Some of the dynamics of International Trade

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Measuring the Impact of Certain Hedonic and Rational Components on Consumers’ Intention to Adopt Innovative Fast Moving Consumer Goods (FMCG) in Egypt

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Key Words
Adoption, Fast Moving Consumer Goods, Hedonic Factors, Innovation, Rational Factors

Abstract
The aim of this paper is to measure the impact of certain hedonic and rational components on consumers’ intention to adopt innovative fast moving consumer goods (FMCG) related to the food and beverage industry in Egypt. This study was considered conclusive research, with a cross-sectional design and a descriptive purpose. Each of the variables were measured using a 5-point Likert scale (the number of the items varied in each scale). Out of 900 self-administrated questionnaires, 475 were returned complete and accurate, yielding a response rate of 52%. The empirical findings indicate that all the independent variables had a positive and statistically significant relationship with attitude formation and adoption intention. The second major finding is that the effect of the variables changed depending on the product. The variables varied in their statistical significance and their contribution to the prediction of attitude formation and adoption intention.

The study has implications for both researchers and practitioners concerning the factors affecting consumers’ decisions to purchase innovative FMCG. This study contributes on the theoretical level in the following ways: by applying the variables to FMCG rather than to technology; by adding to the field of product innovation in the Middle East context; by integrating two models of innovation acceptance and usage; and by demonstrating the validity of the scales of the hedonic and rational components in the urban Egyptian context. It contributes on the practical level by determining the factors that affect consumers’ decisions to purchase new FMCG.

Introduction
Today in the retail market, organizations are operating in a challenging environment. They are experiencing significant pressures from competition, dynamic market requirements, high technical advancements, and shorter product life-cycle (McGrath et al., 1992). For these reasons, the concept of innovation is critical for sustainability. Innovation is an important source of vitality, differentiation and a value adding opportunity for organizations to develop new products. It allows the industry to gain a competitive advantage, attract new customers and retain exiting customers (Kotler & Keller, 2006).

Besides facing the challenges of the competitive market, companies also face challenges in meeting the needs of sophisticated customers (McGrath et al., 1992). Customers these days demand higher levels of quality in new products and demand the latest innovations that are relevant and crucial to their needs. For these reasons, the ability to bring novel products to the market quickly is fundamental to any booming customer-driven company (Michaut, 2004).

Innovations that are applied on products are an effective technique for become unique and successful. Product innovation is the development of new products, changes in design of established products, or the use of new materials or components in the existing products. Companies, specifically those in the field of fast moving consumer goods (FMCG), need to constantly ensure that their innovations are distinctive in order to remain ahead of rivals (Kunc, 2005).

Much of the innovation related to FMCG industry is based on brand extensions of the same product lines. This type of innovation is considered an incremental innovation, referring to products that provide
new features, benefits, or enhancements to the existing products in the current market. Rothwell and Gardiner (1988) showed that this innovation can occur at any stage of the new product development process. For example, in the introduction stage, companies may use existing technology to improve an existing product design. At the mature stage of a product's life, a new line extension can be conducted. Rothwell and Gardiner also mentioned that borrowed technology is also considered an incremental innovation because the products and technology of a different industry may be new to a different market such as Egypt.

Fast moving consumer goods (FMCG) industries in Egypt have shown strong growth over the past ten years. This is due to the expansion of international chains, variety of product offers, a rise in the level of income, and finally the increase in brand advertising. Innovation regarding FMCG concerning food and beverage in Egypt will be the focus of this study. This topic is essential to study for several reasons. The first reason is that food represents 60 percent of family budgets for more than 50 percent of all urban households (Mansour, 2009).

FMCG and the processed food industry have become one of the key economic sectors in Egypt that continues to benefit from high levels of investment and development. The consumer retail sector in Egypt has grown in 2009 due to the increase in the Egypt's population growth (2% growth rate in 2009). This growth is also due to the presence of new international and domestic retail companies. According to the USDA Foreign Agricultural Service reports, the retail sales have increased by 15 to 20 percent in 2009. This increase in change is caused by the boost in imports (total food and agriculture imports in 2008 is $10.9 billion) and the expansion of international chains, Carrefour opened 4 branches: 3 in Cairo and 1 in Alexandria (Mansour, 2009). For these reasons, it is necessary to focus on innovative FMCG, foods and beverages.

There are a variety of innovative FMCG in the Egyptian market. This research will focus on three new FMCG products that reflect the characteristics of incremental innovation. These products are: the instantly cooked soups, drinkable yogurt, and finally 3-in-1 packets of hot drinks (Coffee, Tea, and Chocolate). Different FMCG were chosen in this study because innovation is a subjective assessment of “newness”. Therefore, what one individual sees as new may be mature and old fashion for other individuals (Sandy, 2002). The sales of the chosen FMCG continue to grow in volume and value terms in Egypt (Euro monitor International, 2011). Their consumption increased as they made their way into grab-and-go packaging for consumers with active lifestyles (Mansour, 2009). This study will use these products to measure the impact of certain hedonic and rational components on attitude which leads to consumers’ intention to adopt innovative FMCG.

Theoretical Frameworks

There are many theoretical models for innovation acceptance and adoption. Each of them had different targets and was tested on different contexts and products at individual, organization, and societal levels (Davis et al., 1989; Compeau & Higgins, 1995). In this research, the proposed conceptual framework integrates two main models of innovation acceptance and adoption: Theory of Reasoned Action (TRA) and Technology Acceptance Model (TAM).

In the Theory of Reasoned Action (TRA), a person’s actual performance is determined by his intention to act. This intention is influenced by attitude, subjective norms, and various beliefs. The feelings toward a behavior are determined by the perceived consequences of that action and an evaluation of the desirability of the consequences. The model assumes that consumers’ beliefs (hedonic and rational) help to form attitude, which directly affects behavior intention. This theory is a systematic and applied approach to attitude and behavior research (Fishbein & Ajzen, 1975).

The Technology Acceptance Model (TAM) is based on the TRA (Davis, 1989). It suggests that perceived usefulness and ease of use are helpful in explaining the intentions of using a product. Perceived usefulness is the idea that using the product will enhance the user's performance in some way. Perceived ease of use is the idea that using the product will be free of effort (Dholakia & Dholakia, 2004). The assumptions of this model have received extensive empirical support (Venkatesh & Morris, 2000). A
number of modified TAM models have also been created (Chau & Hu, 2001) which added extra variables such as: perceived enjoyment, importance, and prestige (Moore & Benbasat, 1991; Pedersen, 2005), personal innovativeness traits (Gatignon & Robertson, 1985), and a variety of innovation characters (Rogers, 1995).

The model proposed in this research is illustrated in figure one. The model is made up of different antecedents that influence consumers’ attitudes, leading to the intention to adopt. The first category is the hedonic components, which include the consumers’ perceived enjoyment and prestige. The second category is the rational components. This component focuses on the product’s perceived ease of use, usefulness, and importance. These antecedents (independent variables) were taken from the Technological Acceptance and Usage Model, an extension of the TAM (Davis, 1986).

**Figure One: The Proposed Model**

**Hedonic Components**
- Prestige
- Perceived Enjoyment

**Rational Components**
- Perceived Usefulness
- Ease of Use
- Perceived Importance

**Independent Variables**

**Moderating Variable**

**Dependent Variable**

Consumers’ behaviors and decisions are influenced by attitude. Attitude reveals the person’s level of interest in a product after conducting rational and emotional evaluations (Voss, Spangenberg, & Grohmann, 2003). It is developed through a sequence of mental stages that reflects the beliefs held by the individual (Rosenberg, 1956). According to Lavidge and Steiner (1961), the perceived hedonic and rational factors are assessed to generate an attitude toward a certain product. Once an attitude is formed, behavior will change in terms of intention to act or actual action.

Intentions to adopt novelty can vary among individuals and can carry different meanings for each person. For some consumers, the purchase of new goods can hold personal and social meanings (Featherstone, 1991). For others, the consumption of innovations can emphasize or reflect their identity, morals, and norms, or help them relate to their social networks (Miller, 1987). Consumers may adopt new products on the basis of the need for assimilation or differentiation, depending on their need to be similar to or distinct from other people (Timmor & Katz Navon, 2008).
**Hypotheses Development**

The hypotheses in this study were projected with respect to the relationships between the variables in the proposed model. Prestige was the first factor to be hypothesized. Various consumers believe that a new product can develop and enhance their image in society (Al-Gahtani & King, 1999). “The desire to gain social status” may be one of the most important enthusiasms for individuals. Prestige has a positive contribution on attitude (Lee et al., 2003, p. 215). For those reasons, the initial hypothesis was: **Perceived prestige will positively influence consumers’ attitude which will lead them to the intention to adopt the innovative FMCG.**

Perceived enjoyment plays an essential role in innovation acceptance. Individuals engage in a usage of a product if it provides fun, delight and satisfaction. The TAM extension examined the impact of enjoyment on usage intention and reported that enjoyment had a significant effect on intention (Davis et al., 1989). Several recent empirical studies validated the adoption theory in relation to a wide range of products (Holak & Lehman, 1990). Therefore, hypothesis two was developed: **Perceived enjoyment will positively influence consumers’ attitude which will lead to the intention to adopt innovative FMCG.**

Perceived usefulness and perceived ease of use is found to be crucial in the innovation acceptance. The TAM and the TRA have identified the relationships between perceived usefulness, attitudes, and intentions towards a product (Davis et al., 1989). Adoption researches suggested that if a product does not help people perform better, it will not be favorable to them (Nysveen et al., 2005). This variable has been found to have a strong direct effect on adopter’s intention to use the innovation (Davis, 1989; Adams et al., 1992). Similarly, perceived ease of use has also been confirmed to be an important antecedent of adoption intention. The idea that a product is simple and requires less effort in its usage will lead the person to adopt the product (Davis et al., 1992). In view of that, the next formulated hypotheses were: **Perceived usefulness will positively influence consumers’ attitude which will lead to the intention to adopt innovative FMCG; and Perceived ease of use will positively influence consumers’ attitude which will lead to the intention to adopt innovative FMCG.**

The final variable which was hypothesized was perceived importance. This variable deals with the relevance of the product to the consumer functions or needs. Importance is critical because it influences a person's judgment in product preference and usage. If the product is viewed as essential to consumers, they will easily adopt to it (Bloch et al., 2003). This statement led to the next hypothesis: **Perceived importance will positively influence consumers’ attitude which will lead to the intention to adopt innovative FMCG.**

**Method**

The consumers intercept data collection method was used to reach the respondents and to ensure the collection of large amounts of data in a relatively short period of time in order to test the hypotheses. Previous studies used this method when dealing with consumer behavior towards various foods, brands and products (Batte & VanBuren, 2003). The data collection was conducted during November and December 2010. It was carried out by stopping random consumers on the streets (street intercepts), in shopping malls (mall intercepts), college campuses, sports clubs and retail outlets. This distribution was conducted between the hours of 5:00 and 7:00 pm, Sundays through Thursday. The respondents were stopped and asked if they were willing to participate in a brief research study. Those who agreed were given a brief description of the survey process. The respondents were given a self administrated questionnaire on the spot or taken to a near location that was set up elsewhere. This questionnaire allowed minimum interference with the consumers while answering the questions. It ensured more reliable responses from the participants since they did not have to feel like they had to conform to another individual's expectations.

The questionnaire contained words that are simple and straightforward. The survey was originally created in the English language. However, an Arabic version was also created due to the fact that the native language in Egypt is Arabic. The researcher used the back-translation process in order to ensure that the language conversion was done accurately. The questionnaire was translated from the English language by a bilingual speaker whose native language was Arabic. This translated version of the survey...
was then retranslated back into the original language by another bilingual whose native language was English. This procedure was vital because it helped to develop an equivalent questionnaire.

Results

Out of the 900 self-administered questionnaires, the researcher received 475 that were complete and accurate, for a response rate of 52%. The data were analyzed using the SPSS (Statistical Package for the Social Sciences), to answer the research questions and to support or invalidate the hypotheses. The reliability analysis, validity analysis, frequency analysis, correlation analysis, and regressions were conducted.

1 Reliability Analysis

The reliability analysis was carried out to help indicate the stability, consistency and the “goodness” of each instrument that measured the variables. The Cronbach's Alpha in this analysis pointed to how well the scale's statements were positively correlated to one another. The closer the Alpha was to one, the higher the internal consistency (Tabachnick & Fidell, 2007). This research showed that all the variables' Cronbach's Alpha were above 0.65, indicating that their scales were stable, consistent and free from error across time and across various items. In addition, the overall questionnaire had an Cronbach's Alpha of 0.9, signifying that all questions were correlated to one another. Table one illustrates the researches reliability analysis' results and compares them with previous studies.

<table>
<thead>
<tr>
<th>Variables</th>
<th>Past Study Cronbach’s Alpha</th>
<th>3- in-1 Packet Drinks</th>
<th>Drinkable Yogurt</th>
<th>Instantly Cooked Soup</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prestige</td>
<td>0.69</td>
<td>0.616</td>
<td>0.678</td>
<td>0.755</td>
</tr>
<tr>
<td>Perceived Enjoyment</td>
<td>0.86</td>
<td>0.838</td>
<td>0.888</td>
<td>0.914</td>
</tr>
<tr>
<td>Perceived Ease of Use</td>
<td>0.92</td>
<td>0.878</td>
<td>0.906</td>
<td>0.920</td>
</tr>
<tr>
<td>Perceived Usefulness</td>
<td>0.91</td>
<td>0.787</td>
<td>0.833</td>
<td>0.849</td>
</tr>
<tr>
<td>Perceived Importance</td>
<td>0.75</td>
<td>0.793</td>
<td>0.825</td>
<td>0.810</td>
</tr>
<tr>
<td>Attitude</td>
<td>0.87</td>
<td>0.874</td>
<td>0.884</td>
<td>0.925</td>
</tr>
<tr>
<td>Intention to Adopt</td>
<td>0.91</td>
<td>0.825</td>
<td>0.893</td>
<td>0.898</td>
</tr>
</tbody>
</table>

The Overall Questionnaire | N of items 63 | Cronbach’s Alpha 0.9

2 Validity Analysis

The validity analysis was conducted to help distinguish whether the scale measured what it was supposed to assess. This study used the content validity and face validity tests. The content validity test was performed to ensure how well the dimensions and elements of a concept (variable) had been defined (Stangor, 2006). The measures were used three times on the three different innovative FMCG. The Face validity was performed next to confirm the results of the previous validity analysis (Kidder and Judd, 1986). This analysis included a group of expert judges (professors in marketing and qualified researchers) who evaluated and confirmed the instrument and indicated that the items used to measure the variables assessed the concept correctly.
3 Frequency Analysis
This research included participants of different demographic backgrounds (age, gender, marital status, career, and income) in order to ensure a large enough variety in the studied population. Table three shows the respondents’ traits.

<table>
<thead>
<tr>
<th>Demographic characteristic</th>
<th>N</th>
<th>%</th>
<th>Demographic characteristic</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Residence:</td>
<td></td>
<td></td>
<td>Age:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cairo</td>
<td>236</td>
<td>49.7</td>
<td>Under 20</td>
<td>20</td>
<td>4.2</td>
</tr>
<tr>
<td>Alexandria</td>
<td>166</td>
<td>34.9</td>
<td>20 less than 35</td>
<td>286</td>
<td>60.2</td>
</tr>
<tr>
<td>Port Said</td>
<td>40</td>
<td>8.4</td>
<td>35 less than 50</td>
<td>124</td>
<td>26.1</td>
</tr>
<tr>
<td>Suez</td>
<td>33</td>
<td>6.9</td>
<td>50 less than 65</td>
<td>40</td>
<td>8.4</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>65 and above</td>
<td>5</td>
<td>1.1</td>
</tr>
<tr>
<td>Gender:</td>
<td></td>
<td></td>
<td>Level of Education:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Female</td>
<td>266</td>
<td>56</td>
<td>Elementary School</td>
<td>5</td>
<td>1.1</td>
</tr>
<tr>
<td>Male</td>
<td>209</td>
<td>44</td>
<td>High School</td>
<td>39</td>
<td>8.2</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>College</td>
<td>335</td>
<td>70.5</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Post Graduate</td>
<td>69</td>
<td>14.5</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Other</td>
<td>27</td>
<td>5.7</td>
</tr>
<tr>
<td>Job Status:</td>
<td></td>
<td></td>
<td>Average Monthly Income:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Manager/ Executive</td>
<td>57</td>
<td>12.0</td>
<td>Less than 2,000</td>
<td>46</td>
<td>9.7</td>
</tr>
<tr>
<td>Clerk</td>
<td>78</td>
<td>16.4</td>
<td>2,000 less than 5,000</td>
<td>200</td>
<td>42.1</td>
</tr>
<tr>
<td>Academic</td>
<td>94</td>
<td>19.8</td>
<td>5,000 less than 10,000</td>
<td>168</td>
<td>35.4</td>
</tr>
<tr>
<td>Self employed</td>
<td>82</td>
<td>17.3</td>
<td>over 10,000</td>
<td>61</td>
<td>12.8</td>
</tr>
<tr>
<td>Laborer</td>
<td>16</td>
<td>3.4</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td>105</td>
<td>22.1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Professionals</td>
<td>43</td>
<td>9.1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Marital Status:</td>
<td></td>
<td></td>
<td>Number of Children:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Single</td>
<td>233</td>
<td>49.1</td>
<td>None</td>
<td>272</td>
<td>57.3</td>
</tr>
<tr>
<td>Married</td>
<td>210</td>
<td>44.2</td>
<td>One</td>
<td>71</td>
<td>14.9</td>
</tr>
<tr>
<td>Divorced</td>
<td>21</td>
<td>4.4</td>
<td>Two</td>
<td>73</td>
<td>15.4</td>
</tr>
<tr>
<td>Widowed</td>
<td>11</td>
<td>2.3</td>
<td>More than two</td>
<td>59</td>
<td>12.4</td>
</tr>
</tbody>
</table>

4 Correlation Coefficient Analysis
The correlation analysis which indicated the direction, strength and significance of the relationships of the variables in the hypotheses was conducted (Sekaran, 2003; Pallant, 2007). The results showed that regardless of the innovative FMCG, the independent variables; perceived prestige, enjoyment, ease of use, usefulness, and importance had a positive and significant relationship with the consumers’ attitude formation leading to a positive and significant relationship with the adoption intention.

5 Multiple Regression Analysis
The multiple regressions analysis conducted a more sophisticated exploration of the interrelationship among the set of variables (Sekaran, 2003; Pallant, 2007). The analysis found that the effect of the variables changed depending on the FMCG. The variables varied in its contribution and significance to the prediction of the attitude formation and adoption intention. When the antecedents were tested on the 3-in-1 hot drink packets, perceived enjoyment had the strongest contribution to attitude formation. The variables that followed next respectively were perceived ease of use, perceived importance, perceived usefulness, and perceived prestige. This order changed when applied on the other FMCG.

Perceived prestige had the strongest contribution to the attitude formation towards the drinkable yogurt. Perceived usefulness, perceived ease of use, perceived enjoyment, and perceived importance respectively followed next. When the variables were tested the third time on the instantly cooked soup, perceived importance was the strongest contribution to attitude formation. Perceived ease of use, perceived usefulness, and perceived enjoyment correspondingly followed next.
Discussions and Conclusion

Innovation is a vital force for any retail industry's success (Cardozo et al., 1993). Hence, it is important to gain more knowledge and understanding of the potential consumers and the factors influencing their adoption decisions. The main purpose of this study was to measure the impact of certain hedonic and rational components on consumers’ intention to adopt innovative FMCG. This research problem has not been yet fully explored and tackled before. Through reviewing various literatures, the researcher was able to create and identify general factors that impact consumers’ attitude, leading to the intention to adopt new FMCG. These factors were found and integrated from two different models of innovation adoption (TRA and TAM). The chosen variables, which were not connected together in past studies, were previously used in different contexts such as the European, American, Asian and Latin contexts and were applied on different products such as the internet, assembly lines, electronics, appliances, and other types of technology. This study has linked these variables and applied them on innovative FMCG in the Middle Egyptian context.

This research examined the variables on three randomly selected innovative FMCG and discovered that they yielded, to a certain extent, similar results as to other studies such as those of Gatignon and Robertson (1985), Ajzen (1991), and Davis et al. (1992). When the hypotheses were tested for the three innovative FMCG, results showed that all the independent variables had a positive and significant relationship with the consumers' attitude formation and intention development.

Both the hedonic and rational components were significant when applied on all the FMCG. This research has illustrated that Egyptian consumers will accept new FMCG and will develop adoption intentions if the goods satisfy their rational as well as their emotional needs correspondingly. Consumers do purchase new products when they believe the product can develop and enhance their image (Rogers, 2003); provide pleasure and satisfaction (Davis et al., 1992); simple and straightforward (Davis et al., 1992); helpful in the performance enhancement (Nysveen et al., 2005); and finally relevant and essential to their need (Bloch et al., 2003).

Despite the significance of the variables, findings also revealed that these hedonic and rational were ranked differently according to each FMCG. The order varied according to the type of foods and beverages. This can be due to the fact that every FMCG is viewed by each consumer in a special way. Innovation is a subjective evaluation. For this reason, companies should tackle and generate different variety of creative ideas concerning the emotional and the functional aspects of the product equally. The empirical data shows that new products that enter the market should be relevant to consumer needs, easy to use and useful. At the same time they should give a sense of satisfaction, enjoyment and status in order for potential adopters to consider.

Recommendations

The results in this study led to the suggestions of several recommendations. The market environment in the FMCG industry has become intensely competitive (McGrath et al., 1992). Since the market is crowded with many FMCG, companies should ensure that their innovations are distinctive in order to remain ahead of opponents. For this reason, it is suggested that FMCG companies should use innovation in their products.

A variety of hedonic and rational components have a positive and significant effect on consumers' attitude and adoption intention as shown in this study. Therefore, FMCG companies should focus on product differentiation and positioning based on these attributes that were examined. Companies should generate new ideas based on emotional and rational factors to be implemented on their product correspondingly.

Companies should use emotional strategies in their marketing communication since most consumers do not find many differences among the FMCG. Emotions lead to processing of information and better retention in memory (Ray and Batra, 1983). According to Zajonc (1980), people have little control over affect and once it is called to mind, they are irrevocable. Affect may become separated from...
content and still remain in the minds of consumers. Emotional positioning in FMCG is better than positioning based on rational attributes. Competitors can copy the FMCG rational benefit but if the company created a long term emotional image for the product, competitors would hesitate to imitate.

References


Introduction

The use of unethical practices in marketing has been happening for decades, although most people agree that a set of moral principles, values and ethics should govern the actions of marketing decision makers, even as most marketers would also agree that their decisions should be made in accordance with accepted principles of right and wrong (Ferrell and Gresham, 1985). Many advertising related issues are left to the advertiser's judgment which might be based on diversified considerations such as the campaign's objective, the attitudes of the target audience and the philosophies of the agency or the advertiser (Wells and Burnet, 1998). Therefore, much of what is considered as ethical or unethical comes down to personal judgments and only a fine thin line can be drown to distinguish or differentiate between something ethical and unethical (Oguinn, 2000).

Several questions were raised by different authors about ethical marketing and whether or not it exists in different cultures. Some authors indicated that the reasons of why marketers cross the line need to be explored. Other authors argued whether ethical marketing is a tool used for attracting customers or for getting ahead of competitors, or finally, whether it have to be the thrill of producing advertisem ents for drawing controversies by the publics (Dewitt and Dahlin, 2006) . Based on few previous studies which have generated several definitions of ethical marketing, most agreed on defining ethical marketing briefly as the application of marketing ethics in the marketing process involving practices that emphasize trustworthy and responsible policies and actions that exhibit integrity and fairness to customers and other stakeholders (Klein et al, 2006).

According to Laczniak and Murphy (1993) and Smith (1995), consumers and marketers are now lining in the “ethics era”, in which society’s expectations of marketers have changed and marketers are facing major challenges to basic marketing assumptions. Consequently, it became very difficult to understand the ethics of consumers and the buyer behavior attached to them (Hunt and Vitell, 1992; Folkes and Kamins, 1999). Correspondently, Carrigan and Attalla (2001) argued that it became very difficult for the marketers nowadays to ignore the “ethics gap” found between what society expects and what marketing professionals are delivering.

In light of a recent study by Blair et al. (2006), the variety of ethical and moral standards of today’s public, morals and ethics of society keep on changing overtime. And as a result what is considered appropriate and acceptable by society must also change accordingly because it has became very difficult to approach this sensitive ethical dilemma to determine the moral standards of today’s public. For that reason, it became crucial for the marketing ethics field to continue addressing the marketing decisions and practices to remain relevant in a constantly changing environment, struggling to define the fine line of ethical guidance for advertisers to keep the controversy to a minimum. This caused absence of a clear consensus about what is an ethical conduct for the marketing managers may lead to deleterious results for a business. For example, potentially successful products may be falsely introduced to the public through an unethical ad, believing this is one way to grab attention or attract by potential customers, which may only lead to losses for both sides; the business and its customers (Zhan, 1999).

This research will contribute by offering useful findings and compelling guidance to the Egyptian market, as Egypt is considered to be Hollywood of the Middle East. Previously, researches examined


``Exploring the Ethical Nature or TV Advertising: A Qualitative Study of Consumer`s Perceptions in Egypt``

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Introduction
The use of unethical practices in marketing has been happening for decades, although most people agree that a set of moral principles, values and ethics should govern the actions of marketing decision makers, even as most marketers would also agree that their decisions should be made in accordance with accepted principles of right and wrong (Ferrell and Gresham, 1985). Many advertising related issues are left to the advertiser's judgment which might be based on diversified considerations such as the campaign's objective, the attitudes of the target audience and the philosophies of the agency or the advertiser (Wells and Burnet, 1998). Therefore, much of what is considered as ethical or unethical comes down to personal judgments and only a fine thin line can be drown to distinguish or differentiate between something ethical and unethical (Oguinn, 2000).

Several questions were raised by different authors about ethical marketing and whether or not it exists in different cultures. Some authors indicated that the reasons of why marketers cross the line need to be explored. Other authors argued whether ethical marketing is a tool used for attracting customers or for getting ahead of competitors, or finally, whether it have to be the thrill of producing advertisements for drawing controversies by the publics (Dewitt and Dahlin, 2006). Based on few previous studies which have generated several definitions of ethical marketing, most agreed on defining ethical marketing briefly as the application of marketing ethics in the marketing process involving practices that emphasize trustworthy and responsible policies and actions that exhibit integrity and fairness to customers and other stakeholders (Klein et al., 2006).

According to Laczniak and Murphy (1993) and Smith (1995), consumers and marketers are now lining in the "ethics era", in which society's expectations of marketers have changed and marketers are facing major challenges to basic marketing assumptions. Consequently, it became very difficult to understand the ethics of consumers and the buyer behavior attached to them (Hunt and Vitell, 1992; Folkes and Kamins, 1999). Correspondently, Carrigan and Attalla (2001) argued that it became very difficult for the marketers nowadays to ignore the "ethics gap" found between what society expects and what marketing professionals are delivering.

In light of a recent study by Blair et al. (2006), the variety of ethical and moral standards of today's public, morals and ethics of society keep on changing overtime. And as a result what is considered appropriate and acceptable by society must also change accordingly because it has became very difficult to approach this sensitive ethical dilemma to determine the moral standards of today's public. For that reason, it became crucial for the marketing ethics field to continue addressing the marketing decisions and practices to remain relevant in a constantly changing environment, struggling to define the fine line of ethical guidance for advertisers to keep the controversy to a minimum. This caused absence of a clear consensus about what is an ethical conduct for the marketing managers may lead to deleterious results for a business. For example, potentially successful products may be falsely introduced to the public through an unethical ad, believing this is one way to grab attention or attract by potential customers, which may only lead to losses for both sides; the business and its customers (Zhan, 1999).

This research will contribute by offering useful findings and compelling guidance to the Egyptian market, as Egypt is considered to be Hollywood of the Middle East. Previously, researches examined
several variables, such as the Lack of Truthfulness and Honesty, Offensive, Discrimination of the use of the Ad, Unacceptable to society and Unfairness in competition as factors making an advertisement unethical. But despite all of the profound models that have been developed by previous researchers and literature, no convincing model was found useful in addressing the main problem of exploring the ethical nature of TV advertising from the consumers' perception in Egypt.

Efforts regarding modification and further investigations are required to adopt previous research models to adjust the huge variation of the Egyptian culture (Borgerson and Schroeder, 2002). This study will explore the under investigated "Ethical nature of TV advertising" phenomena in Egypt among consumers, through the conduction of a qualitative analysis to elicit their thoughts and opinions on the variables which from their point of view matter most in judging and determining the ethical nature of the TV advertisements. As the possession of such prerequisite knowledge about the consumers' ethics became nowadays essential, to be able to take efficient consumer decisions (Sporles et al., 1978).

Literature Review

1. Overview of Business Ethics

Business ethics are essentially rules of conduct that guide the taken actions by marketers in the marketplace. They are in other words, the standards against which most people in a culture judge what is considered right or wrong. McGann (1986) defines ethics as a system or as a code of morals of a particular philosopher, religion, group or profession. On one hand, universally, these values include trustworthiness, honesty, fairness, respect, justice, integrity, loyalty, accountability and concern for others. But on the other hand, notions of right and wrong still do differ among people, organizations, and cultures due to personal judgments. Some marketers intentionally or unintentionally do violate their bond of trust with their consumers through unethical marketing practices (Solomon, 2003).

1.1 Ethics in Marketing

Businesses have increasingly realized that ethical behavior is also good business on the long run, since the trust and satisfaction of consumers translates into years of loyalty from satisfied customers (Solomon, 2003). A sub-discipline of business ethics is Marketing Ethics, which is how moral standards are or ought to be applied to marketing decisions, behaviors and institutions (Laczinak and Murphy, 1993; Klein et al, 2006). Similarly, ethical marketing has been also defined by Klein et al. (2006) as involving practices that emphasize trustworthy, transparent, and responsible policies and actions by businesses that exhibit integrity and fairness to customers and other stakeholders. But actually the dilemma or question here lies in the difficulty of deciding which stakeholder interest should take priority if a conflict of interests did exist between those stakeholders.

Under the societal marketing concept, managers must look beyond what is legal and permitted and develop standards based on personal integrity, corporate conscience, and long-term consumer welfare. And because business standards and practices vary from country to country, the issue of ethics poses special challenges for international marketers. The growing agreement among today's marketers is that it is important to make a commitment to a common set of shared standards worldwide (Kotler and Armstrong, 2006).

2. Societal Marketing

Distrust of the market has increased and the calls for its regulation have also increased with less consideration of the implications of unintended consequences (Brown, 2007). Therefore, despite the years of research in which researchers continue to offer scholars and practitioners with challenging views on the value of socially responsible approach to marketing activities (Murphy and Laczinak, 1993; Smith and Quelch, 1996), there has been conflicting views and the issue surrounding marketing ethics and social responsibility remains inherently controversial.
Social Marketing has been defined generally by Kotler et al. (2002); Andreasen (2002); Hastings (2003) as applying the marketing principles and values in exchange to social issues. It is popularly used for campaigns related to the public health and the environment. Beside strategies which deal with obesity, tobacco consumption, family planning, safe sex, recycling, and waste management (Domegan, 2008). Therefore social marketers are accordingly moved by the desire to help, support, care and promote well-being of the society and individuals (Raval et al., 2007).

Marketers may also, try to reverse some of the negative influences which are sometimes caused by commercial marketing in order to enhance the well-being of the society and groups (Raval et al., 2007). As social marketing is about influencing behavioral exchange outcomes, there has been a remarkable and dramatic growth in its use (Gordon et al., 2006) among both commercial and non-profit organizations, especially in areas where educational and legal interventions have failed (Diamond and Oppenheim, 2004). Because such organizations seek to found their activities mainly on empathy, trust, bonding and commitment (Raval et al., 2007).

A key founder of the societal marketing movement was Kotler (1972), who recognized that what consumers’ desire may not necessarily be good for them, for example: tobacco and alcohol, and although marketers may create a happy customer in the short term, in the long run both consumers and society may suffer as a direct result of the marketer's actions in “satisfying” the consumer. Many further authors like Hunt and Chonko, 1984; Robin and Redenbacher, 1987; Garrett, 1987; Laczniak and Murphy, 1993; Murphy, 1998; Hunt and Vitell, 1992; Smith, 1995 agreed Kotler that evidently marketers should consider social responsibility and societal marketing to be an important issue within the marketing field, but how actual consumers view these matters is still an unanswered question. Because although hundreds of organizations and institutions established to research and promote ethical business behavior, marketing ethics and societal marketing are not sufficiently researched from the consumers’ point of view (Carrigan and Attalla, 2001). As the debate about ethics of marketing and its role in both the society and markets has been noticeably enlarging (Brown 2007), marketing critics worried that if marketers continued to address people only as consumers this can mislead them into viewing all social relationships and responsibilities according to the model of consumption (Hove 2008).

3. Societal Marketing and Advertising

Many previous researchers noticed that negative information about a firm's ethical behavior influences consumer attitudes more than positive information is thought to influence the company's image and product sales (Mascarenhas, 1995). Thus, one might expect consumers to be punishing the unethical behaviors, but not necessarily reward the ethical ones (Carrigan and Attalla, 2001). And this was supported by Simon (1995) as his study suggested that consumers are interested in ethical behavior even beyond those issues that directly have impact on them, and they would be discriminating in their purchases according to such information.

Nowadays, possessing the prerequisite knowledge about what consumers perceive as ethical and not ethical became a necessity, but this unfortunately is not enough, because one must also act according to that knowledge. With respect to marketing, consumers’ attention is mostly drawn to certain matters such as unsafe products, violations of confidentiality in transactions, misleading promotions or even illegal pricing schemes. Therefore, due to the absence of enough previous studies addressing advertising, this study fundamental district of the marketing field that is to be closely researched, will be Advertising.

However, authors kept on interpreting advertising ethics in numerous ways. Cunningham (1999) defined advertising ethics as "what is right or good in the conduct of the advertising function. It is concerned with what is ought to be done, not just what is legally a must". Lately, it was defined by Srivastava and Nandan (2010) as organizing the information content of advertising without harming the public right to know about commercial products while having the information content built upon the social values of society and acceptable moral principles in terms of the commercial promotion in markets.
Increasingly, companies are responding to the need to provide company policies and guidelines to help their managers' deal with questions of advertising ethics which are common to all professionals, but due to the wide exposure advertising has among all different kinds of consumers, advertising practitioners encounter various factors that are uniquely related to advertising issues (Drumwright and Murphy, 2004). Of course, even the best guidelines cannot resolve all the difficult ethical decisions that individuals and firms must make. But there are some principles that marketers and advertisers can choose among. According to Kotler and Armstrong (2006), one principle states that such issues should be decided by the free market and legal system. A second and more progressive principle puts responsibility not on the system but in hands of individual companies and managers, by which each firm and advertising manager must work out a philosophy of socially responsible and ethical behavior.

Ethical advertising has many advantages to both consumer and business sides, as it contributes much to the welfare of the society as a whole (Benkert, 1998). Therefore having a clear consensus about what is an ethical conduct for the marketing managers helps businesses in avoiding losses and in serving their customers competently. Researchers argued that getting someone to buy through manipulative or dishonest advertising practices will only lead to short-term gains, while all businesses and mostly the mature ones should be seeking a long-term relation with the market to build a real stable business not just to a quick hit in a market. Because consumers buy from people not from companies, companies that show their true selves and live up to their promises will earn more trust from their potential customers and give them confidence to more likely to want to buy from them. Therefore companies using ethical marketing are offering greater value to their customers by loading and burdening themselves with the extra efforts executed in delivering and doing their businesses in an honest and truthful way.

4. Role of Ethics in Advertising practices

Advertising profoundly impacts consumers' essential values and behavior and the way they understand themselves and the world around them (Murphy, 1998). Similarly, Foley (1999) concluded that Ethical advertising should serve the truth, the authentic development of the human person and the healthy progress of the society. Although ethics is a mainstream topic in advertising literature, the amount of academic research conducted on it is unfortunately not proportionate with its importance (Hyman, et al., 1994).

Usually the traditional challenge of advertising is to create a commercial message that is both effective in selling and truthful, but the issue that remains controversial is that the functions of advertising should be ethically proper for advertisers to picture their audiences' social role (Hove, 2008; Drumwright and Murphy, 2009). In contrast, critics of advertising called attention to the absence of social responsibility in the consumer role, and argue that advertisers should try to affirm ethical ideals more than mere self-interest (Hove, 2008).

Several authors have discussed ethical advertising, through the emphasis on the ethical implications of the role played by advertising in the collective shaping of society. This has been widely debated over the past half century starting from the accusations of subliminal manipulation of consumers (Packard, 1957) to more balanced discussions of advertising's function on the contemporary culture (Philips, 1997; Attas, 1999; Peterson, 1998). Historically, ethical advertising was examined largely through commentary and philosophical debate (Drumwright and Minette, 1993) and from a "macro" perspective of advertising's effects on society, but this study will examine advertising from a "micro" perspective which is the consumer side in Egypt.

From the 1980s through the present, two empirical streams of research on advertising ethics have been developed. The larger of the two streams has focused on understanding consumers' perceptions of potentially objectionable advertising, such as ads with persuasive appeals, ads with idealized imagery, ads of dangerous products (for example: cigarettes) and ads targeting children (Gulas and McKeage, 2000; LaTour and Henthorne, 1994; Tinkham and Waver-Laisay, 1994; Treise et al., 1994). As a result, advertisers must accept some responsibility for the confusion of values caused which became a serious symptom of our times of troubles (Drumwright and Murphy, 2009).
Cultural critics have characterized advertising as the driving force behind this unhealthy "colorization" of all aspects of social life. By contrast, many defenders of advertising saw nothing wrong with the self interest that advertising encourages. As they argue that society benefits when individuals devote most of their effort to purchasing their self interests (Hove, 2008). Later, the debate concerning the nature and effects of advertising that characterized the early literature has continued in more recent years to range from whether or not it is ethical to advertise to children and highlighted the significant parental concern and academicians concern toward the impact of advertising directed at children, advertisers have questioned their ethical standards (Moore, 2004; Hudson et al., 2008).

Several authors, in fact, questioned who is responsible for ensuring that advertising is ethical and concluded that the advertising profession should police itself through voluntary ethical codes of behavior that is to be updated regularly by the industry with the help of the consumer groups’ feedback (Foley, 1999). Therefore, this study’s importance, will add up to the academic reviews and updates the consumers feedback. The importance of such reexamination is to highlight ethical motivations that can occur within the act of consumption. For advertisers, the point of acknowledging these new insights about consumption would benefit them as the consumers ethical concerns are taking more and more importance in consumer choices beside not only to meet clients’ and agencies’ economic goals but also to address audiences’ social and ethical concerns (Hove, 2008).

Further studies of ethics in advertising emphasized developing and understanding of consumers’ perceptions (LaTour and Herthorne, 1994; Triese et al., 1994; Gulas and Mckeage, 2000; Tinkham and Waver-laisay, 1994), however relatively few studies examined the perceptions of respondents regarding ethics of certain behavior or practices (Ferrell and Krugman, 1983; Davis, 1994; James, Pratt and Smith, 1994). Although advertising ethics has been recognized as a main stream topic, its body of research remains inconclusive in many important areas. Therefore, this study is concerned with advertising ethics from consumers’ point of views to determine the ethical nature of TV ads (Hyman et al., 1994).

5. TV Advertising

Advertising can be defined as mass and paid communication, which consumers turn to for information to help them reduce their nervousness in a complex and confusing world (Dyer, 1982). Consumers mostly respond to it because of its high visibility and readily availability, and because it originate authority and certainty (Cushman, 1990). Promotional techniques are increasingly becoming important, especially TV advertising which was found to be of enormous value not only for producers and distributors but also for the consumers. This is because it has a significant influence on people and society in large, such as shaping their attitudes, behavior and priorities (Srivastava and Nandan, 2010).

Advertising has the ability to influence cultures as well as to affect consumers' attitudes and values regarding the fundamental issues in their lives, even when it does not directly affect their buying habits (Schudson, 1984). Therefore advertising is considered unethical if it refers to distraction of societal values and norms established by the religious, governmental or political institutions to which one looks for moral and ethical guidance. It is also held to be deceiving if it has the tendency of deception to an extensive number of customers in a material way (Srivastava and Nandan, 2010).
5.1 Drivers for TV Advertising
The focus of this study is on TV advertising. It was chosen to provide explicit and precise conclusions in the TV advertising ethics field in Egypt, due to many several reasons that were supported by previous studies and are represented in the following drivers:

- Marketing representations are very powerful to an extent that can make consumers believe that they know something of which they have no experience and influence the experiences they have in the future (Schroeder and Borgerson, 2002).
- One important aspect concluded by Borgerson and Schroeder (2002), is that visual representations as a marketing communication tool is that it is mostly used to produce meanings, band images and spectacular similarities that create associations in consumer minds.
- Advertising is considered as a socio-political artifact; as it creates meanings within the circuit of culture that often extends beyond what is intended by the advertising agencies and firms whose products are advertised. Beside the fact that advertising can help organizations deliver messages of faith, tolerance and compassion (Foley, 1999).
- It was stated by Richmond and Hartman (1982) that due to the wide exposure of the advertising tool and high reliance and dependence on TV advertising, every media user is alert to these unethical concerns.
- According to UNESCO Institute for Statistics, 2003 and databanks of several institutions, Egypt is sorted as the 25th Arab country among other 215 of the whole African continent in households owning televisions and television receivers, therefore Egyptians were rated as high TV watchers.

5.2 Ethical Criticisms for TV Advertising practices
Marketing practitioners are troubled about the truthfulness and eventual social impact of advertising, therefore advertising has always been particularly among all other marketing tools open to criticism (Greyser and Reece, 1971; Hunt et al., 1990). The following, highlights some of the criticisms for TV advertising practices:

- Advertising as a promotional technique has a very unique nature with genuine exceptional characteristics, such as its popularity or pervasiveness, stereotypical portrayals, manipulative, influential and persuasive nature. But such distinctiveness costs and has profound consequences such as preoccupation with materialism and consumption, frequent use of sex appeals and lack of information (Pollay, 1986).
- Some TV advertising are by of excessively dramatic and increasingly using graphic for fear appeals (LaTour and Zahra, 1989).
- Advertising has been accountable for targeting practices to potentially vulnerable and defenseless groups such as children and minorities and disadvantaged (Christians et al., 1991; Solomon, 2006).
- Several finally, several other authors argued that advertising is found guilty of unethical or irresponsible handling of potentially harmful or offensive products (Kohn and Smart, 1984; and Christians et al., 1991; Solomon, 2006).

Research Problem
A recent study by Blair et al. (2006), stated that while ethics play a role in advertising it continues generating a great deal of attention, and therefore the role of the educator is becoming an important factor for advertising. Therefore this study intends to determine what's acceptable and unacceptable from the consumers point of view towards the wide variety of TV ads trafficking their daily time spend in front of
the TV, explore the variables that would affect their judgments and which are mostly important from their moral stand point, (Henthorne and LaTour, 1994). Therefore this study research problem is:

"Do Ethics matter in TV advertising from the consumers' point of view in Egypt?"
This research also intends to determine whether or not ethics matter to Egyptian consumers, through the focus on TV advertising to generate in depth information.

**Research Importance**
This Study will have both academic and practical importance to the marketing field and will count a review to the literature in Egypt as few previous studies were conducted to determine the ethical nature of the Egyptian TV ads from consumer's perspectives.

Despite the amount of attention given to the term “Ethical Marketing” in previous studies yet it is still a phenomenon that needs to be investigated in Egypt. Little studies have developed measures to determine the ethical nature of an advertisement in spite of the profound models that have been developed previously by others, still the body of literature that has been investigated is considered few and the measures and models reached by previous researchers may not be transferable in different context and call for further investigation and adjustments.

Although consumers are the key stakeholders in the marketing process, there has been little research attention given to the importance of understanding the ethical nature about the wide range of TV ads from the consumers' perspective (Carrigan and Attalla, 2001).

1. **From the academic perspective**
Ethics in Advertising raises several important moral issues confronting advertising, This topic is one of ongoing important one's to the advertising world, business community, educators and society at large (Murphy, 1998), therefore the role of educators has become an important factor for advertising, due to the great deal of attention ethics is generating in advertising (Blair et al, 2006).

None of the previous researchers had their studies made in this context and therefore no definite variables or research model has been so far defined or found appropriate for this study, therefore this study will explore whether ethics matter in TV advertisements in Egypt from the consumers point of view or not by focusing on knowing how consumers determine the ethical nature of the ads. In order to find out what variables affect their judgments, to determine if consumers do give attention to moral judgments from an ethical stand point or not (Carrigan and Attalla, 2001).

Ethics became increasingly crucial for Business and advertising. Nearly no marketing course exists without ethics module in the curriculum. There is a growing need to determine the positives of ethical advertising and behavior firmly by educators as compared to the possible downsfalls of unethical advertising (Burnett, et al, 2003; Keith, et al. 2008).

2. **From the practical perspective**
Recently Egypt has been witnessing a boom in TV advertising and is exposed to a huge traffic of ads. Therefore, this study will contribute to the Media sector by providing marketing and media planners with the information needed to implement effective strategies that influence consumer's judgments about TV ads.

The following points also summarize some of the main reasons behind the importance of this particular study:

- The media sector is enlarging in Egypt, and organization's are spending large budgets on TV advertising (Brenkert, 1998; Cranfield, 2006).
- The Egyptian consumers are high TV watchers of all age groups and different backgrounds.
TV Advertisers are encouraged to behave in an ethical manner, because ethical behaviors are thought to influence product sales and the image of the company. (Mascarenhas, 1995).

According to Carrigan and Attalla, (2001), large numbers of consumers buy a product or recommend a company based on its ethical reputation, which increases the weight of the ethical importance of the advertisement of any company.

Due to the demographic transition lately happening in Egypt, the majority of women are working which decreases the level of control they have on what their children are watching and may lead to imitation or repeatedness of undesired actions or certain language adopted by their children, as previous studies have shown concerns about the impact of advertising on children (Brenkert, 1998; Bakir and Vitell, 2010).

The Egyptian culture and ethics governs the Egyptian consumers and influences their judgments about what is ethical or not, due to the significant influence that advertising exercises on people and society attitudes, behavior and priorities (Brenkert, 1998; Drumwright and Murphy, 2004).

According to most previous researches, firms which are perceived as unethical turn out to be less profitable and have negative customer attitudes to overcome (Pettijohn et al., 2008) and same holds true considering the effect of corporate behavior on investors, which become less likely to invest in such corporations (Lantos, 1999; Treise, et al., 1994).

The findings gained from this study analysis will be useful to business firms, marketers, media planners and academic institutions that wish to promote ethical training and behavior (Burnett, et al., 2003). Therefore with respect to the companies and marketers efforts, this research will help them identify the role ethics play in TV advertising in Egypt.

**Research Methodology**

This part of the study will discuss the research design, data collection, sampling and Data analysis. Few previous studies have addressed this research problem particularly in an Egyptian context and from the consumer's perspective, which call for the need to adjust or to alter previous models to include the huge variation of the Egyptian culture (Borgerson and Schroeder, 2002). In this study, effort will be made to find out the consumers' point of views in Egypt.

1. **Research Design**

This research is exploratory in nature, because the needed information is unknown and the available information does not apply or address this particular research purpose. Therefore, this study will explore the Egyptian consumer's perspective of whether ethics matter or not in TV advertising. And what factors or variables determine such ethical judgments of an ad, which is a contribution to the literature review and advertising practitioners in Egypt.

2. **Research Problem and Objectives**

This exploratory research attempts to identify whether or not ethics matter for Egyptian consumers and determine the dimensions related to ethical nature of TV ads from the consumers point of view. Therefore the research problem addressed in this study is as follow:

"Do Ethics matter in TV advertising from the consumers' point of view in Egypt?"

This study intends to achieve the following objectives:

- Exploring the ethical nature of the TV advertisements in Egypt from the consumer's point of view.
- Examine the role that ethics play in the use of TV advertising in Egypt.
- Discover whether or not unethical TV advertising actually sells in Egypt from consumers' point of view and reasons behind it.
- Identify the dimensions that consumers take into consideration when evaluating TV advertisements.
3. Research Questions
This exploratory research will answer, the following questions to attain and conquer previous objectives:

- Do ethics play a role in the use of TV advertising in Egypt?
- What is the ethical nature of TV advertisements from Egyptian consumer point of view?
- Does unethical advertising actually sell or not in Egypt from the consumers' point of view and what are the reasons behind it?
- How do Egyptian consumers from their perspective determine the ethical nature of the TV advertisements in Egypt and what dimensions do consumers take into consideration while evaluating a TV Ad?

4. Data collection and Analysis:
This research is exploratory in nature. It is a mono qualitative method research which focuses on the conduction of focus group discussions to explore the ethical nature of TV advertising in Egypt. Themed analysis will be used to analyze the qualitative findings of the focus group discussions (Bryman, 2004).

4.1 The Qualitative Method
This Qualitative research will begin by generating ideas, and making observations within an Egyptian Context. It is associated with inductive approaches, in order to explore and determine dimensions of ethical TV advertising in order to understand the population of this qualitative research, narrative description and constant comparison will take place. On one hand, it does create a limitation that the participants' views may not be representative of the rest of the population; however, it will reveal a richer vein of information which is not always possible through quantitative routes. Also, the interplay between respondents can develop discussions beyond that of independent contributions (Casebeer and Verhoef, 1997; Bryman, 2004).

Focus groups are used frequently for qualitative market research purposes, as a mean for testing concepts and exploring responses to new ideas. Its superior research outcome and extrinsic advantages such as speed and cost, has allowed it to be observable by clients, and easier to analyze (Frechtling et al., 1997; Stokes and Bergin, 2006), therefore it will be used as the main data collection method for this research study. A set of six different focus group discussions will be conducted by the researcher, each include six to eight participants arranged into two major types of discussions, namely homogenous and mixed group members for focus group discussions.

Managing focus groups is more difficult then managing in depth interviews due to certain participants dominating the discussions (Stokes and Bergin, 2006). Therefore careful planning and creation of informal atmosphere will be arranged for the six focus groups discussions to consider this problem, in addition to pre-testing and revising the discussion guide, developed by the researcher.

4.2 Focus Group participants profile
The participants will be of Egyptian consumers from different backgrounds to stimulate their ideas about the nature of ethical advertising in the Egyptian context and explain their relative judgments on the nature of the TV ads. The, participants of each focus group discussion will be carefully selected based on joint backgrounds, shared interests and common characteristics as one type of homogenous arranged focus groups, in order to avoid any conflicts among participants. An invitation card will be sent to potential participants for arranging meetings with them.

Obtaining data through homogeneous group members has several different advantages. These types of groups are less expensive than various data collection methods and quick in analysis; as the content analysis of such data will provide only qualitative not quantitative information (Stokes and Bergin, 2006). Another type of mixed focus groups will be also arranged to be merging or combining different types of consumers from different backgrounds such as age, education levels, social categories...
and income levels in order to experience and witness the other type of possible findings from the use of such method.

First type of homogeneous focus groups discussion will be arranged according to the following:

First Focus Group Discussion: According to Bakir and Vitell (2010), advertising is a shared concern among parents with children, due to the high influence TV advertising has over their decisions and judgments. Therefore this focus groups is going to be a homogenous set of parents who have children without keeping any other factor constant to actually measure or verify if this applies to parental consumers in Egypt or not.

Second Focus Group Discussion: Lane (1995) and Keith et al., (2008) discussed that potential marketing managers are the present business students. Therefore, it is crucial to measure their point of view as current consumers who share same background of business knowledge. This will develop the second type of focus group discussion, which will be set to include only business students.

Other four focus group discussions will be held with a mix of group members from different backgrounds with keeping no factors constant to draw out and explore the relevant information from the consumers’ point of view in an interactive setting of discussion. Participants of these six discussions will provide a flow of input and interaction related to the topic which will allow the researcher to capture subjective comments and evaluate them, due to the variety of consumer characteristics and backgrounds drawn in (Edmunds, 1999; Bryman, 2004; Stokes and Bergin, 2006).

5. Population and sampling:

Elements of the population will be drawn from Egypt based on Judgment Sampling. This research is exploratory in nature and it employs a qualitative approach to data collection. Purposive sampling will be used in this study. It is a sampling technique in which the researcher chooses the sample based on who they think would be appropriate for the study, either because they are the only ones who can provide it or they meet some criteria set in advance by the researcher. It’s is a type of non probability sampling which involves the sample being drawn based on specific purposes associated with answering the research questions (Sekaran, 2003).

Judgment sampling or Purposive sampling will be used for collecting the qualitative data of this study through focus group discussions where a number of Egyptian consumers will be selected from those who are most useful or favorable to provide the information required. It is the most preferable technique used for exploratory researchers during the data collection phase. The major disadvantage of this non-probability sampling technique is that it cannot scientifically lead to generalizations about the total population. This technique would not be representative enough, because it is used primarily when there are a limited number of people having the expertise in the area being researched. Some of the non-probability sampling plans are more dependable and useful for offering important leads to information rather then others. Therefore Judgment sampling will consider the aspect of time and generate basic information quickly for the in-depth analysis required, along with being cost efficient (Sekaran, 2003).

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The Impact of Nigeria`s Exports on Global Trade

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Key Words
Global Trade, Nigerian Exports, Non-oil Sector & Cash Crops

Abstract
The contribution of Nigeria`s exports to global trade has been an issue of concern to most development experts, economists and other policy makers in Nigeria. In the 1960s, Nigeria was noted for the production and export of cash crop; ground-nut, cocoa, rubber and other agricultural produce. Most of the manufacturing sectors in developed countries depended on Nigeria agricultural outputs. The discovery of oil in 1970s and its large scale exploration turned the great agricultural economy to oil exporting economy. In 2000, oil and gas accounted for more than 60% of the Gross Domestic Product (GDP) in Nigeria and about 92% of the foreign exchange earnings. Since 1999, government has pledged to reverse the trend in favour of agricultural and manufacturing sectors. Strategies and options for effectively integrating the non-oil exports to global trading system through export promotion in the country has been put in place. The study makes a modest contribution by examining the trend and relationship between Nigeria`s exports and global trade. The study specifically examines the impact of oil exports and non-oil export on the global trade. The study employs descriptive statistics (correlation, tabular and graphic presentations) in its analysis. The study uses annual time series data from 1980- 2008 obtained from the central bank of Nigeria (CBN), National Bureau of Statistics (NBS) and IMF, World Economic Outlook Database, 2010. The result of the analysis shows that Nigeria`s export has, on the average, not significantly contributed to global trade. The study therefore recommends that the government should take urgent steps to significantly boost the non-oil sector in Nigeria. Furthermore, the study identifies the direction of Nigeria`s export in the global market.
Risk Management in Islamic Financing
- Application of Value-at-Risk (VaR- models]

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Key Words
Islamic Finance, Risk Management, Value-at-Risk (VaR), Basel Banking Accord.

Abstract
The fundamental structure for an Islamic Financial system is a set of procedures and laws, commonly known as ‘Sharia’ which includes the major social, political, cultural, and economic features of the Islamic civilization. The Islamic finance system is now being practiced at various levels almost allover the Muslim world. This is encouraging business and trading activities include advancement of credit facilities without any reservations from religious point of view. In many parts of the world, specifically Baltic States, Mediterranean, and Spain, the trading activities with the involvement of Islamic traders is gaining importance. In fact, the Islamic based trading concepts and techniques are now being implemented by some business circles in Europe as well.

Managing risk in Islamic financing is an important issue. Like mainstream liberalized financial system the need to safeguard Islamic financing against shocks is imperative. However, the practices of conventional banking system appear conflicting with the Islamic system. Islamic financing considers risk sharing as a mandatory element, rather than shifting or transferring of risk. In fact transferring of risk is liable to create lots of economic problem, which have been demonstrated during the 2008 global financial crisis.

This paper will analyze the applicability of risk management tools particularly Value-at-Risk (VaR) models for Islamic financing system. The VaR models will be applied on various Islamic Financial products such as Islamic Equity funds, Modarabah financing, and Islamic sukuk bonds. The paper will assess the impact of such application on Islamic financial system and will recommend ways to make VaR models in compliance with Islamic system. The Islamic financial system is still in infancy stage and this paper hope to contribute towards its development. It should be known that the VaR models are the mandatory requirements under the Basel Banking Accord.

Research on risk management issues, particularly application of risk management tools in the Islamic mode of financing is extremely useful not only for the Islamic world but for the world financial markets including USA and Europe. According to a news item in the Financial Times, June 2006, the United Kingdom is planning to make London, a hub for Islamic finance.
Trade Liberalization and Agricultural Development in Srilanka

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Key Words
Trade Liberalization, Sri Lanka, WTO Regulations, Agricultural Development.

Abstract
Sri Lanka is one of the pioneering economies in the South Asian region that followed liberal economic policies since late 1970s. Despite some drawbacks of inward looking policies followed in 1950-77 period, the country was able to become ‘middle income economy’ within short period as other emerging economies like Malaysia. Trade liberalization that based on outward looking policy was recognized as the prime factor of succeeding economic goals in Sri Lanka. Therefore, the paper intends to find out relationship between trade liberalization and agricultural development of Sri Lanka with special reference in effects and implications of trade policy instruments. i.e. tariff and non-tariff barriers. According to past records of economic performance and agricultural development in Sri Lanka, trade openness has affected greatly to increase export and import volumes, earnings, export and import composition, trade direction and trade agreements. At the same time, reversal effects also could be seen due to some protective policy measures such as tariff and subsidy. However, in overall GNP growth rate, per capita income, Human Development Index (HDI) and other economic indicators were increased significantly. Thus the per capita income has increased from US$ 142 in 1960 to $ 2,399 in 2010 and the HDI has reached to 0.638 in 2010. Sectoral composition of the economy has changed from agriculture to industrial and service sectors. As a consequence the share of agriculture has declined from 43 % in 1960 to 9 % in 2010 and increased the share of industrial and service sectors respectively from 18% to 30 % and 41 % 58 % during the respective period. The selfsufficiency ratio of staple food production also increased to 100% assuring the food security of the nation. Nonetheless, the implications of implementing trade liberalization policies for domestic agriculture caused to create new issues in the protection of small holdings. It includes declining terms of trade and comparative advantage of some agricultural crops. The article would be focused on policy strategies and its effect on surviving small producers under global competition, particularly in relation with WTO regulations. The analysis of the paper would be based on the inductive method that mainly consisted of secondary information published by the Central Bank of Sri Lanka and Department of Census and Statistics.
Determinants of Demand for Automobiles

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Ramnarain Ruia College, Mumbai, India

Key Words
Automobile Demand, Vehicle Ownership, Economic Growth, Emerging Markets, China and India

Abstract
Asian automobile sales growth has been resilient in last three years, notably in China and India, despite the US and European credit crunch-led global slowdown. The secular growth in Asian automobile sales is mainly sustained by the expanding highway system across Asia, which comes along with urbanisation.

Indian automobile market is second fastest growing market in the world with all the leading global brands making their entry to have their own share in this large pie. In fact, car ownership is a symbol of economic progress and is very high on a consumer's wish list of products. This happens particularly in China and India, which are still at the early stage of car ownership given the stronger economic growth and availability of finance at relatively low rate of interest. Over the long run, auto sales are positively correlated to household income and future income expectations.

Along with the rising automobile demand and factors responsible for the same, the relationship between vehicle ownership and economic growth will be analysed in this paper with special reference to Emerging Markets, China and India by using secondary data source published by United Nations Statistical Year Book. The data on urbanisation and land area are obtained from the World Development Indicators of the World Bank.

Socio-economic factors as determinants of car ownership and customer relationship management policies of major car dealers also may be analysed on the basis of a study undertaken in the city of Mumbai.

The success story of the automotive industry is just at its beginning in Asia. Strong domestic spending shift from consumer staples to consumer discretionary amid rising income levels, stronger aspiration for better living standards and urbanisation from the rural areas, bring us to believe that Asian automotive industry will continue to grow in the future.

Introduction
Asian automobile sales growth has been resilient in last three years, notably in China and India, despite the US and European credit crunch-led global slowdown. The secular growth in Asian automobile sales is mainly sustained by the expanding highway system across Asia, which comes along with urbanisation.

The post liberalization period in India (post 1991) has been an era of Consumerism. The last two decades have witnessed a rising purchasing power in the hands of growing middle and upper middle class and a resultant rise in the demand for FMCG, Consumer Durables, High-End Fashion Goods and automobiles, especially passenger cars.

Literature Survey
Joyce Dargay, Dermat Gately and Martin Sommer (2007) have analysed on the basis of pooled time series (1960-2002) and cross section data for 45 countries the pattern of vehicle ownership and implications for transport and environment policies and global oil market. They also have made projections regarding vehicle stock in developing countries.

Sean P McAlinden, Kim Hill and Bernard Swiecki (2003) in their study described the economic contribution of motor vehicle to the US economy, to the multitude of US industries in the retail, manufacturing and service sectors.
Todd Litman and Felix Laube (2002) have examined the macroeconomic impacts of automobile dependency (impacts on overall economic development, productivity, competitiveness and employment). Both economic theory and empirical evidence indicates that excessive automobile dependency reduces economic development. Several current market distortions result in automobile dependency beyond what is economically optimal. Policies that encourage more efficient transportation and land use patterns can provide economic benefits.

The main body of the paper
The number of two wheelers and four wheelers bought and registered in India is rising very rapidly.

Total Number of Vehicle Registrations in India from 2001 to 2008

<table>
<thead>
<tr>
<th>Year</th>
<th>All Vehicles (in '000)</th>
<th>Two Wheelers (in '000)</th>
<th>Cars, Jeeps and Taxis (in '000)</th>
<th>Buses (in '000)</th>
<th>Goods Vehicles (in '000)</th>
<th>Other Vehicles (in '000)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001</td>
<td>54,991</td>
<td>38,556</td>
<td>7,058</td>
<td>634</td>
<td>2,948</td>
<td>5,795</td>
</tr>
<tr>
<td>2002</td>
<td>58,924</td>
<td>41,581</td>
<td>7,613</td>
<td>635</td>
<td>2,974</td>
<td>6,121</td>
</tr>
<tr>
<td>2003</td>
<td>67,007</td>
<td>47,519</td>
<td>8,599</td>
<td>721</td>
<td>3,492</td>
<td>6,676</td>
</tr>
<tr>
<td>2004</td>
<td>72,718</td>
<td>51,922</td>
<td>9,451</td>
<td>768</td>
<td>3,749</td>
<td>6,828</td>
</tr>
<tr>
<td>2005</td>
<td>80,045</td>
<td>57,417</td>
<td>10,460</td>
<td>822</td>
<td>4,053</td>
<td>7,337</td>
</tr>
<tr>
<td>2006</td>
<td>88,068</td>
<td>63,487</td>
<td>11,571</td>
<td>879</td>
<td>4,345</td>
<td>7,891</td>
</tr>
<tr>
<td>2007</td>
<td>96,808</td>
<td>70,141</td>
<td>12,810</td>
<td>936</td>
<td>4,652</td>
<td>8,464</td>
</tr>
<tr>
<td>2008</td>
<td>106,591</td>
<td>77,588</td>
<td>14,222</td>
<td>1,003</td>
<td>5,018</td>
<td>9,065</td>
</tr>
</tbody>
</table>

In four wheeler category the leading brand name is Maruti Suzuki. Car manufacturers in India dominate the passenger vehicle market by 79%. Maruti Suzuki is the largest car producer in India and has 52% share in passenger cars and is a complete monopoly in multi purpose vehicles. In utility vehicles Mahindra holds 42% share. Hyundai and Tata Motors is the second and third car producer in India.
The sales figures for August 2011 are given below:

<table>
<thead>
<tr>
<th>Category : Sub-Segment</th>
<th>Models</th>
<th>August 2011</th>
<th>% Change</th>
<th>Till August 2010-11</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>A: Passenger vehicles : Mini</td>
<td>M800, Alto, A-Star, WagonR</td>
<td>37496</td>
<td>-18.3%</td>
<td>197576</td>
<td>-3.3%</td>
</tr>
<tr>
<td>A: Passenger vehicles : Compact</td>
<td>Swift, Estilo, Ritz</td>
<td>16043</td>
<td>-26.9%</td>
<td>106836</td>
<td>-24.4%</td>
</tr>
<tr>
<td>A: Passenger vehicles : Super Compact</td>
<td>Dzire</td>
<td>7856</td>
<td>-6.8%</td>
<td>41795</td>
<td>-13.9%</td>
</tr>
<tr>
<td>A: Passenger vehicles : Mid-Size</td>
<td>SX4</td>
<td>1893</td>
<td>-7.6%</td>
<td>7994</td>
<td>21.5%</td>
</tr>
<tr>
<td>A: Passenger vehicles : Executive</td>
<td>Kizashi</td>
<td>8</td>
<td>0%</td>
<td>157</td>
<td>0%</td>
</tr>
</tbody>
</table>

| Category | | |
| Total A: Passenger Vehicles | 63296 | -19.2% | 360839 | -10.2% |
| B: Utility Vehicles | Gypsy, Grand Vitara | 1290 | 677.1% | 3434 | -3.0% |
| C: Vans | Omni, Eeco | 12500 | -11.7% | 61295 | 8.7% |

| Category | | |
| Total Domestic Sales | 77086 | -16.8% | 425673 | -7.4% |
| Total Export Sales | 14356 | 18.5% | 63297 | -14.7% |

| Category | | |
| Total Sales (Domestic + Export) | 91442 | -12.7% | 488972 | -8.3% |

* Kizashi was launched in February 2011.

**Discussions and conclusions:**

Rising incomes and aspirations for better levels of living have been the main factors for growing four wheeler ownership. Better technology, fuel efficiency, family size and travel-time to office were the factors leading to choice of car model among the respondents of the study undertaken in the city of Mumbai.

**Research limitations and direction for further research**

This was an effort undertaken at individual level. A similar study can be undertaken on a large scale covering more cities in India and China.

**References**

Badri Narayan G and Pankaj Vashisht (2008), ‘Determinants of Competitiveness of Indian Auto Industry’ Indian Council of Research in International Economic Relations


Trade and Monetary Factors in Reoccurring Economic Expansions of Developed Nations

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Chung Yuan Christian University, Chung-li City, Taiwan

Key Words
Trade Factors, Monetary Policies, Reoccurring Expansions, Parametric Shared-frailty Model

Abstract
This paper utilizes parametric shared-frailty model to examine nine developed countries’ expansion periods. Trade factors and monetary variables, at different time horizons, are seen to have significant effects on an economy’s reoccurring recovery time. Consistent with previous literatures, constant increase in real effective exchange rate, M1 and changes in consumer prices and steady decrease in lending to deposit ratio are seen to slow down recovery time. Other variables, such as current account and foreign direct investment both have positive and negative effects given specific periods. Also, economic openness and international reserves, specifically in the 1980s, help in the continuous expansion of an economy. These findings prove that parametric shared-frailty model is reliable and can serve as an additional tool for academicians and policy-makers in modeling business cycles.

Introduction

Researches connecting monetary policy and expansions have already received much attention in the literature. In a general perspective, Humpage (1996) showed that repeated attempts to control the connection between short-term monetary expansions and economic growth does not always provide positive outcomes and may result in higher inflation. Zarnowitz (2001) compared the most three recent long expansions of the US using variables on inflation, interest rates, foreign trade and monetary base, and found that economic productivity was greater in the 1960s compared to the 1980s and 1990s. Balogun (2007) found that monetary and exchange rate policies are ineffective in affecting GDP in the case of West African monetary zone countries especially in entering monetary unions which may possibly lead to economic growths.
Most of the studies mentioned consider macroeconomic and trade variables (e.g., Chauvet, 1998; Mah, 2005; Lam, 2004; and Balogun, 2007), monetary variables (e.g., Humpage, 1996; Zarnowitz, 2001; Bradley and Jansen, 2005; and Balogun 2007), country-specific expansions (e.g., Bodman; 1998; Zarnowitz, 2001; and Mah, 2005) and region-wide expansions (e.g., Jijilian et al., 2003; and Balogun, 2007), independently or some of the variables are just linked to explain economic booms. This research considers a relatively new model from the biological sciences and a broader variety of factors that may have a possible influence on economic expansions. Survival and hazard models also have a rich literature in business and finance (e.g. Sichel, 1991; Pazarbasioglu and Otker, 1997; Tudela, 2004; and Chen, 2010), however, there’s a dearth of empirical researches utilizing parametric shared-frailty models in studying business cycles. The presence of survival curves calculated by the proposed model will show the acceleration of economies during times of expansions.

This paper used economic expansions of developed nations and examined business cycle reoccurrence through the parametric shared-frailty model. This research will use four trade factors (economic openness, real effective exchange rate, current account and changes in consumer prices) and five monetary variables (M1, international reserves, discount rate, foreign direct investment, lending to deposit ratio) of Japan, S. Korea, US, Canada, UK, Sweden, Denmark, Australia and New Zealand. This study has two main rationales: First, it investigates if constant increase (decrease) in the value of trade factors can have a significant negative (positive) effect on the recovery time of an economy during expansion periods. Second, it looks at the significant effects of monetary variables on how they lengthen or shorten economic improvement in an expansion cycle. This research tries to aid academicians by bridging the gaps of previous papers, applying relatively new models and testing its efficacy in showing the relation between trade and monetary policies, and economic expansion. The authors also reaches out to policy-makers in suggesting which of the variables should be taken into account in order to deliver fast economic recuperation in support to the claim of Jijilian et al. (2003). This paper identifies the reoccurring recovery times of nine developed economies from the whole period of 28 years and also examine if there are changes on the duration over time by comparing three separate periods - 1980s, 1990s and 2000s.

This paper identifies the reoccurring recovery times of nine developed economies from the whole period of 28 years and also examine if there are changes on the duration over time by comparing three separate periods - 1980s, 1990s and 2000s.

This study is organized as follows: Section II presents data and hypotheses based on the literature, Section III explains the parametric shared-frailty models, Section IV interprets the results, and Section V provides the conclusions.

I. Data and Hypotheses

Panel data is on a quarterly basis and covers the period from the 1980s up to the late 2000s of expansion phases of developed countries from Asia, Europe, America, and Oceania. Trade factors and monetary variables are derived from the International Financial Statistics (IFS) database published by the International Monetary Fund (IMF). This research examines the recovery time of an economy under multiple expansion periods as the dependent variable conditional to the influences of trade factors and monetary variables. Table 1 shows the different expansion periods divided in three decades of study.
Developed countries (Gundlach, 1997) and European nations (Ngozo, 2006; Capolupo and Cheli, 2008), found that Economic growth is the ideal purpose of trade liberalization, however, studies among developing imports to the gross domestic product (GDP) (Guttman and Richards, 2004 and Ghosh and Li, 2007). Higher degree of EO can result to a faster economic recovery time leading to shorter expansion periods. (2) Relationship between trade openness and economic growth. But initially, this research hypothesizes that a fundamental causes of currency crises is current account deficits. Mencinger (2008) also found that current payments, and to measure a country’s foreign trade. Dabrowski (2002) reported that one of the current account balance (CAB) is the sum of the balance of trade, net factor income and net transfer payments, and to measure a country’s foreign trade. Trade factors include: (1) Economic openness (EO) is calculated based on the ratio of exports plus imports to the gross domestic product (GDP) (Guttman and Richards, 2004 and Ghosh and Li, 2007). Economic growth is the ideal purpose of trade liberalization, however, studies among developing countries (Gundlach, 1997) and European nations (Ngozo, 2006; Capolupo and Cheli, 2008), found that some group of countries benefits positively from opening their economy, while others do not confirm such relation. That’s why these studies can roughly conclude the hypothesis that there’s a positive relationship between trade openness and economic growth. But initially, this research hypothesizes that a higher degree of EO can result to a faster economic recovery time leading to shorter expansion periods. (2) Current account balance (CAB) is the sum of the balance of trade, net factor income and net transfer payments, and to measure a country’s foreign trade. Dabrowski (2002) reported that one of the fundamental causes of currency crises is current account deficits. Mencinger (2008) also found that current account deficits have negative effects on GDP. Thus, we hypothesize that continued decrease in the current account balances slows down a particular economy’s recovery time resulting to longer expansion periods. (3) Appreciation of real effective exchange rates (REER), according to Dabrowski (2002) can signal currency crisis because of devaluation and trade and balance of payment disequilibrium. Also, Edison (2003) found that over-valuations of exchange rates are associated with currency crises and a weakening economic system. Therefore, continuous increase in the REER is seen to be related to the abatement of economic growth, making expansion times longer. And, (4) constantly increasing changes in consumer prices (CCP) weakens the purchasing power and may discourage savings and investments. Palley (2000) showed that low inflation rate have positive effects to financial markets that contributes in sustaining economic expansion. Consistently, Gonzales-Hermosillo et al. (1997) posited that unexpected inflation

<table>
<thead>
<tr>
<th>Developed Nations</th>
<th>1980s</th>
<th>Reoccurring Expansion Periods</th>
<th>1990s</th>
<th>2000s</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>September 1986 – November 1988</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>May 1999 – February 2001</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>June 1999 – September 2000</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>November 1986 – December 1988</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The relationship and hypotheses of independent variables to the economic improvements during an economic expansion are detailed on this section.
have negative effects on the banking sector. Thus, sudden and continued increase in consumer prices can also make economies grow slower, resulting to difficulty in recovering from recessions.

Monetary variables are: (1) International reserves (IRs) which is composed of deposits of foreign currencies within an economy being held by the central bank. Frankel and Rose (1996), Sachs et al. (1996) and Kaminsky et al. (1998) and Altintas and Oz (2007) claim that countries with less IRs and high domestic credit growth may increase the probability of currency crisis. Therefore, the authors hypothesize that minimal amount of IRs may result to slower recovery time of a particular country. (2) Over supply of real M1 balance determines loose monetary policy before banking and currency crises happens (Edison, 2003; and Jacobs and Kuper, 2003), which, may indicate a possible end of an expansion phase (Kaminsky and Reinhart, 1999) or may lead to very slow economic recovery. (3) Foreign direct investment (FDI) measures foreign ownership of productive assets in a certain economy. Makin et al. (2008) found evidence that foreign capital inflow has a positive contribution to economic development. Thus, an increasing amount of FDI can help in a fast recovery time of an economy coming from a recession. (4) Discount rate (DR) is an interest rate that a central bank charges to borrowing depository institutions. Booth and Booth (1997) posited that monetary policy expansion, which is characterized by low discount rate, tends to increase stock and bond returns which help in a faster revival of an economy. Also, Edison (2003) and Martellato (2009) both agree that before and during a crisis real interest rate is high and volatile. Thus, constant rise in discount rate slows down an economy’s recovery and may result to longer expansion months. (5) Lending to deposit ratio (LDR) is derived by dividing the total amount of domestic credits to demand deposits. Beaton (2009) found that consumer spending decreases (increases) in response to the decline (rise) in credit opportunities. Therefore, a growing number of credit availability increases LDR and can stimulate the economy resulting to faster recovery time coming from economic slump.

We can hypothesize that constantly increasing values of real effective exchange rate, changes in consumer prices, M1 and discount rate are directly related to longer recovery time during an expansion coming from an economic downturn, and continuous rising on the numbers of economic openness, current account, international reserves, foreign direct investment, and lending to deposit ratio are inversely related to longer recovery time and help in the fast recovery time of economy as shown in Table 2.

<table>
<thead>
<tr>
<th>Category</th>
<th>Variables</th>
<th>Notation</th>
<th>Sign</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trade Factors</td>
<td>Economic Openness</td>
<td>OPEN</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Real effective exchange rates</td>
<td>REER</td>
<td>+</td>
</tr>
<tr>
<td></td>
<td>Current Account</td>
<td>CA</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Changes in consumer prices</td>
<td>CCP</td>
<td>+</td>
</tr>
<tr>
<td>Monetary Conditions</td>
<td>M1</td>
<td>M1</td>
<td>+</td>
</tr>
<tr>
<td></td>
<td>International reserves</td>
<td>IRES</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Discount rate</td>
<td>DR</td>
<td>+</td>
</tr>
<tr>
<td></td>
<td>Foreign Direct Investment</td>
<td>FDI</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Lending to deposit ratio</td>
<td>LDR</td>
<td>-</td>
</tr>
</tbody>
</table>

Note: Due to data limitations, t-bill rate and money market rate replaced discount rate; money plus quasi money replaced M1; nominal effective exchange rate replaced real effective exchange rate and annual data was used for the GDP of some of the countries under study.

II. Methodology

Shared-frailty models by Clayton (1978) and Hougaard (2000) are used to examine questions such as (a) how long can a particular economy stay in expansion periods, and (b) up to what extent and what kind of factors affects the expansion to continue. The form that will be followed by the standardized shared-frailty model is a panel survival-data with random-effects model.
The hazard function is the conditional probability that a cycle phase ends at a definite duration, given that it went through such period. The hazard is as follows
\[ h(t_{ij} | x_{ij}, \alpha_i) = \alpha_i h(t_{ij} | x_{ij}) , \quad (1) \]
where
\[ \alpha_i \] represents a frailty that is stipulated to have a mean of one and a variance \( \theta \) representing some unobserved observation-specific effect;
\[ x_{ij} \] stands for the covariates for the group \((j = 1, \ldots, n_j)\) across different countries \((i = 1, \ldots, G)\) at time \( t \);
\[ \alpha_i < 1 \text{ or } \alpha_i > 1 \] denotes the decrease or increase in the hazard given the country’s economy experiencing a decreased or an increased risk, respectively (Cleves et al., 2004).
Hazard and survivor functions can be represented as
\[ S(t_{ij} | x_{ij}, \alpha_i) = \{ S(t_{ij} | x_{ij}) \}^{\alpha_i} , \quad (2) \]
where
\[ S(t_{ij} | x_{ij}) \] is the survival function with a standard parametric model.

The transformed hazard function is derived from the accelerated failure-time metric, represented as
\[ \ln t_{ij} = \sigma_y w_{ij} + \beta_x x_{ij}, \quad \lambda = e^{-\beta_x} \] is a positive hazard rate parameter and \( p = \frac{1}{\sigma_y} \) denotes a positive scale parameter, and \( \beta_x \) are the parameters. Table 3 illustrates the five parametric log-linear survival distributions: Weibull, Exponential, Gompertz, Log-normal and Log-logistics (Greene, 2002).

| Distribution     | Survival Function \( S(t_{ij} | x_{ij}) \) | Hazard Function \( h(t_{ij} | x_{ij}) \) | Shape                                      |
|------------------|---------------------------------------------|------------------------------------------|--------------------------------------------|
| Weibull          | \( \exp(- (\lambda t_{ij})^\rho) \)         | \( \lambda^p (\lambda t_{ij})^{p-1} \)  | Monotonic hazard rate                       |
| Exponential      | \( \exp(- \lambda t_{ij}) \)                | \( \lambda \)                            | Monotonic hazard rate                       |
| Gompertz         | \( \exp((-p/\lambda)(e^{\lambda t} - 1)) \) | \( \text{pexp} (\lambda t) \)            | Monotonic hazard rate (exponential increase or decrease) |
| Log-Normal       | \( \Phi(-p \cdot \log(\lambda t_{ij})) \) | \( \phi / \Phi \)                        | Non-monotonic hazard rate                   |
| Log-Logistic     | \( \frac{1}{1 + (\lambda t_{ij})^\rho} \) | \( \frac{\lambda^p (\lambda t_{ij})^{p-1}}{1 + (\lambda t_{ij})^p} \) | Non-monotonic hazard rate                   |

Note: \( \Phi \) represents the standard normal cumulative distribution.

Table is based on the paper of Chen (2010) with an addition of the Gompertz model.

Providing the foundation for the distributions of parametric survival functions with \((t_{0ij}, t_{ij})\), have the probability procedure of the shared-frailty model:
\[ L(t_{ij} | t_{0ij}, \alpha_i) = \left[ \frac{S(t_{ij} | x_{ij})}{S(t_{0ij} | x_{ij})} \right]^{\alpha_i} \left[ \alpha_i h(t_{ij} | x_{ij}) \right]^{\rho} . \quad (3) \]
The unconditional shared-frailty model with the integrated frailty $\alpha_i$ for the $i$th group ($G_i$) is given below:

$$\begin{align*}
L(G_i) = & \int_{0}^{\infty} \alpha_i^n \prod_{j=1}^{n} \left[ \left\{ \frac{S(t_{ij} | x_{ij})}{S(t_{0ij} | x_{ij})} \right\}^{\alpha_i} \left\{ h(t_{ij} | x_{ij}) \right\}^{\alpha_i} \right] g(\alpha_i) d\alpha_i ,
\end{align*}$$

where

$$C_i = \sum_{j=1}^{n} c_{ij}$$

represents the occurrence of expansion among economies.

The unconditional survival function is denoted by:

$$S_\theta(t_{ij} | x_{ij}) = \int_{0}^{\infty} \left\{ S(t_{ij} | x_{ij}) \right\}^{\alpha_i} g(\alpha_i) d\alpha_i ,$$

where $\theta$ stands for the frailty variance to measure the level of heterogeneity among the different economies; $g(\alpha_i)$ denotes for the probability density function for computational convenience after a gamma distribution (Cleves et al., 2004).

The survival function with a gamma distribution is given by:

$$g(\alpha_i) = \frac{\alpha_i^{1/\theta - 1} e^{-\alpha_i / \theta}}{\Gamma(1/\theta) \theta^{1/\theta}},$$

where $\Gamma$ stands for gamma function.

IV. Results

The best fitting distributions were characterized based on the largest value of log likelihood (Cleves et al., 2004). Among the parametric models, Gompertz distribution best fits the data for the 2000 expansion period while for the rest of the data samples, Weibull distribution is the best fitting model.

Figure 1 illustrates the graphical representations of the recovery times for all of the expansion periods and separated for each decade. We found all the developed countries in the sample recovered the fastest in the decade of 2000, followed by 1990s and 1980s. Although, we can say that there’s no significant difference among the economies under different periods. This study provides support to the recent study of Kose et al. (2008) that industrial countries tend to have converging business cycles.

![Weibull regression graphs](image-url)
Figure 1: Exit times of the period specified

Table 4 presents the summary of the results. Data covering all expansion periods has 5 significant variables. The expected positive sign of the real effective exchange rate (Dabrowski, 2002 and Edison, 2003) and changes in consumer prices (Gonzales-Hermosillo et al. 1997 and Palley, 2000) conforms to the findings that constant appreciation of these two variables weakens the economy, thus, resulting to a slower recovery time during expansion periods. A significant result for M1 also matches the hypothesis. The findings support the claims of Kaminsky and Reinhart (1999), Edison (2003), and Jacobs and Kuper (2003) that excess supply of real M1 balance determines loose monetary policy hindering faster reoccurring recovery time and leading to longer expansion phases. The contrasting signs of current account balance and foreign direct investment can be related to the study of Sachs (1981) among OECD countries, which is further developed by Baxter and Crucini (1993) showing the negative relations of current account and investments against economic booms. They explained that this is attributable to international capital mobility making investment movements as the dominant influence only in the short-run, therefore resulting to halted growth opportunities. Among the significant results, a trade variable, changes in consumer prices are seen to be the major factor in affecting reoccurring recovery time of developed economies. Feldstein and Elmendorf (1989) found evidence on the strong economic expansion that began in 1983, where the rapid growth of real GNP was attributed to the rise in total nominal spending with less increase in price levels as a result of an expansionary monetary policy.

Table 4: Parametric shared-frailty models for the likelihood of exit time of economic expansion

<table>
<thead>
<tr>
<th>Variables</th>
<th>Notation</th>
<th>All Expansion Periods</th>
<th>1980s Expansion Periods</th>
<th>1990s Expansion Periods</th>
<th>2000s Expansion Periods</th>
</tr>
</thead>
<tbody>
<tr>
<td>Economic openness</td>
<td>EO</td>
<td>0.267 (0.74)</td>
<td>-7.027 (0.09)*</td>
<td>-1.8242 (0.77)</td>
<td>1.337 (0.79)</td>
</tr>
<tr>
<td>Real effective exchange rates</td>
<td>REER</td>
<td>0.019 (0.10)*</td>
<td>-0.026 (0.38)</td>
<td>0.113 (0.02)**</td>
<td>0.244 (0.22)</td>
</tr>
<tr>
<td>Current account</td>
<td>CA</td>
<td>0.000 (0.01)**</td>
<td>-0.001 (0.00)**</td>
<td>0.001 (0.17)</td>
<td>0.000 (0.24)</td>
</tr>
<tr>
<td>Changes in consumer prices</td>
<td>CCP</td>
<td>0.155 (0.00)**</td>
<td>0.243 (0.06)**</td>
<td>0.058 (0.78)</td>
<td>2.010 (0.14)</td>
</tr>
<tr>
<td>M1</td>
<td>M1</td>
<td>0.000 (0.00)**</td>
<td>-0.000 (0.19)</td>
<td>0.000 (0.02)**</td>
<td>0.000 (0.82)</td>
</tr>
<tr>
<td>International reserves</td>
<td>IRES</td>
<td>0.000 (0.24)</td>
<td>-0.000 (0.05)**</td>
<td>0.000 (0.15)</td>
<td>0.000 (0.20)</td>
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<tr>
<td>Discount rate</td>
<td>DR</td>
<td>-0.102 (0.18)</td>
<td>-0.035 (0.89)</td>
<td>-0.173 (0.37)</td>
<td>-0.802 (0.44)</td>
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<tr>
<td>Foreign direct investment</td>
<td>FDI</td>
<td>0.000 (0.08)*</td>
<td>-0.000 (0.78)</td>
<td>0.000 (0.11)</td>
<td>-0.001 (0.09)*</td>
</tr>
<tr>
<td>Lending to deposit ratio</td>
<td>LDR</td>
<td>-0.050 (0.26)</td>
<td>0.187 (0.39)</td>
<td>-0.423 (0.07)*</td>
<td>-0.235 (0.00)**</td>
</tr>
<tr>
<td>Constant</td>
<td></td>
<td>-10.974 (0.00)**</td>
<td>-12.062 (0.00)**</td>
<td>-23.383 (0.00)**</td>
<td>-31.636 (0.12)</td>
</tr>
</tbody>
</table>

Note: p-values are shown in parentheses with the following significance: * P<0.1. ** P<0.05. *** P<0.01.

For the 1980s expansion periods, four variables are significant. Economic openness supports the study’s initial assumption and is the lone significant value among the four specifications. Compared to the other periods, 1980s witnessed the significant increase in the international trade factors of imports and exports (Baneth, 1993; Jilek et al., 1993; and Boltho, 1996) that is why economic openness made a huge impact during this time. These effects of heightened trade liberalization also explains the consistent
relations of current account balance (Dabrowski, 2002), changes in consumer prices and international reserves (Frankel and Rose, 1996; Sachs et al., 1996; Kaminsky et al., 1998; and Altintas and Oz, 2007) to the hypotheses presented. The authors found mixed results on the values of current account for all expansion periods and 1980s expansions and these are related to the negative and positive effects of trade liberalization, respectively. However, given the close to zero values of the variable, this paper concludes that the effect of current account is almost negligible. For the 1980s period, another trade factor, inflation is the prime variable in determining expansion phases of developed countries. Again, this is consistent, and provides a strong relationship to the study of Feldstein and Elmendorf (1989). Next, economic booms in the 1990s are affected by three significant variables. Real effective exchange rates, M1 balance and lending to deposit ratio (Beaton, 2009) conformed to the hypotheses that constant increase in values of the variables lead to slower economic recovery time in the case of first two factors and a faster recovery time leading to shorter expansion in the case of the latter variable. Expansion periods in the 1990s showed the strong effects of real effective exchange rates and lending to deposit ratio as the major indicators of economic recovery. Both Dabrowski (2002) and Edison (2003) agree that over appreciation of real effective exchange rates can signal currency crisis because of devaluation and trade and balance of payment disequilibrium, thus results in the weakening of the economy. For lending to deposit ratio, Feldstein and Elmendorf (1989) highlighted the importance of spending in affecting real GNP; and Beaton (2009) found that there’s a decrease in consumer spending with the decline of credit availability. Thus, increasing the number of lending opportunities can increase spending and in return, stimulate the economy helping in a faster recovery time. Expansions in the 1990s showed that a trade factor and a monetary variable both affect the growth of developed economies. The only two significant variables in the 2000s, namely, foreign direct investment (Makin et al., 2008) and lending to deposit ratio confirm the hypotheses. The authors again, found mixed results on the values of foreign direct investment for all expansion periods and 2000s expansions; and these are attributed to the international capital mobility and the economic opportunities created of trade liberalization, respectively. However, the close to zero values of this variable, made the authors conclude that the effect of foreign direct investment to economic expansion is very minor. In the 2000s expansion periods, a monetary variable, lending to deposit ratio are seen to have an upper hand in determining recovery times consistent with the findings of Feldstein and Elmendorf (1989) and Beaton (2009). For all of the samples, trade factors are seen to be more influential than monetary variables considering the weight of significant variables presented.

Figure 2 shows a comparison of the prediction accuracy of the models through the Cox-Snell residual method (Cox and Snell, 1968; and Hosmer et al., 2008). A correctly fitted model is determined by a straight line with an exponential distribution equal to 1. Based on the results, the graph exhibiting all expansion periods provides the best fit among the survival models presented. The remaining plots illustrated that the parametric survival models provide a comparatively justifiable fit to the data and among the three separated boom times, 2000s expansion periods provide a closer fit with the data.
specifically in the 1980s (Baneth, 1993; Jilek et al., 1993; and Boltho, 1996). No significant conclusion can conform to the hypothesis that trade liberalization can help in the continuous expansion of an economy of the 1980s but an opposite positive sign for all samples. Economic openness and international reserves both be derived on the effect of the discount rate on economic booms. For all of the study samples, trade variables are observed to be more influential especially in the 1980s, trade and monetary factors have the same weight in the 1990s while monetary variables played a more crucial role in the 2000s expansions.

This study, after looking at interrelated findings with the previous literatures on the effect of trade and monetary variables concludes that the relatively new parametric shared-frailty models in the field of business cycles proved its applicability. This research also provides supplementary inputs to policy-makers that indeed, significant variables discovered, are strong determinants in times of economic expansions and worth considering in making monetary policies. The paper also recognize the fact that there are mixed, inconsistent and insignificant findings in the other factors; we deemed it necessary that academicians continue to explore the strength of other variables in affecting economic recovery time by

Figure 2: Prediction for Cox-Snell residuals
V. Conclusions and Direction for Further Research

Utilizing parametric shared-frailty models to examine developed countries expansion periods. This paper finds that real effective exchange rate, changes in consumer prices, M1 and lending to deposit ratio conform to the conventional notions of the literature at different time horizons (Feldstein and Elmendorf, 1989; Palley, 2000; Dabrowski, 2002; Edison, 2003; and Beaton, 2009). Constant increase in the values of the first three variables is observed to slow down economic recovery time and lengthens expansion phases of economy, while constant decrease in the value of the latter provides the same effect. This paper also provided additional knowledge to policy-makers that indeed, significant factors found, in relation to previous literatures, are really strong determinants of economic recovery time and worth considering in polishing monetary policies. Current account and foreign direct investment have differencing effects on the economic recuperation stage depending on the period specified – consistent negative sign for the 1980s but an opposite positive sign for all samples. Economic openness and international reserves both conform to the hypothesis that trade liberalization can help in the continuous expansion of an economy specifically in the 1980s (Baneth, 1993; Jilek et al., 1993; and Boltho, 1996). No significant conclusion can be derived on the effect of the discount rate on economic booms. For all of the study samples, trade variables are observed to be more influential especially in the 1980s, trade and monetary factors have the same weight in the 1990s while monetary variables played a more crucial role in the 2000s expansions.
expanding the data, considering the case of other group of countries or discovering new models that may be applicable to business cycles.

References


Examination of Country of Origin on Food Sector in Asian Consumers

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Key Words
Country of Origin, country image, safety certificate, ethnocentrism

Abstract
This study examined the effects of Country of Origin (COO) on Asian consumers: Japanese, Korean, Chinese, and Thais. The objective of this research was to assess the effect of COO on food sector. The purpose of this study was to assess the effect of Country of Origin (COO) on food sector, with specific emphasis placed on examination of factors that influence the mindset of Asian consumers: Japanese, Korean, Chinese, and Thais. The research was performed via a comprehensive questionnaire, by asking respondents in surveys to evaluate country image, price, safety and ethnocentrism between domestic and imported foods from certain countries. The country image that has a significant impact on the Asian consumers buying decision was discussed and compared. The results showed that COO indeed affects consumers’ perceptions on food products, and the country image has a strong link with the image of food products. Customers could categorize COO into nation groups as levels of food safety and its shelf life. COO is one of important factor for Asian consumers to make a purchase decision comparing to price, brand and safety certificate. The effect of COO was significantly different between the four Asian consumers. Korean and Japanese had more negative responses for COO than Thais and Chinese when making purchase decision. This research has enormous benefits for food producing and companies for designing marketing strategies for recent globalizing commerce.
Globalization and Cause-Related Marketing

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Key Words
Globalization, Cause-related marketing, challenges and directions

Abstract
Literature indicates that globalization has influenced the business environment and the functioning of businesses. As a result, the business environment became more dynamic and complex. Studies indicate that changes were also witnessed in the domain of marketing where new forms of marketing have emerged. One of such form of marketing was cause-related marketing. The aim of this paper is to examine the literature in the area of cause-related marketing in order to understand the emerging issues influencing it in the era of globalization. It briefly discusses possible directions for solving these issues. This paper is based purely on the review of literature and indications emerging from the review.

Introduction
Literature indicates that cause-related marketing has started gaining importance in the domain of marketing post nineties. It also suggests that globalization has changed the way business was done and the way marketing was handled. These changes resulted in some issues and this article is an attempt to explore this context in order to find possible directions to handle these challenges. The first section of this paper covers globalization and its impact on businesses. The next section explores changes in marketing domain due to globalization. The following section covers discussions on globalization and its impact on cause-related marketing. While the concluding section of paper covers challenges and possible directions which may guide future marketing strategies in this area.

Globalization and Business
Globalization is defined as “the increasing integration of economies around the world, particularly through the movement of goods, services, and capital across borders. The term sometimes also refers to the movement of people (labor) and knowledge (technology) across international borders. There are also broader cultural, political, and environmental dimensions of globalization.” (p2, IMF, 2008)

As per this report, globalization has increased after nineties and influenced the way business has been conducted in the world. At positive side, globalization brought opportunity in terms of larger market size and availability of best resources (labor, capital, technology, raw material etc) at the most cost effective rates (Bryan & Fraser, 1999). It also resulted in better economic growth, quick dissemination of technology and information, democratization, free market economies, global culture and above all social well being (Reddy & Vyas, 2004). It adds in form of benefits of economies of scale and scope (Levitt, 1984).

However, besides these advantages, globalization also contributed to the increasing competition and turbulent business environment (Roberts, 2000). Growth of globalization was fanned by technological advancements in the area of information and communication technology (IMF, 2008). This growth has been contributing to the dynamism and complexity of business environment (Pearce & Tavares, 2000; Reddy & Vyas, 2004; Ohmae, 2005). It has also contributed to the unemployment in countries which cannot provide cost effective resources (Reddy & Vyas, 2004). They also identified exploitation of resources of week nations, intense competition among nations and spread of diseases as negatives of globalization. It is interesting to observe that globalization has also added to the growth of new power centres and thus to the emergence of multi-polar world (Howorth, 2010). Current phase of globalization is...
clearly indicated growing influence of companies from emerging markets on various international business sectors (Pearce & Tavares, 2000; Piercy, 2009).

Besides macro environmental changes, with the progression of globalization and growth of information technology, customers’ expectations were changing (Doyle, 2008). He indicated that they were growing and becoming more varied than ever. These customers are demanding and which is also driving globalization (McAuley, 2004) also indicated that new global customers were aware of their collective powers and ethical aspect of their decisions. Understanding these trends, marketers have started looking for strategies to win such customers.

**Marketing: A Changing Perspective**

It is almost fifty years since the concept of “marketing myopia” was first introduced by Levitt (1960). His work had drawn attention of many marketers from short term profits to long term issues like customer orientation, definition of business and sustainability. Due to globalization, the scope of marketing was growing, hence, integration became an important strategy (Goldsmith, 2004). Now all stakeholders are part of business vision (Doyle, 2008). Marketing has transformed and its orientation has changed from “production” to “society” (Kottler & Armstrong, 2010). The organizations with focus on various stakeholders of business have started designing marketing strategies which “deliver value to customers in a way that maintains or improves both the consumer’s and society’s well-being.” (p 35, Kottler & Armstrong, 2010)

This transition was evident in the marketing strategies which now focus on providing value to customers and other stakeholders (Doyle, 2008). In this manner, marketing has progressed from being “transactional marketing” to becoming “value-based marketing” (Piercy, 2009). Globalization has added speed to the change and has forced marketers to have more dynamism in their responses (Goldsmith, 2004). In summary, the reviewed literature so far clearly indicates that due to globalization, marketing has become more strategic, dynamic, visionary and holistic than the earlier time periods.

Piercy (2009) stressed that marketing has been transforming not because marketers think that they know what “drives value for their customers” (p 139) but because these customers are well aware and demanding (Piercy, 2009). This generation of customers has contributed to the emergence of some new forms of marketing like societal marketing, relationship marketing, green marketing and causes related marketing (Prosenak, Mulej & Snoj, 2008).

**Globalization and Cause-related Marketing**

Globalization promoted corporate responsibility at global landscape and brought business and society more closer than ever (Smith, 2009). Motives of businesses behind social, environmental and humane initiatives always remained issues of debate. However, the shift in motives was evident with the inclusion of social, environmental and human welfare with economic objectives in various organizations (Buckley & Casson, 2001). Cause related marketing was a result of one such shift in organizational philosophies and it was defined by Varadarajan & Menon (1988, p60) as

“Cause-related marketing is the process of formulating and implementing marketing activities that are characterized by an offer from the firm to contribute a specific amount to a designated cause when customers engage in revenue-providing exchanges that satisfy organizational and individual objectives."

It was noticed that this strategy helped business organizations, cause (non profit organization) and customers (Endacott, 2004). Non profit organizations gain finance, manpower and professional support from the business organizations (Liu & Ko, 2011). Cause-related marketing is not a complete philanthropic activity but is designed to gain some competitive advantages for the corporate (Andreassen, 1994; Demetriou, Papasolomou & Vrontis, 2010). There is a wide array of reasons why corporate go for cause-related marketing (Stole, 2008). Some organizations go for it so that they can convince customers about higher prices, gain good word of mouth, and convince various influencing parties in the business (Meyer, 1999). While some focus on social issues to engage customers in long term relationships as part of their
customer relationship program (Katsioloudes, Grant & Mckechnie, 2007). On other side some organizations opt for this strategy to improve brand image, to generate higher revenue, to gain more visibility and to win over new customer groups (Barnes & Fitzgilbons, 1991).

Growing globalization, success of cause-related marketing, its multi-fold benefits and customers inclination towards welfare activities has contributed in upward movement of cause-related marketing in the organizational strategic chart (Barnes & Fitzgilbons, 1991). In other words, over a period of time it became part of marketing mix (File & Prince, 1998) and has gained a status of a strategy (Barnes & Fitzgilbons, 1991). Globalization has contributed in realizing consumers' social needs with their physical and emotional needs (Buckley & Casson, 2001). It has been observed that consumers expect companies to be socially responsible especially if they are multinational (Maghrabi, 2006). Literature indicates that brand’s association with some causes affects customers purchasing decision positively if other factors like price, quality etc. remain the same (Meyer, 1999).

**Cause-related marketing: Emerging challenges and possible directions towards solutions**

Major aspect of globalization was proliferation of media and other means of communication (Buckley & Casson, 2001). This scenario has also contributed in making customers sceptical about such efforts of marketing (Stole, 2008). In order to maintain the faith of customers in such a dynamic environment, organizations should partner with the cause which is best compatible with their image, objective and product (Barnes & Fitzgilbons, 1991; Till & Nowak, 2000; Nan & Heo, 2007). If this fit can be extended to the social identities of customers, the cause and the organization, the effectiveness of marketing increases (Gupta & Pirsch, 2002). Besides this an organization can also build credibility by internalizing the optimism for selected social cause into its work culture (Alcaniz, Caceres & Perez, 2010). Visibility of such actions and consideration of customers affiliation with cause help in improving trust among customers (Endacott, 2004). Practicing consistency in showing support towards the selected cause and not to hop from one cause to another helps in overcoming scepticism (Singh, Kristensen & Villasenor, 2009).

In global environment it is not easy to know the authenticity and conviction of partners (non-profit organizations/charity) towards the cause (Meyer, 1999). Barnes & Fitzgilbons (1991) indicated that the organizations should give time to the relationship to prove worthy and then decide whether to sustain in long run. In this era, it is better if communication is not limited to mere promotion but should be maintained at all the stages till the communication of its outcomes (Sorribas, 2007). Another problem in the information edge is of message clutter which affects customers’ long term association with the brand and cause (Baghi, Rutaltelli & Tedeschi, 2009). As per these researcher, to overcome this challenge organizations should make use of vividness while communicating with the customers.

From the foregoing it emerges that marketers will need a clear understanding of organizational objectives, causes, customers and emerging scenarios to address the challenges in designing and implementing cause-related marketing in future.

**References**


The Effects of Advertising Expenditure on the Earnings and Stock Value
of Retail Firms September 30, 2011

Steve Johnson
Sam Houston State University

Key Words
Advertising expense, earnings, retail industry

Abstract
This paper presents evidence that increases in advertising expenditure are followed by a decrease in accounting
returns (ROA) the following year. The results of a panel regression of retail firms in the COMPUSTAT database
over the period 1993 - 2010 demonstrate this negative relationship. This result is not due to the strictly mechanical
effect of increasing expenses increasing costs and thus reducing net income, because even after adding back
advertising expenditures to net income, the coefficient on lagged change in advertising expenditure remains and is
statistically significant.
Fiscal Strategies in Europe During the Crisis and Future Fiscal Developments

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Economic Studies Academy, Bucharest, Romania

Key Words
European Union, Direct Taxes, Indirect Taxes, Economic Crisis, Fiscal Measures.

Abstract
The European Union was created as a supra-national structure which does not elude the sovereignty of each member state, but is meant to facilitate the economic exchanges and create a common market. Its objectives are the promotion and extension of the cooperation among its member states in all areas of activity, such as: economic activity, social life, trade, external politics, security and law. Another very important objective of the European Union is to implement the economic and monetary union.

Since the creation of the European Union, continuous efforts have been made in order to ensure the best common practice which respects the fundamental economic liberties. Taxation is one of the fields where special measures were adopted, in order to ensure the proper function of the internal market.

This paper presents the trends in fiscal measures in the European countries during the crisis and the perspective for further development.

Introduction
The crisis originates in disequilibria in the real estate and financial sectors; but the real economy, banks and taxation are parts of the world’s globalised economy. Thus, changes in one economic sector are expected to influence the other sectors through economic mechanisms. Taxations has its proper ways which can enhance or inhibit the development of markets, economic sectors or the consumption of goods and services.

The crisis generated deficit problems, which put the European Union in contradiction with the Treaty article 126.1 which states that “Member States shall avoid excessive government deficits” and also with the article 87 regarding “the interdiction for the member states to grant aids which could affect the free trade”.

In order to reduce the negative effects of the 2008 economic crisis, the European member states used combined measures including money market, fiscal and budgetary measures. The European governments enacted a series of fiscal measures with incidence on the corporate income tax (CIT), personal income tax (PIT), value-added tax (VAT), excises (EXC), social security (SSC); the following table shows the type of fiscal measures used by each member state in the period 2008 - 2010.
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Expected, therefore, direct and indirect tax measures were used. That statutory provisions of corporate tax systems impact on the financial sector as well as on the other taxes. But in the complex economic situation of the crisis, both short-term and medium-term effects were budget of the member-states has emerged.

Established particular fiscal measures for this sector; thus, the idea that it should contribute more to the sectors. But in recent years, the financial sector has known great development and only a few states have generate growth, thus special attention is paid to them.

Further Fiscal Developments in the European Union

For the analysed period, the direct taxes and the value-added tax were widely used by European member states in order to enhance their economies.

It is a fact that indirect taxes can generate a growth in the tax income more rapidly than the direct taxes. But in the complex economic situation of the crisis, both short-term and medium-term effects were expected, therefore, direct and indirect tax measures were used.

### Table 1.

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Source: Eurostat

For the analysed period, the direct taxes and the value-added tax were widely used by European member states in order to enhance their economies.

It is a fact that indirect taxes can generate a growth in the tax income more rapidly than the direct taxes. But in the complex economic situation of the crisis, both short-term and medium-term effects were expected, therefore, direct and indirect tax measures were used.

**Further Fiscal Developments in the European Union**

With a post-crisis perspective, fiscal measures have a fundamental role, as they are expected to generate growth, thus special attention is paid to them.

Future developments in direct taxation are led by the search of a wider taxation basis. It is a fact that statutory provisions of corporate tax systems impact on the financial sector as well as on the other sectors. But in recent years, the financial sector has known great development and only a few states have established particular fiscal measures for this sector; thus, the idea that it should contribute more to the budget of the member-states has emerged.
Another reason why taxation targets this sector is its fundamental contribution to the global crisis. Since the reconstruction of the post-crisis global economy is a common effort for all tax contributors, the financial sector is expected to have a more considerable impact.

In June 2010, the European Council stated that „the introduction of a global financial transaction tax should be explored and developed further”. In a paper called “Financial Sector Taxation”, the European Commission analyzed the possibility to introduce two such measures, with the following goals:

- to enhance the efficiency and stability of financial markets and reduce their volatility and the harmful effects of excessive risk-taking;
- to ensure that the financial sector makes a fair and substantial contribution to public finances;
- the financial sector could contribute more to fiscal consolidation through these new taxes.

The opportunity of introduction of these taxes and their potential to grow the member states budgets are further analyzed.

**Financial Transactions Tax**

The Financial Transaction Tax applies to financial transactions carried out on organized markets, each time the underlying asset is traded; taking into account the frequency it is applied, the tax rate would have a relatively low statutory rate. It would be actually paid via the trading system which executes the transfer.

The tax would be applied to the value of the transaction.

Discussions about the tax base have identified two possibilities:

- a broad base, which includes stock, bond and derivative transactions on exchanges as well as over-the-counter traded instruments. For derivative instruments, it is questionable whether to tax the notional value, which would enlarge the tax base significantly, or to tax the actual price (this is only possible in the case of derivatives where a premium is paid), which reduces the tax base;
- a narrow base, which includes only stock and bond transactions.

Originally meant to reduce speculative transactions, the application of this tax could also have a negative effect in the number of transactions and could direct capitals towards other regions or markets which are less costly.

**Financial Activities Tax**

The Financial Activities Tax is levied on the sum of profit and remuneration of financial institutions, aiming to improve market efficiency and discourage high risk taking.

The main difference from the Financial Transaction Tax is that it does not affect each transaction, but it applies to the financial result (profit) companies report in their financial statements.

If the Financial Transaction Tax could generate avoidance strategies, the Financial Activities Tax offers more stability from this point of view, as it does not distort the activities of the financial sector.

Apart from their inherent negative effects, the two taxes can be transferred by the financial institutions to the final customer, indirectly, through higher commissions. Thus, a fundamental question remains, and maybe only practice will answer it: will these taxes really enhance the financial institutions’ search to grow their business, or will they become just another burden for the final customer?

**Common Consolidated Corporate Tax Base**

In the last 16 years, the corporate tax rates across Europe have dropped more than 10%, as shown in the table below:
This trend shows, on one hand, the intention of the member states to attract foreign investments, which would not be hampered by high corporate income tax levels. And, more importantly, the trend reveals that, in general terms, there was a consensus among the member states regarding the major decisions in corporate taxation. The first result of this common trend was a lower level of the national tax rates. This trend was corroborated with the requirements from large companies operating across Europe, to create easier ways of calculating taxable profit obtained in Europe and thus, to reduce the compliance costs; surveys have shown that large companies are in favour of a common way of calculating the taxation base for corporate income profit.

The Common Consolidated Corporate Tax Base (CCCTB) is a single set of rules for calculating the taxable profit by companies operating within the European Union, meant to significantly reduce compliance costs for businesses operating in several member states; at present, companies have to comply with different rules in each member state where the company operates in order to determine their taxable profits.

The system is optional for the companies, and only sets the regulation for a common tax base for calculating the corporate income tax. Companies which choose the CCCTB would have the possibility of filing a single, consolidated tax return with one administration for their entire activity within the European Union and would also be able to consolidate their profits and losses obtained in the member states where they operate.

Tax rates would continue to be established by each member state for companies operating within their national boarders.

The common consolidated corporate tax base is a very important landmark in the harmonization of corporate income tax regulations, allowing companies to have uniform measures and tax practices, while saving high compliance costs. It is also a measure of stimulating the cross-borders development of businesses, which will enhance the economic growth potential for the member states and can contribute to attract foreign investors for all member states.

### Value Added Tax

In December 2010, the European Commission launched a public consultation in order to find out “how to achieve a simpler, more robust and efficient VAT system to reduce collection and compliance costs whilst limiting fraud and providing maximum flexibility for Member States”.

In his speech at the conference “Green Paper on the Future of VAT” on 6th May 2011, European Commissioner for Taxation and Customs Union, Audit and Anti-Fraud, Algirdas Šemeta stated that “the general tendency to shift the tax burden from direct to indirect taxation is likely to continue”; therefore, he pointed that in order to increase income from consumption taxes, the tax base should be broadened.

### Conclusions

In the European Union, a clear tendency was followed in the last decade to rely more on indirect taxes for increased income, allowing companies to obtain more profits, which they will eventually use for investments or other forms of consumption. This measure allows member states to receive income from consumption taxes, especially VAT.

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Table 2. Adjusted tax rate on corporate income in the European Union (27 member states)

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<td>Tax rate</td>
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<td>29.3</td>
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<td>24.5</td>
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Source: Eurostat
But measures to increase tax income are sought for also in the direct taxes field; thus, as the financial sector is an important part of the economy, it is also expected to contribute more to the budgets. The European Commission proposed that new taxes should target this sector: the Financial Transaction Tax and the Financial Activities Tax. While the assessing of these taxes raises many questions regarding the tax base and its application, it is clear that their introduction would enlarge the taxation area and thus, generate more tax income.

This shows another trend in fiscal development, which is the search for a wider taxation base, both in direct and indirect taxation. An important consequence of this trend is the Common Consolidated Corporate Tax Base for corporate income tax, which will also benefit the companies through lower administrative and compliance costs.

In conclusion, taxation has proved to be a very dynamic field, with instruments which can be used to increase the budgetary income, to correct trends of the markets and to sustain the economies. With the possibility to generate effects both in short and medium term, it is an indispensable field for governments, in their complex measures meant to generate economic growth.

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European Commission, Financial Sector Taxation, 2010;
European Commission, Green Paper on the Future of VAT, 2011;
Entreprenuers Networking:  
The Stock of Knowledge and the Willingness to co-operate  

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Key Words  
Formal Education, Previous Employment, Knowledge and Learning, Entrepreneurial co-operation.

Abstract:  
The way entrepreneurs approach co-operative relationships is also a matter of the characteristics of the individual. The argument developed in this paper is that there are three perspectives under which individual entrepreneurial behaviour needs to be organised relating to: institutions; information, and networks. There is an institution perspective, in which individual behaviour is a result of the institutions he/she has been exposed to. The information perspective argues that individual behaviour is a result of the information they possess. Finally, the network perspective relates the entrepreneurial approach to co-operative relationships with the co-operative networks the entrepreneur is involved in.

This approach marks a break with the methodological individualism perspective, in which individuals are seen as exogenous, rational and equilibrium orientated as in orthodox economic theory (Hodgson, 1991). To that extent, heterodox economics acknowledge that there are particularities inherent to the individual that need to be taken into account.

This paper provides an analysis of the potential contribution of both formal education and work experience in shaping entrepreneurs’ attitudes towards business co-operation. Both factors provide the entrepreneur with information and knowledge, thus this section analyses the processes of information and knowledge acquisition involving co-operative relationships. The issue of knowledge and learning is analysed in this paper in a dualistic perspective. On one hand, knowledge acquired through both formal education and work (life) experiences influence the entrepreneur’s mental processes and thus the way information is perceived, leading to unique entrepreneurial behaviour. This institutional approach1 can be associated to a model favouring the structure of information processing and individual decision making. Here the quality and type of information may be important in determining the mechanisms and propensity to co-operate. On the other hand, business interaction is often aimed at exchanging knowledge (both conscious and unconsciously). The underlying concept of exchange in information sharing is to be seen as part of the spectrum of co-operative relationships.

For the purpose of this paper, education and work experience will be analysed from three perspectives: tacit and codified knowledge; formal and informal learning; and strong and weak ties.  
Keywords: Formal Education, Previous employment, Knowledge and learning; Entrepreneurial co-operation.

Footnote  
1 This approach was named as institutional as it is based on the argument that an entrepreneur cognitive model is a result of the institutions he/she has been exposed to in the past.
Perception of HR Managers and Business Educators on Business Communication Skills: A Survey Study

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Key Words
Business Communication Skills, Human Resource Managers, Business Educators

Abstract
This study examined the perceptions of human resource managers and business educators regarding the importance of business communication skills. Research studies indicated broad agreement regarding the importance of student/employee communication abilities to achieve successful job performance. Yet the literature also suggested that different objectives may give different opinions regarding specific types of skills that constitute the ability to communicate effectively. Conrad (2003) developed three skills sets that are: organizational, leadership and interpersonal communication abilities were used in the present study. The results from this research study indicate that most of the communication skills included in the survey may be considered of importance by a majority in both subject groups. However, the study did uncover some statistically significant differences in perceptions of communication skill importance on some skills.
Performance Evaluation of the Subsidiaries of Astan Quds Razavi by DEA “Financial Management”

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Mohammad Reza Golkani
University of Tehran

Key Words
Performance Evaluation, Iran Anderson-Patterson Model, Auxiliary Variables

Abstract
Today, with the rapid development of business activities there is no doubt about the significance and necessity of performance evaluation systems in organizations. This necessity is so perceptible that the lack of systematic evaluations is considered as one of the symptoms of organizational malaise.

Financial evaluations can encourage companies to achieve a higher level of performance by showing the existing position of a company among other companies and creating a competitive environment. As a result, the companies are able to identify their strengths and weaknesses and, thus, improve their activities. Therefore, the present study deals with "the performance evaluation of the subsidiaries of Astan Quds Razavi by DEA”. To do so, a 5-year means of financial ratios of liquidity, activities, leverage, and economic added values as DEA model input indicators and profitability ratios as the model output indicators were examined. In order to rank the companies under study, input-based BCC covering model has been employed, indicating that of 36 companies, 9 companies are considered as efficient while 27 companies were identified as inefficient. Then, the efficient companies were re-ranked through the Anderson-Patterson model. Finally, reference units and auxiliary variables were employed to show the rate and the causes of weaknesses of each company.
Forum Shopping and Insolvency of Groups of Companies in the European Insolvency Regulation

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Key Words
European Insolvency Regulation, Centre of Main Interests, Forum Shopping, European Union.

Introduction
It is well known that one of the aims of the Insolvency Regulation\(^1\), according to the intention of European legislators, was to avoid incentives to forum shopping. The experience has shown though that this aim has not been achieved, especially as far as the corner-stone connecting factor for jurisdiction, the "Center of Main Interests" (in following "COMI"), is concerned. Hence arises the peculiarity of the jurisdictional “problem” in the field of the European Regulation: a problem which involves some urgent reform of the law, in order to help this failure of the Regulation provisions.

At the outset it must be stressed that in insolvency law forum shopping does not feature in the traditional scheme of a claimant searching for the most convenient forum having jurisdiction. In insolvency law prevails the opposite perspective, of a potential defendant, the insolvent debtor, seeking to obtain a more favourable legal position by transferring the (prospective) judicial proceedings through the movement either of the residence or of the company’s registered office, or by transferring his assets out of the reach of the creditors\(^2\): a “passive” forum shopping also, whose aim is to determine the jurisdiction for insolvency declaration and for liquidation proceedings against the shopper himself.

Actually, the foundation of jurisdiction for opening insolvency proceedings upon a factual connecting element (the “COMI”) intended to hinder the possibility to determine the jurisdiction and the applicable insolvency law by merely displacing the residence or the company’s registered office. Further, the principle of automatic and immediate recognition in the Member States of any judgment opening insolvency proceedings from the time it becomes effective has surely weakened the possibility of preventing the liquidator and the creditors from reaching the debtor’s assets by simply transferring them abroad (at least as far as the transfer is to a Member State of the European Union).

But, although the Regulation provides for an exclusive forum for opening insolvency proceedings, forum shopping has not disappeared since the connecting factor has been defined in such broad terms that leave a not immaterial freedom for the discretionary interpretation by the courts. Furthermore forum shopping tends to turn into forum running, in so far as the only criterion for working out the situation of parallel proceedings is the first-in-time rule, as it usually happens in European Civil Procedure.

Jurisdiction for opening insolvency proceedings
Undoubtedly, the concept of “COMI” connects jurisdiction to a factual situation, but it cannot be contested that, especially as far as companies are at stake, the concept lacks predictability\(^3\). Its only

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\(^2\) See Recital (4); further ECJ, January 17\(^{th}\), 2006, C-1/04, Susanne Staubitz-Schreiber, ECR 2006, 1-701, No. 3 and 25.

\(^3\) See Israël, European Cross-Border Insolvency Regulation, Antwerpen-Oxford, 2005, 258 f.: "The use of a new and open-ended concept as the COMI as the connecting factor has introduced a degree of uncertainty as to choice of forum [...] If predictability of choice of forum were the only interest involved the Regulation should have used (habitual) residence and statutory seat as connecting factors [...] Rather, the more open-ended criterion of COMI reflects a compromise between the interest of predictability and that of ensuring that the insolvency proceedings are conducted in accordance with the law of the State which has the closest connection to the debtor, the debtor’s economic activity and the insolvency"; Virgós/Garcimartín, The European Insolvency Regulation: Law and Practice, Den Haag, 2002, No 47.
material anchoring is the condition that the "COMI" be ascertainable by third parties, whose protection justifies the choice, as a connecting factor, of the actual place of the economic activity of the debtor: the place where the debtor conducts the administration of his interests on a regular basis. Furthermore, it is true that in the case of a company or legal person there is the presumption that the "COMI" is the place of the registered office, but this presumption largely allows a proof to the contrary, in order to guarantee the crucial importance in determining the jurisdiction not of the merely formal and willfully exchangeable place of the registered office but rather of the functional real state of affairs.

Hence arises the temptation for creditors, insolvent debtors and their counsel, to influence the determination of jurisdiction. In addition, it has to be borne in mind that any evaluation of the factual pleadings of the claimant in relation to the "COMI" will take place within a necessarily summary proceedings. Furthermore, it will be even easier to influence the ascertainment of the "COMI" when the insolvent debtor or the administrators are the claimants for the declaration of insolvency: in such situations proceedings will be normally uncontested, since insolvency law does not compel the hearing of creditors when they did not request the opening of the proceedings. Consequently it has become a usual saying that of the "building up a case for a "COMI"": In the sense that the claimant's factual pleadings are purposefully aimed at founding the jurisdiction of the forum with the knowledge, that once the insolvency proceedings is opened, it could be set aside only through an appeal which will bring about a significant amount of time and costs. An appeal which will often be meaningless for the creditors, since the funding of the appeal proceedings, which for instance in England will cost hundred thousands pounds, will at the best provoke only a further grievance of the debts amount or of the payment difficulties of the insolvent company.

4 See Recital (13).
5 Wessels, International Jurisdiction to Open Insolvency Proceedings in Europe, in Particular Against (Groups of) Companies, 25, under http://www.iiliqglobal.org/country/european_union.html: the way the Regulation arranges for the concept of "the centre of main interests" provides a fact intensive standard with quite some room for interpretation, which is in its core contrary to the desire of business life to provide predictability.
6 See Fletcher, in Fletcher/Moss/Isaacs, The EC Regulation on Insolvency Proceedings: A Commentary and Annotated Guide, Oxford, 2002, No 3.11; further the Advocate General Jacob's Opinion in the case Eurofood, below note 18, No 122: "An inherent aspect of the "COMI" concept is to ensure that functional realities are capable of displacing purely formal criteria"; and the Advocate General Jarabo-Colomer's Opinion in the case Staubitz-Schreiber, above note 2, No 64: "It follows from the foregoing that there must be a link between a debtor's business assets and the place of the proceedings, thereby ensuring the best protection for creditors by enabling them to calculate the legal risks they must assume in the event of insolvency".
7 And the same will happen when claimant is the creditor and the insolvent debtor does not contradict with regard to jurisdiction, because he is himself interested in the opening of insolvency proceedings in the Member State of the forum: see Fabiani, Gruppi d'impresa ed insolvenza transfrontaliera: spazi residui di forum e law shopping nella disciplina comunitaria, in: Int'l Lis 2004, 95, 98; Vellani, below note 18, 160 f. See also Bufford, below note 10, 477: "except in Dublin, all of the evidence presented in the courts of first instance in the Eurofood and Daisytek proceedings consisted of unopposed declarations and statements presented in ex parte proceedings where possible opponents were given neither no notice whatever (Leeds, Düsseldorf, and Pontoise) or insufficient notice to present and opposition (Parma)", and finally Fletcher, below note 18, No 7.61: "it is necessary to observe that the momentous implications of such a consequence of the opening of proceedings make it especially vital that counsel appearing on behalf of the party which is applying for the opening of proceedings shall be mindful of the wider duties owed to the court, and to the cause of justice itself ... when seeking to demonstrate that the COMI of the debtor is in some location other than that in which the presumption in Article 3(1) would place it. This ethical duty is especially pertinent where ... the application to open proceedings is uncontested before the court which is hearing it".
8 See the case Brochier Holdings, Amtsgericht Nürnberg, August 15th, 2006, and October 1st, 2006 (European Insolvency Regulation- EIR Database Nr. 171-172). In this case, the liquidators of the insolvent company – an English Ltd. which though run in Germany the whole of its activities – lodged by the High Court of Justice a request for opening the insolvency proceedings. As such, on August 4th, 2006, the directors appointed English liquidators to the company on an out of court basis. In doing this, they stated that the company's "COMI" was in England, largely on the basis that this was where its registered office was located. Forty-five minutes later, German company's employees applied to the Nuremberg Court which, blissfully unaware of the earlier order of the English court, decided that, on the evidence before it, the company's "COMI" was in Germany. Accordingly, it appointed a preliminary German insolvency practitioner. When the existence of the parallel proceedings came up, it was clear that the English liquidators were appointed first and, as such, any attempt to overturn their appointment would have to be made to the English court. Fortunately, shortly after their appointment, the German practitioner convinced English liquidators to make their own assessment and to conclude that Hans Brochier's COMI was not in the UK after all. The English liquidators made an application to the court and, on considering evidence submitted by them and by the German practitioner, the judge had little difficulty in deciding that the company's COMI was in Germany.
9 See the Centre of Main Interest Newsletter (run by PriceWaterhouseCoopers, download under http://www.pwc.com/uk/eng/ins-sol/publ/pwc-eccrescomenewsletter.pdf), where Mr. Klempka, involved in the most numbers of English "COMI" cases, says: "building up a case of factors that are objective and ascertainable it is possible to demonstrate that a company has its COMI in a territory different from that of its registered office [The ECJ] confirmed the „race to court“ [...] so it is important to consider the effects of a possible COMI appointment at an early stage".
“Driving” the determination of jurisdiction is even more important within the Insolvency Regulation, since the applicable law will be that of the Member State within the territory of which such proceedings are opened. And this is true for all of the effects of the insolvency proceedings, both main and local, which are listed not exhaustively in Article 4 of the Regulation. It becomes easy to imagine how strong the temptation can be, to bring about the opening of the insolvency proceedings in a Member State whose insolvency law is more favourable for the claimant, be he the debtor or a creditor. The coherence of forum and jus has determined, that in the case law the opening of a secondary proceedings – provided for by the Insolvency Regulation in order to promote the interests of local creditors or third parties in the Member State of the establishment – does not really serve the diversity of those interests, as it was in the intention of the European legislator. To the contrary, the opening of a secondary proceedings is normally and only requested by the liquidators of the main insolvency proceedings for the purpose of bringing about the application of the insolvency law of the Member State of the secondary proceedings, in order to extend the effects of the insolvency also to rights which would otherwise remain unaffected by the opening of the insolvency proceedings, according to Articles 5 and 7 of the Regulation.

“Passive” forum shopping is also very useful, since the insolvent debtor could factually displace his “COMI” (and not only the registered seat) in order to determine the applicability of a different insolvency law, or since exceptionally the insolvent debtor can even request the opening of the insolvency proceedings right before moving his “COMI” abroad, in order to secure himself the advantages of the insolvency law of the State where the “COMI” originally was. As it is well known, this was the case at the outset of the ECJ judgment Staubitz-Schreiber, where the debtor pursued his appeal (in the end successfully) in front of the German Supreme Court against the declaration of lack of jurisdiction by the appellate Court, with the primary aim of benefiting of the release of the debts provided for by German law (Restschuldbefreiung), which to the contrary would have been impossible according to the law of the Member State, Spain, where the “COMI” has been displaced.

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15 See Israël, above note 3, 258: “COMI” „not only determines the court having (primary) jurisdiction but also the generally applicable law. It is the connecting factor allocating a European debtor to a particular national insolvency regime”. Some authors have stressed that the “COMI”-decision arrives too early, since it determines also the applicable law, although it is released at the beginning of proceedings, at a time in which the due process rights of the interested parties still had not been guaranteed: Bufford, International Insolvency Case Venue in the European Union: The Parmalat and Daisytek Controversies, in: 12 Columbia Journal of European Law, 2006, 429, 471 ff.; Wessels, 20 Suggestions for a Makeover of the EU Insolvency Regulation, in: International Case-Law Alert Nr. 12, Oktober 2006, 68, 70.
16 Recital (23): „Unless otherwise stated, the law of the Member State of the opening of the proceedings should be applicable (lex concursus). This rule on conflict of laws should be valid both for the main proceedings and for local proceedings; the lex concursus determines all the effects of the insolvency proceedings, both procedural and substantive, on the persons and legal relations concerned. It governs all the conditions for the opening, conduct and closure of the insolvency proceedings“.
Recital (12); see also Recital (11): „The application without exception of the law of the State of opening of proceedings would, against this background, frequently lead to difficulties“.
17 See also the Virgós/Schmit Report, No 98; Recital (19); further Gottwald, Le insolvenze transnazionali: tendenze europee e mondiali, in: Rivista trimestrale di diritto e procedura civile, 1999, 149, 162; Balz, The European Union Convention on Insolvency Proceedings, 70 American Bankruptcy L. J. [1996], 485, 520.
18 An example of a successful forum shopping is the case of Deutsche Nickel AG, which displaced the “COMI” to England in order to benefit of the advantages of the „Company Voluntary Arrangement“ of English law and, therefore, of a „debts for equity-swap”: the facts are described in detail by Hiestand/Pilkington, COMI – The Controversy Continues, ..., in: International Case-Law Alert No. 14, Mai 2007, 46, 47.
19 The „COMI“ is often displaced by the debtor, without waiting for the delivery of the decision opening the insolvency proceedings.
20 The „COMI“ is often displaced by the debtor, without waiting for the delivery of the decision opening the insolvency proceedings.
21 See the Advocate General Jarabo-Colomé’s Opinion, No 77. The forum shopping on the side of the debtor has not been detected by the ECJ, which on the one hand stressed (No 25) that the debtor shall not have the possibility of determining the court having jurisdiction and the applicable law by moving the “COMI” to another Member State between the time when the request to open insolvency proceedings was lodged and the time when the judgment opening the proceedings was delivered, but on the other hand it did not notice that in the instant case the request to open insolvency proceedings was lodged by the debtor in a time which allowed him to pursue the clear aim of determining jurisdiction and applicable law.
A substantially identical feature was displayed by the case of the declaration of insolvency of the PIN Group, where the parent company moved its seat from Luxembourg to Germany (where all of the subsidiaries had the registered office and all of the activities of the group were carried on) just few days before filing by the Amtsgericht of Cologne the application for the opening of the insolvency proceedings: See the comment by Weissbrodt, Centre des intérêts principaux: la présomption détournée?, in: [2008] Eurofenix 32, 18, download under http://www.insol-europe.org/publications/eurofenix-past-issues/.
Within the context of the Insolvency Regulation forum shopping is pursued even because of the rigid first-in-time rule which governs situations of parallel proceedings. As it is well known, this rule is not stated explicitly in the Regulation, but it is implied in the general duty of mutual recognition, which obliges the Member States to recognise any judgment opening insolvency proceedings handed down by a Court of a Member State from the time it has become effective in the State of the opening of the proceedings (see Article 16(1)(1)), without any possibility of a review as to the substance of the foreign judgment. This duty prevents any review of the jurisdiction of the Court which handed down the judgment opening insolvency proceedings, since the Regulation allows non recognition only in so far as the effects of such recognition or enforcement would be manifestly contrary to the State’s public policy.

Rather strangely though, one has to read the Recital (22) in order to find the proclamation that, where the Courts of two Member States both claim competence to open the main insolvency proceedings, the conflict of jurisdiction finds the solution, that only “the decision of the first Court to open proceedings should be recognised in the other Member States”. And the ECJ has lent further strength to this principle in the Eurofood judgment (para. 49), in so far as it is recognised that Article 16 lays down a rule of priority, based on a mere chronological criterion, in favour of the opening decision which was handed down first.

A consequence of the Regulation is also that it establishes a “race to court”, or better a “race to jurisdiction”. The reason is that if any given European Union court determines that a company’s “COMI” is within its jurisdiction and makes an order opening insolvency proceedings, only its courts (or ultimately the European Court of Justice on a preliminary reference by an appellate court) can overturn that decision. The running towards an opening decision then is much more important in insolvency law than anywhere

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18 See ECJ, May 2nd, 2006, C-341/04, Eurofood, ECR 2006, I-3813, No 38-44: the ECJ derives from the principle of mutual trust that “If an interested party, taking the view that the centre of the debtor’s main interests is situated in a Member State other than that in which the main insolvency proceedings were opened, wishes to challenge the jurisdiction assumed by the court which opened those proceedings, it may, before the courts of the Member State in which they were opened, the remedies prescribed by the national law of that Member State against the opening decision” (para. 43); see also Advocate General Jacob’s Opinion, para. 104, and the Virgós/Schmit Report, No 202; further Court of appeal of Torino, below note 53; Fletcher, Insolvency in Private International Law, 2nd ed., Oxford, 2005, Rdnr. 7.71: “to employ the more indirect tactic of inviting the court of another Member State to refuse to recognize or enforece the original order, as somehow amounting to a manifest affront to the public policy of the letter State, is to defy both the letter and spirit of the Regulation and would be cumulatively detrimental to the environment of mutual trust on which, as we have seen, the smooth working of the Regulation is heavily dependent”; Virgós/Garcimartín, above note 3, No 70; M.A. Lupoi, below note 22, 1417; E.F. Ricci, Il riconoscimento delle procedure d’insolvenza secondo il Regolamento CE n. 1346/2000, in: Rivista di diritto processuale 2004, 387, 395 ff.; Benedettelli, “Centro degli interessi principali” del debitore e forum shopping nella disciplina comunitaria delle procedure d’insolvenza transfrontaliere, in: Riv. dir. internaz. priv. e process., 2004, 499 (523 ff.); Vellani, L’approccio giurisdizionale all’insolvenza transfrontaliera, Milano, 2006, 159 ff., 228 ff.; De Santis, La normativa comunitaria relativa alle procedure d’insolvenza transfrontaliere e il diritto processuale interno: dialoghi tra i formanti, in: Il diritto fallimentare delle società commerciali, 2004, I, 91 (100); Jauhe, L’Interprétation du Règlement no 1346/2000 relatif aux procédures d’insolvabilité, la fin des incertitudes?, in: Rev. critique, 2006, 811, 815 f.

19 According to the Eurofood judgment, a manifest violation of the State’s public policy can consist in the violation of the fundamental procedural rights of the insolvent debtor (para. 60–68). In this context the Eurofood judgment connects to the Krombach judgment of the ECJ (March 28th, 2000, C-7/98, ECR 2000, I-1935). It has to be noticed that, according to the French Cour de cassation, June 27th, 2006 (below note 21), the non hearing of the employees’ representatives, before the judgment opening insolvency proceedings is handed down, does not imply a manifest violation of the fundamental procedural rights of the persons (the employees) involved in insolvency. According to Bufford (above note 10, 474), though, “none of the Daisystek decisions to open a main proceedings for its French and German subsidiaries provided even as much notice and opportunity to be heard as the Parma court provided in Eurofood”; see also above note 7.

20 This rule of priority derives from the fact that Article 16(1)(1) requires “that any judgment opening insolvency proceedings handed down by a court of a Member State which has jurisdiction pursuant to Article 3 be recognised in all the other Member States from the time that it becomes effective in the State of the opening of proceedings”. See further Supreme Court of Ireland, 3.7.2006, Eurofood IFSC, [2006] IESC 41 (decision following the ECJ’s judgment); Cour de cassation, 27.6.2006, Pourvoir Nr. 03-19863, in Daisystek litigation: Article 16 „doit être interprété en ce sens que la procédure d’insolvabilité principale ouverte par une juridiction d’un Etat membre doit être reconnue par les juridictions des autres Etats membres, sans que celles-ci puissent contrôler la compétence de la juridiction de l’Etat d’ouverture […] si une partie intéressée, considérant que le centre des intérêts principaux se situe dans un Etat membre autre que celui dans lequel a été ouverte la procédure d’insolvabilité principale, entend contester la compétence assumée par la juridiction qui a ouvert cette procédure, il lui appartient d’utiliser, devant les juridictions de l’Etat membre où celle-ci a été ouverte, les recours prévus par le droit national de cet Etat membre à l’encontre de la décision d’ouverture“. See also M.A. Lupoi, Conflitti di giurisdizioni e di decisioni nel regolamento sulle procedure d’insolvenza: il caso «Eurofood» e non solo, in: Riv. trim. dir. e proc. civ., 2005, 1393, 1403; further Bureau, La fin d’un lit de résistance. Le Règlement du Conseil relatif aux procédures d’insolvabilité, in: Rev. Comp., May 29th, 2008, 615, 633. See also BGH, M. Commerzbank AG v. I, JPRax 2009, 73, where the German Supreme Court held the invalidity of the “national” main insolvency proceedings, which was opened subsequently to a prior English main insolvency proceedings, and therefore refused to recognize any power to the liquidator appointed by the German court, as a fictitious-liquidator.
else in European civil procedure, if one takes into account that the opening of the procedure’s effects are substantial irreversible, even if an appeal against the opening decision is upheld in the due course of the proceedings.

And the temptation to forum running will grow even more, since the ECJ in its Eurofood judgment acknowledged that the decision whereby a court of a Member State, presented with a petition for the liquidation of an insolvent company, appoints, before ordering that liquidation, a provisional liquidator, constitutes a decision opening insolvency proceedings for the purposes of the first subparagraph of Article 16(1) of the Regulation, as far as this decision confers to the provisional liquidator powers whose legal effect is to deprive the company’s directors of the power to act. Sure, the answer of the ECJ can prevent the risk that a race to the forum determines a too early opening of the proceedings, as far as the applicable law of the relevant Member State provides for a preliminary proceedings, in order to allow that the “real” opening decision is handed down after a full review of the issues of facts and law; and in this regard the answer of the ECJ will be an incentive to harmonization of the laws of the Member States. But it is also obvious that the answer of the ECJ will fire up the race to the opening decision, since the competitors know that they can win the race if only they are able to provoke the appointment of a provisional liquidator (obviously upon the condition that this appointment will be upheld in the following final decision eventually declaring the opening of the insolvency proceedings).

Jurisdiction for the opening of the insolvency proceedings

In Insolvency Regulation the main connecting factor for the opening of insolvency proceedings is the “COMI”. Fundamental notion already in the Istanbul Convention of 1990, although at that time as a ground for indirect international jurisdiction, the “COMI” has improved as a key connecting factor in international insolvency law. The same is true for the principle of the so-called “limited (or modified) universality” and the ensuing possibility of the coexistence of national proceedings alongside main insolvency proceedings with universal scope: A principle which has been elected as the only useful approach for the protection of all interests involved in insolvency proceedings. Not only the European Convention of 1995 and the subsequent Insolvency Regulation, both UNCITRAL Model Law on Cross-Border Insolvency of 1997 and the Transnational Insolvency Principles of Cooperation among the NAFTA Countries of 2003 build as well upon the “COMI” as a core connecting factor for the opening of main insolvency proceedings.


24 See Articles 16 f of the Istanbul Convention of 1990, whose Article 17 connects jurisdiction for opening of secondary insolvency proceedings without universal scope also to the presence of debtor’s assets – in contrast to Insolvency Regulation, which takes into account only the place of an establishment –. The same is true for the Transnational Insolvency Principles of Cooperation among the NAFTA Countries (see immediately below in text), while the UNCITRAL-Model Law on Cross-Borders Insolvency connects jurisdiction for recognizable secondary insolvency proceedings to the debtor’s establishment, but allows not recognizable secondary insolvency proceedings also in the State of the presence of debtor’s assets, in so far as in this State the main insolvency proceedings have been recognised. The same principle of coordination of proceedings – especially coordination between primary and main insolvency proceedings and limited proceedings, but also between different primary insolvency proceedings – has been elected by the Cross-Border Insolvency Concordat of 1996. For the supremacy of a regulation of international insolvency which rejects the universality approach and chooses instead an approach based on coordination between a main proceedings and ancillary secondary proceedings, see Hanisch, Grenzüberschreitende Insolvenzen. Drei Lösungsmodelle im Vergleich, Festschrift Nakamura, Tokyo, 1996, 223 f.; further Balz, above note 13, 531; „the barren choice of either universality or territoriality of bankruptcy has almost lost its meaning. Intermediary principles and a functional outlook will rule the future of international insolvency”; Trautman/Westbrook/Gaillard, Four Models for International Bankruptcy, in: [1993] American Journal of Comparative Law 41, 573 ff.


26 See Article 2, lit. b), of UNCITRAL-Model Law (in Fletcher, above note 18, 591): „Foreign main proceeding means a foreign proceeding taking place in the State where the debtor has the centre of its main interests”; see further the definitions of the NAFTA Transnational Insolvency Principles: „Main proceeding refers to a full domestic bankruptcy case brought in the country that is the center of the main interests of a debtor.”
a) The interpretation of the “COMI” notion is rather easy, as far as the “COMI” of natural persons comes into account. The Insolvency Regulation does not give particular hints to this topic apart from the general principle laid down in Recital (13), according to which the “COMI” should correspond to the place where the debtor conducts the administration of his interests on a regular basis and is therefore ascertainable by third parties. Nonetheless it is common ground that in this respect the “COMI” will in the case of professionals be the place of their professional domicile and for natural persons in general, the place of their habitual residence.28

Much more difficult instead is the determination of “COMI” for companies and legal persons. Apart from the reference to administration of the interests and to the ascertainability by third parties, the Regulation gives to this effect a fundamental indication. According to Article 3(1), in the case of a company or legal person, the place of the registered office shall be presumed to be the centre of its main interests in the absence of proof to the contrary.29 Immediately a debate has spread about the conditions necessary for rebutting the presumption.

b) The debate concerned on the one hand the cases in which the registered office is a mere formality, because the company’s activity and control and assets are located in a different Member State. Courts immediately shared the opinion that in such cases it is for the Court of the Member State where the company’s administration and assets are located to exercise jurisdiction for opening insolvency proceedings, although the company has been incorporated according to the law of another (Member) State or has its registered seat in another (Member) State. The “COMI” lies also in the State where the company trades, where all its employees work, whose law governs the contracts of employment, and whose law governs the contracts with subsidiaries and franchisees by way of which the company carries out its trading activities.30

The so-called head office functions theory also was conceived specifically in order to prevent forum shopping.31

On the other hand the debate focused on the conditions necessary in order to rebut the presumption of Article 3(1) in so far as groups of companies are involved, especially when the subsidiaries and the parent company have their seat in different Member State and the parent company is totally responsible for the decisions of the whole of the group. The situation has not been envisaged by the European legislator, since the Regulation deliberately does not contain any provision dealing with affiliated companies or groups of companies.32 Nonetheless the question immediately arose as to how this occurrence should be treated within the context of the Regulation, since the group of companies is the

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28 See also the Virgós/Schmit Report, para. 75; Virgós/Garcimartín, above note 3, No 56; Svea Court of appeal, 26.2.2007, no Ö 955-07 (EIR Database Nr. 176), in: International Case-Law Alert No. 14, Mai 2007, 10 f.
29 It must be stressed that, as far as insurance companies and banks are involved, in the Directives 17/02 and 24/01 the European legislator chose a contrary approach, which gives preference to universality of proceedings and connects jurisdiction to the seat of the company, in accordance to the principle of home country control: see De Cesari, above fn 24, 23 f.; Vellani, above note 18, 77 ff.; Wessels, European Insolvency Law: Statutory Scheme or Messy Mixture, download under http://www.iiiglobal.org/country/european_union/060914Wessels.PDF, 4 f.; Marks, in: Fletcher/Moss/Isaacs, above note 6, No 7.23 and 7.47; Virgós/Garcimartín, above note 3, No 106-108.
30 See High Court of Justice, Chancery Division, February 2nd, 2003, In Re Brac-Rent-A-Car International Inc, [2003] EWHC (Ch) 128 (company incorporated in Delaware); further Tribunal de Commerce de Bruxelles, July 29th, 2003, CGC Communications Ltd (EIR Database Nr. 53). See also the opening decision of AG Nürnberg in the case Broticher Holdings (above note 8).
31 See Moss/Smith, in: Moss/Fletcher/Isaacs, above note 6, 8.39: „It seems, therefore, that any evidence designed to show that the centre of main interests is in a Member State other than that in which the registered office is located, needs to show that the head office functions were carried out in that other State”.
32 See the Virgós/Schmit Report, para. 76; the Advocate General Jacobs’ Opinion in the case Eurofood, para. 117; Gottwald, above note 13, 155 f. The absence of a specific provisions for groups of companies has been explained by Fletcher (above note 18, No 7.67) in the sense that: „the very complexity of the problems that would have to be addressed persuaded the negotiators […] that this was something better left to a later date”.
ordinary way of organizing cross-border enterprise activity in Europe: not the least because of the not yet harmonized stand of company and tax laws\(^33\).

At first English Courts in the impressive *Daisytek* case, then the Courts of other Member States endorsed the so-called *command and control* (or *mind of management*) theory\(^34\). This adaptation of the *head office functions* theory to the peculiarities of the groups of companies\(^35\), did cast immediately doubts though, because it disregards the fact of the juridical autonomy and independence of the several companies joined in the group. In fact, according to this theory, the “COMI” for all the companies of the group is the place where the relevant decisions for the whole of the group are taken. This place is ordinarily the place of the head office of the parent company, whose place of administration will determine the seat of the subsidiary companies, irrespective of the place of the latter’s registered office.

The well renowned cases in which the *command and control* theory developed involved the groups *Criscross Telecommunications*\(^36\), *Cirio*\(^37\), *Hettlage*\(^38\), *Daisytek*, *Parmalat*\(^39\), *MG Rover*\(^40\), *Collins & Aikman*\(^41\). In Parmalat insolvency case eventually the Supreme Court of Ireland referred a preliminary question to the ECJ relating to the determination of the “COMI” for the company *Eurofood* in the middle of a jurisdictional battle between Irish and Italian Courts\(^42\). The ECJ rejected the *command and control* theory\(^43\). In view of the principle that in the system established by the Regulation for determining the jurisdiction of the courts of the Member States, each debtor constituting a distinct legal entity is subject to its own court jurisdiction\(^44\), the ECJ pretends that the “COMI” must be identified by reference to criteria that are both objective and ascertainable by third parties. Only this prerequisite guarantees that potential creditors will be able to ascertain in advance the legal system which would resolve any insolvency affecting their interests, thus

\(^{33}\) See Ronen-Mevorach, *The Road to a Suitable and Comprehensive Global Approach to Insolvencies within Multinational Corporate Groups*, download under http://www.iiiglobal.org/prize/2005/GOLD/Gold_Medal_Paper.pdf: “In fact corporate group is the most typical structure of modern international enterprises. The issue then no longer concerns only one debtor but rather a bundle of affiliated companies. These debtors, although legally separated, can in fact be tied together in various ways, including mutual transactions and cross guarantees or even through a single control directing all the companies as a united business. This form of insolvency brings to the cross-border insolvency arena more complex legal issues that need to be resolved”; also Paulus, Die ersten Jahren mit der EuInsVO, in: [2006] RablZ 70, 439.

\(^{34}\) Fletcher, above note 17, No. 7.69 ff.

\(^{35}\) Moss/Smith, in: Moss/Fletcher/Isaacs, above note 6, 8.39: “a company in a group of companies may not have its own head office, but its head office functions may be carried on at the group headquarters”; see also De Cesari, above note 24, 74 f. The Parmalat liquidator – not by chance counselled by QC Moss – made reference explicitly to the *head office functions theory*, but in vain, in the *Eurofood* case: see Advocate General Jacobs’ Opinion, para. 11.

\(^{36}\) Fletcher, above note 18, No. 7.74.


\(^{40}\) See a report of the case in Grubb, *The European Insolvency Regulation. The Recent UK Experience*, September 2006, download under: http://www.insol-europe.org/downloads/congress/2006/papers/ElizabethGrubb.pdf, 2 f.; further the decision of the Tribunal of commerce de Nanterre, which recognised the English decision opening a main insolvency proceedings and therefore declined the jurisdiction of French Courts (EIR Database Nr. 185).

\(^{41}\) High Court of Justice, Chancery Division, Companies Court, June 9\(^{th}\), 2006, [2006] EWCH 1343 (Ch). About English case-law see Fletcher, above note 18, No 7.67 ff.


\(^{43}\) See also Advocate General Jacobs’ Opinion, para. 110: “I agree that the fact of the parent company’s control is not sufficient to rebut the presumption in Article 3(1) of the Regulation that the centre of main interests of a subsidiary company is situated in the Member State where its registered office is to be found”.

\(^{44}\) Para. 30; see also Advocate General Jacobs’ Opinion, para. 117 (“each subsidiary within a group must be considered individually”), and further the Virgös/Schmit Report, para. 76.
enabling the legal risks which will have to be assumed in the case of insolvency to be calculated, which is one of the goals of the Regulation\textsuperscript{45}. The necessity to ensure legal certainty and foreseeability concerning the determination of the court having jurisdiction to open main insolvency proceedings\textsuperscript{46} requires then that only factors which are objective and ascertainable by third parties may rebut the presumption in favour of the registered office as the place of the “COMI”: Not the least in order to comply with the juridical independence and autonomy of the several subsidiary companies, which stems from the principles developed in the case-law relating to free circulation of legal persons\textsuperscript{47} (in particular the judgments Centros, Überseering and Inspire Art)\textsuperscript{48}. One cannot tell that branches are administered by a central parent enterprise just because the main decisions are taken there – that is the case with most of concerns – and because the branches only execute the instructions given by the parent. To the contrary, it is indispensable that the “COMI” corresponds to the place where company’s activities are carried on that have a real influence on the outer and that are thus viewable in the environmental area.

In so far as the subsidiary company is not a “letterbox” company, and instead it carries on its business in the territory of the Member State where its registered office lies, according to the ECJ the mere fact that its economic choices are or can be controlled by a parent company in another Member State is not enough to rebut the presumption laid down by the Regulation\textsuperscript{49}. A conclusion which is much stricter than the one suggested by Advocate General Jacobs in his opinion\textsuperscript{50}.

\textsuperscript{45} Virgós/Schmit Report, para. 75; Virgós/Garcimartín, above note 3, No 52-53; Advocate General Jacobs’ Opinion, para. 118 and 122.
\textsuperscript{46} Legal certainty and foreseeability are all the more important within the context of Insolvency Regulation, “in that, in accordance with Article 4(1), determination of the court with jurisdiction entails determination of the law which is to apply”: para. 33 of the Eurofood judgment. See also Wessels, above note 5, 8: “I do not think that the fact that strategic decisions are made in London carries enough weight. The approach is the third party perception and where the third party is seen as a (potential) creditor, this perception will be much more operations oriented”.
\textsuperscript{47} It would be contrary to the aim of the free circulation of companies, during their life, if the registered office could be ignored only because of the fact that economic choices are or can be controlled by a parent company in another Member State: Fabiani, above note 7, 95 (99, fn 41); see also Supreme Court of Ireland, Eurofood, above note 42: “It seems to this Court to be deeply inimical to the need for respect of corporate identity and respect for the rules of law (including Community law rules) relating to companies that the separate existence of such companies should be ignored […] It would have serious implications for the future of international corporate structures if it were to be accepted that the test for COMI were to be ultimate financial control by a parent company rather than legal and corporate existence”.
\textsuperscript{48} Judgments of March 9\textsuperscript{th}, 1999, C-212/97, ECR 1999, I-1459; of November 5\textsuperscript{th}, 2002, C-208/00, ECR 2002, I-9919; of September 30\textsuperscript{th}, 2003, C-167/01, ECR 2003, I-10155. See also the judgment of December 16\textsuperscript{th}, 2008, C-210/06, Cartesio, ECR 2008, I-9641.
\textsuperscript{49} Eurofood judgment, para. 34-36. For the opinion that the ECJ judgment rejected the „command and control theory“, see Omar, Addressing the Reform of the Insolvency Regulation: Wishlist or Fancies, in: Insolv. Int. 2007, 20(1), 7, 9.
\textsuperscript{50} The ECJ allows a proof to the contrary for the presumption in Article 3 only in so far as the subsidiary is a “letterbox” company, in this way practically preventing the possibility that the “COMI” of a subsidiary company be identified with the seat of the parent company, in so far as the subsidiary carries out its business in the territory where its registered office is situated (see already Virgós/Garcimartín, above note 3, No 51). To the contrary, according to Advocate General’s Opinion to rebut the presumption a strong evidence of overriding and ascertainable control by a parent company satisfying the requirements of transparency and ascertainability could be enough, although the subsidiary conducts the administration of its interests on a regular basis in a manner ascertainable by third parties and with full compliance with its Corporate Identity: a situation, the latter, which according to the ECJ judgment in principle can never be overridden, in order to safeguard independence and autonomy of the several subsidiaries. The Advocate General’s approach intended then to allow a balance between the fact that the subsidiary carries on its business in the territory of its registered office as an independent legal person and the fact that the administration decision are taken by the parent company and that this influence was ascertainable by third parties. If the latter factor could be enough in order to locate the „COMI“ by the seat of the parent company, though, a plurality of “COMI”s could be identified in the context of group insolvency, depending on the findings of the relevant Court: and in those situations only the first-in-time rule will govern which Court will open the insolvency proceedings. According to the ECJ’s judgment instead the stronger conditions which are necessary to rebut the presumption in favour of the place of the registered office should prevent the flourishing of a plurality of “COMI”s.

An influence of the Advocate General’s approach can be detected in High Court of Justice, Chancery Division, July 2\textsuperscript{nd}, 2004, AIM Underwriting Agencies (Ireland) Ltd (EIR Database Nr. 49), where the “COMI” of an Irish company
Clearly the ECJ rejected also the suggestion which has been prudentially put forward by some authors\textsuperscript{51}, according to whom subsidiaries should be always held as a mere establishment of the parent company, just as the ECJ stated in the different context of the Brussels Convention and in particular of its Article 5.5 in the judgment \textit{Parfum Rothschild}, in order to allow the opening of a secondary insolvency proceedings of the parent company in front of the courts of the State where the registered office of the subsidiary lies\textsuperscript{52}. A similar interpretation of the notion of establishment would be unwelcome in insolvency law, because it implies that insolvency of the parent company extends unconditionally and often unnecessarily to the subsidiaries and drives the latter to liquidation\textsuperscript{53}. Further it is not clear, how insolvency of the subsidiaries would impact on the parent company, since an extension of the insolvency “backward” to the parent company would be economically irrational. The aforementioned suggestion expressed though the urgent need for a coordination of the several insolvency proceedings, in a way that on the one hand should go beyond the mere possibility of exercising the shareholders’ rights by the parent company, and that on the other hand could take into account also the interests of the creditors, the investors and the employees of the subsidiary by the liquidation of the assets and of the economic activity of the latter.

It is still not clear, whether and to what extent national Courts are following the ECJ \textit{Eurofood} judgment and are ready to give up the “\textit{command and control}” theory\textsuperscript{54}. But it is sure, as Advocate General


\textsuperscript{52} Judgment of December 9\textsuperscript{th}, 1987, C-218/86, SAR Schotte v \textit{Parfums Rothschild}, ECR 1987, 4905. In this judgment the notion of establishment has been interpreted as applying also to subsidiaries, in so far as the parent and the subsidiary present themselves vis-à-vis third parties in their commercial dealings as a single entity, so that third parties doing business with the establishment acting as an extension of another company must be able to rely on the appearance thus created and regard that establishment as an establishment of the other company even \textit{if}, from the point of view of company law, the two companies are independent of each other (see Geimer-Schütze, \textit{Europäisches Zivilverfahrensrecht}, 2. Aufl., München, 2004, Artikel 5 EuVVO, No 309 and 314).

\textsuperscript{53} Winkler, above note 24, 17 f.; Baccaglini, above note 24, 125, fn 13; see also Vellani, above note 18, 162. It is common ground, that in the cases \textit{Parmalat} and \textit{Daisytek} the liquidators of the insolvency proceedings of the parent company did not request the opening of insolvency proceedings upon all companies joined in the group: see Bariatti, above note 39, 681, fn 17; Bufford, above note 10, 465, fn 303. The question of the automatic extension of insolvency to the subsidiaries, even if not all of them are insolvent, has been considered as a strong objection to the – in principle favoured – possibility of a substantive consolidation within groups of companies, by Paulus, above note 51, 1955.

A completely different question, from the possibility of considering subsidiaries in themselves as an establishment of the parent company, is whether, when the subsidiary has been declared insolvent at the seat of the parent company as the place where the relevant decisions for the subsidiary are taken, a secondary insolvency proceeding upon the assets of the subsidiary may be opened in the place where the subsidiary carries on its activities: The centre of activities will then be held as the place of an establishment of the subsidiary, whose “\textit{COMI}” is in the State of the parent company, in order to protect interests and expectations of employees and creditors. See Court of Appeal of Torino, March 10\textsuperscript{th}, 2009, in: \textit{Il Fallimento}, 2009, 1293.

\textsuperscript{54} Many courts, while paying tribute to the ECJ’s \textit{Eurofood} decision, endorsed a much liberal interpretation of it, which still allowed the opening of main insolvency proceedings over the whole of a group of companies, although the subsidiaries were operative entities \textit{carrying on business} and employees and commercial relations in the State of their registered office: see, in the case Eurotunnel, \textit{Tribunal de commerce de Paris}, August 2\textsuperscript{nd}, 2006, download under http://www.lexinter.net/JPTXT4/JP2005/ouverture_d%27une_procedure_de_sauvegarde_pour_eurotunnel.htm, where a main insolvency proceeding was opened over 16 subsidiaries with seat in England, Spain, Germany and the Netherlands and over 1 English co-parent company, since in France there were the \textit{mind of management} and the essential core of the activities, of the employees and of the assets. See also the cases \textit{Illochroma}, of which the Italian Court of appeal of Torino refers (above note 54) and \textit{Re Nortel Networks SA}, [2009] EWHC 206 (Ch),
Jacobs noticed, that the "COMI" identification requires a decision which, strictly depending on the peculiar facts of the case, still allows that the influence and the control by the parent company determine the outcome of the decision upon jurisdiction. In fact the lacking adequate evaluation of the peculiarities of the case is the major criticism which has been directed to the Eurofood judgment, since many authors noticed that, in the instant case, the ECJ did not pay enough attention to the fact that the Irish subsidiary did not carry on any business in Ireland and was a mere instrument of the parent company Parmalat, in order to raise financial means on a favourable market, as Ireland was for tax reasons: what the principal creditor, Bank of America, was perfectly aware of.

Is the ECJ's one a satisfactory solution for group of companies?

a) It is undeniable that the lack of Regulation's provisions dealing with affiliated companies or groups of companies is the principal responsible for the spreading of the "command and control" theory. There is at least two reasons of criticism regarding this theory. On the one hand, it is unsatisfactory because the relevant interests, whose ascertainability by third parties is essential for the "COMI" identification, are so various and can be so differently weighed that the outcome of the evaluation will be substantially unpredictable. The uncontrolled rebut of the presumption in favour of the place of the registered office, provided for in Article 3(1) of the Regulation, can privilege the point of view either of the investors, or of the employees, or of the consumers, or of the commercial partners, depending on the choice of the Court and the pleadings of the claimant, with the obvious risk that very weak connecting factors will determine the outcome of the jurisdictional issue.

On the other hand, the "command-and-control" theory is questionable in so far as it divides in two the life of the companies joined in a group. Before insolvency the applicable law is that of the place of the


55 Opinion, para. 125.

56 See Winkler, above note 24, 18 f., according to whom for creditors of Eurofood it was perfectly clear that the company was "an empty box"; Baccaglini, above note 24, 126. It must be noticed also that the bonds holder and Bank of America insisted on Irish jurisdiction, because they wanted to avoid that the assets of Eurofood be liquidated or administrated in consideration only of the interests of the parent company Parmalat (since Eurofood did not carry on any business in Ireland, the creditors could not prevent the risk by requesting the opening of a secondary insolvency – and therefore winding-up – proceedings, because Eurofood had no assets in the territory of the registered office). Taking account of the circumstances of the case, it is not to blame the judgment of the Tribunale di Isernia, April 10th, 2009, in: Il Fallimento, 2010, 59, which opened a main insolvency proceedings of a company having its registered seat in Luxembourg, since the stocks of the company were entirely held by an Italian company; since in the board of directors sat only one person domiciled in Luxembourg, who did not have any operative responsibility though; and since the only activity of the company was to raise financial means in the interest of the parent company: in the end, since the company an "empty box", and the creditors were perfectly aware of this; see also Tribunale di Monza, July 27th, 2007, which opened a main insolvency proceeding over the Dutch company Nylstar NV.

57 See M.A. Lupoi, above note 22, 1401 and 1411 f.; Bariatti, above note 39, 678; Baccaglini, above note 24, 125; Benedettelli, above note 18, 503 f., who suggests to identify the "COMI" taking into account the major or minor weight of the relevant interests according to the applicable insolvency law (this could lead to a plurality of "COMI"s, depending on how the relevant interests are weighed); agrees with Benedettelli Winkler, above note 24, 19.

58 See the case Ci4net.com Inc (High Court of Justice, Chancery Division, Companies Court, Leeds District Registry, May 5th, 2004, [2004] EWHC 1941 (Ch)), where English Courts asserted jurisdiction because the bank requesting the opening of insolvency proceedings addressed mail to a London mailbox of the insolvent company. In the case Enron Directo S.A. (High Court of Justice, Chancery Division, Companies Court, June 4th, 2002, EIR Database No. 9; see Fletcher, above note 18, No 7.61) the connecting factor was the fact that the company, which carried on its business exclusively in Spain, owed consistent amount of money to other subsidiaries of the same group having (the latter) seat in London. In the aforementioned cases though, like in the case Brac-Rent-A-Car, the question was not that of jurisdiction over a group of companies, but of jurisdiction over an "overseas company", that is over a company with registered office abroad (U.S.A. and Spain) according to an odd – on the facts of the case – application of the head office function theory.

respective registered office\textsuperscript{60}, while at the time of insolvency the applicable law becomes either that one of the territory of the parent company’s registered office or that one of the place where the relevant decisions for the entire group are taken. This divide implies that all predictions, which have been made by third parties during the physiological life of the company, are going to be frustrated at the pathological time of insolvency, and this implies also the frustration of the aim of the European legislator, to guarantee the ascertainability of the “COMI” and to enable the legal risks which will have to be assumed in the case of insolvency to be calculated\textsuperscript{61}. Not even the shareholders and the management could easily and reliably predict the Member State which will have jurisdiction to open the insolvency proceedings; and the same management could be induced to request the opening of the proceedings in order to determine the most favourable applicable law: Which has happened very often to determine the possibility of a „Company Voluntary Arrangement“ and the ensuing possibility of a debt-for-equity-swap according to English law.

Further, the command-and-control theory, which allows the opening of a single and global proceedings for the whole of the group of companies, does not leave any room neither for the principle of “limited (or modified) universality” and the coexistence of main and secondary insolvency proceedings nor for the ensuing protection of the creditors of the subsidiary companies, in the case of the opening of a rescue proceedings regarding the parent company in the Member State of its registered office\textsuperscript{62}. Hence arises the risk that Courts of the Member State of the place of the subsidiary’s registered office make reference to the violation of public policy, as it happened in the aforementioned case Brochier\textsuperscript{63}, in order to protect the interests of the local creditors or of the tax authorities\textsuperscript{64}.

Sure, English insolvency practitioners pretend that the creditors become always the “best friends” of English insolvency proceedings, as soon as they understand that in England “you will get more money back and you will get it sooner”\textsuperscript{65}. But this is a too vague guarantee for the creditors of the subsidiaries, since not even in front of English Courts there will be the protection of their preference rights in the context of proceedings which will take into account exclusively the interests of the parent company.

Against this scenario it could be argued that the creditors of the subsidiary can prevent any risk by requesting the opening of secondary insolvency proceedings in the territory of the registered office of the subsidiary itself (as it happened in the case BenQ\textsuperscript{66}). But, as it is well known, secondary insolvency proceedings must be winding-up proceedings, even if a rescue proceedings would be the best solution for

\textsuperscript{60} See above note 48.
\textsuperscript{61} Benedettelli (above note 18, 514) stresses that the ascertainability by third parties cannot be guaranteed as a matter of principle, if one takes into account the “factual and effective” seat of the company; see also Fletcher, above note 18, No 7.41 f.: „it is clearly an integral feature of the concept of the COMI that parties who have dealings with a debtor should be entitled to base their expectations, including their calculations of risk arising from those dealings, on the reasonable conclusions to be drawn from systematic conduct and arrangements for which the debtor is responsible ... the spirit expressed in Recital (13) also suggests that this victory of substance over form, in terms of the Regulation’s primary rule of jurisdiction, may need to be balanced in some instances by the application of estoppel-like principles to preclude a debtor from pleading that the true location of the COMI is located in some different State that that in which external parties have been led to suppose“. 
\textsuperscript{62} See Balz, above note 13, 500, 520 and 523: „the possibility of secondary proceedings was viewed, in a European environment with widely differing views on rehabilitation policies, as a necessary precondition for the inclusion of rehabilitation and reorganization proceedings in the scope of application of the Convention“, in order to avoid that «mutual recognition of main rehabilitation proceedings commenced elsewhere [...] make local creditors pay for the protection of employment and other public interests in foreign States”; see also Fumagalli, Il Regolamento comunitario sulle procedure di insolvenza, in: Rivista di diritto processuale 2001, 692.
\textsuperscript{63} See in this context though Fletcher, above note 18, No 7.71: „any dispute as to the standing of the petitioning party to act in the name of the company, or any complaint as to the adequacy of notice given to interested parties so as to afford them opportunity to be heard, should be pursued [only] by means of an appeal in the jurisdiction in which the order was made“.
\textsuperscript{64} One of the main reasons for the opening of insolvency proceedings in England, in the case Isa-Daisytek, was that in front of English courts the French tax authority will not have its habitual preference rights in comparison with other creditors: This aim could be of relevance in respect to every insolvency proceedings opened in civil law systems of French tradition.
\textsuperscript{65} Mr. Klempka in his „COMI-Newsletter“, above note 9.
\textsuperscript{66} AG München, February 5th, 2007, EIR Database Nr. 173.
the creditors. Further, the effects of those proceedings are necessarily restricted to the assets of the debtor situated in the territory of the Member State of the opening decision, so that the creditors can have an interest contrary to the opening of secondary proceedings, when a main insolvency proceedings has been opened in front of the Courts of another Member State67.

It is to welcome also that the ECJ’s Eurofood judgment wanted to stop the “command and control” theory. The ECJ tried to ensure legal certainty and foreseeability in so far as it requests very strict conditions, in order to rebut the presumption according to which the “COMI” must be identified with the place of the registered office of a company. Nonetheless an absolute focusing on the juridical independence and autonomy of the legal person cannot be satisfying too.

b) Group insolvencies pretend an intensive coordination of the proceedings opened with regard to the several companies, in order to guarantee a single one economic strategy to be crafted. The cases MG-Rover and Parkside Flexibles evidence that a single decision-making instance is necessary, if in the interests of creditors and employees one pursues either the most convenient liquidation of the debtor’s assets, avoiding a value-consuming overspill of products on the market68, or the most efficient rescue of the debtor’s business, whose economic individuality has to be maintained in view of its reorganisation or transfer69.

The Eurofood judgment overlooks this need for coordination70. The ECJ takes care of legal certainty and of preserving the legal independence and autonomy of the several companies joined in the group, but leaves without any answer the peculiarities of insolvency of a group of companies. Hence arises the risk that claimants will still try to circumvent the Eurofood judgment’s rationale and that Courts will continue to apply the “command and control” theory, although with a little more caution, in order to pursue the goal of the best administration of the insolvency of the several companies joined in the group within the context of a common intervention scheme71. Therefore it appears unavoidable that the European legislator

67 See Fabiani, above note 7, 98.
68 Mr Klemplka in his „COMI-Newsletter“, above note 9: „The cars were under the control of a network of subsidiaries spread across Europe. When each of those companies was declared insolvent in turn, there would be a fire-sale of Rover cars, flooding the market and destroying their value. Ideally the Rover administrators, PwC, wanted to manage all of Rover’s European operations under one insolvency appointment, to sell the assets in an orderly fashion“. It is not necessarily true then the assumption of Paulus, above note 51, 1950, that the focusing on the single and several companies is right and proper especially when each group company is so insolvent, that only winding-up proceedings appear to be a reasonable outcome of the group crisis.
69 Referring to the Parkside Flexibles case, Mr. Klemplka in his „COMI-Newsletter“ (above note 9) pretends that the administration of the polish subsidiary through PwC according to English insolvency law “enabled the administrators to keep the company trading while several multinational suitors lined up bids, a strategy almost impossible under Polish insolvency law”. See further Paulus, above note 51, 1951; Bufford, above note 10, 465, fn 302: „a business is much more valuable as an integrated whole that is sold as an operating business than its parts are worth separately [...] This is known as the «going concern» bonus in reorganization cases“. It must be stressed that the Insolvency Regulation allows secondary proceedings to be closed by a rescue plan only when the liquidator of the main proceedings proposes such a measure himself and the outcome is allowed by the applicable law (Article 31). Sharp critics have been expressed referring to this limitation: Moss/Paulus, The European Insolvency Regulation – The Case for Urgent Reform, in: Insolv. Int. 2006, 19(1), 1, 5; Moss/Smith, in: Moss/Fletcher/Iassa, above note 6, No 8.68; Vincr, Il Regolamento CE sulle procedure d’insolvenza e il diritto italiano, in: Rivista di diritto processuale 2004, 213, 241 f. The reasons of this mandatory and rigid provision are explained by Balz (above note 13, 550 f.): „a recognized rehabilitation proceeding opened in one State may trigger liquidations in any other State where the debtor owns an establishment. This avoids a series of complex problems in main rehabilitation proceedings, such as deciding who (the debtor or the foreign liquidator) should have the right to choose which type of insolvency proceeding should be opened in the secondary forum. It also avoids the impracticability of attempting to couple a main liquidation proceedings with a secondary rehabilitation”.
70 See M.A. Lupoi, above note 22, 1411; immediately after the entry into force of the Regulation, Bureau, above note 22, 635 f. For the importance of a simple but rigorous coordination in group insolvency see also Fabiani, above note 7, 99, according to whom the “command and control” theory is nonetheless to be rejected; Bariatti, above note 39, 679 f.
71 See Paulus, above note 51, 1952, who stresses the necessity of specific rules of law (and of jurisdiction) for the insolvency of group of companies; see also Moss/Smith, Collins & Aikman, below note 88, 15: „the relevant «head
moves to a reform of the Insolvency Regulation with fresh new provisions dealing with the peculiarities of group of companies’ financial distress: which is favoured nowadays also by authors whose opinion was until now contrary to the introduction of a specific set of rules for group insolvencies 72.

c) What kind of solution would be apt for the issues at stake? That one of substantive consolidation, also of concentration of jurisdiction at the place of the registered office of the parent company, appears to be unsatisfying. Outside the narrow cases of letterbox companies or of a complete assets’ merger 73, substantive consolidation is irreconcilable on the one hand with the necessity of respecting the substantive law applicable to the several companies and of preserving the expectations of shareholders, management and creditors 74, and on the other hand with the necessity of protecting the creditors of the subsidiaries. The latter creditors will have to face preferential rights which are different to those recognised by the law of the Member State of the registered office and may be compelled to accept the policies of rescue of the Courts of the main proceedings with surrender of their interests and of the interests of the subsidiary itself. In this respect it must be remembered that the inclusion of rescue proceedings in the scope of application of the Insolvency Regulation, at the time of its drafting, had to be counterbalanced by the possibility of secondary insolvency proceedings for the protection of local creditors, since rescue plans were believed to pay attention principally to the general interests of the enterprise (or of the group) rather than to the interests of the creditors of the establishment (or of the subsidiaries) 75.

A different solution, which would appear more viable in the European context, is to allow a coexistence of a plurality of main insolvency proceedings within groups of companies 76, ensuring a dominant role to the liquidators of the insolvency proceedings opened with regard to the parent company and a duty to cooperate for the other liquidators more rigorous than that which the Insolvency Regulation provides for the relationships between main and secondary proceedings. Should this be the case, the balance between substantive company law and insolvency law would be maintained and the interests of

72 Vgl. Wessels, above note 10, 72: „I have always been reluctant to criticize the Regulation for its lack of provisions relating to the insolvency of one or more companies, which, along with other companies, form a group of corporations […] Nevertheless, several court cases demonstrate the need for the Regulation to provide a solid set of rules, not just those related to ‘international jurisdiction’ of a court. Changes could also be considered with regard to the nature of secondary proceedings, to the powers of the main liquidator, the establishment of a committee of creditors which duly represents the involved corporate debtors (parent company and subsidiaries), certain forms of consolidation and the treatment of inter-company loans”; see also Fletcher, above note 18, No 7.45, fn 76.

73 Which represent the only cases in which also US-American case-law allows substantive consolidation; see van Galen, The European Insolvency Regulation and Groups of Companies, download under: http://www.iiiglobal.org/country/european_union/Cork_paper.pdf, 15 f. The possibility of substantive consolidation, whenever the assets are separated and can be separately considered, but there are economic features which make appear a substantive consolidation as desirable, e.g. when the companies carry on their business as parts of a single economic entity, or when the several companies manufacture different parts of a product which will be then sold as a specific product “of the group”, is focused by Paulus, above note 51, 1954 f., who adds the condition of the possibility of a rescue plan; for the necessity of a common rule of jurisdiction for insolvency of group of companies, which allows the concentration of proceedings in a single forum, if the group can be considered as “an integrated economic unit”, see also Bufford, above note 10, 465 ff.; further Moss/Paulus, above note 69, 4 f.

74 See Virgós/Garcimartín, above note 3, para. 61: „From a substantive law perspective, the international treatment of corporate groups faces two risks. One is the risk of fragmentation, i.e. dealing in a segmented way with the reorganisation of a corporate combine made up of several companies which are legally independent but which are subject to some form of unified economic control, can prove inefficient. The other risk is the risk of over-centralisation, i.e. consolidating different companies because they have corporate structures linked by relationships of property or shareholder control contradicts the principles of risk diversification and asset partitioning which, for good reasons, form the basis of company law”.

75 See above note 62.

76 See already van Galen, above note 73, 8 f., who suggests the use of the same coordination structures which are provided for in Article 31 dealing with the cooperation between the liquidators of main proceedings and those ones of the secondary proceedings; also Virgós/Garcimartín, above note 3, No 62, but only for the cases of financial distress of a plurality of subsidiaries. The necessity of dealing with group insolvencies through duties of cooperation between the liquidators of a plurality of main insolvency proceedings is focused also in the NAFTA Transnational Insolvency Principles Nr. 23-24.
local creditors would be adequately protected, both as far as preference rights are concerned and in view of the interests of employees vis-à-vis a rescue plan77. The threat of a lack of efficiency because of the opening of a plurality of main insolvency proceedings can be diminished by a more detailed and comprehensive framework of cooperation: Which could be strengthened not only through the inclusion of the Courts among the entities bound to cooperate with each other78, but also through the extension of the fields in which the cooperation is owed, through the possibility of appointing a single “cross-border” liquidator for all of the companies of the group79, and further through the mandatory drafting of Protocols, which should become the main instrument to overcome the difficulties deriving from parallel proceedings in international insolvency law80.

The need to strengthen the cooperation framework has been focused recently also by the drafters of the European Communication and Cooperation Guidelines for Cross-Border Insolvency (“CoCo Guidelines”)81. The drafters’ aim was to provide some substantial and procedural guidance to those practitioners, struggling to communicate and coordinate main and secondary insolvency proceedings in the context of the EU Insolvency Regulation. Focusing on the development of “standards” for cross-border communication and cooperation between insolvency office holders in the EU with a realistic set of Guidelines, should ensure as best as possible to make the Regulation work in practice, so that either liquidation or reorganisation of the debtor’s estate is dealt with efficiently.

After all, ahead of an initially period of turmoil, it was the Maxwell case itself which evidenced that the opening of two main insolvency proceedings shall not be considered as a nightmare in cross-border insolvencies82. Since that case Protocols have developed as a flexible way to deal with conflicts of jurisdiction in insolvency law83. Protocols were a most appreciated means of coordination also in the Parmalat case, in whose context the cooperation between Mr. Bondi and the liquidators of the U.S. main proceedings opened according to Section 301 Bankruptcy Code and those of the U.S. secondary proceedings opened according to Section 304 Bankruptcy Code evidenced no difficulty in relation to the companies having their registered office outside the territorial scope of application of the Insolvency Regulation84:

77 The reason for the protection of local creditors is that of preserving legal certainty and of allowing the legal risks which will have to be assumed in the case of cross-border insolvency to be calculated. This goal has been pursued by permitting secondary proceedings to be opened to run in parallel with the main proceedings (although some authors cast doubt upon this solution: Westbrook, Multinational Enterprises in General Default: Chapter 15, The Ali Principles, and the EU Insolvency Regulation, [2002] Am. Bankr. L.J. 76, 1, 10 f.), especially if one considers the possibility of the so-called Universal Cross Filing according to Article 32 of the Insolvency Regulation (i.e.: the possibility for any creditor to lodge his claim in the main proceedings and in any secondary proceedings, and the possibility for the liquidators in main and in any secondary proceedings to lodge in other proceedings claims which have already been lodged in the proceedings for which they were appointed).

78 See Paulus, above fn 33.

79 See Paulus, above note 51, 1951.

80 This could help to weaken the criticism of Paulus (above note 51, 1952). With regard to the Protocols and their implementation in the U.S. See Westbrook, above note 77, 37: "Much of the cooperation in North American case has been by way of ‘protocols’, agreements negotiated by lawyers and accountants for the parties (or many of them) and approved by the courts involved. These agreements have enabled lawyers and judges to create a legal framework for the conduct of a major case despite the lack of treaties or other public enactments serving that function”.

81 Principally Prof. Bob Wessels and Miguel Virgós, assisted by many others, including judges and academics from North-America and Europe (download http://www.insol-europe.org/ims/Ads/CoCoAdvert.pdf). The utmost importance of cooperation in cases of cross-border insolvency proceedings is emphasized by Vallendar, Judicial Cooperation within the EC Insolvency Regulation, in: [2007/8] Eurofinex 30, 8.


83 See the sections dedicated to Cross-Border Insolvency Orders and Protocols by the International Insolvency Institute (http://www.iiliglobal.org/international/protocols.html).

With the result that transatlantic cooperation developed upon voluntary basis and gave better result than the Insolvency Regulation itself, which instead allowed a dramatic battle between Irish and Italian Courts. Nowadays Protocols have been resorted to in the Lehman Brothers case, where a Cross-Border Insolvency Protocol has been recently proposed in order to govern the conduct of Lehman Brothers Holdings Inc. ("LBHI") and its affiliates worldwide. The need for a Protocol is manifest, given the integrated and global nature of Lehman’s businesses, the spread of assets and activities, the efficient coordination of the administrations in many jurisdictions, as over 70 proceedings and over 16 liquidators are involved. Communication among Tribunals will be regulated to a mechanism well know in USA and Canada, the Guidelines Applicable to Court-to-Court Communication in Cross-Border Cases (American Law Institute), which also has inspired the drafters of the aforementioned CoCo Guidelines.

Outside a cooperation framework the protection of local creditors of a subsidiary company would be otherwise entrusted to the discretionary powers of the Court which opened the main insolvency proceedings, otherwise compelling or through the opening of a secondary insolvency proceedings by the Courts of the State where the subsidiary was carrying on its business. English Courts proved to be able to guarantee an adequate safeguard to creditors of a company having its registered office in another Member State, even in spite of national insolvency law. In the case Collins & Aikman the Court of Chancery evidenced the superiority of common law in finding a satisfactory outcome for hard cases, in so far as the Court allowed the liquidator to comply with the promise made to the creditors of the companies having their registered office abroad, that the preferences and the rank thereof would have been ensured according to the substantive law of the territory of the respective registered office: Although preferences and rank were contrary to English insolvency law, the promise was the counterpart of the acceptance by the creditors not to request the opening of secondary insolvency proceedings, and therefore it could not be deceived.

86 Fletcher stresses (above note 18, No 7.75) that “inevitably, the decision in each individual case will be closely dependent on the particular facts so found, and the relative importance they carry for the purpose of deciding the whereabouts of the COMI”; according to Omar, above note 49, 12, “what gives hope, however, that the Insolvency Regulation may yet prove a success, even in an unamended form, is the pragmatic course steered by insolvency practitioners and judges in the cases outlined above, where any lacunae or deficiencies are resolved by using the provisions creatively”.
87 See Court of appeal of Torino, above note 53.
88 High Court of Justice, Chancery Division, Companies Court, Collins & Aikman, 9.6.2006, [2006] EWHC 1343 (Ch). Mr Justice Lindsay stressed that not only the various creditors’ committees agreed with the liquidator’s proposal, but also the U.S. American creditors agreed, although they would have received less than it would have occurred had English law been applicable to them and, so, they would have been the persons most likely to be put at a disadvantage. This universal support for the liquidator to avoid the opening of a secondary insolvency proceedings evidence the widespread doubts which are cast as to the adequacy of the cooperation provisions envisaged by the Insolvency Regulation. A similar course has been already pursued in the case MG Rover Spain to the advantage of the preferences of the employees (see Omar, Confronting the Challenge of Diverse Priority Rules through the European Insolvency Regulation, in: International Case-Law Alert Nr. 10, Juni 2006, 7, 8 f.), although in that case the Courts were worried that, if they had not guaranteed the employees’ rights, the main insolvency proceedings could be denied recognition by way of the public policy exception (see Omar, above note 49, 8 f).
See also the case Re Nortel Networks SA, [2009] EWHC 206 (Ch), where the Court of Chancery was requested by the joint administrators of various companies joined in the Nortel group (counselled by Moss QC) to send a letter of request to the courts of a number of Member States in the EC asking those courts to put in place arrangements under which the joint administrators will be given notice of any request or application for the opening of secondary insolvency proceedings in respect of any of the companies in administration, and will be permitted to make submissions on any such applications in respect of the potential damage which secondary proceedings might have on the interests of the estate and the creditors of the relevant companies: By this course the joint administrators wish to avoid secondary insolvency proceedings being opened in respect of any of the companies because this would be likely to impede the global restructuring which is planned and would, in their view, reduce the value ultimately realised for the benefit of the companies’ creditors.
It is true that case law evidences a widespread opinion that the mere existence of a parallel secondary proceedings and of another liquidator, although with a minor role, can frustrate the possibility of realizing a global winding-up or rescue plan for the whole of the group. But, a viable solution for insolvency of groups of companies must exploit the improving of communication and coordination systems, and cannot consist in avoiding parallel proceedings in favour of substantive consolidation: Not only because the first-in-time Court opening the main insolvency proceedings will not necessarily be an English one, so that the creditors will often have to face much less flexible judges and substantive laws, and whenever it will be an English Court, the stakeholders will often face a huge amount of costs; but what is most important, is this search for the superiority of a substantive or procedural system would open the way to forum shopping and would be conflicting with the overall aim of the European system of judicial cooperation in civil matters.

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89 See Moss/Smith, Collins & Aikman, in: International Case-Law Alert Nr. 12, Oktober 2006, 12: „it was clear that there would be much greater chances of success in negotiating funding for the insolvency process and in selling the assets if this could be done on a group-wide basis rather than piecemeal on a company-by-company basis”; s. auch Declercq, Secondary Insolvency Proceedings: a Risk or a Tool for Optimizing Value after a European Filing?, in: International Case-Law Alert Nr. 15, August 2007, 31, 32: „Despite the fact that secondary insolvency proceedings may in theory have been designed as a tool, oftentimes in practice avoiding the opening of secondary insolvency proceedings is one of the key strategies for optimizing value after a European filing“.
Some of the dynamics of International Trade

Procurement
Corruption
Insurance

Law
Origins
Tariffs &
Customs
Carbon footprint
Outsourcing
Exchange rates
Globalization
Piracy
Smuggling
Exports
Imports

International Conference on the Restructuring of the Global Economy (ROGE)
1st & 2nd February, 2011
Pune, India.

Corporate Governance and Business Conference (CGBC)
14th & 15th July, 2011
Boston, USA.