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Special Articles

Why is Apple differentiating between India-China?

The latest flavour in the mobile industry is iPhone X. Its manufacturer, Apple, is leaving no stones unturned in ensuring the global success of its flashy new smartphone. It is safe to assume that Apple will devote equal attention to the world's largest telecom markets: China and India. However, the company seems to be differentiating between two peas in a pod, when it comes to regulatory and policy compliance in these two countries.

A few months back, Apple was showing its utmost commitment to China's 'black letter law'. Thus, going to the extent of planning its first data centre in Guizhou province in southwest China, to adhere to the newly-framed data privacy and protection laws of the country. However, in India, Apple has been asking for a host of concessions from the government to manufacture in the country.

China is Apple's second largest market for selling its iconic iPhone, contributing over 20 percent to the company's global turnover. It pledged an investment of US$1bn to operate its iCloud services 'for China from China', in a partnership with a local data management company. The move was made so as not to face the same fate as other tech companies like Google and Facebook who are barred from operating in China due to non-compliance with the country's cyber laws.

On the other hand, Apple had the nerve to upset the TRAI Chief by blocking the DND app on its app store, citing violation of its 'privacy policy'. The blatant disregard for TRAI's DND app signifies the indifferent attitude of the company towards the Government of India, including the telecom regulator. Such indifference may be stemming from the fact that though Apple is one of the preferred premium brands in the country, its overall market share is currently only three per cent. The 'sticker shock' of its product prices is one of the major reasons for its low sales in India.

In its bargaining with the Department of Industrial Policy and Promotion, the company had requested for waiving the minimum domestic sourcing requirement, concessions on import duties, apart from various other concessions. Furthermore, its plan of making and selling refurbished products in the country is also against the Government of India's policy.

India is one of the world's largest telecom hardware markets and it is growing. The potential it holds for Apple, if priced better, should be more than an incentive for the company to start large-scale operations here.

It is time for Apple to fall in line with other mobile manufacturers in India by adopting the policy of 'when in Rome, do as Romans do'. Allowing the DND app on their app store could be a good start in the larger interest of consumers.

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Debate on Competition Law

The National Assembly's Standing Committee of **Vietnam** agreed on the necessity to amend the Law on Competition to address inadequacies in the 12-year-old legislation.

The government's report on amending the competition law said the changes were essential to address shortcomings, including the abuse of market dominance, monopolies and unfair competition.

Participants of the Standing Committee's session also agreed that the amendment would seek to ensure equal and non-discriminatory competition. They said the group drafting the amended law should review thoroughly the relationship between the competition law and related laws, like the Penal Code, the Administrative Procedure Law, the law on fees and charges, and the law on credit institutions.

(http://english.vietnamnet.vn, 15.09.17)

Cartel Bill Passes Third Reading

The Commerce (Cartels and Other Matters) Amendment Bill of **Australia** was enacted into law on August 15, 2017. With that bill enacted, businesses finally have the additional certainty of prohibitions that are better aligned with the equivalent Australian law and an exemption that is better targeted at efficiency-enhancing collaborations between competitors.

Given that this law has been formulated and consulted on for a number of years, businesses are likely to regard this as a positive step towards having both a more fit-for-purpose exemption and legal certainty regarding the competition law regime going forward.

The bill makes a number of fundamental changes to the Commerce Act 1986: it expands the scope of the existing price-fixing prohibition to prohibit market allocation and output restriction arrangements between competitors; and introduces new exemptions to the cartel prohibition.

(ILO, 07.09.17)

Considering Pre-merger Notification

The **Egyptian** Competition Authority (ECA) has recently announced plans to amend Competition Law to introduce premerger notification requirements. The ECA is currently soliciting comments on the draft so the exact details and parameters of the amendments may change by the time they ultimately reach Parliament.

As currently drafted, the broad features of the proposed notification requirements are consistent with many regulatory regimes around the world. The notification would require standard information about parties and the transaction, as well as a filing fee.

Failing to comply with the notification requirements could subject the parties to substantial fines assessed as a percentage of the value of the combined entity's turnover or assets. *(www.whitecase.com, 28.08.17)*

New Merger Filing Thresholds

According to the new **Italian** Law on Market and Competition, mergers have to be filed with the Italian Competition Authority where the combined turnover of all the undertakings concerned exceeds €492mn in Italy; and the individual turnover of each of at least two undertakings concerned in the transaction exceeds €30mn in the Italian territory.

Indeed, on the one hand, in case of acquisition of the sole control over one or more target undertakings there are no particular differences with the previous regime, since the first threshold 'merely' went down from €499mn, while the threshold related to the target went down from €50mn to €30mn.

On the other hand, with regard to joint ventures, even acquisitions of small targets with a negligible turnover in Italy will be intercepted where at least two of the parent companies in Italy each have a turnover exceeding €30mn. *(Lexology, 22.09.17)*

New Trade Competition Act in Force

The relationship between intellectual property (IP) rights and competition law and policy in **Thailand** is usually complicated, as sometimes IP and its exclusive rights, which were originally conceived to invigorate competition through creativity and technology, can be so formidable that they are abused to suppress any competition.

On July 07, 2017, the Trade Competition Act (TCA) was published in the Royal Gazette. It will enter into force on October 05, 2017, and replace the Trade Competition Act in its entirety. The new law empowers the antitrust and competition law principles enshrined in the first TCA with much greater practical force.

(Lexology, 25.08.17)

Streamlining Merger Review Process

The **UK** Competition and Markets Authority (CMA), following a public consultation on September 05, 2017, outlined certain updates to its merger review process. The changes are designed to provide additional guidance to companies, streamline the CMA merger process and reduce requirements on businesses.

The main changes include: additional guidance on the CMA's use of initial enforcement orders (IEOs) which may be imposed during merger investigations to prevent companies from integrating during the CMA's review; updates to the CMA's merger notice form and accompanying guidance notes designed to help to reduce the burden on businesses; and revised guidance on the CMA's mergers intelligence function to clarify when briefing papers may be submitted to the CMA.

(www.walkermorris.co.uk, 14.09.17)

India Updates Leniency Policy

Anshuman Sakle and Bharat Budholia*

The Competition Commission of India (Lesser Penalty) Regulations, 2009 (Leniency Regulations) have been amended by a notification issued on 22 August 2017 (Notification). The Leniency Regulations supplement Section 46 of the Competition Act, 2002, which sets out the statutory provision for grant of leniency in matters involving cartels and enables parties to 'blow the whistle' on cartel arrangements and avail up to 100 percent reduction in penalties.

The amendments have been introduced after nearly seven years since the introduction of the leniency regime in India, addressing substantive issues faced by the industry. The formal amendments are largely in line with the draft amendments issued in March 2017 wherein the Competition Commission of India (CCI) invited comments from various stakeholders.

This article captures the key amendments and the potential implications on the effectiveness of the leniency programme in India.

Individuals to benefit from leniency

Prior to the notification, the Leniency Regulations were restricted in its application to enterprises alone. The Leniency Regulations now stand amended to allow individuals involved in the alleged cartel to seek a reduction in penalty as well. To this end, the leniency application is required to specify the names of such individuals at the time of submission to the CCI. This is a welcome move to encourage enterprises as well as individuals to come forward and provide information on cartel arrangements.

No limitation on number of markers

Prior to the notification, the Leniency Regulations allowed reduction in penalty to a maximum of three leniency applicants on a first-come-first-served basis, coupled with the quality of information/evidence submitted and other factors. The notification has done away with this limitation by allowing additional applicants to avail of the benefits of the leniency programme.

This amendment is significant considering that often enterprises/individuals shied away from conceding to their involvement in cartels due to the risk of submitting self-incriminating evidence without being certain as to whether they will eventually rank within the first three markers and consequently, be able to receive reduction in penalty. With the introduction of this amendment, not only will more enterprises/individuals be encouraged to disclose evidence on their respective collusive conduct but also will enable the CCI to actively bust cartels in the future.

Confidentiality provisions further clarified

Prior to the notification, the Leniency Regulations were silent on disclosure of confidential information submitted as part of the leniency application by the Director General (DG) during the investigation process. The amendments clarify that certain confidential information/evidence may be disclosed by the DG to any party (without the applicant's prior approval) for the purposes of the investigation, should the DG deem such disclosure necessary.

Further, the amendments also specify that inspection in leniency matters will be allowed only after the CCI has forwarded a copy of the report of the DG to the parties concerned. This provision is in contrast with regular investigations initiated by the CCI, where parties are allowed to inspect information/evidence during the investigation process itself without having to wait for the report of the DG.

Clarification on the contents of the application

The notification has clarified that the information in the leniency application in relation to the volume of business affected as a result of the cartel should be limited to *India*. This amendment is consistent with and seeks to formalise the general practice that was typically being followed by leniency applicants in India.

The Bigger Picture

The amendments introduced by the notification appear to be in sync with the CCI's pro-active and aggressive enforcement outlook over the years. With a steady increase in the number of leniency applications, these amendments seem to be a reflection of the CCI's experience and learnings from such leniency matters. Given that cartels are hatched in secrecy and are therefore, difficult to detect, the amendments are likely to encourage more enterprises/individuals to 'blow the whistle', secure immunities and at the same time, enable the CCI to effectively preserve competitiveness in the market.

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* *Authors are partners in the Competition Practice at the Mumbai office of Cyril Amarchand Mangaldas. They were assisted by Anisha Chand, Principal Associate and Aishwarya Gopalakrishnan, Senior Associate. Abridged from an article appeared in* http://competition.cyrilamarchandblogs.com *on August 23, 2017*

ABUSE OF DOMINANCE

Google to Appeal EU Antitrust Fine

Google will appeal the European Union (EU) fine of €2.42bn for abusing its dominant position in the market.

The **US** giant was fined in June 2017 for abusing its monopoly in search engine and shopping comparison services. Google said it respected the **EU** Commission's

ruling, but that it disagrees.

Google did say it will comply with the changes to vertical search, as Brussels requested. However, if it does not do so before the deadline, the EU can fine the company five percent of its daily revenue, each day.

The investigation about vertical search stated in November 2010, with the Competition Commissioner at the time, Joaquin Almunia, wanting to avoid formal investigations and potential fines.

However, after Google 'fixed' the issue by turning search placements into a pay-to-play auction, critics became even louder. Once Margarethe Vestager became Competition Commissioner, Google was eventually fined. Google, on the other hand, argued that the EU's interpretation of competition law is wrong. *(www.betanews.com, 13.09.17)*

Realty Firm Gets Clearance

The CCI has dismissed allegations of abuse of dominance made against **India** realty firm Concept Horizon Infra with regard to sale of a flat.The complaint pertained to purchase of a flat at a project in Greater Noida, Uttar Pradesh.

It was alleged that the company abused its dominant position by not paying the assured monthly return with respect to a residential unit at the project. To assess whether there have been any violation of competition norms, the CCI considered the market for 'provision of services for development and sale of residential apartments/ flats in Noida and Greater Noida' as the relevant one.

The company does not possess market power to act independently of the competitive forces in the relevant market, the regulator said, adding that in the absence of dominance, assessment of its alleged abusive conduct does not arise.

(www.outlookindia.com, 12.09.17)

Mobile Phone Market Investigated

The **Albanian** Competition Authority, following three complaints, initiated an investigation into the mobile phone market in connection with alleged coordinated practices and potential abuse of the dominant position of the market players. It had been alleged that three telecommunications operators had coordinated a change in standard pre-paid packages.

According to the Electronic and Postal Communications Authority, pre-paid customers account for approximately 90 percent of all mobile phone customers. There are three major mobile phone operators on the Albanian market – all three jointly hold approximately 95 percent of the retail market for cellular services.

In order to investigate whether there were signs of competition restriction, the authority initiated a detailed investigation. *(ILO, 10.08.17)*

Intel Wins Fight on Antitrust Fine

Intel Corp. won a round in its eight-year fight with the **EU** over a €1.06bn fine in a case that could have ramifications for a list of disputes involving US tech giants including Google and Qualcomm Inc.

The EU's top court ruled that Intel's appeal had to be reexamined by a lower tribunal, criticising judges for failing to properly analyse the economic aspects of the case in its 2014 decision to reject the chipmaker's challenge.

The lower court was required to examine all of Intel's arguments regarding a test to check whether the rebates used by the company were capable of harming competition. The lower tribunal has to examine whether the rebates at issue were capable of restricting competition. *(BL, 06.09.17)*

Pharma's Charged Excessive Prices

The **UK** Competition and Markets Authority (CMA) recently published its infringement decision that imposed a fine on Pfizer and Flynn Pharma for abusing their respective dominant positions by charging excessive and unfair prices for phenytoin sodium capsules.

In Europe, Aspen Pharmacare was recently fined by the Italian Competition Authority for similar practices, and is currently under investigation by the European Commission for having allegedly implemented excessive prices in several EU Member states on five cancer drugs.

This sends a very clear message to pharmaceutical companies: competition authorities in the EU are willing to investigate drugs' price levels in spite of national price regulations set by health authorities. *(Lexology, 25.09.17)*

Auto Insurers Raided

The European Commission (EC))antitrust officials carried out unannounced inspections at automotive insurance firms in **Ireland** amid suspicions they may have breached competition rules.

Officials conducted the checks alongside counterparts from Ireland's Competition and Consumer Protection Commission, as a preliminary step in investigating suspected anti-competitive practices.

The Commission has concerns that the companies involved may have engaged in anti-competitive practices in breach of EU antitrust rules that prohibit cartels and restrictive business practices and/ or abuse of a dominant market position. *(Law360, 04.07.17)*

PRICE FIXING

Private Clinics Slammed

Argentina's Ministry of Commerce has fined 15 clinics in the province of Salta, along with the Association of Clinics and Private Sanitaries of the Province of Salta for US$1,322,000 for taking part in an alleged price-fixing cartel.

The decision is the result of an investigation by the country's competition watchdog, the National Commission for the Defense of Competition. Through a price agreement, the clinics under investigation had increased the price of sanatorium benefits charged to health fund administrators and prepaid medicine companies.

The sanctioned conduct consisted of the formation of a cartel by clinics in the cities of Salta, Tartagal and Metán, in the province of Salta, in order to fix the agreed prices with health funds.

(CPI, 28.08.17)

LG Loses European Appeal

South Korean electronics giant LG Electronics has lost its final appeal against a giant price-fixing fine imposed by the EU and will pay more than €540mn.

In 2012, the EC hit seven top television and computer screen makers with fines totalling €1.5bn for running decade-long price-fixing cartels for cathode ray tubes (CRTs). The biggest penalty of €1bn was applied to LG Electronics and Philips of the Netherlands, who operated a joint venture.

They appealed against the punishment all the way up to the European Court of Justice, but LG Electronics said in a public disclosure statement that it had ruled against the firm. *(BL, 15.09.17)*

'Ground Rules' for Comparison Site

The **UK**'s antitrust enforcer launched an investigation into whether one home insurance comparison site's use of best price clauses violated competition law and detailed new rules for price comparison websites.

The watchdog has probed the market for digital comparison tools, which are used by consumers to compare prices and buy products such as credit cards.

The Competition and Markets Authority (CMA) has been scrutinising the market for digital comparison tools, which allow consumers to compare prices and buy products such as credit cards or car and home insurance from a range of businesses. *(Law360, 26.09.17)*

Mercedes-Benz Korea Slapped

South Korea's antitrust watchdog slapped a combined US$1.57mn fine on Mercedes-Benz Korea and its dealerships for fixing labour costs for auto repairs.

Mercedes-Benz Korea, the local unit and importer of German carmaker Daimler AG, allegedly suggested to eight dealerships fixing rates for labor costs in January 2009 to improve its balance sheet, according to the Fair Trade Commission (FTC).

The watchdog will strictly crack down on price-rigging practices in the imported car sector, which accounts for some 15 percent of the country's passenger car market.

(www.english.yonhapnews.co.kr, 26.09.17)

Airlines Cleared of Gouging

Canada's Competition Bureau has closed an abuse of dominance investigation into First Air and Canadian North, concluding that both carriers did not set unlawful predatory prices forcing another operator out of the country's internal aviation market.

The antitrust watchdog confirmed that its investigation failed to uncover sufficient evidence that both airlines charged artificially low prices 'below an appropriate measure of cost' to eliminate new entrant GoSarvaq or that they intended to recoup their losses by boosting prices after the carrier went out of business.

The Competition Bureau concluded that there was no evidence to suggest either carrier abused their dominant position on that route.

(www.gettingthedealthrough.com, 31.08.17)

Scania Hit with Penalty

Scania has been handed a £770m fine by the European regulators for involvement in a price-fixing cartel. The European Competition Commission says Scania, which is located in **Sweden**, colluded with five other truck makers to agree on the pricing of new vehicles.This had a result in reduced competition and kept prices artificially high.

Other firms such as MAN, Daimler, Iveco, Volvo/Renault and DAF admitted price-fxing and settled a case in 2016, getting a 10 percent cut in their fines in return for their cooperation.

Scania refused to admit any liability and rejected the settlement case. The company employs more than 45,000 people across 10 countries, including the UK, and supplies trucks to businesses around the world.

(www.fleetpoint.org, 29.09.17)

Electric Cos. Fined for Bid Rigging

Norway has fined six electrical companies a combined total of €1.9mn for openly agreeing to submit identical bids for a tender agreement for schools in Oslo.


www.res.cloudinary.com

The fine, meted out by Norway's Competition Authority, brings to an end a nearly three-year investigation, which was initiated by Undervisningsbygg Oslo KF, the city of Oslo's company for managing school construction and maintenance in Spring 2014.

The supply chain of electrical installation companies, El Proffen/EP Contracting, initiated and organised the cooperation between five competing member companies in the tender competition, with each competitor agreeing on identical prices and exchanging other competitively-sensitive information. *(www.arfonconsulting.eu, 10.09.17)*

Amazon has Escaped Tough Antitrust Scrutiny

Ken Skarbeck*

Over the last century, antitrust law moved away from a focus on the anticompetitive conduct of concentrated markets. That focus has been replaced by price theory and the view that economic efficiency maximises 'consumer welfare'

The US Federal Trade Commission (FTC) and the antitrust division of the Department of Justice (DoJ) both enforce federal antitrust laws. The agencies seek to protect consumers by stopping unfair, deceptive or fraudulent practices. They also are charged with promoting competition, which benefits consumers by keeping prices low and the choice of goods and services high.

Most US mergers valued above US$78.2mn are subject to review by both the FTC and DoJ under the Hart-Scott-Rodino Act. Either agency can take legal action to block transactions they find would 'substantially lessen competition.' Most deals are allowed to proceed after the first review.

Today, with the rapid technological change taking place in many industries, some observers are beginning to ask if we have entered a new age for antitrust. The company that is regularly targeted for this discussion is Amazon.

Interestingly, the Amazon model meets the criteria the agencies seek for the benefit of consumers. Amazon's prices are low, there is plenty of choice and the service is good. Yet some are questioning whether low consumer prices alone are evidence of sound competition. They argue the focus on pricing ignores the market power certain companies have achieved in our modern economy.

Lina Khan addresses the issue in an article headlined 'Amazon's Antitrust Paradox' in the Yale Law Journal. Khan asserts that while Amazon has positioned itself at the center of e-commerce and elements of the firm pose anticompetitive concerns, the company has escaped antitrust scrutiny.

Khan notes that Amazon's online platform structure creates incentives to pursue growth over profits, a strategy that investors have rewarded. Also, because the online platform is an intermediary that other businesses access, Amazon's broad reach across many industries controls some essential infrastructure upon which their competitors depend. The dual role enables access to information that could be exploited to undermine competition.

Google, Facebook, Apple and Microsoft also are sometimes accused of becoming too dominant. In the course of business, they all collect massive amounts of economic and personal data and are seeking ways to capitalise on it.

The internet is an agent for price deflation. It allows consumers to compare prices and shop for the best deal. While this is good for consumers, it has wreaked havoc in many industries. Certain brands have lost their ability to command premium prices. Businesses with higher cost structures, the brick and mortars, are struggling to compete with digital competitors.

Khan notes that over the last century, antitrust law moved away from a focus on the anticompetitive conduct of concentrated markets. That focus has been replaced by price theory and the view that economic efficiency maximises 'consumer welfare'. At one time, predatory pricing, where highly capitalised businesses slash prices to drive competitors out of business, was a major focus in antitrust law. But this conduct has received less attention since the Reagan administration.

Amazon's largest acquisition, the US$13.7bn purchase of Whole Foods, quickly sailed through antitrust review. Kroger's stock dropped 25 percent as investors immediately reacted to the notion that lower prices will decrease profitability for supermarkets.

It would not be surprising if antitrust law were to shift more toward a focus on concentration of market power, enabled by internet pricing strategies that may be harmful to competition.

* *Managing Partner of Indianapolis-based Aldebaran Capital LLC, a money-management firm. The article appeared in* Indianapolis Business Journal, *on September 30, 2017.*

German Car Industry Hit with Big Fines

Guy Chazan, Patrick McGee and Jim Brunsden*

The allegations of collusion among German carmakers have plunged an industry already tarnished by the Volkswagen diesel scandal into a fresh crisis. The news magazine Der Spiegel reported that German automakers – VW, BMW, Daimler, Audi and Porsche – had been engaging in cartel-like behaviour since the 1990s, in particular colluding with each other on the technical details of diesel exhaust treatment systems. The EU competition authorities have opened an investigation, and Germany's Economics Minister says the credibility of the whole German car industry is at stake.

What are the German carmakers accused of?

BMW, Daimler and the Volkswagen Group are accused of holding secret meetings since the 1990s to collude on technology, components and suppliers. The most significant allegation is that they agreed to use only small tanks for AdBlue, a urea solution critical for neutralising emissions from diesel engines. But so far there is no evidence they colluded on prices of end products.

How have carmakers responded to allegations?

VW and Daimler have refused to comment, while BMW adamantly denies that it colluded with its rivals. The EU has confirmed it is investigating allegations – but how likely is it that they will really crack down on German industry?

Germany exercises huge power in the EU and can easily influence the EC agenda. But the competition directorate has a reputation for fierce independence – one that under its current boss, Margrethe Vestager, has only grown. She has taken on a phalanx of corporate titans, ranging from Apple and Google, to Gazprom, Amazon and McDonald's, and is expected to be just as tough in her approach to the German carmakers.

Are there precedents for EU action against German companies?

Yes. Sven Giegold, a German Green MEP, notes how tough the EU competition authorities were when it came to restructuring the four German Landesbanken – public sector banks with a regional focus – that got into trouble during the financial crisis. The directorate also acted against German utility Eon in the late 2000s over concerns it was abusing its dominant market position: in a settlement with Brussels, it was forced to sell its long-distance grid and a big chunk of its domestic generating capacity.

What kind of fines could carmakers face?

EU cartel fines are determined by (i) the annual revenue of the product in question; (ii) the duration of the infringement; and (iii) the gravity of the offence. There is a maximum cap of 10 per cent of global revenues – equivalent to €8bn for BMW, €14bn for Daimler and €19bn for Volkswagen, according to analysts at Exane BNP Paribas. Leniency is a big factor. Some companies have escaped a fine by self-reporting. A similar approach could reduce any fines for the German carmakers.

What do auto industry experts say about claims?

Details are scant, so analysts are having a hard time quantifying the risks. Stuart Pearson, at BNP Exane Paribas, said it was "difficult to separate what is normal industry co-operation and co-development, and what went beyond this normal practice and crossed the grey line into the realms of anti-competitive behaviour".

Why do scandals in the auto industry always seem to revolve around diesel?

Diesel cars are typically more expensive to make, but are more energy-efficient and in years past the fuel was cheaper, making them attractive for consumers even with their higher price tag. The chief downside is that they spew out far more nitrogen oxide emissions than petrol cars, contributing to respiratory problems.

What does this mean for the use of diesel engines?

The allegations come at "the worst possible time for the carmakers," says Stefan Bratzel of the Center of Automotive Management. Already, diesel technology is in trouble: there were the revelations that VW had installed software in its diesel cars to cheat emissions tests, and then came the announcements by some European cities. This is affecting sales: overall, diesel accounted for 47.2 percent of sales in Europe's biggest countries last quarter, down from 51.6 percent a year ago.

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* *Authors are Berlin, Frankfurt and Brussels Correspondents at Financial Times. Abridged from an article appeared in* The Financial Times, *on July 24, 2017*

Essar Oil in Rosneft's Hands

Russia's energy giant Rosneft and its partners have completed the US$12.9bn acquisition of Essar Oil, making a grand entry into the world's most sought after energy market with plans of grabbing a larger share of the fuel retail market in India and significantly better financial performance.

The new owners, which include Trafigura, a global commodity trading and logistics giant, and UCP Investment Group, will acquire India's largest network of private petrol pumps, the country's second-largest refinery, a 1,000-MW power plant along with the Vadinar port and oil terminal.

The deal was a remarkable achievement as the Russian firm had entered the 'high-potential and fast growing' market and the new owners will make a significant difference to the company they acquired. *(DNA, 22.08.17)*

World's 3rd Largest Container Liner

COSCO Shipping Holdings Co Ltd has offered to buy Orient Overseas International Ltd for US$6.30bn, in a deal that will see the mainland China group become the world's third largest container liner.

The proposed deal is the latest in wave of mergers and acquisitions in global container shipping that has left the top six shipping lines controlling 63 percent of the market.

COSCO Shipping will have a fleet of more than 400 vessels and capacity exceeding 2.9 million TEUs (twenty-foot equivalent units) should the deal go through.

This would make it the world's third largest container shipping line after Denmark's Maersk Line MAERSKb.Co and Switzerland's Mediterranean Shipping Company (MSC), according to Singapore-based transport research firm Crucial Perspective. *(FT, 10.07.17)*

NCLT Approves Rcom-Aircel Merger

The National Company Law Tribunal (NCLT) of India admitted proposals for the merger between Aircel and Reliance Communications wireless business, as well as the latter's sale of its tower business to Canada's Brookfield.

An NCLT bench comprising judges BSV Prakash Kumar and V Nallasenapathy dispensed with the need for a creditors' meeting to vote on proposals. The merger and sale of towers, if and when they happen, would help reduce RCom's debt of nearly ₹45,000 crore by as much as 60 percent.

However, both need to be completed by December, as per an agreement with lenders under a strategic debt restructuring scheme put in place after the telco defaulted on some debt servicing obligations.

(ET, 15.08.17)

Linde, Praxair get FTC Request

Linde and Praxair were responding to a second request from the US FTC regarding their planned US$74bn merger and were in a pre-notification phase with the EC.

The German and US industrial gases groups said in a US regulatory filing they still expected the all-share merger of equals, which is subject to anti-trust review in approximately 24 jurisdictions, to close in the second half of 2018.

The deal will create a global leader to overtake France's Air Liquide with a combined market value of US$74bn, revenue of US$28.7bn and 88,000 staff.

(Reuters, 30.08.17)

Vantiv Seals Worldpay Deal

US credit card processing company Vantiv moved closer to creating a US$29bn global payments powerhouse with a formal offer to buy Britain's Worldpay for US$10bn.

Vantiv's move is part of a wave of payments company mergers around the world as consumers are moving away from cash transactions to a smartphone or mobile payments and the industry, once a backwater of banking, faces growing competition from newcomers trying to disrupt the way merchants are paid.

The combined Worldpay and Vantiv, which were both spun out of banks and have thrived in their home markets, will be called 'Worldpay' and headquartered in Cincinnati, with a primary listing in New York and a secondary one in London.

It will have an unparalleled scale, a comprehensive suite of solutions, and the worldwide reach to make us the payments industry global partner of choice. *(FT, 10.08.17)*

Walgreens Drops Rite Aid Takeover

Walgreens Boots Alliance has dropped its takeover pursuit of rival Rite Aid, following resistance from US regulators and will instead now buy stores, distribution centers and inventory in a new US$5.1bn cash deal.

The proposed merger, first announced in 2015, was initially for about US$9.4bn but was cut to US$6.8bn earlier in 2017. Under the new agreement, Walgreens will buy 2,186 stores, three distribution centres and related inventory from Rite Aid.

Walgreens will also assume the related real estate leases and certain limited store-related liabilities. Rite Aid will have an option, exercisable through May 2019, to become a member of Walgreen's group purchasing organisation. *(FT, 30.06.17)*

AT&T-Time Warner Gets Nod

AT&T continues to pull in approvals for its proposed US$85bn acquisition of Time Warner. Chilean regulators were the latest to approve the merger, bringing the number of approvals from competition authorities outside the US to 17.

www.magarticles.magzter.com

The Chilean Fiscalía Nacional Económica (FNE) signed off on the deal, but with "targeted behavioral conditions" to remedy certain competitive issues identified in its review.

However the FNE's approval does not require the sale or divestiture of any assets from either company. The AT&T-Time Warner merger will combine premium content with the networks to deliver that content on any screen viewers want. *(www.wirelessweek.com, 05.09.17)*

Uber and Yandex to Combine

Uber Technologies Inc. is handing over the keys to its business in Russia. The San Francisco-based company and Yandex NV are merging their ride-hailing businesses in Russia. Uber will invest US$225mn and take a 36.6 percent stake in a new, yet-to-be named venture that will be valued at US$3.73bn.

The deal with Yandex is Uber's second retreat from a major market. In 2016, Uber left China in exchange for a 17.5 percent stake in rival Didi Chuxing, after losing more than US$2bn battling its competitor.

The agreement with Yandex is part of Uber's renewed effort to improve revenue, narrow losses and resolve its legal issues. *(Bloomberg, 13.07.17)*

Renewable Energy M&A Heats Up

In 2017 YTD, M&A volumes for renewable energy reached US$15.4bn across 132 deals compared to only US$3.6bn across 66 deals in 2013 YTD, representing an increase of 322 percent over the four-year period. Such deals have grown steadily, with volume consistently up year-on-year since 2013 — and the deal pipeline looks set to keep the upwards trend. With volume for the 10 largest rumoured deals totalling US$19.6bn, there could be a lot more M&A yet to come in the industry. Here is a look:

Rank	Country	No. of deals	Volume ($ mn)	Vol. share (%)
1	China	25	2,000	12.9
2	Japan	16	66	0.4
3	US	12	5,700	37.2
4	Thailand	10	37	0.2
5	Philippines	8	65	0.4
6	Germany	7	391	2.5
7	India	7	370	2.4
8	Italy	7	357	2.3
9	France	6	866	5.6
10	Malaysia	4	561	3.7

Source: Dealogic

(BS, 14.08.17)

Michael Kors Bags Jimmy Choo

Michael Kors Holdings had agreed to buy the shoe company Jimmy Choo for US$1.2bn, the latest push by an American high-end fashion house to find new sources of growth and as the first step in building a bigger international luxury group.

Many upscale brands like Michael Kors have faced plummeting sales and tepid profits. Mall traffic in North America has declined sharply, while shoppers who have traditionally been loyal to the so-called middle market have gravitated toward brands at extremes of the style and price spectrum.

The trends have played well for e-commerce giants like Amazon, fast-fashion brands like H&M and Zara, and luxury houses like Gucci. But it has left companies like Michael Kors – once the runaway leader of the 'accessible luxury market' – exposed. *(ToI, 26.07.17)*

McCormick Acquires RB Foods

Reckitt Benckiser cut the mustard by selling its food business that includes French's Mustard and Frank's RedHot sauce for a higher-than-expected price of US$4.2bn to McCormick & Company.

The US maker of spices, herbs and flavourings beat competition from several strategic bidders, including domestic rival Pinnacle Foods, to secure brands that also include Cattlemen's sauces.

The deal will help boost McCormick's net sales to about US$5bn a year in 2017. The sale will free up Reckitt to focus on turning round newly acquired Mead Johnson, and reduce the cost of funding US$18bn for the infant formula group. *(FT, 20.07.17)*

Hutchison to Sell Fiber Unit

Li Ka-shing, Hong Kong's richest man, has agreed to sell his Hutchison Telecommunications fixed-line phone business for US$1.86bn, in the latest divestment of assets by an Asian tycoon family.

I Squared Capital, a US-based infrastructure-focused private equity firm, will acquire Hutchison Global Communications, which runs an extensive fibre-optic network that connects to over 14,000 buildings. It is also a major provider of WiFi services to Hong Kong. *(FT, 31.07.17)*

Energy Utilities' Revised Merger

Westar Energy and Great Plains Energy, two big US electricity utilities that scrapped a deal in 2016 due to regulatory concerns, have agreed a new all-shares merger that will create a company with a combined equity value of US$14bn.

Under the new deal structure, Westar shareholders will lose the 36 percent premium that Great Plains had offered to pay in 2016 as part of a US$60 cash-and-stock deal worth US$12.2bn, including US$3.6bn in debt.

Westar will effectively acquire Great Plains at a small premium and require no incremental debt, which avoids the problem raised by Kansas authorities. *(FT, 11.07.17)*

Creating Europe's No 2 Steel-Maker

Ending uncertainty over its European assets, Tata Steel announced a plan to form an equal joint venture with Germany's thyssenkrupp AG

The proposed joint venture that will create Europe's second largest steel maker (after ArcelorMittal) provides Tata Steel an opportunity to stem further bleeding of its heavily loss-making European operations by transferring some €2.5bn of term debt and about 18,000 workers to the merged entity to be based in Amsterdam.

The joint venture will facilitate cost synergies of about €400-600mn a year through integration of sales and administration, research and development, optimisation of procurement, logistics, service centres and other support activities.

(BL, 20.09.17)

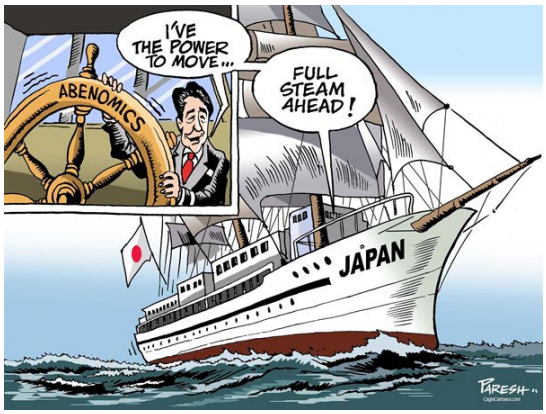
The End of Abenomics will Test Japan's Appetite for M&A

Leo Lewis*

It will not be too long before the term 'Abenomics' will join 'Cool Britannia', 'the end of history' and 'Brics' in the cupboard of cast-offs: ideas that once had thrilling, zeitgeisty chic, but are now too threadbare to be worn in public.

Abenomics – encapsulating the now sputtering economic revival programme of Japanese Prime Minister Shinzo Abe – may well deserve that fate. But it will at least depart having catalysed a defining shift in the country's corporate thinking and the creation of a new generation of outward-looking dealmakers.

Abenomics is nearly five years old. So, too, is the country's record run of more than US$350bn in overseas acquisitions – the first time, say JPMorgan bankers, that the outbound grab has been 'meaningful'. According to Mergermarket, Japan's outbound deal count of 145 in the first half of 2017 was only a handful short of the record set in 2015, and mergers & acquisitions bankers are already hinting at big deals in the insurance, pharmaceutical and chemical sectors later in 2017.



Record run of more than US$350bn overseas acquisitions stores up problems for future

Under pressure to quantify how much longer the fun will last once 'Abenomics' is consigned to history, analysts have recently scrambled to unpick the phenomenon, and reached similar conclusions. Japanese executives see the population shrinking, domestic growth slowing and a loss of competitiveness and market share around the world.

Acquisition, many are now convinced, is salvation. Funding costs show every likelihood of remaining low. There is no shortage of global targets and, in areas such as energy, the government has been actively encouraging outbound M&A. Buybacks have sharply fallen this year as companies store cash in acquisition war chests. And so the feeding frenzy is expected to continue.

But the permanence of the mindset change in Japanese boardrooms, and the degree to which new dealmaking habits have surpassed the competence of the buyers or compatibility of targets, will be severely tested by the retreating Abenomics tide. Cross-border M&A, according to both Japanese and US studies, is notoriously prone to long-term failure, and corporate Japan's unadventurous 'salaryman' instincts leave particular vulnerabilities.

In the fiscal year ending in March, Japanese firms, according to some calculations, collectively announced more than US$18bn in write downs on deals that did not work out as intended.

Punishment for questionable dealmaking has been consistently light during the current boom. Japan's protracted overseas M&A spree, and the share prices of those companies leading it, have been shielded from serious scrutiny by a bull market that has doubled the value of the benchmark Topix index since Abe came to power.

But the Abe premium, say some market strategists, could vanish quite rapidly. The semblance of progress on reform coupled with the PM's high poll ratings were always vital to the Abenomics story. Both have now evaporated. A bigger shoe will drop, some argue, if investors decide that the market's buoyancy is the result of unsustainable manipulation.

Since early 2013, the Bank of Japan has supported the domestic stock market by buying ¥12.6tn of exchange traded funds. The foreign investor buy-in over the same period has been ¥13.8tn but, in a potentially deadly blow to the Abenomics illusion, the BoJ is set to overtake them by the end of September.

In the event of a fierce shakedown, focus will sharpen on whether the past five years have made Japan as skilled at dealmaking as it has been energetic. Penalties for bad dealmaking will increase. A book by Professor Shigeru Matsumoto, which concludes only eight percent of Japanese deals between 1985 and 2001 were successful, has become a fixture in nervous boardrooms.

A guesstimate by Shigenobu Nagamori, Chief Executive of Japanese manufacturer Nidec and a well-known dealmaker, that only two percent of Japanese acquisitions are successful looms menacingly.

Overpayment, lack of synergies and governance failures are among the most common pitfalls for Japanese buyers. The US$350bn Abenomics-inspired spree heightens the risk that plenty of companies will fall into them.

* *Tokyo Correspondent for the Financial Times. Abridged from an article appeared in* The Financial Times, *on July 26, 2017*

Fox Takeover of Sky must clear more Hurdles

David Bond*

The UK Culture Secretary Karen Bradley has said she is 'minded to' refer 21st century Fox's £11.7bn bid to seize full control of satellite broadcaster Sky to the Competition and Markets Authority, for a fuller, 'phase two' investigation.

The move, which follows a three-month inquiry by the media regulator Ofcom, threatens to add a further six-month delay to the deal. Here is how the takeover has come under scrutiny:

What Ofcom was asked to examine

The media watchdog had to consider three questions: Would a Fox-owned Sky affect UK media plurality by handing too much power to the Murdoch family's media empire? Would the merged company fail to meet UK broadcasting standards? Were Fox and its senior executives fit to hold a British broadcasting licence?

Ofcom cleared the deal on broadcasting standards and approved Fox as 'fit and proper', but raised 'serious concerns' over media plurality. Why?

Fox argued in its submission to Ofcom that the rapid growth of the internet had created multiple new media outlets, which diluted the combined influence of Rupert Murdoch's newspapers and the Sky News channel. It also made the case that the 2013 separation of Murdoch's media businesses into Fox and News Corp had reduced his ultimate level of control.

Ofcom rejected both arguments. It concluded that a combined Fox-Sky and News Corp would have the third-largest reach of any UK news provider, behind ITN and the BBC. It also found that contrary to the idea that social media players such as Facebook and Twitter and websites such as the Huffington Post and BuzzFeed had reduced Murdoch's media power, his media companies were performing well in the new online world.

UK watchdog is looking for more concessions as media plurality concerns remain

What Fox must do next

With the Murdochs anxious to complete the deal by the end of 2017, the US media group has unusually given undertakings up front to try to ease concerns over plurality.These include setting up a separate editorial board with a majority of independent members to oversee Sky News and a commitment to maintain Sky-branded news for five years at current funding levels.

Times of India

Ofcom accepted these would mitigate the public interest concerns, but Ms Bradley rejected the undertakings, arguing that Fox needed to do more.

Fox must now come up with a new proposal that will satisfy Bradley on editorial independence, but does not threaten financial sustainability.

Despite Ofcom finding that the recent Fox News scandal in the US amounted to 'significant corporate failure', Fox is seen as a 'fit and proper' owner of Sky

Fox News has been rocked by a string of sexual harassment and racial discrimination claims against senior management and star broadcasters. The claims have already led to the departure of anchor Bill O'Reilly, co-president Bill Shine and, before his sudden death, the channel's founder and former chairman Roger Ailes.

Ofcom's report said the allegations were "serious and disturbing" and included claims that women were told that professional advancement was dependent on entering into a sexual relationship with senior executives. Ofcom also heard claims that financial misconduct may have resulted from the way in which settlements with complainants were structured, as well as allegations of email hacking.

Despite all this, Ofcom could find no evidence that Fox chief executive James Murdoch or his father Rupert were aware of any of the claims before July 2016, when the first sexual harassment claim was escalated to senior management.

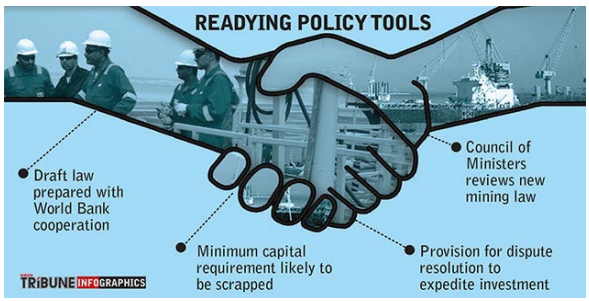
In the end the watchdog concluded there was 'no reasonable basis to conclude that if Sky were 100 per cent owned and controlled by Fox, it would not be fit and proper to hold broadcast licences'.

The timetable now

Bradley has requested parties to respond and will then update Parliament on her next steps.

* *Media Correspondent, Financial Times. Abridged from an article appeared in* The Financial Times, *on June 30, 2017*

FDI Law Enters Final Stage



A comprehensive regulatory framework to attract FDI to the Sultanate of **Oman** is inching closer to reality. The new regulation, which is receiving finishing touches, is expected to encourage foreign fund inflow and expedite the government's diversification efforts.

A draft of the 'Foreign Capital Investment Law' was with the Omanian Ministry of Legal Affairs where its provisions were getting examined.

The law drafted with the objective of attracting foreign investment was made to satisfy the requirements of international businesses and prepared in cooperation with the World Bank and would be akin to any other such law.

The law is likely to allow 100 percent foreign investment in various sectors, remove minimum capital requirement, clarify rights and duties of investors and make provision for dispute resolution including international arbitration.

(http://omantribune.com, 13.09.17)

SoEs Face Regulatory Challenges

Cross-border acquisitions by state-owned enterprises (SoEs) in **China** have increased sharply since 2008 and accounted for over 20 percent of total cross-border acquisitions in 2009. SoE acquisitions have since come down but remain close to 10 percent of the total. However, this practice is not always preferred or viewed as appropriate by regulators, the public or other stakeholders in host countries.

Foreign SoEs are often regarded as agents of their home-country governments, pursuing political agendas and implementing government strategies that are outside of normal business considerations. They may receive subsidies from home countries, a practice that conflicts with free-market principles.

After announcing the purchase of local firms, SoE acquirers still face the challenge of approvals by regulatory agencies.

(http://ccsi.columbia.edu/files/2016/10/No-205-Li-and-Xia-FINAL.pdf, 31.07.17)

Groundwork for More FDI

China's outbound direct investment has gone up rapidly year by year but its foreign direct investment (FDI) growth dropped sharply from 7.9 percent (in 2015) to 3.9 percent.

The Chinese government responded by rolling out a series of regulations further relaxing regulatory controls over foreign-invested enterprises (FIEs) and simplifying the administrative procedures around foreign investors starting up a business in China. FIE laws were amended and a simpler filing regime introduced.

Further actions were taken to boost foreign investment in 2017: publication of the 2017 FDI Catalogue together with the long-awaited National Negative List (June 2017); a State Council Executive Meeting hosted by Premier Li Keqiang, urging more efforts to attract foreign investment (July 2017); and amendments to the Chinese Ministry of Commerce (MoFCOM) Filing Measures (July 2017).

(NRF, 08.08.17)

FDI to Triple By 2025

Asia's 'striving tiger cubs' – **India** and the **ASEAN-5** – are well placed to attract the bulk of FDI flows over the next few years, as rising labour costs in China and ageing population in north east Asia disincentivises flows in those regions.

Bulk of the FDI inflows is likely to come in from Japan and China, unlike US and EU in the past. It expects FDI flows into India and ASEAN-5 (Indonesia, Malaysia, Thailand, Philippines and Vietnam) combined to surge from US$100bn per annum currently to around US$240bn by 2025.

In India, FDI inflows is seen in sectors in need of growth capital, like infrastructure, banks, e-commerce and hospitals, Nomura said. Sectors with strong long-term growth prospects such as retail, automobile, pharma and diagnostics are also expected to benefit, the broking and research firm adds.

(PTI, 02.08.17)

Radical Shake-Up of Investment

A radical shake-up of the **UK**'s £7tn investment market has been ordered by Britain's financial regulator in an attempt to stamp out conflicts of interest and restore savers' trust in the asset management industry.

The Financial Conduct Authority told fund managers to overhaul their charging structures and improve governance standards following a two-year investigation into competition issues in asset management. The sweeping set of measures, which are yet to be finalised, would make the UK one of the toughest regimes in the world for asset managers as London considers its post-Brexit future.

Its most controversial reform ideas include forcing investment managers to present investors with an all-encompassing fee and to put two independent directors on fund boards.

(FT, 29.06.17)

On Top of Global Greenfield FDI

Serbia ranks first in a global greenfield FDI performance index, produced by fDi Intelligence, the Financial Times' data division.

Serbia scored 12.02 in the index - and the score indicates that in 2016 it attracted more than 12 times the greenfield FDI that would be expected for an economy of its size. Serbia is followed by Cambodia (11.24) and Macedonia (9.18).

Serbia's otherwise disappointing economic performance has been outweighed by regulatory reform, low labour costs and access to the EU single market - and most investors are attracted to Serbia as an export platform rather than as a market in its own right.

(FT, 29.06.17)

Media Law Deal Sealed

Historic media law reforms are all but set to pass after the **Australian** Federal Government struck a crucial deal with Senate powerbroker Nick Xenophon.

The competition watchdog will investigate the impact of digital giants on Australian media, while the government will provide grants for investigative journalism and cadetship programmes in the regions under the deal.

It follows intense days of negotiations between Communications Minister Mitch Fifield and Senator Xenophon. The agreement will see reforms almost certain to pass the Senate, including scrapping the controversial 'two-out-of-three rule', which prevents a company controlling more than two of the three traditional segments of the media – radio, television and newspapers – in one market. *(www.news.com.au, 14.09.17)*

Ban on Credit/Debit Surcharges

Consumers in the **UK** are no longer to be charged extra for paying by debit or credit card. From January 2018, businesses will not be allowed to add any surcharges for card payments. The worst offenders currently are airlines and food delivery apps, and small businesses which typically add a fee for cards.

In 2010 alone consumers spent £473m on such charges, according to estimates by the Treasury. It follows a directive from the European Union, which bans surcharges on Visa and Mastercard payments.

However, the government has gone further than the directive, by also banning charges on American Express and Paypal too. Campaigners welcomed the move, saying it was great news for consumers. *(BBC, 19.07.17)*

Emerging Drone Framework

As part of its ambitious aviation strategy, the **European Commission** has proposed harmonising European drone rules. In June 2017, the Single European Sky Air Traffic Management Research Joint Undertaking unveiled U-Space – a blueprint on the use of drones in low-level airspace.

U-Space will cover altitudes of up to 150 metres (m) and pave the way for denser traffic of automated drone operations over longer distances, including over cities. It will facilitate any kind of drone mission, including: infrastructure inspections; precision agriculture; search and rescue; delivery of goods; and urban air mobility.

The European Aviation Safety Agency (EASA) is seeing to it that U-Space has rules that ensure the safe integration of drones into the airspace.

The EASA published the Notice of Proposed Amendment (NPA) 2017-05, which was prepared in consultation with EASA member states and the aviation industry. The idea is to create effective safety rules that are proportionate to the risk. *(ILO, 19.07.17)*

Ports and Harbours Authority Bill

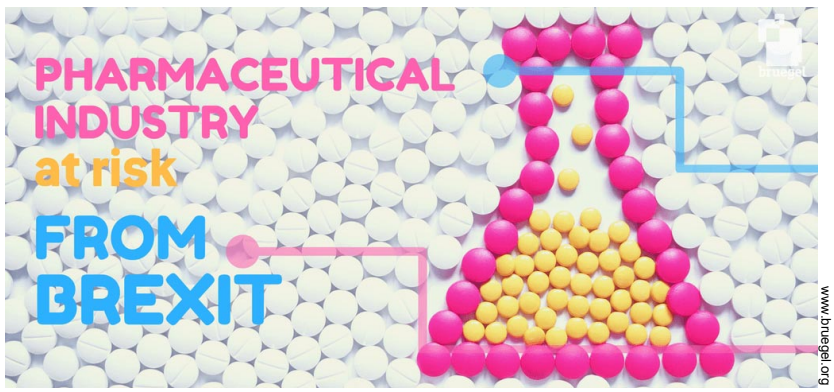
The **Nigerian** Ports and Harbours Authority Bill passed its third and final reading in the Senate in April 2017. In accordance with the Constitution, the Bill still requires concurrent passage by the House of Representatives and presidential assent to become law. However, many industry watchers consider these last hurdles to be minor – thus, a pre-emptive look at some of the bill's more significant provisions is worthwhile.

The first section of the Ports and Harbours Authority Bill clearly states that the bill's objectives are to provide an appropriate institutional framework for the ownership, management and development of ports and harbours; ensure the integrity, efficiency and safety of the ports based on the principles of accountability, competition, fairness and transparency; and promote and safeguard Nigeria's competitiveness and trade objectives.

These objectives will resonate with followers of Nigeria's port reform efforts, as they clearly demonstrate an intention to give legal status to the landlord port management and administration model adopted by the government in 2006. *(ILO, 27.09.17)*

Brexit Implications for Pharma Law

The **UK** government put forward the European Union (Withdrawal) Bill in July 2017, by which the government hopes to convert the entire body of EU law into British law. The intention is that when the UK leaves the EU, the law can continue to function as it does until Parliament wishes to amend it in the future.



For pharmaceuticals, it will be impossible to simply 'copy and paste' EU medicines law into UK law because EU law so heavily references the European Medicines Agency (EMA) and a pan-European framework of regulations, including the Centralised Procedure for product licences.

The Withdrawal Bill, therefore, will need to create potentially sweeping powers to make secondary legislation to 'enable corrections' to the laws that would otherwise no longer operate properly after leaving the EU and to reflect the content of any negotiated Brexit deal. Otherwise, further primary legislation will be needed. *(www.pmlive.com, 28.09.17)*

Digital Platforms Force a Rethink in Competition Theory

Diane Coyle*

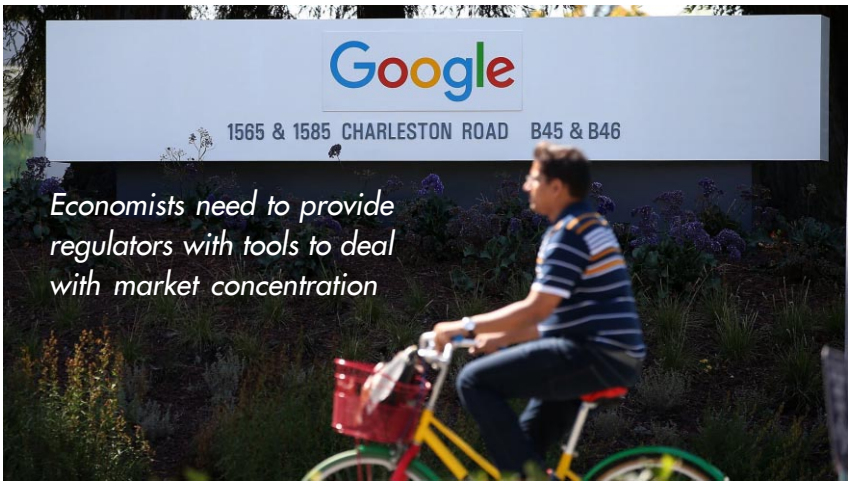
Anxiety about the health of competition in the US economy is growing. The concern may be well founded but taking forceful action will require economists to provide some practical ways of proving and measuring the harm caused by increasing market power in the digital economy.

The forces driving concentration do not affect the US alone. In all digital markets, the cost structure of high upfront costs and low additional or marginal costs means there are large economies of scale. The broad impact of digital technology has been to increase the scope of the markets many businesses can hope to reach.

In pre-digital days, the question an economist would ask is whether the efficiencies gained by big or merging companies would be passed on to consumers in the form of lower prices. Another key question was whether it would still be possible for new entrants to break into the market.

Digital platforms make these questions harder to answer. The basic economic theory, developed by Jean Tirole and others, establishes that in such markets one 'side' will cross-subsidise the other. So the signal prices send about competition is completely different from in a traditional market. Platforms also generally expand into neighbouring markets, so the standard market definition exercises done by competition authorities are doubly uninformative. Big digital companies argue that the consumer benefit they provide through free services is immense. So where is the harm?

They rely heavily too on competition among themselves, and the threat of digital disruption: just as Facebook quickly toppled MySpace, so it could be toppled in turn. They argue that competition for the market is intense, and some competition experts agree.



Economists need to provide regulators with tools to deal with market concentration

This might be right, but we do not know. Economists are letting down competition regulators in failing to provide the tools for evaluating in specific cases the claim that bigger is better for everyone.

How will investment in physical networks or content get funded if an incumbent using the network and content captures all the profit downstream?

One much-needed tool is how to assess consumer benefits. Google and Facebook provide services consumers greatly value without taking money directly from them; but advertisers place great value on the services too, and their payments will be passed on ultimately to consumers in the price of whatever is being advertised. How high is that price? The network effects of digital platforms do produce real economic welfare gains, but nobody knows how big these are or who captures them.

A second issue is how to take into account the interactions between markets, given that most platforms and tech companies steadily expand into other activities and markets. There has probably been too little focus in antitrust policy for a long time on the purchasing power of big companies.

A third issue, perhaps the most important, is the effect increasing concentration has on incentives to innovate and invest. The economic welfare gains from innovation will usually dwarf the gains from lower prices. Competition economics has always been poor at trying to quantify these relative gains, but the stakes are high now that innovation is seen as one of the main drivers of competition. How can potential challengers develop new technologies to topple an incumbent if they have to compete with an apparently zero price?

For that matter, how will investment in physical networks or content get funded if an incumbent using the network and content captures all the profit downstream?

Reversing the kind of increased concentration seen in the US takes a significant commitment of political capital and bureaucratic energy. These are more likely to be forthcoming if the analysis and evidence is there to back them up. It is up to the economists to provide the ammunition.

* *Professor of Economics, University of Manchester. The article appeared in* The Financial Times, *on August 17, 2017*

New Fintech Law on the Anvil

The Mexican draft Financial Technology Law was published on March 23, 2017. The law will regulate the organisation, operation, function and authorisation of companies that offer alternative means of access to finance and investment – financial technology (fintech) institutions; issuance and management of electronic payment funds; and exchange of virtual assets or cryptocurrencies.

The bill will also amend existing financial services laws. This fintech initiative will formally introduce to the regulatory framework several widely used industry concepts, including cryptocurrencies, e-money, robo-advisers and application programming interfaces.

The Ministry of Finance and Public Credit Comments (SHCP) has sought comments on the draft law from the Mexican banking and financial industries.

(ILO, 01.09.17)

'Big Four' to Fund 'Belt & Road'

China's largest state-owned commercial banks are raising billions to fund investment under 'Belt and Road' drive, bolstering ambitions to revive Silk Road trade routes and internationalise the yuan.

China Construction Bank Corp, the country's second-biggest bank by assets, has been conducting roadshows to raise at least ¥100bn from onshore and offshore investors.

Bank of China, the smallest of the country's 'big four' lenders, aims to raise around ¥20bn.

The fundraising comes less than a week after the government said it would strengthen regulation to reduce risk for domestic firms investing abroad and curb 'irrational' Belt and Road investment. *(Reuters, 22.08.17)*

Really Depressing

Narayana Kocherlakota*

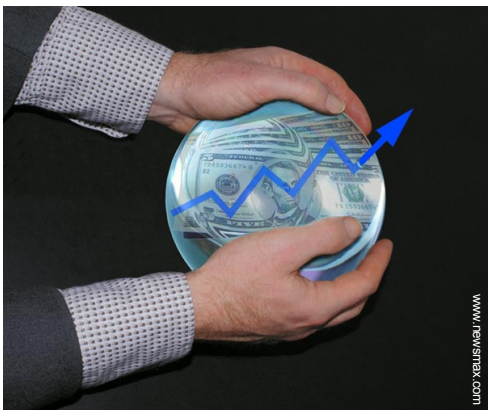
In some ways, the financial crisis was worse than the Great Depression

Ten years on, it is possible to say that the financial crisis of 2007 to 2009 did more economic damage than the Great Depression of the 1930s. Yet the response of our elected officials still leaves much to be desired.

Consider a few data points:

- As of mid-2017, US economic output per person was up just six percent from 2007, in inflation-adjusted terms. In a typical decade, per-capita output increases by about 20 percent.
- As of 2015 (the most recent data available), the inflation-adjusted income of the median US household had declined two percent from 2007. Black households fared even worse, suffering a decline of about five percent.
- Even the rich did not fare as well as many people think. As of 2015, the income threshold for the top one percent was more than 15 percent lower than in 2007, adjusted for inflation.
- At first glance, this does not seem quite as bad as the Great Depression, which economists have traditionally viewed as the worst episode in US history. From 1929 to 1939, real output per capita increased 3 percent, slightly less than the 6 percent we've seen in the past decade.

But 1939 was different in one crucial way: Back then, with the unemployment rate at about 10 percent, the Federal Reserve recognised that the economy was operating well below potential and hence still had a lot of room to grow. Now, by contrast, Fed officials worry that, with unemployment close to four percent, the economy may have already reached or exceeded its potential — meaning they view the damage done by the crisis as being permanent.



What should this experience teach us about economic policy? It suggests that financial crises and the responses to them can have highly persistent adverse effects on economic potential. The risk of such large costs means that policy makers must have better safeguards in place, and be willing to respond vigorously through monetary and fiscal stimulus when crises nonetheless happen.

So what is happening along these lines? The Trump administration's nominee to be vice chair of supervision and regulation at the Federal Reserve wants to make the big banks' stress tests less stringent — and that'll make a financial crisis more, not less, likely. In a speech last summer, Fed chair Janet Yellen suggested that the Fed's planned response to a recession would lead to elevated unemployment for many years.

In short, I see little evidence that policymakers have learned the lessons of the last decade. I hope that situation will change before another crisis occurs.

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* *President, Federal Reserve Bank of Minneapolis from 2009-2015. The article appeared in The Hindu Business Line, on August 03, 2017.*

Open Banking Reforms Gather Pace

Mark Taylor*

The UK Competition and Markets Authority open banking proposals, which enter into force in January, are the CMA's broadest and most ambitious reforms since Britain's competition watchdog was established in 2013.

The CMA initiative includes forcing banks to open their systems for new technology firms to create services from previously shielded customer data.

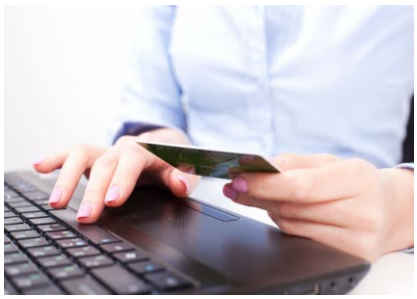
The final parts of the initiative kick in alongside equally pioneering European Union payment laws in January 2018, giving Britain's banks until January to comply with two sets of complex guidelines.

"It is difficult to state just how revolutionary open banking could, and should, be," said Imran Gulamhuseinwala, a London-based partner of Ernst & Young LLP loaned to the CMA to head implementation of the changes. "It is a remarkable project; one with the potential to change retail banking forever. If we get it right, we will for the first time in the world, put the customer in control of their data, their privacy and their finances."

One of the most notable changes is the introduction of application programme interface, or open API, banking standards. The largest retail banks were ordered to share a range of information, such as location of local branches and product terms and conditions.

Other measures include easier account switching, account information and overdraft alerts for consumers and clearer lending information for small and medium-sized enterprises.

"The project is now moving at pace as we stride towards our deadline," Gulamhuseinwala said. "In March 2017, we made open data available – product, branch and ATM data from the CMA9 – followed by the Read/Write API specifications in July which will give customers the ability to share their financial data and take advantage of a dynamic new market for financial services."



The era of 'open banking' is just four months away and promises to forever alter retail lending as the biggest names in the space gear up for the January deadline set by the UK's competition authority

CMA9 is a legislative guide outlining the CMA's decision-making process on prosecuting individuals for cartel-like behaviour. Following studies by the CMA's predecessors, the retail banking market was referred for in-depth investigation and became one of the CMA's first major inquiries since its formation. Probes into the market in the decade prior to the CMA investigation resulted in very little change, and the four big names – Lloyds Bank PLC, HSBC Holdings PLC, Barclays PLC and The Royal Bank of Scotland Group PLC – enjoyed minimal competition and had no pressure to adapt.

As the CMA considered its remedies, a major shake-up of the payment sector that would overhaul banking was nearing adoption in Europe – the revised Payment Services Directive.

The PSD requires banks to share data with third-party payment providers, which brings technology firms operating in the sector within the sphere of regulation for the first time.

It also opens the European banking sector to competition from tech companies that are able to develop apps and act as interfaces between banks and consumers.

But banks became worried that this would effectively relegate them to back-end plumbing while a new app sitting on top of their system hoovers up the lucrative consumer data.

In recent years, banks have pumped tens of millions of dollars in funding into research and development, and many now boast huge internal testing labs where they welcome fintech companies into the fold to help develop new ideas to stay relevant.

A report by professional services firm Deloitte Touch said consumer appetite for such services **will ultimately determine** the level of disruption to the banking industry.

With increasing smartphone ownership, and an appetite for more app-based banking services, traditional banking services are set for radical evolution as data is shared, Deloitte said.

The next steps of the reforms are due to appear next month, when providers adopting them are to enroll in a directory, which will enable them to better reach consumers.

"So open banking is happening – now – and its significance will only become more apparent in the coming months; not least when in October, providers will be able to register for enrollment in the directory," said Gulamhuseinwala.

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* *Senior Reporter at Law360, UK. The article appeared in Law360 on September 12, 2017*

Banking the Unbanked is Crucial for Higher Remittances

Udai S Mehta and Sidharth Narayan*

The hard work of millions of Bangladeshis working in countries such as UAE, Kuwait, Qatar, Oman, etc., yielded more than US$13bn in remittances in 2016 alone. Such inward remittances by them have become a significant foreign currency earning for Bangladesh.

It contributed about 6.7 percent (2016-17) to the country's Gross Domestic Product (GDP), and increased foreign exchange reserves, per capita income and employment opportunities, leading to economic growth and poverty alleviation.

The country operates an exchange-controlled economy through the Foreign Exchange Regulation Act 1947 (FERA), and all inward/outward transactions are regulated by the Central Bank of Bangladesh (Bangladesh Bank). Though, most transactions take place through the Formal Fund Transfer System (FFTS), Informal Fund Transfer Systems (IFTS) such as hundi and hawala are also prevalent in the sector. These are tax avoiding devices and thus violate FERA, amounting to money laundering. If remittances received through IFTS are added to the reported annual figure of remittances, the total may exceed US$20bn.

It is not easy to accurately determine the amount of remittances through IFTS, but pundits say that the use of IFTS has been declining, i.e. 54 percent in 2006 to 30-40 percent in 2013 and 16 percent in 2016 approximately. Remitters acknowledge that formal channels are more secure and reliable for money transfer as there is no possibility of losing money or falling victim to fraudulent practices, yet some still prefer IFTS over FFTS.

To counter IFTS, the Bangladesh Bank has taken certain measures to encourage expatriates to remit funds through formal channels such as: expediting remittances for fast delivery, setting up foreign exchange clearance houses abroad, implementing Anti-Money Laundering (AML) guidelines, etc. However, much more needs to be done to ease the process of remittance inflow in Bangladesh.

Banking the unbanked is crucial to any effort designed to result in shifting from informal to formal mechanisms.

Awareness must be promoted among Bangladeshi migrants about the fiscal incentives for using FFTS through programmes on cost, prices, foreign exchange regulation, AML, and remittance-linked new banking products. The Bangladesh Bank must also address the genuine problems with its foreign exchange regulations, which hinder the smooth delivery of migrant remittance. Also, commercial banks should be asked to take measures for improving the quality of remittance services for Bangladeshi migrant workers.

Since commercial banks may not be able to serve the needs of clients in remote rural areas, they could be linked with the already successful smaller, down-market Microfinance Institutions (MFIs) to deliver local currency remittances to their beneficiaries. Such institutions should also be encouraged to devote their attention to estimating and replacing unauthorised channels of remittances. Furthermore, since remittances are a volume-based business, establishing a banking system which can efficiently process large volumes of transactions of low amounts, at low marginal costs is crucial. International best practices relating to FFTS need to be adopted by the Bangladesh Bank for attracting safe and secured remittances at lower cost.

Although IFTS has proved difficult to regulate, proper enforcement of more stringent laws and regulations on IFTS can deter illegitimate IFTS activity, as remitters will perceive a greater risk in using an informal channel.

Non-resident Bangladeshis needs to be incentivised to use FFTS by offering competitive exchange rates, introducing attractive bank loan schemes for returning migrants who use FFTS, removing Outward Bill Collection charges on remittances, offering attractive investment opportunity for remitters using FFTS, etc.

Banking the unbanked is crucial to any effort designed to result in shifting from informal to formal mechanisms. The government should analyse and address the perceived burdens considered by remitters as well as beneficiaries, while choosing formal channels for remittance.

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* *Deputy Executive Director and Research Associate at CUTS respectively. Abridged from an article appeared in* The Financial Times, *Bangladesh on September 19, 2017*

China's Communist Party Seeks Company Control before Reform

Tom Mitchell*

Investors in state-owned enterprises are going to be seeing a lot more of the party

When the head of a US multinational's China operations recently sat down for talks with the chairman of a large state-owned enterprise (SoE), he was surprised when his old friend presented him with a new business card. The two men had met regularly over the years to review matters at a joint venture established by their companies, but on this occasion the Chinese executive was not just representing his SoE. In addition to his chairman title, he was also now Secretary of the SoE's Communist party committee.

The ruling Chinese Communist party has maintained representative committees inside SoEs for decades, but they were often moribund bodies. That has been changing over recent years, as President Xi Jinping and the head of his anti-corruption campaign, Wang Qishan, seek to extend the ruling party's representation in the state-backed groups.

To most western executives and analysts, the party's higher profile at SoEs undermines the authority of their company boards and is more bad news for state-sector reform, which they feel has been neglected by Xi's administration. In comparison with the Chinese president's bold anti-corruption campaign and military reorganisation, SoE 'reform' has largely been an exercise in party-directed mergers that create bigger state companies.

To Xi and Wang, the party's more prominent profile in SoEs is actually a prerequisite for state-sector reform. In their view, the party had given SoEs too long a leash, leading to mismanagement at best and unchecked corruption at worst. For Xi, who last year described SoEs as 'the major force to boost the comprehensive strength of the country and to protect the common interests of the people', state companies are too important not to play a more active role in supervising and, if necessary, managing.

Whether stricter party oversight will ultimately help or hinder SoEs is no mere academic debate. It could well determine the fate of Xi's larger project to end the Chinese economy's dependence on debt-fuelled investment and establish himself as a 'transformative' economic reformer in the mould of Deng Xiaoping, the architect of China's post-Mao 'reform and opening' strategy. In Communist party-speak, the proliferation of party committees at SoEs is in keeping with a larger strategy of quan fu gai, or 'full coverage'. For better or worse, people who do business with or invest in SoEs are going to be seeing a lot more of the party.

In Hong Kong, where the internationally listed arms of China's largest SoEs have traditionally downplayed their party links, they are now redrafting bylaws to formally establish party committees that previously existed only at the group level. Over the past year more than 30 Hong Kong-listed SoEs have amended their articles of association accordingly.

The State-owned Assets Supervision and Administration Committee (SASAC) says that China's 100 largest SoEs have formally amended their articles of association to emphasise the importance of 'party-building' activities. Further reflecting the party's higher profile within SoEs, the chairmen of 74 SASAC-administered companies now also head their group's party committee.

State-owned China Nuclear Engineering & Construction Corp, which formally designated its chairman head of its party committee late in 2016, said in June that 'party construction' work is as important as the safety of its nuclear reactors.

Initially, some SoEs did not get the memo on the newfound importance of party committees. In January, enough shareholders at Tianjin Realty Development, a state-owned real estate developer in Tianjin, the port city bordering Beijing, voted against a resolution mandating the establishment of a party committee.

It took just five months for the party to recover from that setback and ensure 'full coverage' at Tianjin Realty. In May the same resolution, which promised that the party committee would discuss all 'major company issues' before they went to the board, passed with support from investors holding 99.9 per cent of shares voted.

* *An American Computer Scientist and E. Fredkin University Professor at the Carnegie Mellon University. Abridged from an article appeared in the* Financial Times, *on August 15, 2017*

South Africa's Technical Recession Likely to Deepen Poverty

Hamlet Hlomendlini*

According to the recent Statistics South Africa (Stats SA) poverty trends report, one in two South Africans lives under the poverty line, implying that more than half of South Africa's population are poor and are living in poverty.

The report further indicated that the most vulnerable to poverty in the country's communities are black Africans, people living in rural areas, those residing in Eastern Cape and Limpopo, and persons with little or no education.

What the report does not directly say however is that, intrinsically linked to the rising poverty in South Africa is the rising of both inequality and unemployment especially amongst black Africans. Also, important to note is that poverty, inequality and unemployment are directly linked to the looting and corruption that is currently taking in the country.

Billions of rands that could have been used for meaningful projects to create jobs and ultimately grow the economy are being spent on unnecessary expenditure at a government level and wasted on corrupt activities at the country's SoEs.

Looting and corruption is denying the majority South Africans access to basic social services and are perpetuating poverty, inequality and unemployment. South Africa must show the political will to address the things that are required to lift people out of poverty such as employment creation, skills development and encouraging entrepreneurship, which has a huge potential to eradicate poverty.

There is a framework in place, the National Development Plan (NDP), which is described as the detailed blueprint for how the country can eliminate poverty by 2030. The implementation of the NDP, coupled with good political and economic will and leadership, might salvage South Africa from the blink of poverty crisis

In that regard, there is a framework in place, the National Development Plan (NDP), which is described as the detailed blueprint for how the country can eliminate poverty by 2030. The NDP makes a compelling claim in this regard about the importance of the agricultural sector. Notwithstanding the importance of other sectors of the economy, there is evidence that suggests agriculture dominates non-agricultural activities by its potential to reduce poverty.

According to an Organisation for Cooperation and Development (OECD) study carried out in a few developing countries that made the fastest progress in reducing poverty (including Indonesia and Vietnam) more than half of the reduction in poverty achieved was attributed to growth in agricultural incomes.

Given many challenges facing South Africa at the moment, including the slow economic growth, which has pushed the economy into a technical recession trajectory, there is a high probability that poverty will not be eliminated, instead it could worsen by 2030. The implementation of the NDP, coupled with good political and economic will and leadership, might salvage South Africa from the blink of poverty crisis.

Perhaps the upcoming ANC elective congress in December, will provide some light on how South Africa will address the poverty, inequality and unemployment issues, depending on the leaders that will be elected, which will potentially lead the country come 2019 general elections.

* *Agri SA's Chief Economist. The article appeared in the* Business Report on August 25, 2017

Publication

Policy Watch

The July-September 2017 issue carries a cover story entitled, 'Will a New Vice Chairman Mean a New *NITI Aayog*' stating that *NITI* Aayog will continue to be watched closely by policy observers as well as the Prime Minister of India Narendra Modi. Wth a change of guard there is an opportunity to revisit the performance of *NITI Aayog*. The newsletter encompasses an exclusive interview of Manoj Sinha, Union Minister of State for Communications. The current issue also encapsulates a Feature, entitled, 'The Return of India's Super Rich' indicating that income disparity in India represents inequality of flows like wages and returns to capital and is closely related to employment, mobility and education.

This newsletter can be viewed at: www.cuts-ccier.org/pdf/pw_July-Sept_2017.pdf


PolicyWatch

Will a New Vice Chairman Mean a New *NITI Aayog*?

Joint ACP-UNCTAD Guiding Principles for Investment Policymaking

The Joint African, Caribbean and Pacific Group of States (ACP)-UNCTAD Guiding Principles for Investment Policymaking has been approved by the ACP Committee of Ambassadors in Brussels.

The non-binding Principles were jointly developed by the UNCTAD and the ACP Secretariats after consultation with ACP Members States and regional organisations. The Joint Principles draw on UNCTAD's Core Principles set out in UNCTAD's Investment Policy Framework for Sustainable Development and build on key ACP policy documents, notably the Georgetown Agreement establishing the African, Caribbean and Pacific Group of States, the Declaration of the 8th Summit of ACP Heads of State and Government of the ACP Group of States, the Strategic Framework for ACP Private Sector Development. The Joint ACP-UNCTAD Principles reflect 79 ACP countries' priorities for national and international investment policymaking, and support of existing ACP initiatives.

The non-binding Principles provide guidance for investment policymaking with a view to:

- promoting inclusive economic growth and sustainable development;
- promoting coherence in national and international investment policymaking;
- fostering an open, transparent and conducive global policy environment for investment; and
- aligning investment promotion and facilitation policies with sustainable development goals.

The Joint ACP-UNCTAD Principles come at a time when countries are re-orienting their national and international investment policies in line with today's sustainable development. Recent developments in national and international investment policies will be discussed during the September 12, 2017 session of UNCTAD's Trade and Development Board, Palais des Nations, Geneva as well as during UNCTAD's Annual International Investment Agreements Conference at Palais des Nations, Geneva from October 09-11, 2017.

http://investmentpolicyhub.unctad.org/News/Calendar/Home/550

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
- Readability (colour, illustrations & layout)

Sources

BBC: British Broadcasting Corporation; BL: The Hindu Business Line; BS: Business Standard; CPI: Competition Policy International; DNA: Daily News & Analysis; ET: Economic Times; FT: The Financial Times; ILO: International Law Office; NRF: Norton Rose Fulbright; PTI: Press Trust of India; ToI: Times of India

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