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Special Articles

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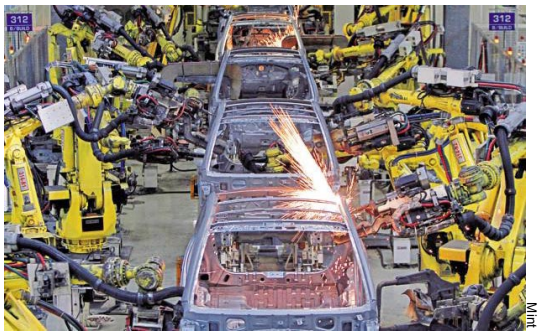
CUTS C-CIER

Digital Society's Many Disruptions

Digital revolution is the new buzzword in India. The government had already announced a campaign on Digital India with the mission of digitally empowering every Indian and ensuring that all information is digitally available. Following the demonetisation measure, consumers were asked to use the digital space to make payments for their purchases in view of the cash shortage. That was not too easy, though the usage of digital platforms for cash transactions has jumped hugely.


Mint

How can India create one million jobs per month if its production systems, for both goods an d services, are run on artificial intelligence, which includes remotely controlled robotics? Already today, in the midst of its historical boom, India is losing 550 jobs per day. With digital automation set to accelerate, the spectre of jobless growth looms large. The World Bank gloomily predicts that a whopping 69 percent of jobs in India could potentially be automated.

At the same time, robots are levelling manufacturing costs in the old industrialised countries. Why would an investor go through the hassles of weak governance, long shipping lines, and the lack of a skilled workforce if labour cost barely makes any difference?

Already today, in some industries the trend to re-shore production facilities back to developed markets is picking up. On the global scale, stagnating trade figures and disintegrating supply chains seem to indicate that globalization is reversing. With the global window for export and manufacturing-led growth closing, the quest for development has turned into a gigantic race against time.

What can India do to create livelihoods for its growing population? Will the green economy create green jobs? In India, the build-up of renewable energy promises to create 1.1 million jobs. Will the blue economy create jobs in coastal areas? The Bay of Bengal initiative hopes to jumpstart blue-water farming, boost pharmaceutical and cosmetic industries, and build up coastal infrastructure. Can India leapfrog into a service-led economy?

Much hope has been pinned on India's potentially big domestic market. But are India's consumers in a position to afford all those products? Yet, the impact of the digital revolution will go well beyond the disruption of industries. A digital society will need to renegotiate the entire social contract. To illustrate what is at stake, it is useful to follow the heated debates over universal basic income.

Opponents fear the replacement of solidarity-based welfare with naked redistribution will trade the common effort to enlarge the cake with cut-throat competition over the remaining cake slices.

What this quick glance into the future shows is that the digital revolution will not only disrupt economies, it will transform societies. This phenomenon will be aided by myriad social networking platforms which disseminate information speedily and invite citizen action, some of which may be irrational and harmful.

We therefore need to broaden our understanding of the impact of the digital revolution, and start a grand debate over how to shape digital society.

Significant Competition Law Changes

The **German** Federal Parliament passed the ninth amendment to the Act against Restraints of Competition on March 09, 2017. The amendment is expected to come into force in second quarter 2017 and will substantially change German competition law.

The reform is driven in part by formal requirements to implement EU legislation into national German law, and to eliminate some inconsistencies between EU and German law in the area of cartel enforcement.

But it also aims to adjust the domestic competition law framework to some of the challenges that come with big data, two-sided markets, and with the digital economy more generally.

(Mondaq, 20.03.17)

Ensuring a Level Playing Field

Australians will benefit from new laws aimed at protecting two million small businesses from bigger rivals. But there's doubt as to whether they will get through the Senate.

Parliament's lower house passed the legislation, despite opposition from Labor and concerns from within the government. The legislation was further criticised by one of the government's own backbenchers.

The so-called 'effects test' bill strengthens rules that prevent companies with substantial market power engaging in conduct that harms competition. It will ensure a level playing field in business, including for over two million small local companies.

(www.9news.com.au 28.03.17)

Major Antitrust Changes on Cards

Argentina and **Chile** are poised to enact or implement major changes to competition policy to modernise antitrust and merger enforcement in their jurisdictions and bring them in line with countries such as Brazil and Mexico that have adopted similar reforms in recent years.

Chilean lawmakers had passed an antitrust reform law in 2016 that will take effect in June, increase penalties for anticompetitive conduct, institute a mandatory merger review regime, and grant the competition authority new powers to undertake market studies, among other changes.

Meanwhile, Argentine lawmakers are considering a draft bill proposed by Argentina's antitrust regulator that would create a new, independent competition authority, increase fines, move the country to a premerger notification system, and create a leniency programme for antitrust whistleblowers. *(Law360, 29.03.17)*

Concept of 'Abuse of Buyer Power'

The **Kenyan** Competition Act 2016 received legislative assent on December 23, 2016, and became effective on January 13, 2017.

The Competition Act introduces changes to the Competition Act 2010 that have implications for the Competition Authority of Kenya's (CAK) powers in respect of investigations into restrictive trade practices (RTPs) and abuse of dominance conduct. The Amendment Act has also introduced a new concept of 'abuse of buyer power'.

Further, the financial penalties that can be imposed for breaching RTP, abuse of dominance and abuse of buyer power provisions have been increased.

(www.uk.practicallaw.thomsonreuters.com, 01.03.17)

Boosting Antitrust Authorities

The **European Union** (EU) is proposing new rules to make antitrust authorities in the bloc's member countries more effective.

The EU's Executive Commission put forward proposals to ensure that national authorities have all the powers they need to gather evidence, such as the right to search cellphones and laptops.

The proposal also envisions antitrust authorities having coordinated leniency programmes in an effort to encourage companies to come forward with evidence of illegal cartels. It wants to ensure they can work impartially 'without taking instructions from public or private entities.'

The proposal requires approval from the European Parliament and from the 28-nation EU's member countries.

(AP, 22.03.17)

First Ever Bid Rigging Case

The Competition Commission of **Hong Kong** commenced enforcement proceedings in the Competition Tribunal for the first time since the Competition Ordinance came into force in Hong Kong on December 14, 2015.

The proceedings are brought against five information technology companies over an allegation of bid-rigging in a tender related to the supply and installation of a new IT server system based on Nutanix technology. The Commission is seeking remedies including pecuniary penalties and a declaration that each party involved has contravened the Ordinance.

It is alleged that in responding to a tender issued by the Hong Kong Young Women's Christian Association, the five companies colluded by engaging in bid-rigging, which involved the submission of 'dummy' bids by certain parties.

(Lexology, 28.03.17)

Why Competition Can be Healthy for Development-Friendly Trade

Jonathan Fried*

The 2030 Agenda for Sustainable Development for people, planet, prosperity and peace calls on trade as a means of delivery. In fact, it mentions trade 19 times. But trade alone is not a panacea, it must be accompanied by sound economic regulation. An important support is competition policy, to make markets work better, encourage enterprise and create more choice for consumers and workers. Yet the words 'competition' or 'compete' are nowhere to be found in the 2030 agenda.

The WTO has been remarkably successful in addressing a range of impediments to trade. Without robust competition policy preventing unfair arrangements, however, we don't always succeed in levelling the playing field for *all* participants in the global economy, or allowing business to succeed across borders.

Developing countries have a particularly acute need for the improvements in economic efficiency and the emphasis on consumer welfare that are at the core of competition policy. Competition law can act as a powerful check on elite privileges and cronyism that frustrate the economic prospects of so many people.

Anticompetitive behaviour undermine the benefits that would otherwise flow from trade in several ways. So development assistance, and national development plans, should encompass the strengthening of competition laws and policies, and the capacity to administer them, as a central element of a sustainable growth strategy.

Competition and trade-law communities largely work independently of one another. Both regimes are predicated on the theory that free and fair competition optimises the use of resources and yields the best economic welfare results. Both seek a level playing field. Trade rules typically seek to discourage governments from discriminatory meddling, while competition laws focus on commercial actors.

Four examples may illustrate this overlap:

1. **State-owned enterprises:** State-backed financial support, tax preferences, regulatory privileges and favourable government purchasing arrangements for SoEs undermine the concepts of free and fair competition that lie at the heart of both trade and competition policy.
2. **Telecommunications:** WTO negotiators have agreed to specific competition provisions in telecommunications, such as requiring major suppliers to provide opportunities to connect to their networks.
3. **Selective enforcement:** Business has complained of antitrust enforcement becoming a tool of industrial policy.
4. **Government procurement:** Collusive behaviour is pervasive in bidding for government contracts and purchasing, from construction to healthcare. The WTO's Government Procurement Agreement increases competition via trade liberalisation by requiring transparency in tendering, an open bidding process and opportunities to challenge decisions.

Can competition policy, which is traditionally focused on domestic consumers, address export restrictions and export cartels? Do the limitations on governments' ability to access generic medicines that are set out in trade deals result in harmful anti-competitive practices? How should trade and competition rules interact in industries such as communications or transport?

Some developing countries see trade liberalisation as locking in current production patterns in global value chains. A path forward may include greater focus on competition law capacity in developing countries, and greater international cooperation among competition and trade authorities to tackle anticompetitive conduct offshore.

The Trade Facilitation Agreement is a possible model for how to sequence capacity-building with bringing developing countries into a harmonised international framework. The result could be a boost to trade and development.

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* *Canada's Ambassador to the WTO, but the views expressed here are those of the author and do not represent the policies or views of the Government of Canada.* *The author gratefully acknowledges the assistance of Ian Medcalf, Second Secretary at Canada's Mission to the WTO, and Sean Doherty, Head of International Trade & Investment at the World Economic Forum.*

– *Abridged from an article that appeared in the* World Economic Forum *on December 20, 2016*

PRICE FIXING

Car Suppliers Slammed

Car suppliers from Germany, France and Japan have been slapped with a total fine of US$163mn for cartels that ended in 2009. Customers of big carmakers such as Daimler, Volkswagen and BMW had to dig deeper to pay for their cars' air-conditioning and cooling units as a result of the collusion.

A total of six car suppliers – Germany's Behr, France's Valeo and Calsonic and Japan's Panasonic, Denso and Sonden – were charged for colluding on prices and market share and the exchange of sensitive information.

While all six car parts makers acknowledged their involvement in the cartels and agreed to settle the case, both Panasonic and Denso received full immunity, as they revealed some of the cartels, the European Commission's antitrust unit said in a statement.

(www.global.handelsblatt.com, 08.03.17)

Yamaha Challenges KPPU's Verdict

Yamaha Indonesia Motor Manufacturing (YIMM) lawyer Rikrik Riziyana questioned the verdict by the Business Competition Supervisory Commission (KPPU) in relation to an allegation of cartel practice carried out in the automatic scooter industry.

"The KPPU made an inaccurate analysis in reviewing data and information presented by a number of individuals," Rikrik said.

He admitted that he was disappointed with KPPU's verdict, which according to Rikrik was based on an inaccurate interpretation of data presented by Yamaha. The KPPU alleged that Yamaha had manipulated the data. *(www.en.tempo.co, 23.02.17)*

Publishing Firms Fined For Collusion

Norway's four largest publishing companies have been fined US$3.8mn for what state competition authorities call 'illegal cooperation'.

Aschehoug and Gyldendal, two of the major Norwegian publishing houses fined by competition authorities, are located just across this plaza from one another in downtown Oslo.

State officials at Konkurransetilsynet claimed that the publishing firms broke Norway's competition law by 'collectively boycotting' distributor Interpress, and sharing competitively sensitive information.

(www.newsinenglish.no, 23.03.17)

Banks Manipulated Forex Trading

South Africa's antitrust investigators urged that a dozen banks be fined for colluding and manipulating trades in the rand, potentially becoming the latest in a string of penalties handed to lenders around the world for rigging currencies.

The Competition Commission of South Africa identified lenders including Bank of America Merrill Lynch, HSBC Holdings Plc, BNP Paribas SA, Credit Suisse Group AG, HSBC Holdings Plc, JPMorgan Chase & Co. and Nomura Holdings Inc. as among those that participated in price fixing and market allocation in the trading of foreign currency pairs involving the rand since at least 2007.

The outcome of the probe comes as President Jacob Zuma and his governing African National Congress step up pressure to break the dominance of the country's four largest lenders and force them to lend more to black clients. *(Bloomberg, 15.02.17)*

Battery Recycling Cartel Penalised

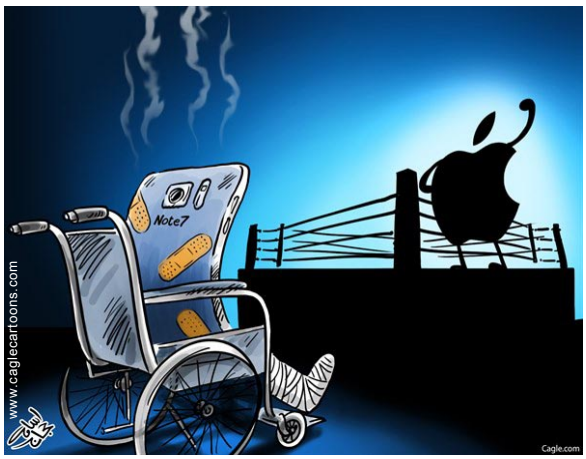
Three recycling companies have been fined a total of €68mn (£58mn) by the European Commission for their roles in a cartel operation that enabled them to pay less for used automotive batteries, and "undermine the circular economy".

The companies involved in this cartel, however, paid reduced prices to obtain used batteries from suppliers by agreeing to lower the prices they paid, setting target prices, maximum prices and volumes to buy from suppliers. They also exchanged information on the prices suppliers had offered or on final prices they had agreed with them.

The Commission says that by coordinating to lower the prices they paid for scrap batteries, the four companies disrupted the normal functioning of the market and prevented competition on price.

(FT, 08.02.17)

Apple Coordinated iPhone Prices



Apple has been found guilty of price-fixing in Russia, after the country's anti-monopoly agency said the US company had arranged for retailers to co-ordinate the prices of its iPhone models.

Russia's Federal Antimonopoly Service said Apple's Russian subsidiary had illegally ordered retailers to fix prices of its iPhone 5 and iPhone 6 products, a charge that could lead to the California-based company being fined.

Apple had instructed 16 Russian retailers to hold the prices of its iPhone models and contacted them in the event that any products were being sold at 'inappropriate' prices, the FAS said, adding that it suspected Apple was able to terminate sale agreements with retailers if pricing guidelines were not met. *(FT, 14.03.17)*

ABUSE OF DOMINANCE

Uber Denies Abusive Practices

Uber India Systems told the Supreme Court that it did not indulge in any anticompetitive practices and abuse of its dominant position as alleged by its rival Meru Travel Solutions.

As per the Meru's complaint, Uber allegedly resorted to many abusive practices, including predatory pricing, with the sole intent to establish its monopoly and eliminate otherwise equally efficient competitors from the market by way of discounts and incentives.

The two-taxi-hailing apps like Uber and radio taxi service providers like Meru-are locked in a stiff competition all across the country. *(FE, 02.03.17)*

Coca Cola Distributor in Hot Water

Israel Antitrust Authority (IAA) head Adv. Michal Halperin handed the Central Bottling Company Group, which manufactures Coca Cola in Israel, fines totaling NIS 62.7mn, for exploiting its monopoly status in the country's soft drinks market.

The IAA also informed the Central Bottling Co. that it had apparently violated instructions it had been given and signed on when it merged with mineral water producer Neviot.

The IAA also fined a senior executive at the company NIS340,000 for his alleged involvement or at the very least being aware of the orders that were signed on by the company.

(www.globes.co.il, 23.03.17)

Energy Giant Abuses Market

Energy giant Engie, the former GDF, has been fined €100mn for abusing its market position in one of the heaviest fines ever handed down by the French competitions authority.

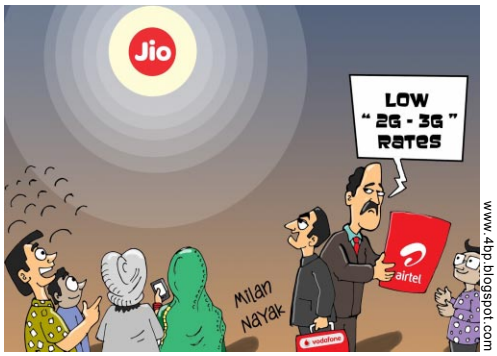
It was found to have used files on former clients to entice them to sign deals when the gas and electricity market was opened for competition – and to have repeatedly lied to prevent clients from leaving for rival offers.

The Autorité de la Concurrence said Engie as historic supplier was allowed to compete against other firms but could not abuse its dominant position to compete other than on the merits of its offer.

(www.connexionfrance.com, 23.03.17)

Are Reliance Jio Offers Predatory?

The Telecom Regulatory Authority of India (TRAI) will seek the opinion of the country's top law officer to decide whether free services provided by Reliance Jio Infocomm Ltd are predatory in nature.



Bharti Airtel Ltd, India's largest mobile phone operator, had in December approached the Telecom Dispute and Settlement Appellate Tribunal (TDSAT), accusing the regulator of being a 'mute spectator' and killing competition by allowing Jio's free services. Jio initially offered free services till December 31, 2016 and later extended it to March 31, 2017.

Jio's rivals contend that free services are resulting in asymmetric traffic, burdening their networks. On the other hand, Reliance Jio has been accusing rivals of not releasing adequate points of interconnection, leading to call drops and call failures. *(Mint, 19.01.17)*

Google Faces Regulatory Scrutiny

American multinational tech company Google faces a regulatory scrutiny in Turkey after officials launched an antitrust investigation on company's Android operating system.

The investigation, prompted by a complaint from Google's Russian competitor Yandex, was launched to find out whether the tech giant's software has broken the country's antitrust rules.

Google has been accused that its software bundle in Android creates an unfair advantage against its competitors.

The investigation in Turkey was the latest legal problem for Google, which faces three separate competition charges in Europe and has already been found to breach antitrust legislation in Russia.

(www.newindianexpress.com, 07.03.17)

TIM-Fastweb in Question

Italy's Antitrust Authority opened an investigation into a broadband joint venture between Telecom Italia and Swisscom unit Fastweb for possible violations of competition rules.

The two companies agreed to set up a joint venture in July to speed up the roll-out of an ultrafast broadband network in 29 cities across Italy.

The authority said it had sent inspectors, along with finance police, to both of the companies to acquire 'elements needed for the investigation'.

The joint venture 'could reduce the intensity of competition' in the broadband and ultrafast broadband sectors. *(Reuters, 09.02.17)*

Proceedings against Aspen Pharma

The Spanish Competition Authority (CNMC) has started sanction procedures against the Ireland-based Aspen Group pharmaceutical, as well as its Spanish distributor, Deco Pharma SL, over alleged abuses of market power, including denial of supply of certain drugs, excessive prices, and agreements to limit distribution and cause deliberate shortages.

The CNMC's probe was kick-started after information on these possible uncompetitive practices were notified by the Italian Competition Authority, from where some of the medications involved have been imported.

(www.competitionpolicyinternational.com, 07.02.17)

Global Cartel Fines Hit New High

Catherine Belton*

US competition authorities drop back as cases 'gestate'

Antitrust fines levied across the globe hit a new high of US$6.7bn in 2016, but the two biggest markets took divergent approaches, with the European Commission imposing record fines while penalties fell sharply in the US.

Brussels Competition Chief Margrethe Vestager meted out a record US$4.1bn in penalties, a tenfold increase over 2015, when the European Court overturned a big air cargo cartel case.

The total included the biggest cartel fine in EU history, US$3.2bn levied against five truck producers — Iveco, DAF, Volvo/Renault, Daimler and MAN — charged with colluding for 14 years in pricing trucks while passing the cost of environmental compliance on to consumers. The fine came even as the meetings related to the conduct took place outside the EU.

The case was 'a coming-out moment' for Vestager, who had promised to rigorously investigate before bringing cases, said John Terzaken, head of cartel enforcement at Allen & Overy, the law firm that compiled the data.

Fines imposed by the US fell sharply in 2016 to US$386m from record levels of US$2.85bn the previous year, the research by Allen & Overy found. The drop came as new investigations remained in 'gestation period', while the 'blockbuster' investigations of the previous year into foreign exchange rate manipulation had come to a close, Terzaken said.

He said the US Department of Justice's recent focus on criminal prosecutions of individuals may have absorbed energy and cut overall fine levels.

Brussels by contrast brought a big rate-rigging case in 2016, imposing US$521m on Crédit Agricole SA, HSBC and JPMorgan Chase for manipulating Euribor interest rate benchmarks. Additional bank fines are expected in 2017 as the European Commission finishes up its investigations into forex manipulation, Terzaken added.

But he warned the increasing global co-operation of recent years on enforcement cases — such as in forex — could soon start to peter out. "The new political headwinds against globalisation suggest that co-operation could be scaled back, which could change strategic decision-making for multinationals," Terzaken said. "Cartel enforcement is likely to be no exception."

EU member states are already starting to ramp up local enforcement activity, the report compiled by Allen & Overy found, with Spain issuing its largest fine of US$143m for price fixing by eight producers of nappies for adults, while Italy and Germany were also active.

The biggest question, however, surrounds the future of the UK competition watchdog, the Competition and Markets Authority, which could face a significant increase in its workload following Brexit. Currently the European Commission investigates all cases that involve more than one member state. But should the UK leave the single market, the CMA could find itself investigating cases concurrently with the European Commission. The CMA could find itself either 'a wilting flower' or it could become more important, Terzaken said.

Regulators in Brazil, South Africa and South Korea also kicked enforcement against cartels up a notch, the research found, with South Africa levying a record US$110.7m fine against ArcelorMittal South Africa Limited for allegations it was involved in at least three different conspiracies involving the steel and scrap metal markets.

Brazil's regulator issued US$230.7m in fines over foreign exchange benchmark rates, electrical transmissions components and auto parts, a figure that could further grow in 2017 with cartel cases expected in relation to the wide-ranging corruption investigation into Petrobras.

* *Legal Correspondent, Financial Times. The article appeared in* The Financial Times, *on January 05, 2017*

Barclays gets 'Divorce Settlement'

Barclays has reached agreement with its African subsidiary about the details of their divorce, a key step before the British bank can sell more shares in its Johannesburg-listed offshoot.

Barclays Africa Group Limited (BAGL) depends on its UK parent for a range of services, including technology, branding, human resources, credit risk management, strategic development and operational management support.

To break the master services agreement that governs the provision of these services, Barclays is expected to pay a fee to its African subsidiary, in which its stake is worth £4.16bn.

(FT, 23.02.17)

Merger to Create Eyewear Giant

Italy's Luxottica and France's Essilor have agreed a €46bn (US$49bn) merger to create a global eyewear powerhouse with annual revenue of more than €15bn.The all-share deal is one of Europe's largest cross-border tie-ups and brings together Luxottica, the world's top spectacles maker with brands such as Ray-Ban and Oakley, with leading lens manufacturer Essilor.

The merger between the top players in the eyewear market is aimed at helping the businesses to take full advantage of expected strong demand for prescription spectacles and sunglasses due to an aging global population and increasing awareness about eye care. *(Reuters, 16.01.17)*

RB Buys Baby Formula Firm

Reckitt Benckiser has agreed to buy US baby formula maker Mead Johnson Nutrition for US$16.6bn, taking the British consumer goods company into a new area and expanding its presence in developing markets.

Including Mead Johnson's debt, the deal is worth US$17.9bn and Reckitt Benckiser said it would finance the acquisition with debt underwritten by Bank of America Merrill Lynch, Deutsche Bank and HSBC.

Reckitt whose business has been hurt by a safety scandal in South Korea, slowing emerging markets and a "failed" Scholl product also reported weaker than expected sales in the fourth quarter due to declines in Europe and North America. *(FE, 10.02.17)*

Dupont-Dow Faces EU Resistance

Dow Chemical and DuPont has offered to sell assets to ease EU competition concerns that their planned US$130bn merger may lead to farmers facing higher prices and fewer new herbicides and pesticides in the future.

The companies reiterated their goal of closing the deal in the first half of 2017. The European Commission (EC) confirmed that the companies had offered concessions. It is now expected to seek feedback from customers and rivals before deciding whether to accept them or demand more.

The Dow, DuPont deal is one of three in the agrochemicals industry as companies seek scale and cut costs.

(Reuters, 06.02.17)

Siemens to Purchase Mentor

German engineering group Siemens is set to gain unconditional EU antitrust approval for its US$4.5bn bid for US software company Mentor Graphics, its biggest deal in this area in a decade.

Siemens unveiled the deal in November last year, aiming to boost its presence in a sector with faster growth and bigger margins than other areas. The German company's move comes in response to growing customer demand for more complex software for smart connected products such as aeroplanes, trains and cars. Siemens is targeting a rise in its software revenue by about a third from the deal.

Mentor Graphics' software helps semiconductor companies design and test their chips before they manufacture them. *(Reuters, 23.02.17)*

UK Reviews Sky Sale to Fox

The UK government was leaning toward a formal intervention in the EC's review of 21st Century Fox's US$14.6bn bid to buy the 61 percent of British pay-TV giant Sky it does not already own.

The government said it had not made a decision yet, and would consider the matter over the next 10 days, but that it was 'minded to inject itself in EU deliberations over the deal on public-interest grounds.

If the government decides to intervene, it would refer the deal to UK's competition authorities and its media watchdog, Ofcom. The proposed transaction is already being reviewed by the Commission, Europe's top competition authority. *(TA, 06.03.17)*

All Set for Bank Merger

The Indian government is expected to give final approval to the merger of Bharatiya Mahila Bank (BMB) with the country's largest lender State Bank of India (SBI) within three months.

BMB, set up in 2013, has 103 branches with its presence in almost all the states. The total business of the bank is about ₹1,600 crore with ₹1,000 crore of deposits and ₹600 crore of advances, majority of which is retail business, according to the bank's website.

With the merger of all the five associates, SBI is expected to become a lender of global proportions with an asset base of ₹37tn or over US$555 bn, 22,500 branches and 58,000 ATMs. It will have over 50 crore customers. *(TH, 18.03.17)*

The Economic Times

LSE-Deutsche Boerse Set to Fail

The London Stock Exchange has all but ended a planned merger with Deutsche Boerse to create Europe's biggest stock exchange by ruling out a European antitrust demand, saying it has strong prospects alone.

In a bid to create a European trading powerhouse that would better compete against US rivals making inroads on their home turf, the two exchanges struck a €29bn (US$30.1bn) deal just over a year ago.

If the merger fails, it will be the latest in a series of doomed efforts at dealmaking by stock exchanges and the likely breakdown of the latest attempt disappointed investors, with shares in Deutsche Boerse tumbling more than four per cent in early trading and London Stock Exchange shares down three percent. *(Reuters, 28.02.17)*

BAT Agrees Takeover of Reynolds

British American Tobacco has agreed to acquire Reynolds American in a US$49.4bn deal that will create the world's largest listed tobacco company by sales.

The two companies announced the agreement, three months after BAT first made an unsolicited US$47bn bid to acquire the 57.8 percent stake in Reynolds it did not already own.

The acquisition will bring BAT back to the US market more than a decade after it folded its US subsidiary, Brown & Williamson, into Reynolds in exchange for a large minority stake. *(FT, 18.01.17)*

Johnson Swoop on Actelion

Johnson & Johnson unveiled the biggest deal in its 130-year history as the world's largest healthcare company tries to revive its flagging pharmaceuticals division with a US$30bn takeover of Swiss drugmaker Actelion.

The acquisition ends a long quest by Alex Gorsky, J&J chief executive, to find a deal of sufficient size to boost growth at its drugmaking unit, and comes after months of on-again, off-again negotiations with Actelion, which had been a reluctant seller.

If completed, the deal would be one of the largest in the pharmaceuticals sector since 2015. It could presage a period of intense consolidation among drugmakers – if Republicans press ahead with plans to allow companies to repatriate more than US$100bn of offshore cash at a discounted tax rate. *(FT, 27.01.17)*

Airtel-Millicom to Combine

Bharti Airtel and Millcom have struck an agreement that will see them merge their subsidiaries in Ghana in a 50:50 JV.

The deal will see Tigo Ghana merge with Airtel Ghana, becoming the African country's second biggest operator, serving nearly 10 million customers with revenues close to US$300mn.

The combined unit will have around 5.6 million data customers, and offer 3G connectivity to around 80 percent of Ghana's population, giving it the widest 3G reach across the country. *(ET, 24.01.17)*

Peugeot Agrees Deal with GM

French PSA group, the maker of Peugeot and Citroen cars, is to buy General Motors' European car business including Opel and Vauxhall for €2.2bn. The deal announced in Paris by GM and PSA will realign the industry and create Europe's No. 2 carmaker after Volkswagen. The combined company could make five million cars a year.

PSA will join with French bank BNP Paribas in the deal, which foresees taking over 12 manufacturing facilities that employee about 40,000 people.

The purchase marks a major turnaround for PSA, bailed out just three years ago by Chinese investors and the French state. *(HT, 07.03.17)*

AMC Continues to Expand its Reach

AMC Entertainment, the cinema chain owned by China's richest man, has agreed to buy the largest cinema group in northern Europe in the latest in a spree of overseas investments that have made AMC one of the world's biggest cinema chains.

AMC said that it had 'entered into a definitive agreement' to buy Stockholm-based Nordic Cinema Group for US$929m from Bridgepoint, the private equity group, and Bonnier, the Swedish media company.

The acquisition, which is subject to antitrust approval from the European Commission, is set to be AMC's third major deal in less than a year. *(FT, 24.01.17)*

Verizon-Charter to Pursue Talks

Verizon and Charter have hired advisers to explore a deal that could create the world's largest telecoms and cable company.

Talks between executives are at a very preliminary stage and no proposal is on the table. Yet both sides are seriously studying how to create what would be the world's largest provider of wireless and fixed line internet access.

At current stock prices, the combined company would have an equity value of US$282bn, topping AT&T's US$255bn market capitalisation.

Free Press, a non-profit group that campaigns for an open internet, said the prospect of the two companies combining was "unthinkable". *(FT, 27.01.17)*

Financial Times

Unilever was a Deal too far for Kraft Heinz

Profit has many good qualities, but does not yet have the right to vote. Workers do, and politicians listen to them. So there was probably some anxiety in London and Amsterdam late last week when the news arrived that Kraft Heinz was preparing an offer for the Anglo-Dutch consumer goods company Unilever, which employs 169,000 people worldwide. No minister in either capital could be under any illusion that the suitors' plan for Unilever was anything other that cutting costs and eliminating jobs. That is simply what Kraft Heinz does, and Unilever, with margins that trail many competitors', is a juicy target.

In 2012, back when they were separate companies, Heinz and Kraft, the American packaged food companies, had combined revenues of just under US$30bn, a blended operating profit margin of 15 percent, and employed 55,000 people. In early 2013, 3G Capital, a private equity firm, and Warren Buffett's Berkshire Hathaway teamed up to buy Heinz. Then, in early 2015, Heinz took over Kraft. By late 2015, when Kraft had been part of the merged company for only half a year, combined sales were down a bit, yet the margin had risen to 21 percent.

Why exactly 3G and Berkshire decided to drop their approach over the weekend is unknown. Perhaps, facing firm public resistance from Unilever, they decided that the savings from buying a company only partly in the food business and based across an ocean were not great enough to justify the risks of a nasty takeover fight. It is entirely possible that neither Mr Buffett nor Jorge Paulo Lemann, the leader of 3G, got a first- or even second-hand message from a government official. But political risk would have been on their minds regardless, especially given Kraft's history in the UK. When the company bought the British chocolatier Cadbury in 2010, Kraft committed to keeping Cadbury's plant in Bristol open. It was closed almost immediately. Britain has not forgotten.

The world has changed, making megadeals based on cost cuts harder

www.static4.businessinsider.com

It is easy to pillory Kraft Heinz's version of large-company capitalism as short-sighted. Indeed, it may turn out to be just that. The remarkable improvement in margins may come at the cost of long-term sales. Given Kraft Heinz's excellent brands, this will take years to find out. Further, the history of 'roll-up' companies is not happy.

The situation is not so simple, though. If Kraft Heinz has an opposite at the other end of the capitalist spectrum, it is Nestlé. The company is famous for patiently investing and reinvesting to build market positions across the globe and across decades. Even so, last week, Nestlé said that it would not be able to meet its mid-single digit growth target. It is simply very hard to grow a multinational packaged food business in the current global economy. So surely one legitimate approach is to admit that the industry is mature, focus on costs and take capital out of the business to be deployed elsewhere.

Equally, while all mergers should be exposed to rigorous antitrust scrutiny, governments surely should not interfere in deals simply on the grounds that consolidation leads to job losses. Down that road lies governments' picking winners, crony capitalism, poor allocation of capital and stagnation. That is not to say that the wrenching character of the modern global economy does not need to be addressed. It does. The point is that government should not place all the burden in this domain on companies, especially not by blocking transactions.

Pragmatically, however, companies must recognise the world has changed. The Brexit vote and the election of Donald Trump both indicate popular unhappiness with global capitalism's hard edges. This means that governments will make life difficult for companies that make those edges particularly visible. From the point of view of global prosperity, this is probably too bad. All the same, companies that fail to acknowledge that the rules are changing will be made to suffer.

– *Abridged from a news item that appeared in the* Financial Times *on February 21, 2017*

Idea-Vodafone Merger: A Long-term Connection

K S Bavadharini*

The Economic Times

Synergies from the merger are expected to flow in after a few years

The speculation of merger between Idea Cellular and Vodafone India was put to rest when the boards announced the tie-up. The merger deal values Idea at ₹72,200 crore, slightly lower than what was pegged by the market.

While the implied swap ratio of 1:1, increased market share and spectrum capacity and cost synergies are positives, intensifying competitive scenario, possible regulatory hitches and a still large debt pile on the books of the combined entity limit the upside for Idea shareholders in the near term.

Deal contours

The deal essentially values Idea at ₹2.5 a share, based on the 30-day average closing price as on January 27, 2017. The rally over the past month ahead of the merger announcement, saw the stock giving up some of its gains, falling over 15 percent.

According to the merger announcement, both Idea Cellular and Vodafone India will have equal rights in the combined entity. Vodafone will transfer 4.9 percent stake in the combined company (around 35 crore shares) to Aditya Birla Group for ₹3,900 crore.

Following this, Vodafone will hold 45.1 percent and Aditya Birla Group 26 percent in the combined entity. The Birla group will have the option of buying 9.5 percent stake from Vodafone at ₹130/share, to equalise the shareholding (35.5 percent). If the shareholding is not equalised by the expiry of the fourth year, Vodafone will have to sell its stake to a third party.

Wider reach

The merged entity would be the largest telecom player in the market with customer base of 395 million; Bharti Airtel and Reliance Jio have a subscriber base of 320 million and 100 million respectively as of December 2016. The new company formed will be able to meet the surging demand for data and voice services pan-India due to the availability of 1,850 MHz of spectrum at its disposal.

Prior to the merger, Idea Cellular provided 4G services in 20 circles and 3G coverage in 15 circles, while Vodafone's services for 3G and 4G are in 16 and 17 circles respectively.

Although the merged entity might have to sell some of its excess spectrum holdings as per regulatory norms, it will still be able to provide services across all the 22 circles in India.

The new company will be able to bridge the gaps in the network, thanks to the strong presence of Vodafone in urban areas and Idea's in semi-urban and rural areas.

Synergies for long term

The merger is expected to bring in capex and opex synergies in the form of lower infrastructure costs, network consolidation and cost efficiencies in information technology. The initial years would entail integration costs, estimated by the management at ₹13,300 crore. Total cost synergies of ₹14,000 crore on annual basis, are expected to flow in only from the fourth year after the merger. Hence, cost savings/synergies, which hold the key to future earnings, are expected to come in only in later years.

The October 2016 spectrum auction has left the telecom players saddled with heavy debt. The intense price war after the entry of Reliance Jio, led to a drop in revenues in the last two quarters. Idea's revenue declined by 3.8 percent year-on-year in the December quarter while Vodafone's revenue declined by 1.9 percent.

The net debt of the combined entity is pegged at about ₹1.07 lakh crore.

The merger could face regulatory challenges on account of excess spectrum and revenue market share of over 50 percent in some circles.

The litigation cases of the companies involved, particularly the tax struggle of Vodafone, could delay the closure of deal.

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* *Trainee, The Hindu Business Line. The article appeared in* The Hindu Business Line *on March 26, 2017.*

A Global Investment Court for a Changing Era of Trade

Cherie Blair*

In a year of upsets and doom-mongering, Canada has stood out as a rare haven of stability and optimism. While many countries were moving towards nationalism and isolationism, Canada welcomed 25,000 Syrian refugees and looked outward, signing the Comprehensive Economic and Trade Agreement (CETA) with the EU.

It comes as little surprise, then, that the European Commission finds Canada an eager partner in spearheading a trade initiative that could change the way governments and companies interact in the field of international investment.

EU Trade Commissioner Cecilia Malmström and Chrystia Freeland, then Canada's international trade minister, held exploratory talks in Geneva last month to discuss the establishment of a multilateral investment court. Such a body would be designed to resolve investment disputes. It would be open to all interested countries and, critically, would replace the current much maligned, ad hoc mechanisms for investor-state dispute settlement (ISDS).

This initiative aims to answer criticism of ISDS, which reached a peak last year amid heated debate over regional trade agreements including Ceta, the Transatlantic Trade and Investment Partnership and the Trans-Pacific Partnership. Whether accurately or not, ISDS has been associated with unaccountable tribunals prone to awarding companies outsized awards behind closed doors, leaving governments no chance of appeal.

While these criticisms are exaggerated, traditional ISDS provisions are no longer fit for purpose. The current apparatus is largely a legacy of the free-trade agreements that proliferated in the 1960s and 1970s. Times have

changed. Now there is an increasing sense that big businesses are just as likely as states to abuse privileges, behave badly and operate outside existing rules. The time is right, therefore, to revisit the arcane world of ISDS and to consider whether there is scope for improvement.

Recent EU free-trade agreements such as CETA and the EU-Vietnam agreement have already replaced the traditional ISDS provisions with a transparent and accountable bilateral investment court system. These agreements expressly note the potential of transitioning to a multilateral court, should it be established.

Among other things, these new trade deals explicitly reaffirm the prerogative of governments to legislate for the good of citizens. They require that adjudicators have the necessary expertise and are free of conflicts. They also emphasise the need for transparency. At the same time, there remains a recognition of the good that investors bring and the need for protection of investments.

The multilateral investment court is a bold restatement of the role of governments and companies in a democratic society. There are no limits to the potential size of the court, and it is to be set up once a minimum critical mass of participants joins.

A multilateral court entails multilateral negotiations, with all the hurdles this will inevitably raise. Consensus will be needed to determine, inter alia, location, jurisdiction, composition and, most importantly, who pays for the unavoidable costs involved.

In an age of uncertainty and reaction, a new international investment court will not solve the problems of globalisation. But it could go some way to mitigating discontent with the existing, creaking structures.

A previous attempt in 1995 by the OECD to promote a multilateral investment protection agreement stalled. Today's climate may well be too hostile to foster the necessary compromises and decision-making to set up the court. However, the events of 2016 have also underlined the importance of consensus, dialogue, international co-operation and, of course, the need for action. Time will tell.

* *Founder and Chair of Omnia Strategy. The article appeared in the* Financial Times, *on January 24, 2017*

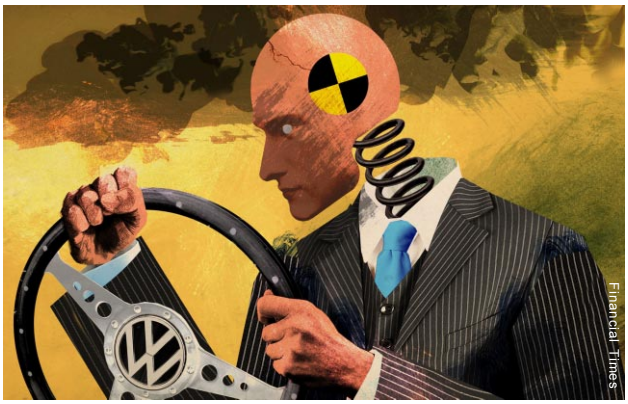
The Volkswagen Scandal Shows that Corporate Culture Matters

Robert Armstrong*

Why did Volkswagen veer so badly off the road? How did the biggest carmaker in the world end up costing itself about US$17bn in fines and settlements to date in an ill-considered attempt to beat emissions tests?

The facts in the case are slowly coming to the surface. A full account must, however, cover more than nitrogen oxide, competitive pressure and corporate memos — it must also consider culture. This is a lesson we should have learnt from the response to the financial crisis of 2008, when we decided to go after banks' balance sheets rather than individual bad actors — leaving banks weaker and taxpayers unsatisfied.

The hard question is not who did what, but why they did it. If a group of people at a company as strong as VW felt that their best option was to go to the dark side, something has to be said about what was going on in their heads or, if you prefer, their hearts.



Economics alone struggles to explain the German carmaker's disastrous choices

The standard answer to this question is simple. It is that somebody got greedy — that corporate skulduggery is an economic phenomenon, explained by how the average person responds to constraints and opportunities.

An economic account of what has been dubbed the 'dieselgate' scandal would go something like this. A decade or so ago, VW was hungry for growth. It was battling Toyota and General Motors for the number one position in the global car market. The obvious place for it to grow was the huge US market, where it had only a small presence.

As it happens, VW — because of tax incentives in Europe — has special expertise in making small diesel engines. What is more, these engines produce less carbon dioxide than petrol ones, so selling them makes it easier to comply with greenhouse gas rules. Given its commercial footprint, technical strengths and the regulatory climate, the economically optimal strategy for VW was pushing small diesels in the US.

Here the economic story turns to VW's governance. A family-controlled company with a fractious and unfocused board, it was accountable to no one, except perhaps its trade unions. Under these lax conditions, VW's progression from targeting to US market to dieselgate was as natural and easy as water flowing downhill.

This narrative leads directly to specific conclusions about remedies: fine the company heavily, sending a message about the cost of cheating; tighten regulations so carmakers assume there is a good chance of getting caught; and reform corporate governance so companies focus on sustainable growth strategies, not nefarious and risky quick fixes.

This is tidy but incomplete. The implication is that the miscreants at VW thought subverting the law was in their best interests. And this conclusion certainly fits with the regime of rewards and punishments under which they operated.

But the world is full of imperfect incentive regimes, yet systematic cheating on the scale and seriousness of dieselgate is relatively rare. Yes, Fiat Chrysler is facing accusations in the US that echo those levelled at VW. But across industries, regulators are hopelessly outnumbered and under-resourced relative to companies. Poor, unaccountable corporate governance are sadly pervasive. And there is always money to be made in bending rules. But while corporate skulduggery, from Enron to Valeant, is a regular feature of the market, it remains the exception.

I understand little about how corporate cultures work or how to improve them. What I have read on the topic has left me none the wiser. I spent some years studying moral philosophy but I haven't a clue how I would apply it to VW.

It is important, all the same, not to be the man with the hammer who sees a world made of nails. I think I understand money pretty well; culture puzzles me. But culture is there and it matters. And if we ignore it, there will be more dieselgates in the future.

* *Chief Editorial Writer at Financial Times. Abridged from an article that appeared in the* Financial Times, *on January 14, 2017*

Spectrum Trading on the Anvil

Hong Kong fixed and mobile operator Hong Kong Telecom (HKT) has called on the government to implement spectrum trading to aid the development of future 5G cellular services, by allowing operators to freely trade spectrum among themselves.

HKT said in a statement: 'Spectrum trading provides a commercial mechanism to assist the government in clearing spectrum bands and re-farming spectrum.'

It added: 'The efficient use of spectrum brings important benefits to consumers in terms of broader services availability (e.g. true 5G and the Internet of Things [IoT]), better service quality, lower prices, increased investment and innovation, and enhanced competition.'

(www.telegeography.com, 23.01.17)

New Baggage Rules in Force

Operators in the travel industry have advised passengers flying out of **Dubai** International to adhere to the new baggage regulations that came into effect to avoid delays.

Bags that do not have at least one flat surface will be rejected at check-in, including irregularly shaped and oversized items, as they can bog down the luggage-handling process.

Customers are being asked to not bring round bags to DXB as they can jam baggage system, delay baggage delivery and inconvenience other passengers. Baggage has at least one flat surface.

An Emirates spokesperson said the airline is also advising its customers to check its website for all baggage enquiries, to avoid confusion. With the new changes announced, some passengers are still likely to show up with non-compliant bags. *(GN, 08.03.17)*

More Competition in Telecom

Argentina has loosened regulations to allow more competition in its telecoms sector and widen internet penetration, according to a decree published that the government hopes will attract billions of dollars in investments.

Companies will no longer be barred from simultaneously providing cable TV, internet, fixed line and mobile phone services. Satellite TV company DirecTV will for example be allowed to sell internet services while cable operator Cablevision SA gets the green light to enter the 4G mobile telephone market.

But the main telephone players including Telefonica, Telecom Argentina and Claro will only be able to offer paid television starting in January 2018, according to the decree.

(Reuters, 10.01.17)

President Trump to Big Pharma

US President Donald Trump signed an executive order that could have direct implications for the FDA. Trump also met with several pharmaceutical executives – from companies such as Eli Lilly, Novartis, Amgen, and Merck – to propose his plans for the industry.

Trump claimed throughout his campaign that excessive government regulations got in the way of speedier drug approvals, and vowed to reduce costs. The newly signed executive order, directing federal agencies to eliminate two regulations for every new regulation that is issued, is part of Trump's action toward accelerating FDA drug approvals.

Among select topics at his meeting with top pharma CEOs, Trump focused on cutting FDA regulations to bring pharmaceutical manufacturing operations back to the US. He added that as much as 80 percent of regulations are unnecessary. The executive order directs federal agencies, including the FDA, to cut down on regulations, which Trump foresees will facilitate drug manufacturing and jobs.

(www.pharmacytimes.com, 01.02.17)

'No-Fly Rules' for Aviation

The **Indian** Civil Aviation Ministry, together with regulator Directorate General of Civil Aviation, has started the process of updating flying regulations for unruly passengers and sought a report on global best practices on the subject.

The move comes in the wake of the controversy over Shiv Sena member of Parliament Ravindra Gaikwad, who thrashed a 60-year-old Air India official in Delhi with slippers, prompting Air India to file a first information report against him and ban him from flying. It was joined by IndiGo, SpiceJet, Jet Airways and GoAir.

While there are regulations for unruly behaviour, this marks the first time that airlines have got together to jointly ban a person from flying.

Based on the best practices report, authorities will update the current regulations on who can ban a passenger from flying, for how long and for what offence. *(Mint, 29.03.17)*

Crowd-Funding Revamp Set

The **Australian** government's proposed crowd-funding reforms look set to pass the Senate tonight with support from the Greens, despite concerns from some start-ups and Labor, who described the legislation as half-baked.

The equity crowd-funding bill, which is an amendment to the Corporations Act, would allow unlisted public companies with less than $25 million in annual turnover to raise capital via the 'crowd'. A prior version of the bill passed the lower house last year but ultimately failed before the election, after heavy criticism.

The biggest sore point of the legislation is that equity crowd-funding will only be available to public companies; proprietary companies will be required to become unlisted public companies in order to raise money.

(TA, 15.02.17)

Germany Considers New Digital Markets Regulator

Martin Sura, Christoph Wünschmann, Falk Schoening and Christian Ritz*

Will Germany establish a 'Digital Agency' to monitor compliance with competition law rules in digital markets? Will a German 'Digital Antitrust Enforcer' become a role model for a European protectionist approach against American and Asian platform providers?

The German Federal Ministry for Economic Affairs and Energy seems to see a pressing need for regulation in digital markets. The White Paper 'Digital Platforms', published on the March 20, 2017, provides an outlook on possible forms of digital regulatory policy in Germany and potentially also in Europe. Of particular interest from a competition law perspective is the proposal to establish a new 'Digital Agency'.

The White Paper aims at creating the foundation for fair competition conditions in order to strengthen competition in digital platform markets in Germany and Europe. The Federal Ministry therefore proposes the following measures:

- **Creation of a 'Level Playing Field'** between the traditional telecommunication companies and Over-the-Top-Players (OTT-Players), e.g. online messengers such as WhatsApp and VoIP providers like Skype. Through the introduction of an ePrivacy Regulation, as proposed by the European Commission in January 2017, especially non-EU OTT-Players providing their services in Europe, should be obliged to abide by the European data privacy standards. In addition, the White Paper considers the introduction of new regulation on consumer protection and security especially tailored to OTT-providers.

- **Implementation of a dual, proactive competition law** through the creation of a new 'Digital Agency' for active and systematic market control through an 'early warning system'. In view of the dynamics of digital markets, the Federal Ministry considers consistent control of digital platform markets necessary to guarantee compliance with competition law rules. For this purpose, *ex-post* competition law enforcement should be accompanied by an active and systematic market control by a still to-be-created 'Digital Agency' which, complementary to the tasks of the German Federal Cartel Office (Bundeskartellamt) and the Federal Network Agency (Bundesnetzagentur), should be equipped with specific sovereign tasks and intervention powers. The systematic market monitoring should enable the 'Digital Agency' to act proactively in the event of abusive behaviour from established market players.

- **Acceleration of antitrust investigations** by lowering the threshold for the imposition of interim measures in antitrust investigations. The proactive application of competition law in digital markets should be further facilitated by faster intervention in case of suspected market abuse. Antitrust investigations in case of alleged abusive behavior should not depend on conclusive evidence of a company's dominant position. In addition, it should be possible to prohibit any behavior which is suspicious from an antitrust or unfair competition law perspective before the closure of on-going investigations in order to prevent damage to consumers and competitors.

The White Paper aims to further push the European Commission's Digital Single Market initiative. The proposed mechanisms should expressively strengthen the discourse on a European level and could, in the view of the Federal Ministry, serve as a role model for potential European regulations.

However, the proposals put forward in the White Paper deviate significantly from the European Commission's position. In particular, the European Commission so far considers existing competition rules and enforcement agencies as being sufficient to address new antitrust challenges posed by platforms.

The Federal Ministry's initiative is particularly surprising on account of the fact that the legislative procedure for the 9th amendment of the German Act Against Restraints of Competition (GWB) aiming at adjusting the GWB to the needs of the digital economy has almost come to an end by now. These new proposals of the Federal Ministry played no role in the legislative procedure.

With concerns about increasing global protectionism and with German elections later this year the regulation of digital markets and platforms may become part of the political campaign. Market players should carefully monitor these developments and consider sharing their perspectives with decision-makers in Berlin and Brussels.

* *Authors are associated with Hogan Lovells. Abridged from an article that appeared in* www.hlregulation.com *on March 23, 2017*

Bankers Seek Regulatory Relief

A group of Wisconsin bankers on a recent lobbying trip to **Washington, DC,** returned with heightened optimism that some of the rules now governing community banks will be eased.

Community banks in have argued that consumers have been affected in the process, too, as banks have stopped offering some services rather than go through the hassle of dealing with the new rules.

Now that President Donald Trump has told the Treasury secretary to review the 2010 Dodd–Frank Wall Street Reform and Consumer Protection Act and its thousands of regulations, community bankers are hopeful some relief could be on the way.

(www.jsonline.com, 01.01.17)

Killing Foreign Bank Rules

The **UK** is trying to kill a planned EU rule for foreign banks that will become crucial for its own lenders after Brexit. It declared its opposition to plans to force banks from outside the bloc to consolidate their activities under a single entity.

That plan would only boost costs and complicate structures without helping supervision and resolution, the two said.

The EC would require banks from abroad to set up an 'intermediate parent undertaking' to head their businesses within the bloc. The aim is to ease resolution by having a company with its own capital and loss-absorbing debt available to fund its own demise should disaster strike.

(www.gulfnews.com, 01.04.17)

Bank Fees on the Rise

A new study found that Chase, Wells Fargo and Bank of **America** made more than five billion dollars in overdraft and ATM fees. That's up six percent from 2016.

As most bank stocks surge, and upcoming interest rate increases are expected to boost the banks' bottom lines, some analysts had been anticipating a decline in bank fees, which have been compensating banks for loss of revenue streams due to regulations but nothing seems to have changed yet.

The study also found that customers pay an average of US$655 a year in fees. *(www.fox19.com, 14.03.17)*

Banks to Give Rate Cap Law Time

The **Kenyan** Banking Amendment Act that brought in a cap on interest rates for loans and a floor for deposits has been in effect for only seven months. The Act fixed the maximum interest margin on loans, which is the difference between the loan and deposit rates.

Granted, this has met outright opposition from the banking fraternity, and understandably so. It is a matter of self-interest. It means less money is available to meet operating costs and a reduction on profits.

For some unexplained reason, the government is willing to borrow at high interest rates, even when the market is holding excess liquidity. *(TS, 30.03.17)*

Reviewing Consumer Credit

The **UK's** largest banks face a review of consumer credit and their toughest ever test of resilience after the Bank of England (BoE) unveiled an extra assessment of their ability to weather certain economic scenarios.

The BoE will put the seven largest lenders through an additional examination alongside its regular annual stress test, which measures how banks would fare if the economy experienced a severe shock, at the end of 2017.

The new 'exploratory' test, which will occur every other year, will assess banks' resilience to a wider range of risks beyond those emanating from the financial cycle – such as persistent low interest rates and high costs.

(FT, 27.03.17)

Thousands of Jobs at Risk

Thousands of jobs will be put at risk as the world's biggest banks harness artificial intelligence systems to the wave of roles created in recent years to meet ever-growing regulatory demands.

New technologies mean that banks could make vast savings in compliance, according to Richard Lumb, Head of Financial Services at Accenture, who estimated that 'thousands of roles' in banks' internal policing could be replaced by automated systems.

He said many of the jobs created by banks in recent years for compiling and checking data on customers and transactions had already been moved offshore to lower-cost countries.

(FT, 25.01.17)

'Open Banking' Legislation

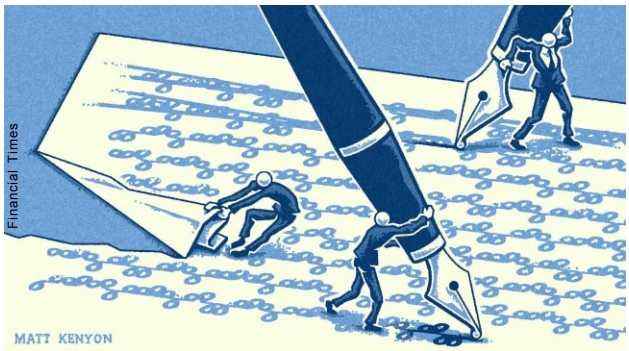
Europe's FinTech upstarts said the big banks are using their substantial lobbying power to water down EU legislation that has threatened to shift the balance of power between the old and new worlds of finance.

The second payment services directive (PSD2) is designed to boost competition in the name of 'open banking' by forcing banks to allow third parties, such as innovative financial technology companies, to access the data of customers who authorise it.

The law is being finalised by regulators at the European Banking Authority and will be rolled out in 2018. *(FT, 01.02.17)*

Why the Debate over Financial Reform is Bogus

Rana Foroohar*



Rich US corporations, not banks, are in need of new scrutiny

It is a sad fact that almost a decade after the start of the financial crisis, Washington is still arguing about financial regulation. President Donald Trump is trying to gut the Consumer Financial Protection Bureau, one of the best things to come out of the 2008 crisis, and Republicans in the House of Representatives are pushing the 'choice bill', which aims to swap the Dodd-Frank financial reform rules for higher capital requirements in banks, which would presumably cover a multitude of sins.

The debate has led to a strange new assortment of political bedfellows, including heartland Republicans who want to bring back the Glass-Steagall act that separated investment and retail banks, Southern and Midwestern free-marketers who believe banks should hold much larger quantities of cash, and populist liberals who want to go beyond banking to limit things like corporate share-buybacks which increase the wealth gap by enriching executives paid largely in stock options.

Given that we are probably at the end of a longish economic recovery, with corporate borrowing at record levels and a US Federal Reserve that is low on monetary firepower, it would seem a bad time to start tearing up financial reform that took years to create.

Yet in crisis, there is opportunity. The Committee on Banking, Housing And Urban Affairs will launch hearings on the role of financial companies in fostering economic growth, which is a good moment to consider the question of whether: a) they actually do, and b) we have the regulatory structures in place to help them do that.

On the first point, the evidence is not good. Financial companies represent more than seven percent of the US economy, which is roughly double the rate at which they become a headwind to overall economic growth, according to studies by the Bank for International Settlements and the IMF. Meanwhile, they employ only four percent of the population and take 25 percent of corporate profits.

On the second point, no one would argue that the Dodd-Frank regulation is perfect. It is long and complicated, and this provides plenty of room for banks to squeeze through the loopholes they spent hundreds of millions of dollars to create. It does not solve the too-big-too-fail problem, which is now even stickier given that the largest institutions are larger than they were before 2008.

Yet there is no question that after Dodd-Frank the financial system became safer and better capitalised: the amount of cash and high-quality assets held by big banks spiked in anticipation of regulation almost immediately after the crisis. Rolling back Dodd-Frank, particularly when it is unclear exactly what could replace it, would send the wrong message at the wrong time, a point with which even Trump advisers like Carl Icahn, an activist investor who is no stranger to doing business with debt, would agree.

It is rich US corporations, rather than banks, that have record levels of debt on their balance sheets. They also have plenty of cash but the bulk of it is in offshore accounts waiting for the tax repatriation that, in this political environment, may not come soon, despite the latest promises from the Trump administration.

No wonder liberal financial reform advocates like Massachusetts senator Elizabeth Warren seem just as concerned with issues such as the legality of share buybacks as the particulars of capital requirements for big banks, while others like Ohio senator Sherrod Brown have proposed carrot and stick regulations for corporations that do (or do not) increase labour's share of the economic pie.

The coming debate over tax reform will provide new opportunities to discuss all the ways in which the tax code encourages dangerous and unproductive corporate debt, as well as that pot of offshore money. Big business rather than big banks may well be the next battleground for global capitalism.

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* *Global Business Columnist at Financial Times. Abridged from an article that appeared in* The Financial Times *on March 26, 2017*

Why do Organisations Fail in Large Numbers?

Biju Dominic*

According to the Boston Consulting Group, banks the world over have paid US$321bn in fines since 2008 for regulatory failings ranging from money laundering to market manipulation to terrorist financing. The *New England Journal of Medicine* found out that despite dozens of years of heightened awareness, medical errors result in thousands of deaths each year, hospitals have not become safer. Several studies have shown that more than 70 percent of the change management programmes in organisations fail.

One can possibly understand if these levels of failures come to nation states. Every nation state has citizens belonging to various demographics and psychographics. A government cannot choose its citizens — it has to manage all the individuals who are its citizens. And the nation has limited incentives at its disposal, but has to rely on disincentives for deviant behaviour through laws and punitive action.

On the other hand, corporations have a strictly controlled internal environment. Each employee is selected from a pool of applicants through a rigorous process. Each employee undergoes several training programmes to make them perfectly fit into the role they have been selected for. Every employee has clear job profiles that define their responsibilities. There are performance appraisal systems to reward the best performers and weed out the non-performers.

What explains the unexpectedly high failure rates of organisations?

Much more than the technology that runs the machines in the organisation, and the financial resources that keep an organisation alive, what matters most is the employees of the organisation. Their behaviours determine if the company sinks or swims.

A look at the prevailing corporate structures and processes does not give one the confidence that firms are created with any deep understanding of human behaviour

A look at the prevailing organisation structures and processes does not give one the confidence that organisations are created with any deep understanding of human behaviour.

The most prevalent organisational structure is hierarchical. As one moves up the hierarchy, the power at one's disposal increases. Since the number of individuals keeps decreasing as the levels go higher, there is concentration of power at the top. Most organizational theories still hold a managerial bias. Employees lower in the hierarchy are viewed as manipulable by top management for the aim of increasing organisational effectiveness.

On the other hand, nation states moved out of monarchy, a similar power structure, and moved towards democracy, where power was devolved to the individual citizen.

The basic assumption most organisations have about human behaviour is that human beings are rational beings.

New behavioural sciences remind us that humans are mostly irrational, and emotions drive most of their decisions. They are social animals who desire to interact freely with their fellow beings. But policy manuals within modern organisations ensure that there is little opportunity to express their authentic human nature. Most modern corporations, with their hierarchical structures and standardised decision-making processes, look like artificial entities in an organic larger society. Few organisations can claim to have a genuine connection with the ecosystem outside their high walls.

While modern corporations cling to their traditional understanding of human behaviour, surprisingly several nation states are trying to use new behavioural sciences to build a stronger and more humane connection between the government machinery and the citizen. Nudges derived from the philosophy of 'libertarian paternalism', implemented in the spheres of taxation, transportation safety, and even sanitation, are slowly but surely replacing traditional policies.

A closing thought. All nation-states have armed forces which consist of individuals who are willing to sacrifice their lives for the country. How many corporations in the world, with all their management systems and resources, have managed to create employees with such dedication?

To effectively manage their employees, organisations have to learn a lot more about human behaviour.

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Bad Economics and the Education Debate

Martin Wolf*

The UK government's bill on higher education is under fierce examination in the House of Lords. The government argues in its defence that it 'will drive up the standard of teaching at universities, deliver greater competition and choice for students, while safeguarding institutional autonomy and academic freedom'. It is more likely to deliver the reverse.

The proposals manage to be both too radical and not radical enough. The explanation for this is the influence of half-baked economics. One example is the idea that, since competition is good, more competition must be better. Another example is the idea that, since graduates earn more than non-graduates, raising their numbers must deliver a matching rise in benefits. The first error is market fundamentalism. The second is the fallacy of composition.

I sought to explain the limits of market competition in guiding higher education in a lecture delivered to the Council for the Defence of British Universities. A market in university education suffers from five defects.

First, consumers do not know what they have bought until well after they have bought it. Second, the most important information is the reputation of the institution. Third, the price charged is a decisive signal of quality. Fourth, the failure of providers destroys the value of its qualifications. Finally, the government rightly takes much of the risk, via income-contingent loans.

Given these features, reliance on market competition to drive this sector is almost sure to lead to perverse results. The government's answer is a new regulator — the Office for Students. Yet this body, apart from being far too powerful, will find it impossible to provide credible evidence on teaching quality.

The proposed creation of a market-driven university system, with no limits on numbers, no minimum qualifications on entry and government-backed loans is a disaster waiting to happen. In this respect, the policy is too radical.

Ample evidence exists of graduates doing jobs that used not to need degrees. With close to half of the age cohort now acquiring degrees (up from 8 per cent in 1970), a rising number of graduates fails to earn more than non-graduates. The economy also shows no sign of the surge in productivity that the huge rise in graduation rates was intended to create.

The belief that the university degree is the only tertiary qualification that matters has had other dysfunctional results. The system of tertiary-level vocational qualifications has collapsed. Funding is concentrated almost entirely on universities. Marginal students gain little but debts.

It does not have to be this way. Many European countries, notably including Austria, Germany and the Netherlands, have well-respected non-degree tertiary qualifications that deliver substantial benefit to students and employees. England seems unique in the extent to which this provision has been allowed to collapse. Yet there is clear evidence of market demand for such skills. But little or no incentive exists to meet that demand, because government support is so skewed toward universities.

In this respect, the policy on higher education is not nearly radical enough. A good reform would create a universal entitlement to borrow for tertiary education, which could be used over a lifetime, subject to an upper age limit.

The government would also create an updated set of tertiary vocational qualifications equivalent to those that existed in the 1970s, but were then destroyed. Qualifications are a public good. It is government's job to help establish procedures for creating them.

Until these things happen, most young people will seek to gain a degree, however useless, because there is no credible and adequately funded alternative. We are moving into a world in which tertiary education of some kind will be almost universal.

Yet that does not mean everyone should do a three-year degree. A radical government would universalise the entitlement, but promote a more diverse and appropriate set of qualifications. This happens elsewhere. Why not in England?

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Sharpening the Fight Against Tobacco

Prabhash Ranjan* and Pushkar Anand**

Towards the end of 2016, the Commerce Ministry sent a note to the Cabinet proposing a blanket ban on foreign direct investment (FDI) in the tobacco sector. Although India banned FDI in tobacco manufacturing in 2010, foreign tobacco companies are allowed to invest through technology collaboration, licensing agreements and by forming a trading company. The Commerce Ministry's proposal, which *NITI Aayog* has opposed, would put an end to all kinds of participation of foreign companies in the tobacco sector.

India should adopt a plan packaging regulation rather than a impose on blanket ban on FDI in the tobacco sector

However, this proposal has not gone down well with the American tobacco giant, Philip Morris International (PMI), which has invested in the Indian tobacco market through a licensing agreement with Godfrey Phillips India. Additionally, the Swiss affiliate of PMI has also entered into a joint venture with some Indian companies to form a wholesale trading group involved in selling tobacco products. As recently reported, PMI, keen to maintain a foothold in the US$11bn Indian tobacco market, has written letters to the Commerce Minister and to *NITI Aayog* arguing that such a ban would be 'discriminatory' and 'protectionist'.

Risk of investor-state dispute settlement claims

It is quite possible that PMI might challenge any such blanket ban under India's bilateral investment treaties (BITs). This is especially so given the two recent instances of PMI opposing anti-tobacco measures of two countries under BIT's investor-state dispute settlement (ISDS). First, Philip Morris Asia (PMA) challenged Australia's plain packaging regulations under the Hong Kong-Australia BIT. Second, PMI challenged Uruguay's regulation requiring tobacco companies to put pictorial warnings on 85 percent of the area on cigarette packets, under the US-Uruguay BIT.

As PMI has already indicated, the FDI blanket ban could be challenged as being discriminatory by favouring domestic tobacco investors over foreign investors. India might be asked why it didn't consider adopting other less foreign investment-restrictive regulatory measures to meet the objective of reducing tobacco consumption. The reported termination of this BIT by India will not impact any such claim because the treaty contains a survival clause promising protection to existing foreign investment for the next 10 to 15 years.

Plain packaging regulation

In view of this, India should consider alternative regulatory measures, which will better achieve the objective of reducing tobacco consumption and be less investment-restrictive as well. One such measure is adopting plain packaging regulation. Second, we are unsure how prohibiting FDI through licensing arrangements, etc. would help reduce tobacco consumption. Domestic players could occupy the market freed up by foreign players.

In the past, some efforts have been made to introduce plain packaging regulations in India. In 2012, Baijayant Panda introduced a bill in the Lok Sabha to amend the Cigarettes and Other Tobacco Products Act (COTPA) proposing plain packaging of cigarettes in India. However, the bill failed. In 2014, the Allahabad High Court allowed a petition on plain packaging regulation and said that the Central government must implement it. A petition on this was also filed in the Supreme Court last year. However, the plain packaging regulation still remains a pipe dream.

We also need a proactive government that does not drag its feet when it comes to adopting tobacco regulations as it happened in the case of implementation of the 85 percent pictorial warning requirement on cigarette packets. Despite notifying this regulation in October 2014, the government did not implement it because it was ostensibly red-flagged by Parliament's committee on subordinate legislation, which had the owner of a *bidi* empire as one of its members! This notification was finally implemented from April 01, 2016 after the Supreme Court's intervention. In sum, the government needs to demonstrate strong political will and carefully choose policies to deal with the menace of high tobacco consumption.

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* *Authors are Assistant Professors of Law at South Asian University and University of Petroleum and Energy Studies. Abridged from an article that appeared in* The Hindu *on February 15, 2017*

Publication

Policy Watch

The January-March 2017 issue of the quarterly newsletter carries cover story entitled "The Right Processes for a Good Budget" stating that decision making is a difficult task, especially when the decision is going to affect millions of Indians. The presentation of the annual budget is one such important and challenging occasion for the Finance Minister of India.

It also encompasses an exclusive interview of Union Minister for Power, Coal, Mines, New and Renewable Energy Piyush Goyal discussing about conventional sources of electricity though having an important place in India's energy mix but the likelihood of low wind profile areas do not receive the same level of low price bids.

In one of its features, it highlights that despite women progressing considerably among the global workforce yet there remain many barriers for them in joining the politics and boardrooms.

Besides, it covers news on infrastructure, trade and economics, corporate governance, health, education, competition etc.

This newsletter can be viewed at: www.cuts-ccier.org/pdf/pw_Jan-Mar2017.pdf

UNCTAD's Investment Policy Monitor

UNCTAD has just released the latest issue of its Investment Policy Monitor. 33 countries took 49 investment policy measures in the review period (October 2016-February 2017). Most of them improved entry conditions or promoted and facilitated foreign investment, with developing countries and transition economies taking the lead. New foreign investment-related regulations or restrictions were mainly based on strategic or national security considerations.

Among the notable policy measures are the issuance of a comprehensive circular to attract foreign investment in China and the introduction of new public-private partnership laws in Argentina and Romania. Another important feature was new privatisation measures in France, Greece, Republic of Korea, the Netherlands and the Russian Federation. Indonesia introduced a foreign ownership limit on electronic payment service firms, and Canada issued Guidelines on the National Security Review of Investments.

Regarding international investment policies, countries continued to sign and negotiate new International investment agreements (IIAs), bringing the total number to over 3,330. Provisions in new IIAs include elements ensuring the parties' right to regulate in the public interest, clarifying certain clauses or addressing investor responsibility.

We want to hear from you...

Please e-mail your comments and suggestions to **c-cier@cuts.org**

We put a lot of time and effort in taking out this newsletter and it would mean a lot to us if we could know how far this effort is paying off in terms of utility to the readers. Please take a few seconds and suggest ways for improvement on:

- Content
- Number of pages devoted to news stories
- Usefulness as an information base
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Sources

AP: Associated Press; BBC: British Broadcasting Corporation; ET: Economic Times; FE: Financial Express; FT: The Financial Times; GN: Gulf News; TA: The Australian; TH: The Hindu; TS: The Star

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