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by
R.Shyam Khemani*
(LECG, Europe)

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* Director, LECG (Law & Economics Consulting Group), Europe. The author is on leave (2000-2002) from the World Bank, Washington DC, where his responsibilities included providing technical assistance and advice on business environment and competition policy matters. He is also a former Chief Economist, Canadian Competition Bureau, and has served as an adviser to several Governments and competition offices. The views expressed in this paper are those of the author and do not necessarily reflect the views held by the staff in his current or past institutional affiliations. The author wishes to thank Mr. Philippe Brusick and Mr. Rajan Dhanjee for discussions, information and materials on the issue of exemptions and competition legislation in various UNCTAD member countries.

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Introduction

This paper discusses exemptions and exceptions granted to industries and certain types of economic activities and/or business transactions under competition law in a selected sample of developing and advanced industrial economies. A distinction is made in the use of the terms "exemption" and "exception" as they are generally applicable in the context of competition law policy. The term *exemption* refers to being "excused or free from some obligation to which others are subject". An *exception* is to be "excluded from or not conforming to a general class, principle, rule, etc."[1] However, it may be noted that while the terms "exemption" and "exception" (also "exclusion") have specific meanings within the context of particular national legal systems, they are often used interchangeably.[2]

For greater clarity, some examples may be useful. In some countries State-owned and operated enterprises are exempted from the purview of competition law, while private sector firms are not. Similarly, in some jurisdictions mergers and acquisitions (M&As) by firms that lead to market dominance or substantial lessening of competition may be prohibited, whereas in certain cases and/or jurisdictions exceptions for selected M&A transactions may be made if there are efficiencies or other offsetting benefits. In addition, the exemptions may be sectoral in nature and cover specific industries such as airlines and electricity supply or they may be non-sectoral and cover certain functional types of economic

[1] These definitions based on Funk & Wagnalls Standard Dictionary, 1991.

[2] See World Trade Organization, "Exceptions, Exemptions, and Exclusions Contained in Members' National Competition Legislation", document WT/WGTCP/W/172 (2001). This document contains a useful summary table which provides a bird's-eye view of various country and sectoral exemptions from and exceptions to competition law in different jurisdictions. See also Barry E. Hawk, "OECD Trade Committee study of the Sectoral Coverage (and Limitations) of Competition Laws and Policies" OECD, 1996. Mimeo.

arrangements such as specialization and rationalization agreements, and the development of product standards.[3] Generally speaking, exemptions tend to be broader in scope, as is the case with sectoral or industry examples, whereas exceptions tend to be more narrowly focused, often determined on a case-by-case basis, applying a rule-of-reason approach such as in selected M&A transactions and specialization agreements that while resulting in the lessening of competition may still be in the public interest. This paper discusses these various types of situations, which are described and illustrated in greater detail below. It should be noted that this paper is not intended to be an exhaustive survey of exemptions and exceptions contained in competition law(s) of different jurisdictions. The focus is on commonly found examples and discussion of the underlying rationale for having exemptions and exceptions to the broad application of competition law and policy.

While "best practice" advice suggests that competition law policy should apply to all sectors and firms in the economy engaged in commercial economic activity, in practice various types of exemptions and exceptions are granted for social, economic, and political reasons. The granting of exemptions and exceptions does not necessarily imply the weakening of competition law enforcement. Indeed, it may well be that such instances are necessary for furthering the objectives of competition law policy. For example, virtually all competition laws strictly prohibit horizontal price agreements between competitors, as they tend to lessen competition. However, various forms of non-price horizontal agreements do not necessarily have the same effect and may be in the public interest if inter-firm cooperation results in standardization of products, improved quality and increased information, so that consumers

[3] See UNCTAD, "Consultations on Competition Law and Policy: The Scope, Coverage and Enforcement of Competition Law and Policies and Analysis of the Provisions of the Uruguay Round Agreements Relevant to Competition Policy, and Their Implications for Developing Countries", Document TD/B/COM.2/EM/2 (1996).

have better choices. A review of such exemptions and exceptions, and the underlying rationale, is useful for re-evaluating the coverage of competition laws in some countries, and may also serve to guide other countries in the process of adopting or revising existing competition legislation.

The ensuing discussion is organized along the following lines. Section I discusses the general nature and scope of competition law policy, and the extent to which exemptions from and exceptions to its application may or may not be desirable. Section II describes the coverage of competition laws in a selected sample of countries. Section III focuses on the types of exemptions and exceptions that have been granted in different countries, and their underlying economic or other rationale(s). Section IV offers some conclusions and general policy recommendations.

I. The nature and scope of competition law policy

"Best practice" advice recommends that competition (antitrust or antimonopoly) law should be a *general law of general application;* that is, the law should apply to *all sectors* and to *all economic agents* in an economy engaged in the *commercial* production and supply of goods and services. In this regard, both private and public (i.e. State) owned and operated enterprises should be subject to the same treatment.

The interdependent nature of economic activity

There are fundamental legal and economic reasons for advancing the recommendation that competition law policy should be generally applicable. Entities engaged in the same or similar lines of activity should be subject to the same set of legal principles and standards to ensure fairness, equality and non-discriminatory treatment under the law. Such an approach will result in greater predictability and consistency in the interpretation and application of the law, and promote more transparency, accountability and confidence in the legal and other institutions responsible for the implementation of the law. It would foster "due process" under the law.

The economic reasons relate to the interdependent nature of economic activities conducted in different markets, and the promotion of allocative efficiency. Conditions prevailing in one market can affect prices and outputs in other markets either because one good or service is an input