In April and May 1993 seminars were held in the Slovak Republic and in the Czech Republic. A Glossary of Industrial Organization Economics, Competition Law and Policy Terms has been published and made available to interested persons in CEECs and NIS.

(c) Regulation of natural monopolies

Work has started on the preparation of a conference on the regulation of natural monopolies. The conference will be held in spring 1994 in Budapest and bring together regulatory and competition agencies from OECD member countries and from CEECs/NIS.

(d) Assistance to the Russian Antimonopoly office

This activity consists of supporting the development of a legislative framework for competition and demonopolization programmes in Russia. In this context, workshops and expert missions provide assistance in drafting a guide for the enforcement of competition law.

It is also envisaged to organize a series of two-week training seminars in Moscow dealing with the basic principles and issues of competition policy. Participants from the Russian State Committee on Antimonopoly Policy will present actual cases which will be discussed by a panel of competition experts from OECD member countries. This activity is expected to improve the economic analysis applied to actual competition cases in the Russian Federation. Training could also be extended to judges of the arbitrazh courts which will be in charge of reviewing the decisions of the Antimonopoly Committee. This activity will be carried out in cooperation with the World Bank, the EC and OECD member countries.

D. COMMENTS

Most of the CEECs have now adopted comprehensive competition legislation although some of the early laws may need to be revised in the near future. OECD assistance in the coming years will focus on enforcement training, assistance in preparing commentaries and guidelines and help in improving existing laws. Work will also be required to encourage international cooperation in the enforcement of competition law, including the sharing of pertinent information. This ongoing work is based on the experience of the secretariat and OECD member countries and on the studies conducted by the OECD Committee on Competition Law and Policy. Cooperation with other international organizations, in particular EC and World Bank, will be strengthened to develop joint project design and implementation.

C. OECD TRAINING ACTIVITIES AT THE JOINT VIENNA INSTITUTE

The Joint Vienna Institute (JVI) sponsored by the OECD, the BIS, EBRD, IMF and the World Bank, is a cooperative venture whose purpose is to provide policy training for officials from economies in transition: the CCET coordinates the OECD training programme offered at the JVI and represents the OECD on the Executive Board of the JVI.

Competition Policy (DAF)

This programme teaches competition officials from CEECs and NIS how to analyse the cases that confront them daily. The following training modules have been developed for this programme:

- market definition;

- market dominance (identification and abuses);

- vertical restraints;

- horizontal restraints;

- demonopolization and privatization.

For each course, participants submit case studies summarizing actual cases they have considered or are currently investigating. These case studies are then discussed by a panel of experts from the OECD secretariat and member countries. The courses promote understanding of legal and economic analysis of competition cases. They also serve to develop networks among CEEC competition agencies for exchanges of experience on common problems. Such networks should prove to be especially valuable for cooperation among NIS competition authorities as the economies of these countries are still closely interconnected.

Training seminars were held in May, July and November.

One publication and two other reference documents have resulted from this work. The publication is the "Glossary of Industrial Organization Terms" which provides short explanation of commonly used competition policy terms and concepts. It has been widely circulated to CEEC competition offices. The other reference material consists of short lecture notes and a set of generic comments used as a guide for work on improving various countries competition laws.

Competition and Consumer Policy Division

East West Competition Policy 1994 Activities

Since the beginning of this year, the Division has been involved in several assistance activities for the transition countries.

In early January, the Division presented a one week "Introduction to the Law and Economics of Competition Policy" to employees of the Antimonopoly Committee of Ukraine. This seminar in Kyiv was assisted by Patrick Hughes of the Canadian Bureau of Competition Policy.

From 6 to 8 April, CCP hosted a three day visit by a delegation from the Russian State Committee for Antimonopoly Policy and Promotion of New Economic Structures ("Antimonopoly Committee") headed by its Chairman, Mr. Leonid Bochin. The meetings included discussion of proposed amendments to the Russian competition statute, and plans for future assistance. Our written comments regarding proposed amendments will soon be supplemented with comments on a new methodology defining the term "dominant position" and a methodology describing what constitutes "monopolistically high prices". We are also planning to help draft a methodology to assist in reviewing mergers and concentrations. This will include a visit to Moscow probably in early May. Several other areas of our assistance include:

1. assembling teams of industry experts to advise on applying the Russian demonopolization plan to specific industries (we provided extensive comments on that plan towards the end of last year) - clearly we will be looking for help from delegations in delivering this assistance;

2. advising on appropriate policy towards financial-industrial groups; and

3. helping to draft laws on organized commodity markets, and on competition in financial markets.

[For further Russian Antimonopoly Committee requests for assistance, Delegates should also consult the appended room document entitled "Request for Competition Policy Technical Assistance".]

The next offering of our Vienna seminar series is scheduled for 6-17 June, again assisted by staff from member country competition offices. There are plans for possibly two, one week Vienna style seminars to be held near Moscow. Organizational assistance for those seminars is expected from the Russian Privatization Centre.

From 30 May to 4 June the World Bank will be giving a training seminar in Tallinn, Estonia for competition officials from the three Baltic countries. We will be taking part in two days of that seminar.

At the end of June in Budapest, there will be a two and one half day conference on competition and regulation in network infrastructure industries ("Conference"). Over 100 delegates will be invited from some 15 countries in Eastern and Central Europe, the Baltic States, and the NIS. The Conference will address three principal themes:

1. why competition should be encouraged in network infrastructure industries, with regulation being confined to their network aspects;

2. how to foster equal access to networks by competing firms; and

3. how to design regulation so that its negative effects are minimized.

Four industries will receive extensive examination in the Conference: telecommunications; oil and gas pipelines; electricity; and railways.

In planning the Conference, the Division has worked closely with other parts of the OECD, i.e. the European Conference of Ministers of Transport ("ECMT"), SIGMA (the Eastern and Central European arm of the OECD’s public management improvement project), the International Energy Agency, and the Directorate for Science, Technology and Industry. The ECMT and SIGMA are also providing some financial assistance. We hope to significantly supplement that with moneys supplied by the World Bank. Many of the Conference panellists will be drawn from member countries’ competition and regulation agencies.

In July, the Division will be offering, with the help of Anna Fornalczyk (Poland) and Ferenc Vissi (Hungary), a one week seminar in Istanbul for high level officials of the Trans-Caucasus and Central Asian Republics of the former USSR. The idea is to explain the need for competition policy as part

of the transition to a market economy, and to provide advice on how competition authorities should be set up and on how they should relate to other government departments.

We wish to thank all the member country competition offices who have supplied expertise and personnel. Both those inputs have been vital in supplying much appreciated assistance to the countries in transition.

Request for

Competition Policy Technical Assistance

The Competition and Consumer Policy Division, with funding from the Centre for Cooperation with Economies in Transition, provides and facilitates the provision of technical assistance in competition policy to countries in transition from central planning to a market-based economy. This document represents one part of this effort, that of being a conduit for information.

The State Committee for Antimonopoly Policy and the Promotion of New Economic Structures of the Russian Federation (Russian Antimonopoly Committee) has asked the Secretariat to pass onto OECD member countries the following requests for competition policy bilateral technical assistance.

(1) The Russian Antimonopoly Committee requests practical assistance in examining specific cases by sending experts to work in central and regional bodies of the Russian Antimonopoly Committee.

(2) The Russian Antimonopoly Committee would like to discuss issues of antimonopoly legislation pertaining to competition policy and State subsidies, as well as practical assistance in analysis of cases in this area.

(3) The Russian Antimonopoly Committee is interested in internships of its personnel in antimonopoly bodies of OECD Member countries.

One component of the Privatization Implementation Assistance Loan (PIAL) negotiated between the World Bank and the Government of Russia relates to the provision of technical assistance in the field of competition law enforcement and policy. Funds are available under the PIAL to cover the costs of items (1) and (3) above. Offices/agencies willing to assist Russia in any of the above areas should notify the secretariat.
