Research Institute of Economy, Trade and Industry (RIETI)

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RIETI BBL Seminar Handout

"Competition Law in a Global Economy"

March 6, 2014

Speaker: Professor Frederic JENNY

http://www.rieti.go.jp/jp/index.html

Competition law in a global economy

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RIETI
Tokyo March 6 2014

Globalization of markets and the fragmentation of nation states

More than 100 new countries since 1947

1947	India	Pakistan				
1948	Israel					
1949	China	Indonesia				
1953	Cambodia	Laos				
1956	Morocco	Sudan	Tunisia			
1957	Ghana					
1958	Burkina Faso	Guinea				
1960	Cameroon Somalia Benin Gabon Niger Nigeria	Chad Madagascar Democratic Republic of the Congo	Central African Republic	Congo Mali Senegal Togo	Côte d'Ivoire Maurtania	Cyprus

More than 100 new countries since 1947

1961	**Sierra Leone**	**Tanzania**		
1962	**Burundi** **Rwanda** **Uganda**	**Trindad & Tobago**	**Samoa**	
1963	**Algeria**	**Kenya**	**Jamaica**	**Malaysia**
1964	**Malawi**	**Zambia**		
1965	**Angola**	**Gambia**	**Maldives**	**Singapore**
1966	**Botswana**	**Lesotho**	**Barbados**	**Guyana**
1968	**Equatorial Guinea**	**Mauritius**	**Swaziland**	**Nauru**
1970	**Fiji**	**Tonga**		

More than 100 new countries since 1947

1971	**Bahrain**	**Bangladesh**	**Qatar**	**United Arab Emirates**
1972	**Sri Lanka**			
1973	**Bahamas**			
1974	**Guinea Bissau**	**Grenada**		
1975	**Cape Verde**	**Comoros** **Mozambique**	**Sao Tome and principe**	**Suriname** **Papua New Guinea**
1976	**Seychelles**			
1977	**Djibouti**			

More than 100 new countries since 1947

1978	**Solomon Islands**	**Tuvalu**		
1979	**Saint Lucia**	**Saint Vincent**	**Kiribati**	**Micronesia**
1980	**Zimbabwe**	**Dominica**		
1981	**Antigua & Barbuda**	**Belize**		
1983	**St Kitts &Nevis**			
1984	**Brunei**			

More than 100 new countries since 1947

1986	**Marshall Islands**		
1990	**Namibia**	**Yemen**	**Armenia**
1991	**Kyrgyzstan** **Tajikistan** **Turkmenistan** **Uzbekistan** **Kazakhstan**	**Moldova** **Slovenia** **Ukraine** **Georgia**	**Belarus** **Estonia**
1992	**Azerbaijan**		
1993	**Eritrea**	**Bosnia and Herzegovina**	**Czech Republic** **Slovakia**
2002	**Timor-Leste**		
2011	**South Sudan**		

Globalization and the fragmentation of competition law systems

72 new competition regimes since 1998

1998	**Bulgaria**	**Gabon**	**Cameroon**	**Malawi**	**South Africa**	Mali		
1999	**Belgium**	**Indonesia**	**Thailand**	**Slovenia**	**Saint Vincent**	**Cyprus**	**Togo**	
2000	**Armenia**	**Fiji**	**Ghana**	**Ukraine**	**Lithuania**	**Morocco Cape Verde**	**Moldova**	**Uruguay**
2001	**Jersey**	**Malta**	**Slovakia**	**Kazakhstan**	**Antigua Barbuda**	**Saint Lucia**	**Bosnia Herzgovina**	
2002	**Latvia**	**Barbados**	**Papua New Guinea**	**Austria**	**Azerbijan**			
2003	**Ethiopia**	**Namibia**	**Tanzania**	**Barbados**	**Albania**	**Algeria**	**Mauritius**	
2004	**Luxembourg**	**Lithuania**	**Jordan**	**Lao RDP**	**Saudi Arabia**	**Vietnam**	**Paraguay**	

72 new competition regimes since 1998

2005	Serbia	Singapore	Egypt	Madagascar	Honduras	Macedonia	El Salvador
2006	Russia	Qatar	Nicaruaga	Honduras	Guyana	Montenegro	Columbia
2007		Nepal	Gambia	Dominican Republic	Swaziland	Uruguay	
2008	Mozambique	Syria	Bolivia	Ecuador			
2009	Botswana	Seychelles	Columbia				
2010	Burundi						
2011	Malaysia						
2012							
2013		Paraguay					

Interaction between national competition law systems and globalization

1) The proliferation and heterogeneity of competition law systems increases transaction costs and reduces the advantages (and the advance) of globalization.

But the proliferation of competition laws facilitates globalization

Interaction between globalization and national competition law systems

2) The globalization of economic activity (in a world characterized by unilateral juridictionalism in competition law enforcement) can limit competition in two ways :

- National competition authorities can take measures or allow transactions which protect competition domestically but limit competition in other jurisdictions <u>(conflicts)</u>

- National competition authorities may not be able to exercise their operational sovereignty and apply their law to transnational anticompetitive practices originating abroad and restricting competition on their territory. <u>(gaps)</u>

But the advance of globalization increases competition

Conflicts of competition laws

Potential conflicts in competition law enforcement

Legislators	Different Scope of Competition Law Exceptions/ exemptions	Agriculture SMES Industrial policy
Legislators	Substantive differences In competition law provisions	Parallel pricing Abus of dominance RPM
	Strategic use of Competition Law	
Convergence of NCA	Differences/ inconsistencies in substantive analysis Procedural difference	Rebates/discounts IP and essential facilities/Abuse of dominance
Cooperation between NCAs, Courts	Negative externalities in enforcement and gaps	Transnational Mergers Export Cartels
	Loss of operational Jurisdiction of NCAs	Unilateral Juridictionalism

Few actual conflicts

Cases	Year	Conflicts
Dyestuff	1972	Cartel
Uranium Westinghouse	1982	Cartel
Transatlantic Ocean Shipping	1983	Cartel
IBM	1985	Abuse of Dominance
Wood Pulp	1988	Cartel
De Havilland Alenia-Aerospatiale	1991	Merger
California/Hartford Fire Insurance	1993	Cartel
Boeing/McDonnell Douglas	1997	Merger
Air Liquide /BOC	1999	Merger
General Electric/Honeywell	2001	Merger
Microsoft	2004	Abuse of Dominance

Does the global antitrust system need to be fixed ?

Gerber: « As long as conflicts are few and minor in importance, the conflict-generating tendency of unilateral jurisdictionalism may be overlooked, but as these conflicts become more frequent and more costly, they will attract increasing attention and concern.

The limitations of the jurisdictional regime have not gone unnoticed, and efforts have begun to address some of them ».

Is the heterogenity of antitrust law systems unique ?

Consider also the insolvency of a multinational corporate enterprise,with assets, debtors and creditors scattered around the world. It is possible to address that insolvency through an aggregation of local bankruptcy proceedings conducted under national bankruptcy laws— one in each country in which assets of that enterprise are located. Yet without a global plan to identify all assets and to ensure that all creditors are treated similarly, no fair distribution can take place—and certainly the reorganization of that enterprise would be difficult. Here, then, the goal of equitable distribution of an insolvent enterprise's assets has shifted up to the global level.

Consider also : Securities, Environment, Corruption, Taxation, Intellectual Property etc…

Antitrust convergence as a response to globalization

The process of convergence: four models

External pressure
constrains the autonomy of countries

Race to the bottom
laxist policy

World society approach:
global culture
dominant model
OECD; ICN

Economic threat
of losing capital and competitiveness if inadequate regulation

Ideational pressures
leaders fear looking like laggards if they do not adopt similar policies

Neoliberal institutionalism
WTO
Trade agreements

Power of autonomous agents; choice among alternative policies
policy coordination

Elite consensus Approach
Economic Approach

Convergence in competition law and enforcement

Scope → Competition law adopted in a great many countries
In the 1990s and early 2000s (120 countries to date)

Goal → July 2001: Mario Monti: « **the goal of competition policy in all its aspects is to protect consumer welfare** »

Substance →

Vertical agreements: Commission Regulation 2790/1999 on vertical restrictions

Merger control: December 2003 **New European merger test** « **significant impediment to effective competition** »
Compare Horizontal Merger Guidelines with the European Commission's own guidelines

Abuse of Dominance: December 2008 Publication of EC guidance on exclusionary abusive behaviour by dominant firms

Convergence in competition law and enforcement

Instruments → Ex: All OECD countries (and many non-OECD countries) now have a **leniency** program. Many competition authorities now have **dawn raids** power and **settlement** procedures

Priorities → **Cartel enforcement**: OECD Hard Core Cartel Recommendation; increased severity. In the EU there were 21 cartel decisions in the period 1990-1999 and 66 decisions in the period 2000-2009 in the EU fines amounted to approx € 830 ml in the period 1990-1999 and to more than € 13 bl in the period 2000-2009).

Remedies → Some coordination: US/EU , others

Procedure

Fast convergence of instruments: ex. leniency programs

The first discussion on leniency programs happened at the OECD at the end of the 1990s following the adoption by the Council of the 1998 Recommendation on Hard Core Cartels.

In particular, the 2002 Report of the Committee on Fighting Hard Core Cartels: Harm, Effective Sanctions and Leniency Programmes promoted the use of leniency programs as one of the most effective, if not the most effective, enforcement tools to fight cartels in the OECD. When the report was drafted only a few OECD jurisdictions had a leniency/amnesty policy (US effectively since 1993; EU since 1996, Korea since 1997), while others had only announced that they were going to adopt similar programs (Canada, UK, Germany, France and Sweden).

Today, all 34 OECD jurisdictions have leniency/amnesty programs.

Areas where convergence is less obvious

-1) **Scope of competition laws** (state aid control/ mergers control/ abuse of buying power etc…..)

-2) **Relationship of competition authority with sectoral regulators** (cf UK model versus upcoming Dutch model or Australian model or New Zealand model)

-3) Positions on **type I versus type II errors** (Type I in US versus type II in Europe)

-4) **Substantive analysis of exclusionary abuses of dominance/monopolization** (including concept of essential facility, treatment of refusal to deal or discounts)

Areas where convergence is less obvious

6) **Relationship between competition law and consumer law**

6) **State Interventions** (between Europe and the rest of the world)

7) **Sanctions**, nature of sanctions (weak movement for criminal sanctions for HCC (for ex in UK and Ireland) but still a small minority of countries rely on criminal sanctions), level of sanctions

8) **Due process**

9) Institutional setting

Antitrust convergence: is the glass half empty or half full ?

This paper makes the case that despite different histories, cultures, legal systems, and statutes, and not withstanding occasional differences, the competition authorities of the United States, the European Union (EU), and other developed countries have substantially converged toward a consumer welfare based model of antitrust enforcement.

Substantial Antitrust Convergence, Margaret Bloom, ABA Antitrust Section Spring Meeting, Washington, DC March 30 – April 1, 2005

Antitrust convergence: is the glass half empty or half full ?

"(…) the factors that influence decisional outcomes in the US system are often virtually unique. To assume that competition law systems throughout the world are likely to converge around them is to underestimate this uniqueness and the impact of this uniqueness on the mechanics of antitrust convergence".

International Antitrust Convergence:The Real and Imagined Roles of U.S. Antitrust Law, David J. Gerber2005 ABA Spring Antitrust Meeting, March 30, 2005, in Washington, D.C.

The future of convergence

« Given the relative weakness of its impetus factors and the obstacles that convergence face there is little basis for expecting extensive convergence to occur (at least in the near future) across wide ranges and dimensions of competition law and on a global basis ».

?

David Gerber, « Global Competition law, markets, and Globalization, Oxford University Press, p289

Cooperation agreements as a response to globalization

Cooperation

Even, if all countries had the same competition law, in a world characterized by unilateral juridictionalism, there would still be conflicts in the treatment of global competition tissues:

-Each country's competition authority would have limited operational jurisdiction

-There would be gaps in enforcement

Thus a system of cooperation is a necessary complement to convergence.

International cooperation on competition

- **Scope** Bilateral (EU/USA USA/Can. Aust/NZ)
  Regional (Mercosur, Andean Pact, Caricom)
  Plurilateral (OECD)
  Multilateral (Unctad, WTO)

- **Context** Agreements between competition authorities
  Agreements between governments

- **Levels** Consultations
  Technical assistance
  Exchange of non confidential information
  Positive and negative comity
  Joint investigations
  Exchange of confidential information

- **Types** « optional » (ex bilateral)
  « commitments » (ex WTO)

Political economy of cooperation

International cooperation significantly enhances the autonomy of EU and US competition authorities.

If cooperation fails and competition authorities clash over individual cases, they become susceptible to external influence. Then,

-Governments may try to intervene;

-Firms can choose forums;

-Judges get the ultimate say in cases of conflict.

By contrast, trans-governmental networking makes competition authorities institutionally more independent and allows them to privilege more clearly undistorted competition over other policy goals.

Michael Blauberger, The Governance of Overlapping Jurisdictions. How International Cooperati on Enhances the Autonomy of Competi ti on Authorities, Transformation of State Working paper 102, Bremen 2009

Regional cooperation on competition

-1) The economy of a country is usually more deeply integrated with other economies of the same region than with more distant economies;

-2) Furthermore neighbouring countries may have fairly similar levels of economic development and share the same legal systems;

-3) Finally regional agreements are easier to negotiate hence the idea of regional cooperation on competition.

A large number of regional agreements on competition (often in the context of a trade agreement establishing a custom's union or a common market) have developed in Latin America and Africa : ex Mercosur (4 member states, custom union) , Andean Community (5 member states, , Caricom (15 member states,single market economy), Waemu (9 member states, common market), Ecowas (15 member states economic community), Comesa (19 member states, common market), SACU (5 member states, custom union), East African Community (EAC) (3 states, custom union) etc..

Regional cooperation on competition

A number of the agreements require the member States to establish a domestic law competition laws

Some agreements provide for a « federal » competition law even if all countries party to the agreement do not have a domestic competition law (ex Caricom, Waemu);

Some agreements provide for the direct application of the federal law in member states

Other agreements provide for a cooperation mechanism between the Member States or their competition authorities (ex Comesa, Mercosur);

Regional cooperation on competition

Uneven results:

- Contribute to raising the awareness of member states on the usefulness of competition and competition law enforcement (ex Arab League, Asean)

- Some « peer » pressure put on member states to adopt or upgrade their national law but not always sufficient (ex Mercosur, Caricom)

- A few examples of cases adjudicated at the « federal level » (ex Waemu, Comesa on merger control)

- Useful for conflicts avoidance and resolution

- General technical assistance between member countries

Gaps in competition laws

What is Potash ?

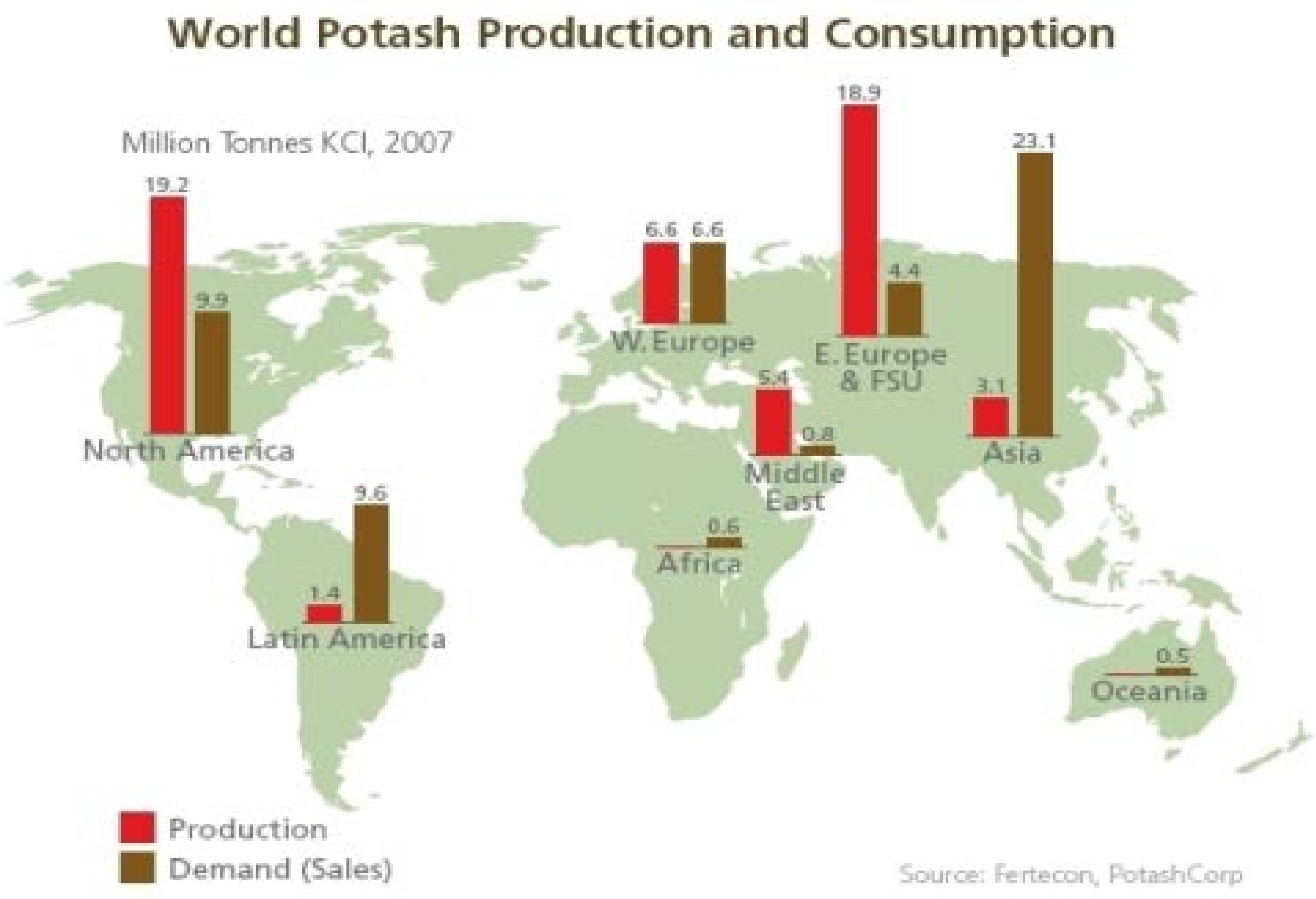
Potash is, in effect, a capital improvement to land. It clearly improves crop yields.

The demand for potash is directly driven by the demand for crops, which can be cyclical and can depend on whether the crops are consumed directly or are used as feed for livestock.

(…) when food prices rise, there is incentive to increase crop yields by adding potash to the soil.

One final characteristic is important to note. Unlike other mining products, it is relatively costly to store potash because it cannot be left out in the open air. This means that inventories typically constitute only around 1 per cent of supply.

For these reasons, Potash is very much a just-in-time good with a short cycle between production and usage.


World Potash Production and Consumption
Million Tonnes KCl, 2007
19.2
9.9
North America
9.6
1.4
Latin America
6.6
6.6
W. Europe
18.9
4.4
E. Europe & FSU
5.4
0.8
Middle East
0.6
Africa
23.1
3.1
Asia
0.5
Oceania
Production
Demand (Sales)
Source: Fertecon, PotashCorp

The demand drivers for potash

1) Higher incomes in developing economies
As more people move up from subsistence diets, their food consumption habits will change. This will mean more calories per day from staple grains, and it will also mean increased demand for protein-rich diets, significantly increasing meat consumption. (…)

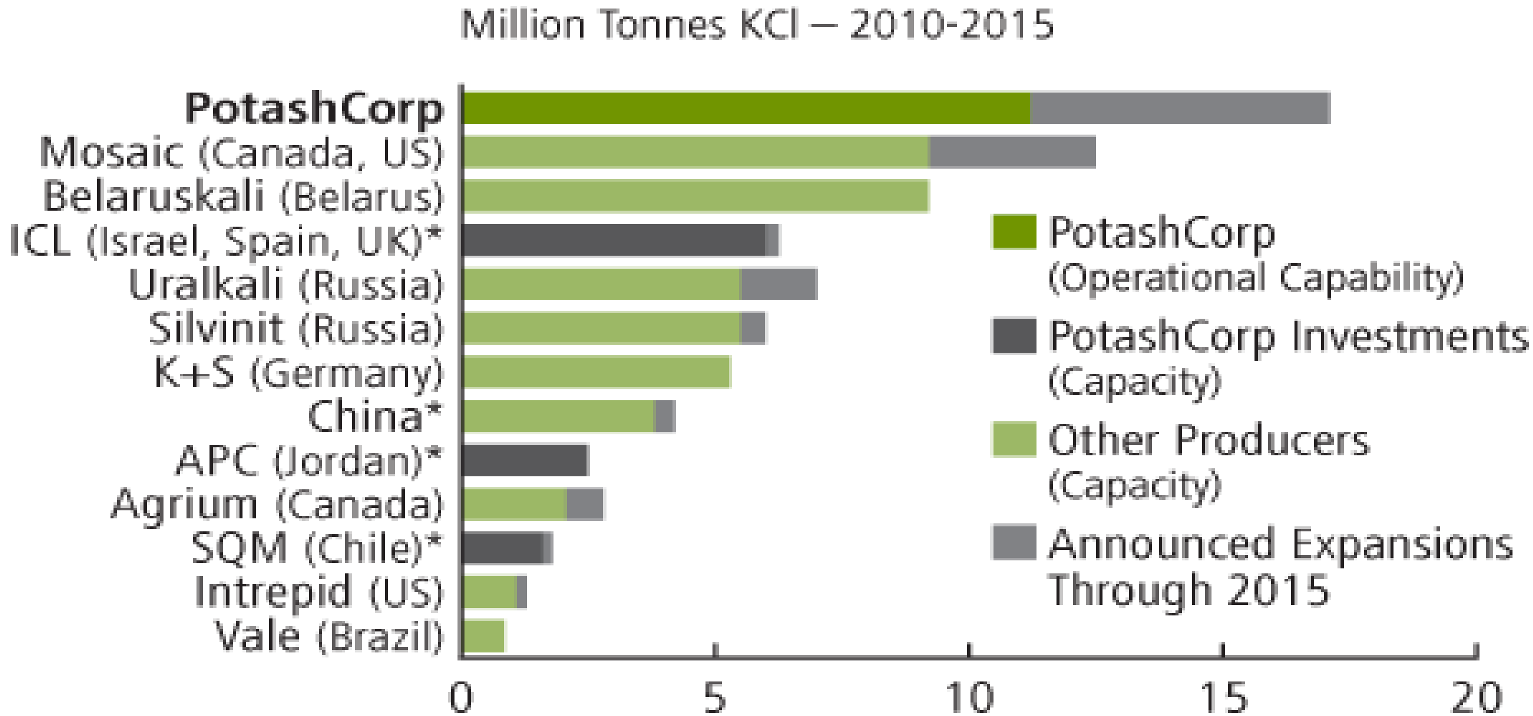
2) Growing global population
The world's population will rise from nearly seven billion today to more than nine billion by 2050. Even if per capita demand were unchanged in the coming years, world food consumption would continue to rise because the world's population continues to grow

3) Declining amount of arable land
The inventory of arable land available for agriculture purposes is gradually shrinking. Consequently, the remaining farmland needs to be more productive and deliver higher-quality yields.

4) Low yields in developing countries
Crop yields vary considerably by country, and yields are often much lower in developing countries than they are in developed countries.

World Potash Producer Profile

PotashCorp growth potential is unmatched

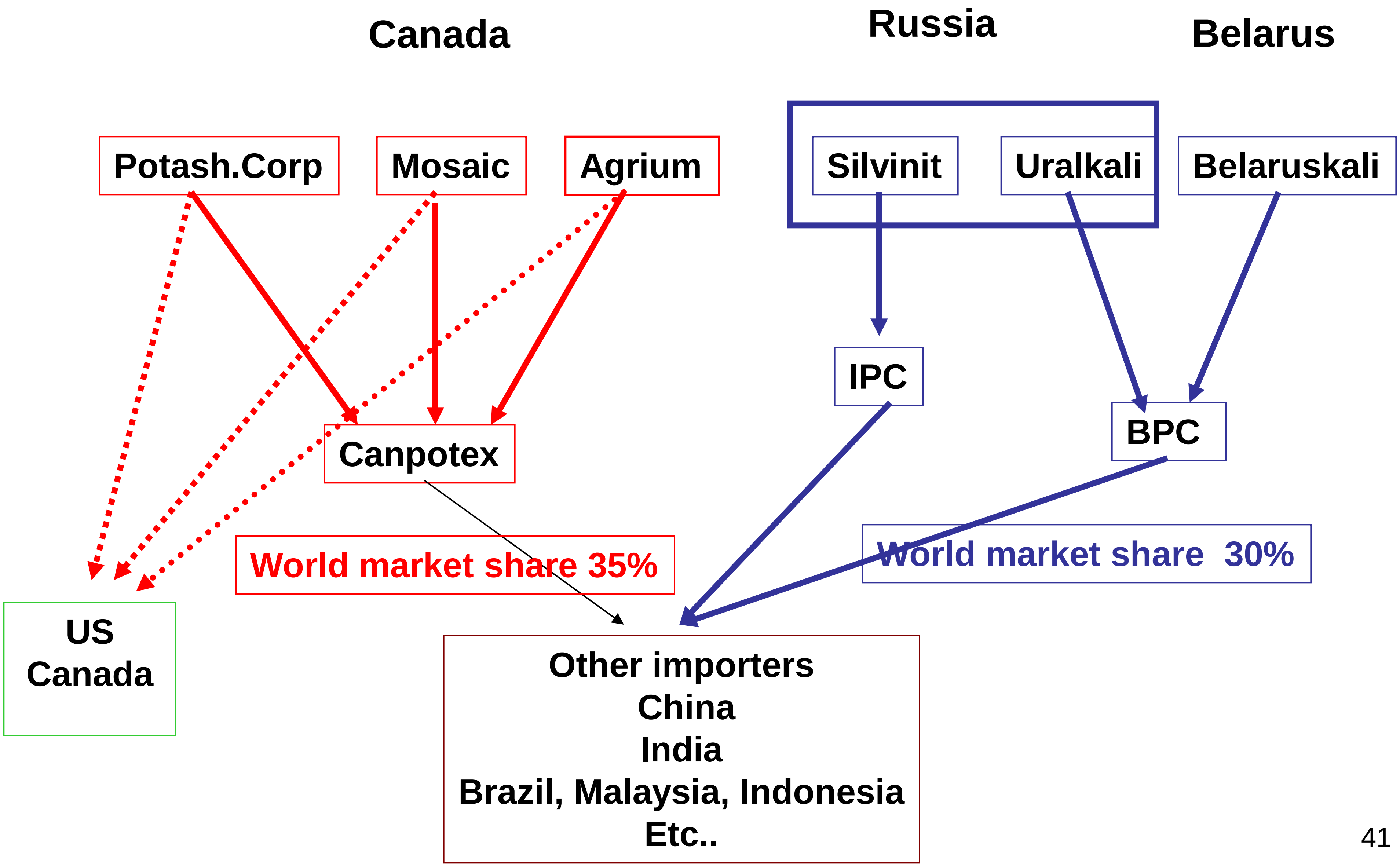


* PotashCorp investments: ICL (14%), APC (28%), SQM (32%) and Sinofert (22%)

Note: PotashCorp based on operational capability while competitor capacity is stated nameplate, which may exceed operational capability.

Source: Fertecon, CRU, IFA, PotashCorp

The potash trade



Canpotex

“(PCS) uses its jointly owned subsidiary, Canpotex, to coordinate sales with Mosaic Co. and Agrium Inc. into export markets outside of North America and counts on market discipline among the three producers in determining volumes for North America (….)” (1).

1) Saskatchewan in the Spotlight: Acquisition of Potash Corporation of Saskatchewan Inc.—Risks and Opportunities, The Conference Board of Canada, October 1 2010, p15

East West Collusion

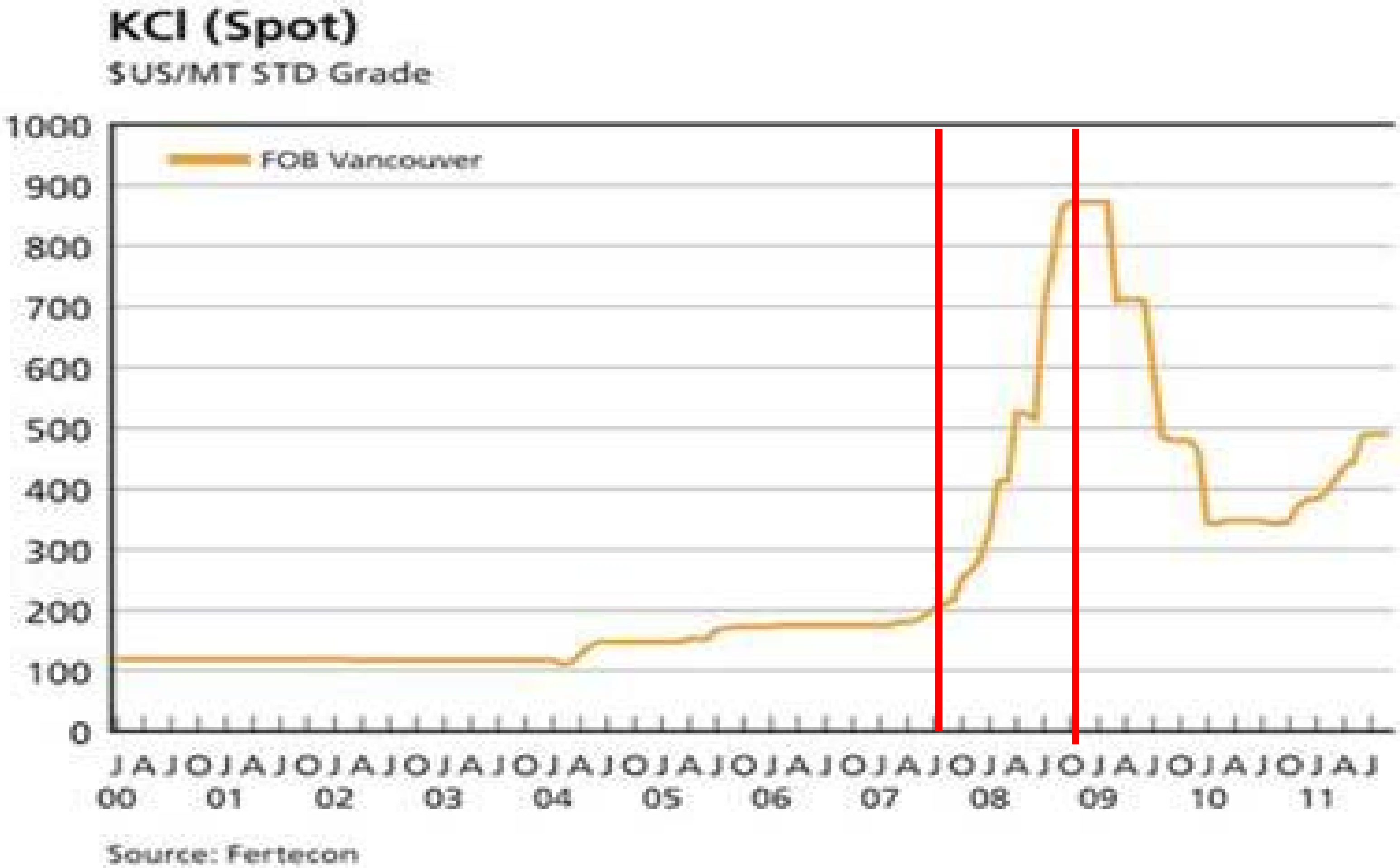
Less than 10 years ago, the Russian producers started to push up against capacity and realized it was in their interest to behave like oligopolists (1).

"Our strategy is that price is much more important than volumes," Chief Financial Officer of OAO Uralkali, Russia's biggest fertilizer maker, Victor Belyakov said in an interview yesterday in London. "It's a strategy for most of the big players in the market. We usually cut some production to come up with a fair price."

"Uralkali is following Potash Corp.'s strategy, and historically, Russian producers didn't always do that," he said. "If Russia and Canada have the same strategy, this is a much better business than it used to be.(2)"

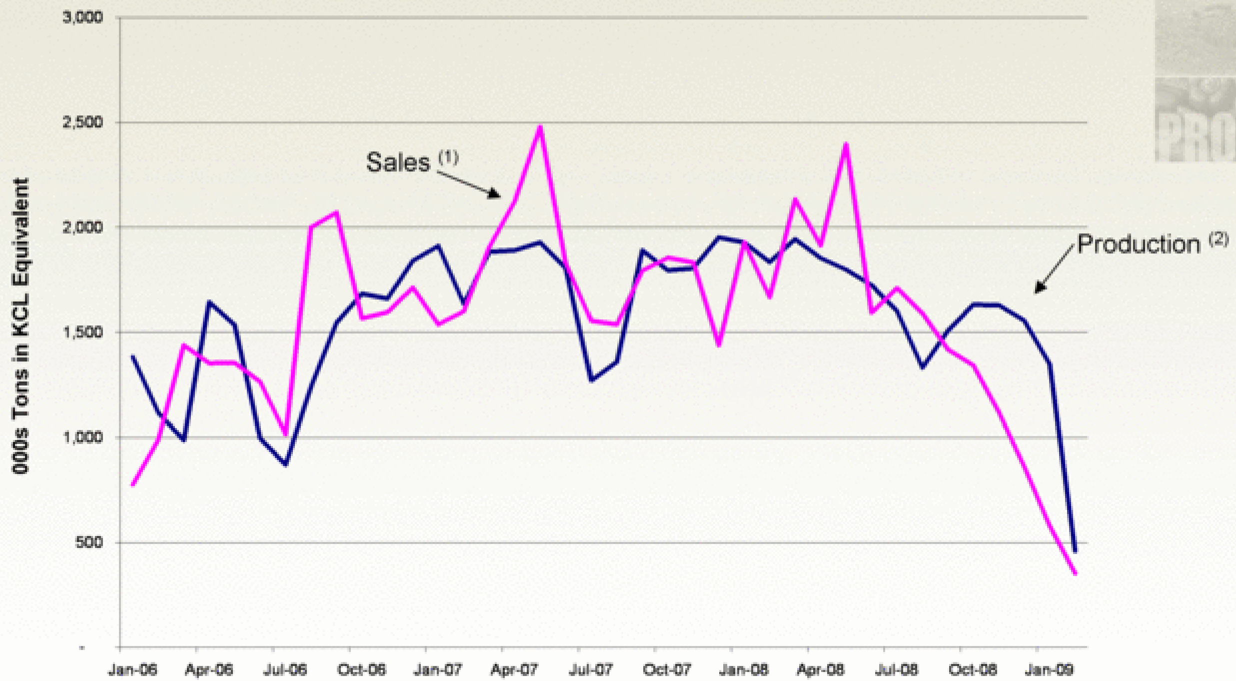
1) Saskatchewan in the Spotlight: Acquisition of Potash Corporation of Saskatchewan Inc. —Risks and Opportunities, The Conference Board of Canada, October 1 2010
2) Bloomberg Business Week, Jan. 25 2012

World prices



In a period of 18 months (January 2008 to october 2009) the price of potash increased by more than 400%.
The price of potash which historically had been for decades less than US$ 200 per ton i multiplied by 250% between January 2008 and 2011

Production Curtailed to Match Demand



2009 North American Production Curtailment Announcements

Global potash consumption dropped by about 9% in 2009 following a 16% decline in 2008. Global potash production plunged by 39%, shipments declined by 43% and the global trade volume dropped by 51% in 2009. Global potash production and trade volumes were at their lowest levels of the past 30 years.

Between 2008 and 2009 Canada's potash production declined by 56.3%. Potash.corp's production declined by 56%, Agrium's production decliend by 50%

Cutting production to keep prices high

BusinessWeek

Bloomberg Businessweek

Wednesday January 25, 2012

"Suppliers are seeking to prevent a drop in prices this year, concerned that demand has been "slow,"

Potash Corp., which announced temporary cuts at two mines in Canada last month, has since unveiled a four-week halt at its Allan mine and an extension of the shutdown at its Rocanville operation. Combined, Potash Corp.'s cuts total about 1 million tons, Credit Agricole's Connelly said.

Mosaic, North America's second-largest potash producer, said on Jan. 5 that it is cutting production by 250,000 tonnes over the first three months of this year, trying to pressure prices higher along the Mississippi River supply route.

OAO Uralkali, is ready to cut production (by 10%) to prevent potash prices from falling after Potash Corp. of Saskatchewan Inc. announced reductions this year.

The Conference Board of Canada
Insights You Can Count On

FINAL REPORT

Saskatchewan in the Spotlight:
Acquisition of Potash Corporation of Saskatchewan Inc.—
Risks and Opportunities

Presented to:

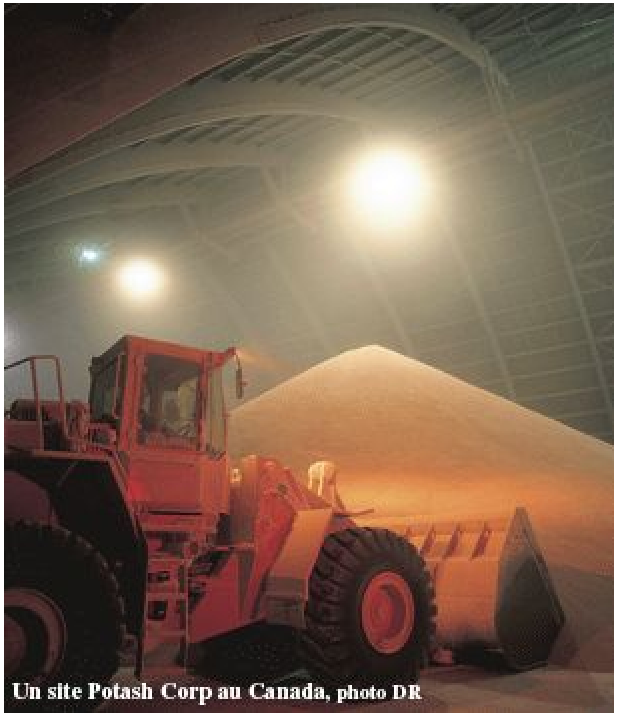
Government of Saskatchewan

Prepared by:

The Conference Board of Canada

October 1, 2010

The battle for potash


Un site Potash Corp au Canada, photo DR

Scenario 1 : Base case

Table 20: Assumptions and Results for the Base Case Scenario

	2009	2010	2011	2012	2013	2014	2015	2020
Price ($CAN/K2O tonne)	825.6	531.7	574.3	591.0	601.2	611.2	611.2	734.3
No Sale of PCS to BHPB and Delayed Development of Jansen Lake								
Production (millions of KCl tonnes)	7.0	11.8	16.6	18.2	19.9	21.4	22.2	25.6
Direct and indirect employment (thousands)	8.2	8.2	8.2	8.4	8.8	9.5	9.8	11.5
No Sale of PCS to BHPB and Development of Jansen Lake								
Production (millions of KCl tonnes)	7.0	11.8	16.6	18.2	19.9	21.4	22.2	26.7
Direct and indirect employment (thousands)	8.2	8.2	8.2	8.4	8.8	9.5	9.8	11.8
10-year average potash industry royalty revenue (mils of $)	988							
10-year total potash industry royalty revenue (mils of $)	9,883							
Sale of PCS to BHPB and Development of Jansen Lake								
Production (millions of KCl tonnes)	7.0	11.8	16.6	18.2	19.9	21.4	22.2	26.7
Direct and indirect employment (thousands)	8.2	8.2	8.2	8.4	8.8	9.5	9.8	11.8
10-year average potash industry royalty revenue (mils of $)	786							
10-year total potash industry royalty revenue (mils of $)	7,857							

Sources: The Conference Board of Canada; The Saskatchewan Ministry of Energy and Resources.

Scenario 2: Full Production Scenario

The key assumption in this scenario is that once a major producer like PCS breaks ranks with the other producers and maximizes production, all other market participants will follow suit. They are expected to respond in this manner since any other response would require PCS's competitors to cede market share to the new owners of PCS in an effort to support prices, which they are unlikely to do.

As well, maximizing production would reduce the average production cost per tonne, allowing producers to maximize profits in a lower price environment.

This scenario has been confirmed through our interviews with various industry experts.

Two critical assumptions are necessary to assess the effects of a full production scenario. The first is the amount of global operational production capacity that will exist over the next ten years. We assumes that the price
elasticity of potash is 0.4 for the purposes of the full production scenario

Scenario 2: Full Production Scenario

Table 21: Assumptions and Results for the "Full Production" Scenario

	2009	2010	2011	2012	2013	2014	2015	2020
Price ($CAN/K2O tonne)	825.6	531.7	574.3	356.7	245.0	225.7	217.5	488.2
Production (millions of KCl tonnes)	7.0	11.8	16.6	20.5	24.4	26.8	28.0	31.8
Direct and Indirect Employment (thousands)	8.2	8.2	8.2	9.5	10.8	11.8	12.3	14.0
10-year average potash industry royalty revenue (mils of $)		213						
10-year total potash industry royalty revenue (mils of $)		2,130						

Sources: The Conference Board of Canada; The Saskatchewan Ministry of Energy and Resources.

Expected prices of potash under a competitive scenario and a cartel scenario

Price	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Competitive scenario (Potash bought by Sinochem)	574	356	245	226	217					488
Canadian cartel Scenario	574	591	601	611	611					734

What does this mean for India ?

On average under the current cartel scenario the price of potash would be doubled or $321 more expensive per ton than under the competitive scenario from 2011 to 2020

If we assume that India needs an average of 6 million tons of potash per year between 2011 and 2020, the overcharge it will pay each year will be at a minimum $ 750.000.000, if it succeeds in getting a 30% discount (as it has recently), and could reach $ 1.9 billion toward 2020 when the pressure of demand will be greatest.

Thus, if the Indian government keeps on paying an annual subsidy of $1.5 billion to make potash fertilizers more affordable for Indian farmers, from 50% to 100% of this subsidy will in fact finance the monopolistic rent that potash producers will enjoy on their sales to India thanks to the restrictive practices of Canpotex.

India cuts phosphate and potash subsidies

May 2 2013: **India is cutting subsidies on phosphate and potash fertilizers** in fiscal year, which began in April, in an effort to cut fiscal deficit. “According to the new rates, the total subsidy for potash and phosphate fertilizers for the financial year 2013-14 would be reduced by around 15%,” said finance minister P. Chidambaram...

Jul. 25th, 2013: Depreciation of the Indian currency and reduced government subsidies have made imported phosphate and potash fertilizer more expensive for manufacturers and farmers.

The unfavourable conditions in India could last up to a year, or until after the next general election, when it may be easier for the government to re-balance fertilizer subsidies, said Mosaic chief executive officer Jim Prokopanko.

“They know they’ve got a deficit that has to be tamed, and they’ve chosen, if ham-handedly, to reduce payments for potash and phosphate imports.”Mosaic estimated current quarter potash prices at $330 to $360 per tonne, compared with an average of $368 last quarter.

The international potash cartel in difficulties, September 2013

Uralkali announced pulling out of the international cartel named Belarus Potash Company (BPC).

BPC used to market potash for Uralkali and Belaruskali and Canpotex for three Canadian producers -- Potash Corporation of Saskatchewan, Mosaic and Agrium.

Together, BPC and Canpotex monopolised the potash business.

The international potash cartel in difficulties, September 2013

This happened at a time when **global potash capacity was increasing against less robust consumption growth** (in particular **lower demand due to the falling Indian rupee)**

As a result, the **potash market became more competitive with certain producers acting aggressively to gain a larger market share, which resulted in price decline in all major markets.**

In December 2012 there appeared **a decree by the Belarusian president, which cancelled the exclusive right of BPC to export Belarusian potash**. Following the issue of the decree, Belaruskali has made a number of deliveries outside BPC.“

The Telegraph Sunday 10 November 2013

The international potash cartel in difficulties, September 2013

“Against such environment and Belaruskali's behaviour, **Uralkali had to revise its strategy and maximise output selling it through its own trader**, as we believe that Uralkali is most favourably positioned in such conditions being the **lowest-cost producer** and having the opportunity to launch new capacities at the minimal cost," the spokesman said.

"Being the lowest-cost producer with highest potash capacity, having the ability to supply to China by rail, we hope to increase our share in all major markets, above all in China, India and Brazil."

Starting from August, Uralkali is going to use 100pc of its mine capacity, which could produce 13m tonnes a year.

"Apart from enabling us to increase our share in key markets, high capacity utilisation will result in economy of scale," Uralkali said.

The Telegraph Sunday 10 November 2013

The international potash cartel in difficulties, September 2013

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The move was likely to result in global potash prices plunging from the current $400 (£263) a tonne to about $300 in the second half of the year, according to Vladislav Baumgertner, Uralkali's chief executive.

Note that in the pre-crisis commodity boom, potash prices hit $1,000 a tonne. "Uralkali used to be the most disciplined potash producer sticking to ‘price over volume strategy'," a spokesperson for Uralkali told *The Daily Telegraph*. “

India bags good deal in potash as cartel falls apart, September 2013

India contracted potash imports at $375 a tonne for August-January shipments. This translates into **a huge discount of $52 a tonne on prices earlier charged by two largest potash suppliers, Uralkali of Russia and Belaruskali of Belarus**.

Earlier, the contracts were at $427 a tonne for shipments round the year. The cartel then refused to cut prices. By July end Indian had already imported 1.8 million tonnes at the old price out of the total contracted 3.48 million tonnes for 2013. The remaining 1.68 million tonnes would come at the discounted price.

Taking advantage of the split in the potash cartel, Indian negotiators pushed hard over the past few days to get the discount in the net rate, which includes the cost of potash, insurance, freight and handling.

The discount includes a $3 a tonne incentive on importing all the contracted potash. India would also gain from 180-day credit, apart from an additional $3-5 a tonne discount on incidental charges.

Financial Chronicle, 23 septembre 2013

The international potash cartel in difficulties, September 2013

"We have discussed Uralkali's new strategy with industry consultants Ferteco," City broker Liberum said. "**We expect lower potash prices in the short-term but expect an accelerated path to a tighter supply-demand balance as expansions are delayed and demand is restimulated. We are not changing our long-term potash price assumption of $400 a tonne but are cutting our 2014 and 2015 potash price assumptions to $300 to 350 a tonne**."

The Telegraph Sunday 10 November 2013

Short term gain but for how long ?

Lukashenko lambasted Uralkali, saying, **"Only an idiot will work against his own interests. Our re-merger with the Russian company will raise prices for potash fertilizers. Separation will definitely bring the prices down.“**

Globes' correspondent, 29 septembre 2013, Israel Business Arena

Note: The break-up of the Uralkali-Belaruskali export alliance, which controlled more than 40 percent of the world potash market, is predicted to push global potash prices down 20 percent and result for Belarus in a loss of some $890 million in export proceeds this year (2013). Potash reportedly accounts for about 10 percent of the nation’s total export earnings and 12 percent of government revenue.

Investors react positively to the restoration of the Russian potash cartel

In the stock market, **Israel Chemicals Ltd. (TASE: ICL) rose 5.8%,** for the biggest gain among Tel Aviv 25 shares, and on the day's biggest turnover of NIS 89.4 million, **after Belarus President Alexander Lukashenko basically said that the Russian potash cartel would be restored**. Parent company Israel Corporation (TASE: ILCO) rose 4.4%.

Aviv Levy and Globes' correspondent, 29 septembrer2013, Israel Business Arena

Conclusions

1) International trade and investment have grown significantly in the 1990s and the 2000s until the financial crisis in spite of the heterogeneity of national legal systems.

2) Conflicts due to the heterogeneity of national competition systems have not increased but have , if anything, decreased over time.

3) There are complementary ways to address the problems raised by the heterogeneity of competition law systems and the increasing globalization of economic activity.

4) Significant convergence among competition law systems, together with a proliferation of competition laws, have characterized the last two decades. There is no reason to believe that further progresses cannot be achieved on convergence, even if there is no one size fits all.

5) Voluntary cooperation between competition authorities in developed countries has developed significantly; however small or medium size-developing countries which are victims of transational anticompetitive have rarely been offered the benefits of bilateral cooperation.

Conclusions

6) Regional agreements are easier to negotiate than multilateral agreements and there are often deeper economic exchanges, more similar levels of economic development, more like-mindedness, and more commonalities in legal systems among neighbouring countries. However the governance of regional agreements varies greatly and so does their effectiveness.

7) Competition authorities promote soft convergence and cooperation among themselves but are weary of international agreements which require governement approvals. Yet, their independence can limit their ability to promote convergence (for ex when such convergence requires legislative changes).

8) An agreement between the EU and the US on cartels, while welcome, would not address a pressing problem in global antitrust enforcement and would not be meaningful unless it included criminalization of cartels in Europe and the elimination of export cartels (which competition authorities cannot deliver without government involvement).

Conclusions

9) If progress is to be made in creating a more homogeneous and seamless Global antitrust law enfocement system, two pre-conditions have to be met:

- Economists have to make a compelling case for the usefulness of competition for economic development. So far, there is no clear link between competition intensity and innovation, no clear link between competition intensity and economic growth, no clear link between competition intensity and employment, no clear link between competition and poverty alleviation.

-Competition authorities have to recognize that competition law enforcement is but one of the elements which determine the intensity of competition on global markets and therefore they have to start a dialogue and join forces with policy makers in related fields (industrial policy, trade policy, investment policy, regulatory policy etc…) to establish the contours of a workable system of governance for global markets .

Thank you very much

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