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Special Articles

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Bring Back Trade and Competition Policy at the Multilateral Level

The issue of a framework multilateral agreement on competition policy within the multilateral trading system has been at the heart of heated debates for at least 20 years, until it was dropped from WTO negotiations as demanded by developing countries. But with the surge of cartels and other anticompetitive practices globally, many of these developing countries have come to appreciate their vulnerability and today 130 countries have adopted competition laws. The lack of a multilateral framework in this regard poses challenges for governments, consumers and businesses alike.

In recent years, the issue has been revived though the inclusion of competition-related provisions in many bilateral and regional trade agreements. The adoption of regional guidelines on competition policy in the ASEAN is a case in point, but other agreements such as the Economic Partnership Agreements between the Africa, Caribbean and Pacific group of countries and the European Union have also embraced competition-related issues.

During a Session on multilateral competition policy organised by CUTS International at the recently concluded WTO Public Forum, 2015, Robert D Anderson, Counsellor, IP Division, WTO delivered a presentation on *'The interface of competition policy and the multilateral trading system: is a resumption of work timely? What would such work address?'* It focussed on the recognition of the importance of competition policy to realise the gains from trade, past work on competition policy in the WTO Working Group and lot more.

Harsha Vardhana Singh, Former Deputy Director General of the WTO stated that the subject is being taken forward at various levels, and the need is to bring everything together and definitely, the plurilateral and multilateral goes in tandem.

Direct implications for the multilateral trading system were also illustrated by Anthony Amunategui Abad, Chief Executive Officer, Trade Advisory Group, the Philippines, through an example of a state monopoly on rice imports in the Philippines which successfully waived the tariffcation of rice at the WTO.

Panellists reviewed possible avenues for reviving a multilateral agenda on trade and competition policy, including through exploring more recent issues such as developing countries' request for focussing on export cartels rather than international cartels.

Some of them also argued that previous proposals for a multilateral framework on trade and competition policy could also be revived, some of which addressing contemporary issues as export cartels that damage developing countries, promoting cooperation and institution-building in competition policy, and promoting transparency and non-discrimination in the application of competition policy.

Debapriya Bhattacharya, Centre for Policy Dialogue, Bangladesh, said that there is a need to develop the capacity of low income countries to understand welfare implications of anti-competitive market distortions in their countries.

Zimbabwe Reviews Comp. Policy

Zimbabwe needs to review its competition policy to ensure that gaps in the legislation are addressed. Dumisani Sibanda, Chairman, Competition and Tariff Commission of Zimbabwe said there was need for a regulation that would act as a referee because in some economies, the competition commission would be in a dominant position to abuse others.

The objectives of the draft policy would be to address problems related to the control of mergers and acquisition cartels and misuse of market power in key sectors.

There should be a comprehensive competition policy for Zimbabwe which will provide guidance on treatment of social, economic and legal issues facing Zimbabwe competition legal framework. *(ND, 03.09.15)*

Singapore View on New Rules

The Competition Commission of **Singapore** (CCS) proposed revisions to its enforcement framework that, if implemented, would see the decade-old authority introduce a form of settlement procedure aimed at speeding up investigations.

The new procedure is one of several suggested amendments to competition enforcement guidelines. The planned new fast-track procedure would be a significant change to the commission's practices, reducing the burden on companies by shortening investigations.

In return for briefer probes and 10 per cent fine reductions, companies would be forced to acknowledge liability for competition infringements and agree to cooperate with CCS investigations.

(www.straitstimes.com, 28.09.15)

Russia Streamlines Law

Russia's State Duma approved new amendments to the country's competition law in a move that will add transparency and predictability to the work of the Federal Antimonopoly Service.

After more than four years of drafting and consultations between government officials and antitrust stakeholders, the lower house of the Russian legislature by a near-unanimous vote sent the proposed amendments to the Federal Council for its approval. The amendments will then be sent to President Vladimir Putin for his signature.

The amendments include adding a system to warn companies violating antitrust law; protection from prosecution for small businesses accused of abuse of dominance violations; and a pre-notification process in which merging companies can discuss to address potential competition concerns *(GCR, 25.09.15)*

Merger Guidelines in Lithuania

Lithuania has published guidelines requiring companies to give the competition authority more detailed information about their deals and bringing the process in line with European standards.

The new notification procedure, which will come into force in January 2016, is more extensive and specific about the information that must be given. This added detail will raise initial costs for companies filing merger notices, but the authority said it should result in a more efficient system with more reasoned decisions.

The new guidelines should reduce that disconnect in the process.

(GCR, 18.08.15)

HK Sets Date for Competition Act

Hong Kong has announced that its long-awaited Competition Ordinance become fully effective in December, almost a decade after the government started looking into creating a competition regime.

The 14 December deadline brings an end to a lengthy implementation process: Hong Kong's government first passed the ordinance in 2012, with elements of the legislation coming into force in stages ever since. Public consultation for the legislation first began in 2006, and the draft bill was presented to the government in 2010.

The announcement will 'further raise the awareness of the community and remind the business sector of the requirements of the ordinance to the full commencement.' *(GCR, 24.07.15)*

Colombia Amends Leniency Laws

Colombia's government issued a new set of regulations to simplify and modify the country's leniency laws. The new rules seek to provide greater legal certainty to companies and individuals who blow the whistle on cartel behaviour.

The changes came after consultation with a panel of experts and recommendations from the Organisation for Economic Cooperation and Development. The government said it was bringing its laws in line with the most effective anti-cartel regimes around the world.

Pablo Felipe Robledo, Head, Competition Authority said the reforms showed the country was serious about economic governance. *(LL,23.07.15)*

China Changes Merger Review Regime

The Anti-monopoly Bureau of **China**'s Ministry of Commerce has introduced procedural changes to its merger review regime, which will significantly reduce both the time and bureaucracy of its decision-making.

Under the new regime, merger notifications will be directed to one of three divisions within the anti-monopoly bureau for both pre-acceptance and substantive review. Each division will be allocated responsibility for particular industries and will scrutinise all filings within those sectors, in a bid to encourage sector-specific experience and expertise.

Prior to the changes, all merger notifications were sent to the consultation division of the anti-monopoly bureau, where only three officials were responsible for vetting all applications as part of the pre-acceptance review. *(GCR, 15.09.15)*

Competition Law in Africa: Where to From Here?

Joanna Pickering* and Tamara Dindi**

Merger control in Africa is increasingly coming under the spotlight. For many international businesses, merger notification obligations are now being triggered in various jurisdictions on the African continent.

Competition law regimes are in place in most sub-Saharan African countries, including Botswana, Kenya, Malawi, Mauritius, Namibia, South Africa, Seychelles, Swaziland, Tanzania, Zambia and Zimbabwe. In addition, Mozambique's competition law became effective in July 2013, although the competition regulatory authority there is still in the process of being established to enforce it.


www.nk-lawyer.org

In addition, in 2013, the regional competition regulator for the Common Market for Eastern and Southern Africa (COMESA), which is made up of 19 member states, was established to enforce the COMESA Competition Regulations across the common market.

Limited but Rising Enforcement

Although some African competition law regimes grant significant powers of investigation to competition authorities when it comes to prohibited practices, authorities have focussed largely on merger control. This has meant that enforcement activity in respect of anticompetitive practices has been limited.

For example, the **Tanzanian** Fair Competition Commission's (FCC) powers include the power to summons any person it believes is able to provide information, produce a document or give evidence that will help in an investigation, and to conduct searches of their premises.

Similarly, in **Malawi**, where the competition law regime has been in place since 1998, the legislation grants broad powers of investigation to the authorities, including being able to summons and examine witnesses and to call for and examine documents.

The Competition Authority of **Kenya** has, since August 2011, had the power to summons individuals and to conduct searches and seizures together with the police.

The **Zambian** Competition and Consumer Protection Commission has broad investigative powers, including the ability to apply to court for a warrant authorising it to conduct an unannounced raid on the premises of an enterprise that it reasonably believes is contravening the competition legislation and would be likely to hide or destroy information if the investigation is made known.

In **Botswana** a number of complaints of prohibited practices are under investigation, but limited progress has been made with these by the Competition Authority.

Development of Corporate Leniency Policies

This lack of enforcement in Africa is hardly surprising as cartel conduct is by its nature difficult to detect and, where there are no incentives for whistleblowers to approach regulators, action taken in relation to anti-competitive conduct may be limited to complaints submitted by companies.

On a regional level, enforcement activity appears set to increase. The Regulations make the **COMESA** Competition Commission (CCC) responsible for enforcing prohibitions against anticompetitive business practices but do not, unfortunately, provide for a corporate leniency policy at present. A draft leniency policy is currently being prepared by the CCC.

While **Botswana** does not yet have a leniency policy, in 2013 a draft corporate leniency policy was prepared.

While the **Namibian** Competition Commission does not yet have a leniency policy in place, a draft leniency policy has been prepared and provided to the attorney general for scrutiny.

While **Tanzania**'s 2003 Fair Competition Act confers broad investigative powers on the FCC, there has been limited enforcement in respect of cartel conduct.

In **Zambia** a corporate leniency policy has recently been developed, but is yet to come into effect.

Conclusion

Enforcement activity in respect of anticompetitive practices in African competition law regimes has been limited until now. However, the foundations for an increase are in place, in that most regimes already provide for broad investigative powers and are moving towards providing for and enforcing criminal sanctions for cartel conduct and other prohibited practices.

The extent to which the CCC takes forward the enforcement of the Regulations on a regional level could have significant

– *Partner* and Candidate** Attorney at Bowman Gilfillan* Africa Group in Cape Town. Abridged from an article in *The African Law Business* on September 04, 2015

ABUSE OF DOMINANCE

Qualcomm's Pricing Tactics

Europe's competition regulator is training its sights on Qualcomm Inc., adding to regulatory woes that have long dogged the big mobile chip maker.

The European Commission (EC) would investigate possible predatory pricing tactics by Qualcomm to determine whether the company charged prices below its production costs to squeeze out competitors.

The EC will also investigate whether Qualcomm offered discounts to customers on the condition that they buy baseband chips exclusively from the company. Qualcomm could face fines of up to 10 percent of its global annual revenue and be forced to change its business practices, if it is found to have breached EU antitrust rules. *(FE, 16.07.15)*

Movie Studios Breach Antitrust Law

Brussels accused Sky UK and six leading Hollywood studios of breaking antitrust law, in a landmark case that could break open national pay-television markets and allow European consumers to buy content regardless of where they live.

The European Commission served formal charges – a so-called 'statement of objections' – against the groups for entering into illegal agreements with Sky UK to stop EU consumers from accessing pay-TV services available in the UK and Ireland.

If the charges against these 'territorial restrictions' are upheld, the case could smash apart the country-by-country licensing regime that dominates the sales of exclusive pay-TV content such as new movies. *(TG, 23.07.15)*

Gazprom to Settle EU Antitrust Case

Russia's top natural gas producer Gazprom has sent proposals to the EC regarding an out-of-court settlement of an antitrust case against the company.

After more than two years of investigation, EU antitrust regulators charged the Russian gas giant in April 2015 with abusing its dominant position in Poland, Hungary, and six other countries in Eastern Europe, to overcharge by up to 40 percent.

State-run Gazprom has denied the charges and said it has already made significant concessions. However, it would consider offering Europe new concessions to settle the antitrust case, and thereby avoid a long legal battle. *(Reuters, 22.09.15)*

Airtel Vs. Safricom Supremacy

Telecommunications firm Airtel could exit the **Kenyan** market if new regulations are not passed to curb Safaricom's dominance. The Communications Authority of Kenya (CA) would need at least one-and-a-half years to conduct a study to determine the thresholds that determine abuse of dominance in the telecommunications industry.

It is only after the study that new laws can then be enacted to address any anticompetitive practices in the market. Chief Executive of Airtel Adil El Youssefi Youssefi also took issue with a recent notice by the industry regulator indicating that Safaricom will be given a licence to roll out high-speed (4G) Internet countrywide.

Youssefi said giving Safaricom the 4G permit ahead of other telcos would 'tie' consumers to one service provider. *(BD, 08.09.15)*

Carpet Company Abused Dominance

Egypt's Competition Authority has ruled that Oriental Weavers abused its dominant position, after a long-running investigation that is seen as an important move against vested interests in the country.

The authority issued a public statement saying Oriental Weavers abused its position as the market leader in machine-made carpets by enforcing exclusivity clauses in some distributors contracts, which foreclosed competitors from freely distributing their products.

The violation has now been referred to the public prosecutor's office, which will launch its own fresh investigation before deciding whether to take the case to court. *(GCR, 19.08.15)*

Lottery in Anticompetitiv Practice

Belgium's Competition Authority fined National Lottery €1.19mn for using information gained from the market it dominates through a government-granted monopoly to enter the competitive sports betting market.

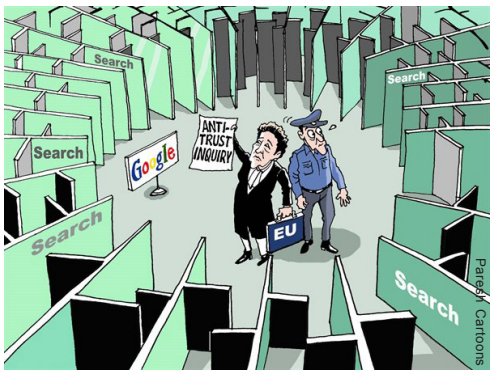
The Belgian enforcer announced the penalty. Its investigation began in July 2013 with dawn raids after sports betting companies Stanleybet, Sagevas, WFA and PMU filed a complaint on multiple grounds.

These included allegations that National Lottery was using data, tangible and intangible resources, and its image acquired in the context of a monopoly, to promote its new sports betting product Scooore! *(www.olswang.com, 24.09.15)*

Google Broke Competition Rules

Russian antitrust authorities ruled that Google broke the country's competition rules. Google had abused its dominant market position with Android, its mobile operating system, by favouring the company's own services over those of rivals, including Yandex, a Russian competitor.

Yandex complained to the country's competition authority that cellphone manufacturers were not able to include the company's rival digital offerings in the Android operating system. After the complaint, the regulator began investigating whether Google unfairly bundled its own services, like digital maps, in its Android software.



Margrethe Vestager, the EU's Chief Antitrust Official, is expected to rule on Google's antitrust charges by early 2016. *(NYT, 14.09.15)*

PRICE FIXING

Visa to Pay in Antitrust Case

Visa has been fined A$18m by an **Australian** court, following action by the Australian Competition and Consumer Commission (ACCC). The global payments giant was found to have shut out rivals' access to its currency conversion service.

Unlawful conduct which prevents or hinders the competitive process in concentrated industries and restricts consumer choice are priority areas for the ACCC.

The ACCC was concerned that Visa's conduct was likely to stop the growth of currency conversion services which competed with its own and, as a result, limit the choices available to consumers.

(ACCC, 09.09.15)

Notices to Medical Institutions

The Competition Commission of **Pakistan** (CCP) has issued show cause notices to eight medical institutions for alleged violation of Section 10 of the Competition Act 2010.

The CCP addressed the matter after the Medical and Dental Council issued a press release in which 22 private medical and dental colleges were named that had failed to meet the registration criteria for the academic year 2013-2014 and were therefore not recognised by the council or had restrictions imposed on their intake of students.

Through the show cause notices, the medical institutions in question have been asked to file their written responses after which the CCP will fix hearings to consider the matter further.

(ILO, 27.08.15)

Banks' Metals Trade Probed

EU antitrust regulators are probing precious-metals trading following a US investigation that embroiled some of the world's biggest banks.

The EC disclosed the probe after HSBC Holdings said in a filing that it had received a request for information from the EU in April. The Commission is currently investigating alleged anti-competitive behaviour in precious metals spot trading.

US prosecutors have been examining whether at least 10 banks, including Barclays, JPMorgan Chase & Co and Deutsche Bank, manipulated prices of precious metals such as silver and gold. *(WSJ, 25.08.15)*

Mastercard Charged over Fees

MasterCard faces formal antitrust charges in **Brussels** after the EC accused the payments company of 'artificially raising the cost of card payments'.

The EU's executive arm claimed that MasterCard prevented banks from offering lower fees to retailers in different countries. So-called 'interchange fees' vary steeply between member states, meaning that some customers within the EU face far higher fees than others, the Commission alleged.

Under EU rules, the Commission can fine a company up to 10 per cent of global revenues for antitrust breaches. It can also demand fundamental changes in a business's operations.

(FT, 10.07.15)

Pfizer Charging Unfair Prices

Britain's competition watchdog has accused Pfizer and Flynn Pharma of breaching UK and European law by ramping up the cost of an epilepsy drug, given to more than 50,000 British patients, by as much as 2,600 percent.

The UK Competition and Markets Authority (CMA) said its provisional view was that Pfizer and Flynn Pharma each abused a dominant position by charging 'excessive and unfair' prices for phenytoin sodium capsules.

The CMA can fine companies up to 10 percent of annual worldwide sales if they are found to have breached competition law. *(Reuters, 06.08.15)*

Disneyland Faces Pricing Probe

Disneyland **Paris** is facing a pricing probe following accusations that UK and German customers are being frozen out of certain price promotions. The EC had 'received a number of complaints' from customers.

The EC is concerned that Disneyland Paris is stopping consumers in some member states from shopping around for the best deals. Under European law, firms cannot stop consumers from doing this. Consumers in countries including the UK, Germany and Italy have made pricing complaints.

The problem potentially lies in, for example, a UK holidaymaker trying to order a Disneyland Paris ticket from a French website but being unable to pay because they do not have a French credit card. The French government has now been asked to investigate.

(BBC, 28.07.15)

Apple Conspired to Fix e-Book Prices

Apple must pay consumers a total of US$450mn in damages after the company lost an appeal of a 2013 court decision, which found that Apple illegally conspired with ebook publishers to raise prices starting in 2010.

In the latest legal round in the price-fixing case, a three-judge panel in the Second US Circuit Court of Appeals in Manhattan issued a 2-1 ruling that upholds an earlier lower court ruling, which found that Apple violated US civil antitrust rules in taking its alleged actions on ebook prices.

Apple fought the case, which was brought by the US Department of Justice, for more than three years, even after the ebook publishers involved in the case had settled with the government, the article reported.

(www.eweek.com, 01.07.15)

Hayes Found Guilty of Libor Manipulation

I probably deserve to be sitting here because I made concerted efforts to influence Libor

Former UBS Group AG and Citigroup Inc. trader Tom Hayes, the first person to stand trial for manipulating Libor, was sentenced to 14 years in prison after being found guilty of conspiracy to rig the benchmark rate.

After deliberations, jurors unanimously found that the 35-year-old worked with traders and brokers to game the London interbank offered rate to benefit his own trading positions. Judge Jeremy Cooke's sentence after the verdict is among the longest for financial crime in the UK.

Prosecutors said during the nine-week trial that Hayes was the 'ringmaster' of a global network of 25 traders and brokers from at least 10 firms who tried to manipulate Libor on an industrial scale. He would bribe, bully, cajole and reward his contacts for their help in skewing the benchmark, used to price more than US$350tn of financial contracts from mortgages to credit cards and student loans.

Libor Fines

The scruffy, blond-haired Hayes has been the public face of the global scandal over Libor rigging since he was first charged by US officials in 2012. Authorities have levied US$9bn in fines against banks and brokerages, including a U$1.5bn penalty for UBS. Citigroup has been censured by Japanese regulators over its involvement.

Before sentencing, Hayes's lawyers reiterated their defence that benchmark manipulation was widespread in the industry.

"The conduct Hayes has been convicted of was prevalent" for at least five years prior to his joining UBS, Neil Hawes, his lawyer told. There were 'others above him who were aware of the activity.'

The sentence was double the seven-year term that was given to Kweku Adoboli, another UBS banker, who was convicted of fraud in 2012 in relation to a US$2.3bn trading loss.

Libor rigging "erodes public confidence and undermines the integrity of financial markets," prosecutor Mukul Chawla said before the punishment was handed out. Hayes played a leading role in the scandal.

SFO Interviews

Central to the case against Hayes were 82 hours of interviews with the UK Serious Fraud Office in 2013, during which he detailed his methods and even named co-conspirators. One of the traders he fingered was his own step-brother, Peter O'Leary, then a graduate trainee at HSBC Holdings Plc in London.

In the SFO interviews, Hayes coolly explained how the scam started soon after he joined UBS as a yen interest-rate swap trader in Tokyo in the summer of 2006 and continued through to his firing by Citigroup in September 2010.

Hayes said in SFO interview. "Although I was operating within a system or participating within a system in which it was commonplace, you know, ultimately I was someone who was a serial offender."

'Catalog of Mistakes'

After cooperating and being admitted into the SFO's whistle-blower programme, Hayes had a change of heart and pleaded not guilty.

In court, Hayes called the interviews a "catalogue of mistakes," half-truths and falsehoods. He said he had exaggerated his culpability to avoid extradition to the US, where he was facing a possible 60-year sentence.

I wanted to say "I do not think I have done anything" wrong, Hayes said during his fourth day of testimony. I had to say I was doing something wrong. I had to get charged. I was pretty much having a breakdown.

One lawyer said the contradictions between the SFO interviews and the courtroom testimony was one of the keys to the unanimous verdict.

The judge told the jury that Hayes had been diagnosed with a form of mild, or very mild, Asperger's Syndrome. For that reason he did not have to sit in the dock during the trial and had an intermediary sit next to him to offer assistance should he need it.

"It was a matter between the SFO and Hayes," the Zurich-based bank said in a statement. The bank has resolved this legacy matter with most authorities.

* *The news item appeared in the* Financial Express *on August 04, 2015*

Coke Bottlers Agree Three-Way Link

Three of Europe's main bottlers of Coca-Cola products are to combine in a US$27bn deal to simplify manufacturing at the world's largest drink maker as it seeks to cut costs at a time when consumers are shifting away from its famous sodas.

Coca-Cola Enterprises (CCE), the US-based bottler with exclusive Coke licences in several western Europe countries, will merge with its Iberian and German counterparts in the latest consolidation of the Coca-Cola Company's supply chain.

The three-way merger is one of the biggest consumer deals ever in Europe, and will create a company with revenues exceeding US$12.5bn to be headquartered in London.

(FT, 07.08.15)

Services Group in US$18bn Deal

The Willis Tower (C), formerly known as the Sears Tower, dominates the southern end of the downtown skyline on March 04, 2015 in Chicago, Illinois. The building, completed in 1973, was the world's tallest for more than two decades. It is reported to be up for sale with an asking price of US$1.5bn.

Towers Watson and Willis Group are to combine in an US$18bn deal that will create a wide-ranging professional services business and push further into healthcare benefits consulting.

The combined company, with annual revenues of more than US$8bn, will seek to woo corporate customers with a broader array of services from risk management and insurance broking to pensions' advice. *(FT, 01.07.15)*

Time Warner to Merge with Charter

St. Louis, Missouri based Charter Communications wants to buy Time Warner Cable in New York and is waiting for the go-ahead from the New York Public Service Commission in order to make the US$55bn purchase.

This cable company is promising to create more call centre jobs in Western New York, as well as offer faster internet and cheaper rates. Already the merger is gaining a lot of support from Western New York business leaders, but not all customers are on board just yet.

It was almost a year ago when the US$45bn merger deal between Time Warner and Comcast fell apart. There were concerns Comcast would control too much of that nation's internet traffic. *(www.wkbw.com, 25.09.15)*

Energy Companies to Merge

MPLX, a US oil pipeline company, has agreed to buy the gas processing and pipeline group MarkWest valued at about US$17.4bn including debt, in the latest of a wave of deals to have swept through the industry over the past year.

Buying MarkWest reflects MPLX's confidence in the continued growth of gas production in the northeast US, including the Marcellus Shale centred in Pennsylvania and the Utica shale centred in Ohio. MarkWest is the leading gas processor in that region.

MLPs, which are typically oil and gas infrastructure businesses, usually pay out most of their free cash in distributions to investors – and often project rapid growth in the size of these distributions. *(FT, 14.07.15)*

Expedia, Orbitz Get US Clearance

The US Department of Justice will not challenge travel booking site Expedia's US$1.3bn purchase of competitor Orbitz, saying the deal is unlikely to hurt competitors or consumers. The agency found no evidence that Expedia is likely to charge new fees and added that the deal should not affect the commissions Expedia charges to hotels, airlines and car rental companies.

It noted that Expedia will still have to compete with The Priceline Group Inc. and others and says the online travel business is changing rapidly, with new options and competitors emerging.

The two companies own websites that allow travellers to book airline tickets, hotel rooms or car rentals.

(AP, 16.09.15)

Insurance Groups Seal Tie-up

The dealmaking rush in global insurance reached new levels when Ace agreed to buy its New York-listed rival Chubb for US$28.3bn, the industry's largest tie-up on record.

The deal will create the US's second-largest listed property and casualty insurer by market capitalisation, and pushes the equity value of takeovers in the sector sealed in 2015 to the highest level since at least 2000.

The combination signalled that the wave of consolidation in the insurance sector was spreading to larger operators, as they feel increasing strains from weak pricing and investment returns. *(FT, 02.07.15)*

Forming Food Giant

The Kraft Heinz Company announced the successful completion of the merger between Kraft and Heinz. The transaction creates the third-largest food and beverages company in North America and the fifth-largest food and beverage company in the world with an unparalleled portfolio of iconic brands.

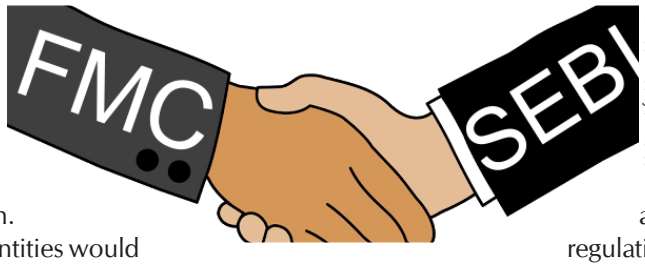
The complementary nature of the two brand portfolios presents substantial opportunity for synergies, which will result in increased investments in marketing and innovation.

This historic transaction unites two powerful businesses and iconic brands, and provides a platform for leadership in the food industry both domestically and internationally.

(www. news.heinz.com, 02.07.15)

FMC Combines with SEBI

In the first ever merger of two regulators, over 60-year-old commodities regulatory body Forward Markets Commission (FMC) merged with the capital markets watchdog Securities and Exchange Board of India (SEBI) with Finance Minister Arun Jaitley ringing the customary stock market bell to formalise the amalgamation.



The commodities market entities would get a timeframe of up to one year to adjust to the new regulations as they would have to follow the same norms that are applicable to their peers in the equity segment.

The entire process has "all been very well thought out" and the regulator has also brought out a handbook for the benefit of all entities by making them aware about various rules and regulations.

(TH, 29.09.15)

Beer Merger Means Losing China

A successful marriage between beer giants Anheuser-Busch InBev and SABMiller would almost certainly have to be done without one of the jewels in SAB's crown: its 49 percent stake in China's biggest-selling beer brand.

That would mean the combined mega-brewer would have to forgo the huge distribution and bottling facilities held by SAB's China joint venture, CR Snow, a platform that would help it grow in the huge Chinese beer market.

ABI's attempt to tie-up with SAB would trigger a change of ownership that would probably hand CRE the right to buy out SAB's stake, and lawyers anticipate China's competition watchdog will be waiting in the wings to rule that any deal must exclude CR Snow. *(www.independent.ie, 18.09.15)*

Monsanto Gives Up Syngenta Pact

Monsanto abandoned its US$46bn pursuit of agribusiness rival Syngenta, after its third bid in 2015 to create a dominant seeds and farm chemicals business was rejected by the Swiss company.

The decision to walk away was instantly cheered by Monsanto's investors, who had begun to chafe privately to the US company about its efforts to buy Syngenta.

The move ends the latest attempt by Monsanto's Scottish chief executive Hugh Grant to buy Syngenta – a takeover he has personally pursued on three different occasions since 2011.

(FT, 26.08.15)

Green Light to Lockheed-Sikorsky

US regulators have given the green light to Lockheed Martin's acquisition of Sikorsky Aircraft, according to filings made with the Securities and Exchange Commission by Lockheed and Sikorsky parent company United Technologies Corp.

The filings signal that Lockheed's US$9bn purchase of the American helicopter maker will not be subject to a second request for information from US regulators, which could have postponed the deal's closing substantially.

Instead, the deal appears to be on track to close in the 4th quarter of 2015 or the first quarter of 2016, as Lockheed had hoped when the defence giant announced the deal. Regulators in Japan and South Korea have also reviewed the deal, the SEC filing states.

(www.defensenews.com, 24.09.15)

Lupin Acquires US Generics Firm

In its fifth foreign acquisition, Lupin would acquire New Jersey-based generic drugs firm GAVIS for US$880mn to boost its presence in the US, the company's biggest market.

This is the largest acquisition by any Indian pharmaceuticals company in the US, where Lupin is sixth in terms of market share.

The deal, finalised through a competitive bidding process, is likely to be closed in the third quarter of 2015. Lupin will fund the acquisition through cash reserves of US$100mn and a bridge loan. *(BS, 24.07.15)*

Shell Takes Over BG Group

Oil giant Royal Dutch Shell PLC cleared a significant hurdle toward its planned takeover of UK-based oil and gas firm BG Group PLC, after Europe's highest antitrust regulator approved the deal unconditionally.

The EC concluded after a brief investigation that the deal would not allow Shell to influence the prices of oil and natural gas in Europe and that those markets would remain competitive.

The EU's decision keeps the companies on track to close their merger in early 2016 said Shell's Chief Executive, Ben van Beurden. Shareholders still need to vote on the deal and are expected to receive formal documents late 2015 or early 2016.

(WSJ, 02.09.15)

QVC Buys Online Shopping Site

Liberty Interactive, the media company that owns shopping channel QVC, did some high-end shopping: It announced plans to buy online retailer Zulily in a deal worth US$2.4bn.

Founded in 2010 by President/CEO Darrell Cavens and board Chairman Mark Vadon, Zulily is an e-commerce website specialising in selling discounted clothing and merchandise.

This combination under Liberty is about investing in our future and providing a tremendous opportunity to accelerate our platform for growth of the Zulily brand through the partnership with QVC. *(FT, 18.08.15)*

Honesty and Quelling Culture Clash are Vital for Successful 'Mergers'

Sarah Gordon*

There is a story about the merger between Daimler, the makers of Mercedes-Benz, and Chrysler in the late 1990s. A joke circulating among the US staff after the deal asked "How do you pronounce DaimlerChrysler?". The answer was: "'Daimler' — the 'Chrysler' is silent'".

The humour encapsulated Chrysler employees' belief that their culture was being taken over by the German carmaker, with clashes reported over everything from expense claims to how managers should be addressed. After an unhappy decade together, the merger unravelled in 2007 when Daimler sold off Chrysler.

Culture clash, a subject on the minds of FT journalists after its purchase by Nikkei, can happen all too easily. Moving from perceiving differences, to magnifying them, then to stereotyping and put-downs is a familiar path in life, let alone in a cross-border deal. It appears to be one factor behind the long delays in creating the world's largest law firm from the merger of Dentons and China's Dacheng.

Six months after announcing it, the two have not yet set a date to put it fully into operation, rolled out their joint name or launched a combined website. The deal has spawned even more than the usual impressive amounts of paperwork. But it is also reportedly proving harder than first envisaged to integrate two radically different legal cultures.

Hardly surprising, one might argue. But if that is true, why do investment bankers and other advisers never talk about the potential cost of cultural differences when they are crunching the numbers in the run-up to a deal? Cost and revenue synergies are freely bandied about, as are analysts' forecasts of earnings enhancements. But no one ever predicts that goodwill may have to be written off because of a clash of cultures.

Sometimes, though, culture clash is used to excuse a failure to put in this effort, or to obscure more specific conflicts between personalities at the top. The deal between the US's Omnicom and Publicis collapsed supposedly because of cultural differences, but really because the putative merged company was not big enough to contain the egos of Maurice Lévy and John Wren. Ditto the near-collapse of French-Swiss LafargeHolcim, where one chief executive ended up being ousted for similar reasons.

That is not to say that cultural differences do not have the potential to throw a spanner into the works. In 2005 Richard Schoenberg of Cranfield School of Management analysed management styles in 129 UK cross-border acquisitions of continental European targets.

The research suggests it does not matter whether it is the bidder or the target that is the more risk-averse, just the size of the difference between them, and it also showed that a different attitude to risk led to an inferior outcome even where the acquired company was subsequently managed as a standalone subsidiary, or where the previous management team remained in place.

There is a plethora of advice for managers as to how to diminish cultural clashes, some more sensible than others. One gem suggests employees be asked to collect a symbol of their "pre-merger identity" and to place it, together with a list of the negative ways in which the merger would affect them personally, in a wooden coffin that is then crushed, all accompanied by a band playing a funeral march. More helpful ones include assessing cultural fit during the due diligence process.

The Hindu Business Line

Calling a deal a takeover instead of the oft-used 'merger of equals' can help avoid cultural clashes

But what might help most is to avoid calling deals "mergers of equals" — which rarely reflects financial or organisational reality. Nokia, the Finnish company that is buying France's Alcatel-Lucent, is not putting up with such nonsense. Its chief executive, Rajeev Suri, unashamedly calls the deal a takeover, an approach that at least is honest about the impact on Alcatel's employees.

DaimlerChrysler was a "merger of equals" and it seems Suri has learnt the lessons of history well.

* *Business Editor, Financial Times. Abridged from an article in the* Financial Times*, on July 30, 2015*

Investors Demand Policy Reforms

The **Zimbabwe** government, in desperate need of investment to halt economic collapse, must put its house in order and stop shifting goal posts through toxic policies like indigenisation as it risks losing out more on limited foreign direct investment (FDI).

Zimbabwe is considered a risky investment destination due to lack of policy clarity and consistency, especially exemplified by the indigenisation laws.

Zimbabwe's 2014 FDI inflows marginally grew from US$400mn in 2013 to US$545 million compared to Zambia's US$2,4 billion, Mozambique US$4,9 billion, and South Africa's US$5,7 billion, a strong indicator of the country's hostile investment climate which needs urgent reforms.

(www.theindependent.co.zw, 04.09.15)

Investment Climate Statement 2015

The American Chamber of Commerce (AmCham) has recently launched a report on the investment climate in **Bangladesh** titled 'Investment Climate Statement 2015'.

Corruption has been identified as one of the major impediments that increase the risk and cost of doing business, and it is estimated to reduce growth of GDP by as much as two to three percent.

As the anti-corruption watchdog has been downsized in terms of power, the effectiveness of the drive against corruption may be stunted. Bureaucratic delays, inadequacy of infrastructure and lax implementation of laws are some of the issues that have been highlighted as major impediments to FDI.

(http://www.thedailystar.net, 04.09.15)

Largest Cross-Border Investor

China will become one of the world's biggest cross-border investors by the end of this decade, with global offshore assets tripling from US$6.4tn now to nearly US$20tn by 2020, according to research.

While much of the total will be in the form of foreign exchange reserves and portfolio investment, a growing share will come from direct Chinese investment in developed western countries, according to a joint report by the economic research firm Rhodium Group and the Berlin-based Mercator Institute for China Studies.

Based on the historical experiences of other countries, China's global stock of outbound foreign direct investment (OFDI), which includes investing in corporate mergers, acquisitions and start-ups, will grow from US$744bn to as much as US$2tn by 2020.

The report's projections are valuable because official cross-border OFDI statistics from China and recipient countries are widely seen as being of poor quality and do not give an accurate picture of real investment flows.

(FT, 26.06.15)

A Roadmap to Improve Investment

Ukraine and the **US** will work together to develop a roadmap that aims at improving the country's investment attractiveness. That's according to US Secretary of Commerce Penny Pritzker, who attended first US-Ukraine Business Forum in Washington.

Ukrainian and American officials and businessmen/women pledged to create a roadmap together of the things that they wanted to accomplish. The implementation of the roadmap and the necessary reforms by Ukraine will be analysed by the American party.

Ukraine needs investors who would be able to bring the best practices of corporate governance and transparent business rules.

(www.uatoday.tv, 14.07.15)

Regional Policy on Investment

The East African Legislative Assembly (EALA) is pushing for the enactment of a regional policy on investment to attract investments in the **East African Community** (EAC). The EAC region does not have a common investment policy to guide investment on a regional basis.

There is need to formulate a policy for a corrupt free investment climate. The MPs also want the investment policy to address issues of incentives especially to local investors which they said are being taxed heavily at the expense of foreign investors.

Existing investment provisions portray a number of deficiencies, which calls for development of an appropriate legal and institutional framework for investment in the EAC region.

(NV, 18.08.15)

UK: Top Destination for FDI

The **UK** remains the leading destination for FDI in Europe, according to a report issued by UK Trade & Investment (UKTI) in June.

The 2014-FDI has resulted in over 100,000 new and safeguarded jobs in the UK and the attractiveness of the UK as an investment destination confirmed as UK's FDI stock reaches US$1.56tn.

The UK received the highest number and value of FDI projects in Europe in 2014.

The annual investment figures from UKTI for the 2014-15 financial year show the UK attracted 1,988 FDI projects — 12 percent more than 2013-14 — estimated to have brought with them almost 85,000 new jobs and 23,000 safeguarded jobs across the UK.

(SiteSelection Magazine, September 2015)

UK Retailer to Pay Above Living Wage

IKEA is the first national retailer in the UK to pay all of its 9,000 workers significantly above the 'living wage' rate recently announced by the government as the new mandatory minimum.

The move comes shortly after the Chancellor George Osborne announced the new living wage, giving a minimum of £7.20 per hour to workers aged 25 and over. IKEA will be going with the rate set by the independent Living Wage Foundation - £7.85. The company estimates that the change will see more than half of its employees benefit from the increase.

The company said: "Introducing the living wage is not only the right thing to do for our co-workers, but it also makes good business sense. This is a long-term investment in our people based on our values and our belief that a team with good compensation and working conditions is in a position to provide a great experience to customers." *(BR, 20.07.15)*

Chipotle Sued for GM-Free Menu Claims

Chipotle, which caused something of a stir when it previously announced it was aiming to purge its menu of genetically modified ingredients, is being sued by a Californian woman for false advertising.

The woman, Colleen Gallagher, said that the company's menu had never been genuinely GM-free, and that its claims were intended to deceive diners into paying more for their food. The company has based its claims on its removal from its supply chain of GM corn and soy – common sources of GM food in restaurants.

On the company's website, it does admit that, the prevalence of GM in animal feed means that most of the animal protein the restaurants sell will likely have been given GM feed. Beverages containing fructose corn syrup are also likely to contain GMOs. It says it is working to solve these problems for the future.

However, the lawsuit argues that people are unlikely to see these disclaimers and are being misled into believing the full menu is GM-free. The company intends to contest the suit.

(BR, 01.09.15)

McD's to Use Only Cage-free Eggs

McDonald's will source the 2 billion eggs it uses annually in the US and Canada from cage-free hens over the next decade. Less than one percent of its eggs are currently cage-free.

The move is the latest change brought in under new CEO Steve Easterbrook to make the company more modern and progressive in the face of growing competition and rising awareness in the US of animal welfare issues.

It brings the company into line with Subway and Starbucks who have made a similar commitment on cage-free eggs. The change to cage-free eggs will take time because the capacity within US suppliers currently does not exist to meet the demand that McDonald's will create.

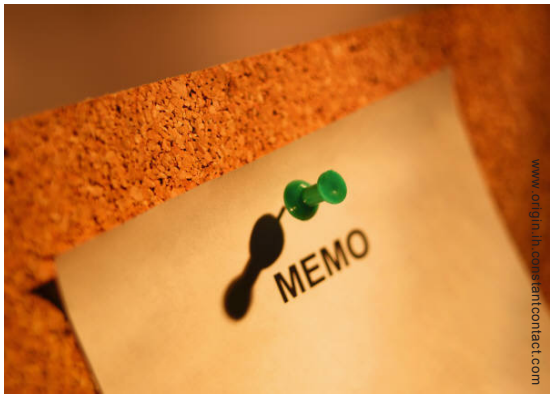
Only around 6 percent of egg-laying hens in the US are currently cage-free. The company has said it will work with existing suppliers to convert housing systems for their hens.

(BR, 09.09.15)

DoJ Issues 'Yates Memo' on Individual Accountability

The US Department of Justice (DoJ) issued new guidelines for the prosecution of individuals involved in corporate fraud and other misconduct on September 09, 2015.

The 'Yates Memo' is the result of a DoJ working group convened to review DoJ's approach to investigating corporate entities and holding individuals at all levels accountable for large-scale fraud and other corporate misconduct.



Although primarily focussed on fraud, these guidelines are applicable to all future investigations of corporate wrongdoing, as well as any pending investigations to the extent practicable.

The memo outlines six 'key steps' or best practices that prosecutors should follow when reviewing corporate wrongdoing in both the criminal and civil context:

- in order to receive any credit for cooperation, a corporation must provide all relevant facts relating to the individuals responsible for the misconduct;
- focus should be placed on holding individuals accountable from the inception of the investigation in both criminal and civil cases;
- criminal and civil prosecutors should be in routine communication with one another as an investigation progresses;
- culpable individuals will not be released from civil or criminal liability absent "extraordinary circumstances or approved departmental policy";
- resolutions should be made with a corporate entity without addressing the liability of related individuals, and any decisions not to prosecute individuals should be memorialised; and
- civil attorneys should evaluate the potential for filing suit against individuals in addition to the corporate entity. *(www.lexology.com, 09.09.15)*

Volkswagen's 'Uniquely Awful' Governance at Fault in Emissions Scandal

Chris Bryant* and Richard Milne**

A former chairman of a large German industrial company says "Germany has corporate governance problems but VW has long been uniquely awful".

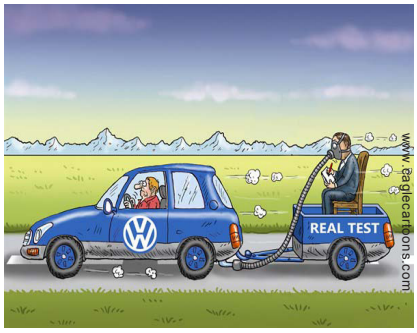
Volkswagen's decision to nominate a long-serving executive as chairman has once more highlighted the carmaker's corporate governance and culture, which some experts argue were a root cause of the diesel-emissions scandal.

Top directors announced that Hans-Dieter Pötsch, VW's chief financial officer since 2003, would become chairman, filling the spot vacated by patriarch Ferdinand Piëch. Hans-Christoph Hirt, a Director of Hermes Equity Ownership Services, an adviser to Pension Fund Investors in companies including VW, said the appointment created a 'serious conflict of interest'.

VW has admitted installing software in engines over several years so they passed laboratory emission tests but belched out dangerous nitrogen oxides when on the road. Martin Winterkorn resigned, insisting he knew nothing of the cheating, which analysts fear could cost VW billions of euros in fines, lawsuits and recall costs. Assisted by a US law firm, VW has launched an internal investigation and reported the wrongdoing to prosecutors.

However, governance experts argue the cheating was predictable because of VW's lax boardroom controls and peculiar corporate culture. Even before the diesel scandal, VW's shares traded at a discount to other carmakers partly because of governance concerns.

A key weakness at VW remains the lack of diversity of opinion and expertise on the company's supervisory board. The 20-member council of directors is



responsible for hiring and firing executives, providing advice to management and monitoring their actions.

Yet 17 of the 20 members are either German or Austrian and the board of directors has only one truly independent voice. The German carmaker is engulfed in the worst scandal in its 78-year history after it admitted to manipulating emissions test data on its diesel vehicles in the US and Europe.

Many of the remaining directors are representatives of the three largest shareholders – the Porsche and Piëch families, the State of Lower Saxony and Qatar. In 2012 VW appointed Ursula Piëch to its supervisory board. Both have since resigned.

Hirt said that VW's supervisory board is short of people with relevant experience and skills and – significantly – independence. External investors have only 12 percent of the voting shares and therefore 'cannot change anything', according to Juschus.

Directors at other German companies often meet investors but their access to Piëch was very limited. It was not always that way. Ten years ago VW's supervisory board still boasted external luminaries including Cromme, Author of Germany's Corporate Governance code.

But Cromme quit VW's board in 2006 when Piëch used votes from workers to push through a trade unionist as head of personnel, against the wishes of some shareholder representatives on the board.

The carmaker's response to the diesel scandal emissions crisis has been steered by a small committee of top directors and three of the five members are labour representatives. Ferdinand Dudenhöffer, automotive expert at the University of Duisburg-Essen, describes Bernd Osterloh, VW's chief labour representative, as a kind of 'co-manager' who now 'dominates the supervisory board'.

VW has almost 600,000 employees but its management board is staffed entirely by men. Under Piëch and Winterkorn, decision-making at VW was highly centralised and more junior managers were frightened to speak their mind.

Following his appointment as VW Chief Executive, Matthias Müller pledged to 'develop and implement the most stringent compliance and governance standards in our industry'.

Others recall that previous crises at VW did not deliver real reform. "If VW does not change now then they will never do it. It really depends on the three big shareholders – whether they are willing to reform," Alexander Juschus, Director at IVOX, the German proxy adviser. "I have my doubts."

* *Shadow Leader of the House of Commons, UK*
** *Nordic and Baltic Correspondent, Financial Times*
Abridged from an article in the Financial Times*, on October 04, 2015*

Transport Regulation Matters

Since transportation network companies such as Uber and Cabify began operating in Mexico City, much controversy has arisen regarding their regulation. Taxi drivers have contended that such companies are illegal and have requested the Mexico city government to ban them.

The Federal Economic Competition Commission recommended that the applicable transport regulation be modified to recognise this new form of service without imposing anticompetitive barriers.

Mexico City government published the regulation which derived from the negotiations; it enters into force in August 2015. The regulation guarantees the legality of services provided by transportation network companies. *(ILO, 20.08.15)*

Bipartisan Bills Signed

Jack Markell, Governor of Delaware signed three bipartisan bills into law that aim to reduce government regulations. One proposal requires a regular review of agency rules, while two others deal with government's impact on small business.

Markell pledged to 'continue to eliminate red tape that inhibits growth' and urged lawmakers to back legislation on that front. Together, these three bills will improve transparency, increase accountability and make life easier for small businesses.

Procedural reviews must begin by January 01, 2016, for the regulatory bill, and the other two bills go into effect on that date.

(www.delawarestatenews.net, 22.07.15)

Amendments to Fairway Dues Act

The Finland Fairway Dues Act was amended with some of them having only a temporary, technical or clarifying nature. Certain regulations were open to interpretation and as a result led to disputes between shipping companies and Customs.

The amendments are temporary, in the respect that the unit price and maximum amount of fairway dues have been halved for the period from 2015 to 2017 to compensate for additional costs incurred as a result of the EU Sulphur Directive.

The Act's scope of application has been amended to release icebreakers that provide services to the Finnish Transport Agency in Finnish territorial waters from the obligation to pay fairway dues. *(ILO, 01.07.15)*

Ultra-wideband Gets Green Light

The decree on ultra-wideband in Italy has finally been given the green light, with the allocation of €2.2bn to create a reliable and eagerly awaited infrastructure that will be accessible to: 10 million people, 800 municipalities, 400 hospitals, 2,000 schools, and 5,000 administrative headquarters.

The €12bn plan, which will run until 2020, includes approximately €7bn of public funding in addition to €5bn in private investment.

Availability during the first phase of the plan (i.e. until 2017) will be limited and the designation of a production centre is also expected. *(ILO, 02.09.15)*

New Wireless Technology on Anvil

The National Communications Commission (NCC) of Taiwan has given the green light for industry to harness the benefits of innovative new wireless technology.

The NCC plans to release the television white space as soon as 2017 in the 500 megahertz (MHz) to 600MHz band used by licensed terrestrial broadcasters for very high frequency and ultra-high frequency.

White spaces are gaps in the radio spectrum in frequency bands which can be used to offer new wireless applications to benefit consumers and businesses. The NCC is now laying the foundations for industry to use television white spaces. *(ILO, 09.09.15)*

Air Navigation Services Established

A new law was published in the Public Gazette in Argentina, which creates a government agency to provide air navigation services. The agency is called EASA (*Empress Argentina de Navigation Area Societal del Estado*) and is part of the Ministry of the Interior and Transportation.

EASA will be a state-owned company and its shareholders will be the Ministry of the Interior and Transportation and the Ministry of Defence. It will provide services that were previously provided by the Argentine Air Force and its personnel.

Further, the agency will be governed by the legal norms and principles of private enterprise and its employee contracts will be governed by labour law.

(www.lexology.com, 12.08.15)

Single Digital Framework in 2017

Policies for a fully integrated, pan-European digital market that can rival the US and China will be outlined by the European Commission within 18 months.

Businesses that trade online within Europe must prepare for the shift to an open 'digital single market' as part of Europe's initiative to catch up with the digital revolution of business and allow homegrown companies to scale without migrating to the US.

Money generated by various regional European funds and the Juncker package will be used to build digital skills across the continent including €2bn from the social fund and €18bn for SME broadband and cloud adoption, to name a few initiatives. *(www.computerworlduk.com, 15.07.15)*

Privatising Rail Worked, We Just Failed to Notice

John Kay*

The Financial Times

Despite backing for renationalisation, the sell-off has delivered much of what was hoped

Both the leading candidates for the leadership of Britain's opposition Labour party have now committed themselves to renationalising the country's railways. The words from Jeremy Corbyn and Andy Burnham are no surprise – rail renationalisation sounds leftwing but commands broad popular support, even many Conservative voters favour it.

The unpopularity of rail privatisation is an odd phenomenon. British Rail, the monolithic state-owned operation that preceded privatisation, was one of the country's most reviled institutions. And what people do seems at variance with what they say. The story of rail usage under British Rail was one of inexorable decline. Between 1960 and 1995, passenger numbers fell by about a third. Since 1995, they have more than doubled. The dramatic trend reversal coincides exactly with privatisation.

Britain's railways generate a wealth of data – every journey is reported and the results aggregated. Huge demand-forecasting exercises are undertaken by the train operators collectively in conjunction with the Department for Transport. Still, we have little understanding of this shift in public preferences.

Similar trends can be seen elsewhere in Europe, although the growth of demand for rail in Britain is exceptional. From the 1960s car ownership became the norm. Households embraced the sense of personal freedom it offered, and in later decades access to a car was a means by which young people could assert their independence.

But the golden age of the car ended in the 1990s. As the environmental movement grew powerful, road building ceased to keep pace with car use, and the dream of the open road was replaced by the reality of urban congestion. If greater personal mobility was the life-changing technology of the 1960s, mobile communications have fulfilled that role in the past two decades.

That shift is relevant to how we travel. You can use your phone or laptop on a train – and every train is full of people who do. You can use your phone in a car, but not comfortably or most important legally. For journeys such as trips from London to Scotland, the increasing hassle of air travel favours the train. But such changes have happened far beyond the UK. We need a British account of increases in rail usage.

The bewildering plethora of fares offered by train companies – derived from innovations in yield management pioneered by British Rail; for example, increasing prices to match increased demand – irritates customers, but does appear to stimulate traffic while limiting public subsidy. More generally, privatisation has achieved many of the things its proponents hoped it would: better trains, new timetables, more responsiveness to passenger needs.

The benefit of rail restructuring (achieved at the cost of complex negotiations between different service providers) has been the freeing of managers from the dead hand of centralised control which was the hallmark of British Rail. Some of the worst managers – notably the weaker franchisees and the incompetent executives of Railtrack, the former rail infrastructure operator – have been shown the door. Critics of privatisation are right to point out that such autonomy and accountability could be achieved under public ownership – as with the East Coast franchise, which was for a period taken into state control. But mostly it is not.

The public attitude to rail is ambivalent. People love trains, loathe rail operators, and mostly use their cars (rail still accounts for less than 10 per cent of passenger mileage). We want a service that cannot be delivered – a public transport system that picks you up at the door, effortlessly deposits you where you want to be, and does so at modest cost. The good – and startling – news is that such a service is on its way. It is called the driverless car.

* *Britain's Leading Economists. The article appeared in* The Financial Times *on August 18, 2015*

Consolidation in Financial Sector

The head of Bank Mandiri, **Indonesia's** largest bank by assets, has called for consolidation in the highly fragmented financial sector ahead of integration across the Association of Southeast Asian Nations in 2020.

Chief Executive Budi Sadikin has warned that Indonesia's 118 commercial banks must strengthen their capital base through mergers and acquisitions, or risk losing out to more competitive regional peers when the industry is liberalised.

In recent years, Indonesia's central bank has sought to encourage consolidation by limiting the business of commercial banks — including their ability to open branches overseas — according to their core capital.

(FT, 29.06.15)

Banks to Resolve Complaints

Banks in the UK are being urged to take action as customer complaints over current accounts soar, in spite of a major review to improve competition in the sector.

Complaints over current accounts rose 31 percent in the first half of the year compared with the previous six months, making it the second most-complained about product.

But banks are coming under scrutiny as the Competition and Markets Authority prepares to release its findings from a key inquiry into current accounts, in an attempt to stoke competition and shed light on fees.

(FT, 30.09.15)

Recovery Measures for Banks

To give banks an additional tool to manage bad debts effectively, the Reserve Bank of **India** (RBI) introduced the Strategic Debt Restructuring Scheme. Under this scheme, banks may convert outstanding loan payments into equity shares through strategic debt restructuring if defaulting borrowers fail to achieve projected viability milestones set out under the restructuring package.

The RBI has observed that, in many cases of restructured debt, borrower companies remain under financial stress due to operational and managerial inefficiencies, despite substantial sacrifices made by the lending banks. In such cases, lenders should be able to change ownership and management. *(ILO, 11.09.15)*

OSFI Releases ICAAP Feedback

The Canadian Office of the Superintendent of Financial Institutions (OSFI) has released its annual feedback on Internal Capital Adequacy Assessment Process (ICAAP) submissions filed in 2014.

The feedback relates to banks and other deposit-taking institutions that use the standardised approach to credit risk with respect to their Capital Adequacy Requirements Pillar I capital levels.

Although the next ICAAP report is not due until the end of 2016, OSFI provides the feedback annually so that banks may begin to incorporate OSFI's observations and concerns into their capital assessment processes.

(www.regulationtomorrow.com, 28.08.15)

Regulation on Mortgage Lending

The Central Bank of **Kosovo** approved the Regulation on Mortgage Lending, which establishes requirements and standards for mortgage loans.

The regulation entered into force on October 01, 2015 and applied to all credit-issuing financial institutions licensed by the Central Bank (i.e. banks, non-bank financial and microfinance institutions).

A 'mortgage loan' is defined as any loan secured by immovable property which allows the mortgage creditor to initiate foreclosure proceedings for the purpose of fulfilling the debtor's obligations under the mortgage loan.

The regulation classifies mortgage loans as either residential or commercial. *(ILO, 25.09.15)*

Banking Secrecy for Protection

A revision of the Federal Act on Banks and Saving Banks of **Switzerland** entered into force, which increases criminal liability for the violation of banking secrecy.

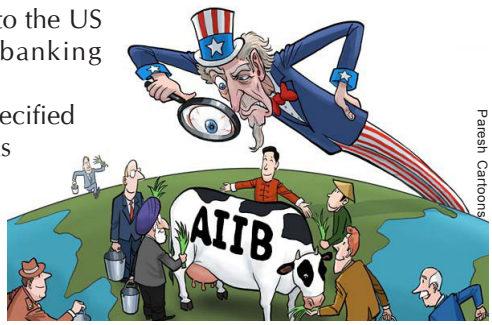
Under the amended Act, intentional disclosure of data covered by banking secrecy or exploitation of such information for a third party's benefit will be subject to a penalty of up to three years' imprisonment or a monetary fine.

As per the amendment, foreign tax authorities cannot be penalised under this provision as they are generally not punishable. However, employees of a foreign authority could be caught by this provision in certain cases.

The amended law also introduces a qualified crime – anyone who benefits financially from the use of the information or who receives a financial advantage for a third party when violating banking secrecy is subject to a penalty of up to five years' imprisonment. *(ILO, 25.09.15)*

Countries Sign Agreement on AIIB

India was among the 50 founding countries that signed an agreement providing the legal framework for the China-led US$100bn multilateral Asian Infrastructure Investment Bank (AIIB) which is being seen as a rival to the US and Europe-dominated banking institutions.



The 60-article agreement specified each member's share as well as governance structure and policy-making mechanism of the bank, which is designed to finance infrastructure in Asia.

The delegates from 50 founding countries gathered at the Great Hall of the People for the signing ceremony. Australia was the first country to sign the agreement, followed by 49 other members. Seven more countries are due to sign by the end of 2015. The AIIB is seen as a rival to the World Bank and Asian Development Bank. *(CD, 30.06.15)*

Britain Bets the Ban on Pivot to China

Philip Stephens*

The Financial Times

Here is the question. Can a state that counts itself America's most reliable military ally also be China's special friend in the west? Ask George Osborne, Britain's chancellor, and the answer is an unequivocal "yes". Others take a different view.

Osborne has been touring China, including the troubled Xinjiang province, where Beijing's authority is challenged by native Uighurs. When the chancellor was not signing commercial deals he did everything to skirt controversy. His aim was to set up the signing of a string of financial and investment agreements when President Xi Jinping pays a state visit to Britain in October.

Osborne promised a £2bn taxpayer guarantee if Xi puts Chinese cash into a new nuclear power plant in southern England. He also offered Britain as a test bed for China's own nuclear technology. Whitehall officials think that the nuclear project has been rendered uneconomic by shale oil and gas and by changing patterns of energy use. The chancellor will have none of it.

> *UK assumes an economic relationship requires submission on everything else*

As he journeyed between Beijing, Shanghai and Urumqi promoting Britain as China's "best partner" in the west, national security officials back in London were drafting a new national security strategy. Its centrepiece will be a reaffirmation of the security and military alliance with Washington.

David Cameron, the prime minister, was badly shaken earlier this year by US criticism of planned UK defence cuts. As chance would have it, the defence review will also preface a big expansion of Britain's capacity to counter cyber-attacks. Many of these are directed from China.

It is rare for the Treasury to set the direction of foreign policy; the most powerful department in Whitehall has long shown institutional disdain for foreigners. Officials keep it quiet if they happen to speak a foreign language. So the outreach to Beijing is very much the chancellor's personal project. There has also been an element of pragmatism. He needs Chinese money to take some of the edge off domestic austerity.

When Cameron visited east Asia during the summer, the Singapore government thought he might like to take the opportunity to say something about regional security. Britain, after all, is a member of Asia's Five Power Defence Arrangements. Fearful of saying anything that might upset China, which is at odds with several of its neighbours and with the US in the East and South China seas, Cameron demurred. His host was told he preferred to talk about the opportunities for Asian companies to raise capital in the City of London.

More recently, Osborne was behind Britain's decision to break with the US and sign up to the Beijing sponsored Asian Infrastructure Investment Bank. Many in Washington would now agree that the US attempt to organise a western boycott of the new bank was at best ill-advised. Yet the chancellor's motivation was less than strategic. He wanted to persuade his Chinese counterpart to choose London as the centre of offshore trading in the renminbi.

It is odd, too, that Osborne's proposed special relationship with Beijing is all but disconnected from any broader assessment of Britain's long-term strategic interests. The security and defence review will say that the country's prosperity and security rest above all on preservation of the open, rules-based international system — an order that since 1945 has been underwritten by the US. Beijing sees this system as an expression of western hegemony.

There is nothing easy about balancing beneficial economic engagement with China with the safeguarding of Britain's security. Nor should Britain necessarily always agree with the US. But there is more to Britain's national interest than a few billions of Chinese investment in a dodgy nuclear energy programme.

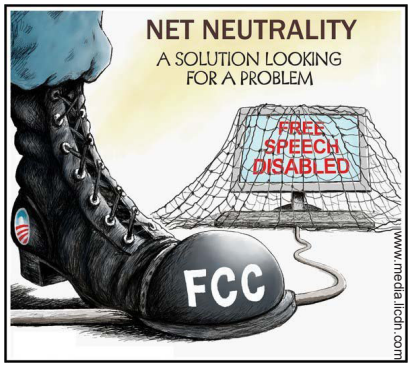
* *Associate Editor, The Financial Times. Abridged from an article that appeared in* The Financial Times *on September 24, 2015*

Neutral Net: A gate-pass to the global society

Pradeep S Mehta* and Rohit Singh**

Noam Chomsky, a famous leftist American philosopher, once said: "The Internet could be a very positive step towards education, organisation and participation in a meaningful society." This stands true in the current scenario, where the Internet has moulded the world into a global society, truncated distances and enabled thought sharing beyond boundaries. Also acting as an educational hub, the Internet has helped providing solutions in seconds, which earlier used to take hours of search in libraries. There is no denying that the Internet has now turned into what Bill Gates once referred as "town square for the global village".

The increased uptake of this resource has acted as breeding ground for a number of innovative applications, known as over the top (OTT) applications. From communicating to shopping or from finding doctors to buying groceries, there are applications for everything. Despite the high utility, these applications are now strongly being considered for regulations. The telecom operators claim that these applications impact their revenues by providing substitutes to the services they offer, such as calling (Viber, Skype, WhatsApp), messaging (WhatsApp, Line, Hike), etc. The debate on Net neutrality, as it is called, has developed into a duel for the ownership cake. Why do we need owners for this wonderful realm? The question in itself is baffling.



The Net neutrality storm had spread across the world long back, but like many other countries, India too played a silent spectator

The Net neutrality principle simply states that there should be no blocking, no throttling and no paid prioritisation of any lawful content on the Internet. The US Federal Communication Commission (FCC) embracing Net neutrality is persuading other countries to decide their positions. Though the FCC ruling was immediately challenged by the operators on grounds of their profitability, the US appeals court refused to grant a stay on the ruling and the final hearing is scheduled later this year. The European Union has also enforced Net neutrality and so telecom operators there are not allowed to block or throttle any content, application or services on the Internet.

However, unlike the FCC's strict ruling, the EU's version is milder and allows zero-rating (paid prioritisation) agreements. Other countries which have enacted complete Net neutrality as a law are Chile, The Netherlands and Brazil. Given so many examples across the globe, India has alternatives aplenty to choose from, but the choice has to be rather sagacious.

To gauge the stakeholders' opinion, the Telecom Regulatory Authority of India (TRAI) released a consultation paper in March 2015, posing 20 questions on Net neutrality. The questions, primarily on regulation of OTTs and non-discrimination of Internet services by operators, attracted over a million comments. A majority rooted for core Net neutrality, but Trai is still undecided on the most awaited ruling.

The Department of Telecommunications (DoT) had also commissioned a high-level committee on Net neutrality. The DoT committee has failed to address other issues such as data privacy. With OTTs holding huge consumer data, the issue of protecting consumers' sensitive data is worth a mention. However, the regulator reviewing tariff plans on zero-rating before being launched in public is an optimistic step for consumer protection.

A hurdle to Net neutrality also comes from the existing revenue models of Internet-based services. From Internet search to prioritising data packets on quality of service, the entire network is governed by payments made by companies to avail preferential treatment. The power of choice should, in any case, rest with consumers and not the operators. Consumer demands vary according to individual preferences.

The operators highlight the need of capital expenditure for infrastructure and argue that OTTs, that impact their revenues, hinder their ability to invest on infrastructure. It is undeniable fact that OTTs rely on Internet service, and it's equally their responsibility to let Internet breath for long. OTTs should lend a hand on building the foundation, for which the question that needs answer is "how".

Thus, the Internet we use is nowhere close to being perfectly neutral. We still have to safeguard it from the probable clutches of the prospective owners. The idea is to promote the Internet, not to break it. The need is to make it robust, seamless and for everyone.

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Abridged from an article in Asian Age and Deccan Chronicle *on September 19, 2015*

The Man from Cambridge

Meghnad Desai*

Ajit Singh demolished the idea that markets punish the inefficient and discipline firms. He showed that de-industrialisation began in the UK before Thatcher.

Ajit Singh, who has died at the age of 74, was a Cambridge economist and a Cambridge man in every sense of the word through his entire academic life, which spanned 50 years. He was born in Lahore in pre-Partition India. His father's name was Sardar and his mother Pushpa was descended from the family of the third guru, Guru Amar Das, of the Sikh pantheon. He graduated from Panjab University, where one of his teachers was Manmohan Singh, with whom he developed a lifelong association. He then went on to Howard University, the famous university for black Americans in Washington DC and an unusual choice for an Indian student, for his masters. (Howard University inducted him into its hall of fame in 2008, after his retirement from Cambridge.)

He later went to the University of California, Berkeley, where I first met him in 1963, for his PhD. In 1964, he moved to Cambridge for a research appointment and then stayed there for the rest of his life. He was successively lecturer (1965), reader (1991) and professor (1995) at Cambridge. He was also director of studies at Queens' College (1972-95), where he was a fellow.

Ajit Singh's work was mainly in the field of corporate structures, growth of firms and the economics of mergers and takeovers. He was able to demonstrate with copious empirical work that mergers were, by and large, not helpful for the shareholders of companies but attractive to managers, whose emoluments multiplied as a result of mergers and takeovers. The idea that markets punish the inefficient and discipline firms could be said to have been demolished by his work.

Ajit Singh's most innovative finding was that the UK economy had begun to de-industrialise as early as the mid-1970s in his 1977 article, "UK industry and the world economy: a case of de-industrialisation?". His idea was that the manufacturing industry should be of a sufficient size to be able to finance the imports from the exports it generates. The UK manufacturing industry lost that ability soon after the oil shock of 1973. In popular discussion, "Thatcherism" is often blamed for the decline of the manufacturing industry. Ajit Singh had shown that the process began before 1979.

Ajit Singh also took a keen interest in the economics of developing countries, writing and consulting extensively. He acted as a consultant for the United Nations Conference on Trade and Development (UNCTAD) and the Group of 77 on many occasions on issues of globalisation, development and trade. In 2005, he was involved in a tripartite project for the UNCTAD, the UK's Department for International Development (DFID) and the ministry of commerce of the Government of India on issues of globalisation, trade and poverty.

Many students from developing countries, especially the Indian subcontinent, remember him fondly for his rigorous teaching as well as his generous nature and the time and care he devoted to them. He was appointed to the prestigious Tun Ismail Ali Chair in Monetary and Financial Economics at the University of Malaya in 2011 and was made a life fellow of Queens' College, Cambridge.

Ajit Singh's politics was always firmly and strongly on the left. This was as true the day I met him in Berkeley, California, in 1963 as in his final years. He was active in the anti-Vietnam War movement. His academic work had a socialist perspective but also knew the value of rapid growth as long as it was inclusive.

He was struck by Parkinson's disease in 1982 but did not let that slow him down and went on working at his research and teaching till the very end. He was married to Jo Bradley till their divorce in 2012. He then married Ann Zammit, who survives him.

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* *Emeritus Professor of Economics at the London School of Economics, is a Labour peer. The article appeared in* The Indian Express *on July 16, 2015*

The Land of Free Markets, Tied Down by Red Tape

Gillian Tett*

Every nation needs a unifying idea. Americans love to see themselves as champions of free markets and entrepreneurial zeal — and have long been more welcoming to entrepreneurs than has most of the western world.

But the 2008 financial crisis tarnished America's self-image. The entrepreneurial halo is starting to slip, too, since increasing quantities of red tape are making life harder for start-ups, relative both to the past and to the rest of the world.

Take a look at a striking report issued by the White House this week on occupational licensing, the rules that force workers to obtain qualifications to do certain jobs. Five decades ago, occupational licences were required only in specialist arenas such as nursing. But, in recent years they have proliferated so dramatically that a quarter of all American workers must secure one from individual states. Sometimes this is justified: airline pilots need licences. But often, as in the three years of training needed to become a security guard in Michigan or the thousands of hours required for hairdressers in Utah, the rationale is less clear.

The process of securing these licences is often so costly and cumbersome that one recent study estimated costs for consumers at US$200bn a year. More importantly, licences deter many would-be workers — and entrepreneurs.

A separate World Bank report is even more sobering. Last year it ranked countries according to their levels of support for the corporate world. This placed America in seventh place in terms of overall ease of doing business. But the US was ranked 46th in terms of how easy it is to start a company. This is worse than Estonia, Malaysia, Georgia and even France.

One important reason for this dismal position is that in America entrepreneurs need, on average, to navigate six different legal and regulatory hurdles to start a company. In New Zealand and Canada, which top the league, there is just one procedure. The complexity faced by Americans means that it takes them on average about six days to create a start-up; in many other countries the process is much faster and cheaper.

The US was ranked 46th in terms of how easy it is to start a company, worse than Estonia, Malaysia, Georgia and France

Of course, this World Bank league does not tell the whole tale. The American national average conceals significant geographical variations because it is municipalities that set many of the business rules. Moreover, red tape is only one factor that determines start-up activity; what also matters is whether there is access to capital and a culture of respect for entrepreneurs.

The White House has attempted to respond to the problem: this week President Barack Obama urged states to reduce the number of occupational licences. Last month, he launched a "Start up in a Day" initiative to slash the length of time it takes to create a business; it is offering a US$1.5m prize to anyone who uses technology to streamline the process.

It is clear that far more needs to be done, however. One idea that policymakers ought to discuss is whether it is time to introduce a "sunset" principle for business regulations — an assumption that regulations should automatically expire after a given period unless specifically renewed.

This concept flies in the face of current practice, which tends to leave rules on the books unless they are deliberately repealed. And sunset comes with drawbacks: renegotiating regulations can introduce business uncertainty and endless lobbying fights.

But some policymakers are talking seriously about the idea. Indeed one congressman, Chris Collins, introduced a bill this week calling for a seven-year sunset approach. The concept needs to be discussed, if nothing else because it might start a proper conversation about which start-up rules are worth keeping and which are not, and how to stop the sprawl of red tape.

Who knows? In a country that worships the ideal of the plucky start-up, a campaign to slash red tape could be one of the few things that all the presidential candidates actually agree on. Even (or especially) that arch entrepreneur himself, Donald Trump.

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* *Markets and Finance Columnist and US Managing Editor. Abridged from an article in the* Financial Times*, on July 31, 2015*

Publications

Economiquity

The July-September 2015 issue of Economiquity carries an article entitled, 'Mega Regional Trade Agreements and the Indian Economy' which states that due to a multitude of factors, not least the stagnation in multilateral trade negotiations under the aegis of the WTO, mega regional trade agreements (RTAs) are gaining momentum. These create opportunities and challenges for excluded countries like India. India can take these challenges and transform them into opportunities for serious economic growth and development.

A special article by Timothy A. Wise and Biraj Patnaik states that it is hypocritical of the US to give price support to its farmers while denying it to the world's poorest farmers.

Another special article by Shamshad Akhtar opines that the 2030 Agenda has vital implications for Asia and the Pacific.

This newsletter can be accessed at: www.economiquity.org/


ECONOMIQUITY

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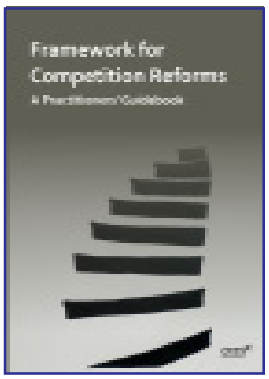
CUTS International

Framework for Competition Reforms
A Practitioners' Guidebook



This Guidebook is published under the project entitled, 'Competition Reforms in Key Markets for Enhancing Social & Economic Welfare in Developing Countries' (CREW). It begins with a clear account of some of the best economic studies that show the benefits of competition. It quite rightly then identifies the key challenge as being to link this rather dry academic evidence with outcomes from real policy change; a challenge that the CREW project was established to address with comparative case studies of staple foods and bus transport in four developing countries.

It provides the methodology that was used in those studies, refined in an iterative process from the experience of those studies themselves.

http://www.cuts-ccier.org/CREW/pdf/Framework_for_Competition_Reforms-A_Practitioners_Guidebook.pdf

Privatisation in Ghana: *Successes During Economic Collapse and Authoritarianism*

The goal of this Discussion Paper is to empirically analyse the case of privatisation in Ghana to determine what factors led to successes and what policies led to failures. It outlines the establishment of state-owned firms in Ghana, motivation and process of privatisation with a particular emphasis on initiation of the policy in late 1980's. The paper looks at the performance record of privatisation in Ghana in terms of its effect on firm performance, workers, broader economy and general public.

http://www.cuts-ccier.org/pdf/Privatisation_in_Ghana-Alan_Potter.pdf

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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
- Readability (colour, illustrations & layout)

Sources

ACCC: Australian Competition and Consumer Protection; AP: Associated Press; BBC: British Broadcasting Corporation; BD: Business Daily; BR: Business Respect; BS: Business Standard; CD: China Daily; FT: Financial Times; GCR: Global Competition Review; ILO: International Law Office; LL: Latin Lawyer; ND: News Day; NV: New Vision; NYT: New York Times; FE: Financial Express; TG: The Guardian; TH: The Hindu; WSJ: Wall Street Journal

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