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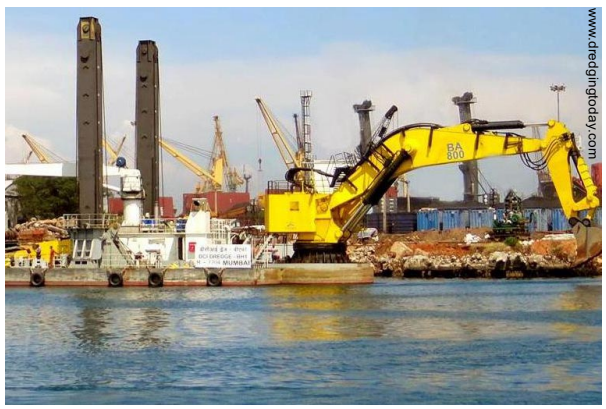
CUTS C-CIER

Inland Water Transport Sector Susceptible to Anticompetitive Practices

Bangladesh is a country with rivers crisscrossing the whole country and water transport is a major means of communication. Nigeria and Cambodia are other countries of the world where inland water transport plays an important role. All these countries are without a competition law but in process

In November 2011, Spain's competition authority, the National Competition Commission, descended harshly on the inland water transport sector, fining six ferry companies a total of around •16mn (US$20mn) for operating price fixing and market allocating cartels on the Algeciras to Ceuta route.



Since several countries including India are now enforcing or countries like Bangladesh, Nigeria, Malaysia and Cambodia are in the process of adopting modern competition laws, this example needs to stir them up to take action.

India's inland water transport sector consists of a variety of navigable waterways comprising river systems, canals, back waters, creeks, and tidal inlets; used for various purposes. It is used as passenger transport across rivers at numerous locations on all waterways in the country.

Inland water transport is also important for tourism, a growing activity with economic potential in Kerala, Alappuzha and to a smaller extent, Kozhikode where houseboats are popular for the activity. The carriage of vehicles across areas such as West Bengal, Kerala and Goa also rely to some extent on inland water transport. Statistics from the Transport Research Wing, Ministry of Shipping indicate that during the period 2009-10, nearly 370.85 million tonnes of cargo was moved through inland water transport. The active players in the sector include both state-owned and private companies and associations.

Although water transport in India has a very marginal contribution to the overall transport movement (about 0.15 percent in 2004), players in the sector enjoy brisk business as the industry has remained lucrative over the years. Water-based transport is characterised by low operating costs of fuel with the waterway

being naturally available without much maintenance and upgrading costs. In addition, some waterfront locations can only be accessed through water transport, giving business advantages to the players.

Bangladesh is a country with rivers criss-crossing the whole country and water transport is a major means of communication. Nigeria, Cambodia are other countries where inland water transport plays an important role. All these countries are without a competition law but in process.

In Cambodia, a CUTS study in 2002 discovered that the passenger ferry service from Phnom Penh, the capital, to Siem Reap, the most popular tourist town was run by a cartel. Cut-throat competition among the eight private companies involved drove down prices drastically, resulting in the companies deciding to sit down and organise a price fixing cartel which drove prices up significantly (from US$5-US$10).

In addition, a market allocating arrangement was also worked out, where only one boat provided boat transportation service in a day, although bigger companies were allowed more quotas. Unfortunately there was no competition law to deal with the issue, a problem existing up to now.

Eid is a major festival in all Muslim societies. On the eve of Eid in Bangladesh, staff of the government-owned Bangladesh Inland Water Transport Corporation indulged in price gouging by charging Taka 1800 US$ 21.9600) instead of Taka 1200 (US$14.6400) per cattle-laden truck to ferry them across to Dhaka from another location. Naturally this was a result of corruption rather than official action, and was therefore denied by the authorities. But action was missing.

In Malaysia, a cartel activity resulted between Lumut and the island of Pangkor, after two firms, the Pangkor-Lumut Express Feri Sdn Bhd and Pan Silver Ferry Sdn Bhd got entangled in a price war in 2003. The price war reduced fares drastically [from RM10 (US$3.1350) in December 2002 to as low as RM1 (US$0.3135) in July 2003]. This resulted in collusion between the two players, which eventually saw prices increasing back to RM10 (US$3.1350) in 2003. Malaysia too does not have a competition law, though it has just adopted one, whose implementation will begin in February 2012.

In June 2011, the Federal Competition Commission of Mexico imposed a 10 million pesos (US$0.7380) fine on Cruceros Marítimos del Caribe, and a further 15 million pesos (US$1.1070) to another company Ruta Náutica del Caribe for cartel behaviour in the ferry services sector. Even in more advanced countries in competition law enforcement, collusion is also rampant. In Europe, the European Commission took measures against five ferry operators after an agreement to impose common currency surcharges on freight, following the devaluation of the pound sterling in September 1992. P&O European Ferries, Stena Sealink, SNAT, Brittany Ferries and North Sea Ferries, were fined a combined value of ECU 685,000 with P&O European Ferries being fined the biggest fine of ECU 400,000.

While allegations are yet to be levelled against players in India, one cannot discount possibilities of anticompetitive practices. The sector can also easily escape scrutiny due to the fact that not much notice is taken of it, even though operators are enjoying brisk business. There are not many players in this industry in India, which makes it easy for them to coordinate behaviour. In addition, some companies are very dominant, which gives them power to cower competitors into submission through real or imagined price wars.

Based on the statistics from the Transport Research Wing in the passenger ferry services, Hooghly Nadi Jalapath Paribahan Samabaya Samity, Kolkata has a dominant position as it carried 20.3 million passengers using 44 vessels during the 2009-10 period, while the second placed, West Bengal Surface Transport Corporation Ltd had a distant 6.8 million passengers from 23 powered vessels.

The same pattern is also apparent in the cargo ferry services, where the leading company Sesa Goa Ltd could afford to carry over 6 million tonnes of cargo when second placed SV Salgaocar carried 1.5 million tonnes. Associations also play a very active role in the trade, making it easy to coordinate behaviour.

Thus, conditions facilitating cartels are fulfilled, showing that India's inland water transport system too is vulnerable to anticompetitive practices. The sector is, however, yet to be scanned through competition lens, despite its importance in economic activity.

Given the incidents of anticompetitive conduct that have been reported in other countries over the years, it is difficult to expect India to be an exception. Cartelisation in the sector would have bad consequences on the economy as well as on the public using the transport services, which would have an impact on poverty.

Although the Competition Commission of India (CCI) has over the years attempted to understand the nature of competition in several potentially vulnerable markets, the nature of competition prevailing in the sector is yet to be explored. This calls for a more detailed focus from CCI.

New Developments in Swiss Competition Law

The Swiss Competition Commission (ComCo) announced that BMW AG in Munich (BMW) will be sanctioned with a fine of US$163 for impeding direct and parallel imports. This is the highest sanction the ComCo ever imposed for vertical restraints of competition.

According to the ComCo, the dealer contracts of BMW contained export bans prohibiting dealers in the EEA from selling new BMW and MINI cars to customers domiciled outside the European Economic Area, including to Swiss customers. Consequently, BMW was held liable to have foreclosed the Swiss market and to have precluded any competitive pressure on retail prices for new cars.

The ComCo commits to this principle and considers the BMW decision as part of its fight to ensure that currency exchange rate advantages are being passed on to consumers. It will continue to take actions against measures which are leading to a foreclosure of the Swiss market. *(Lenz & Staehelin, June 2012)*

Brazil Revamps Antitrust Regime

Brahma and Antarctica, the Brazilian beer groups, agreed to merge in a deal that would eventually help form Anheuser Busch-InBev, the world's largest brewer by sales. The transaction marked the start of Brazil as a globally important market for mergers and acquisitions.

While CADE approved the Brahma-Antarctica deal in the relatively quick time of around one year, the size, volume and complexity of mergers in Brazil have risen to such an extent that its antitrust regime is now being overhauled.

Brazil launched a revamped body that will have more staff and move from the previous, unwieldy "post-merger" approval system to a more conventional "pre-merger" framework.

The new law includes a "clawback" mechanism that allows CADE to review any transactions between companies smaller than the minimum thresholds up to one year after they are closed on antitrust grounds. *(FT, 05.06.12)*

B'desh Competition Bill Passed

The Bangladeshi Parliament passed a bill though it is awaiting President's approval, providing for measures against syndication to ensure healthy competition in trade and commerce. The bill proposed to form a Commission to enforce and implement the Competition Law to resist anticompetitive designs and ensure healthy competition for all, particularly small and medium industries.

Some vested individuals and institutions are trying to derive financial benefit by taking advantage of free market economy and liberal trade arrangements in the country. Such trend hampers the interest of consumers, on one hand, and casts negative impact on overall economic activities on the other.

Therefore, it has become extremely urgent to introduce the Competition Law to ensure a healthy market atmosphere and stabilise the prices of essentials. *(FE B'desh, 18.06.12)*

Expropriation for Antitrust Violation

Venezuela's National Assembly has finally drafted a new competition law, introducing "expropriation" as a punishment for antitrust violations and exempting government entities.

Unlike the current law, however, monopolies and oligopolies are prohibited regardless of whether the companies abuse their dominant position and regardless of how they obtained such position.

The law will introduce a new Antitrust Authority independent of the Ministry of Commerce, which oversees the body currently in charge of competition enforcement. *(GCR, 28.05.12)*

China Issues Landmark Litigation

China's Supreme People's Court released a judicial interpretation of China's Antimonopoly Law (AML) which promises to shape the development of private antitrust litigation in China. The interpretation confirms a plaintiff's right to institute stand-alone actions and introduces mechanisms to regulate China's litigation system and to assist plaintiffs bringing civil damages claims.

Investigations or decisions by enforcement agencies will not be a prerequisite for an individual or company to pursue private action in court. The changes are intended to "improve the competitiveness of enterprises and promote the healthy development of a socialist market economy". *(GCR, 11.05.12)*

New Antitrust Law in Portugal

Portugal's government published the country's new competition law, bringing it in line with the requirements of the country's memorandum of understanding with the European Commission, European Central Bank and International Monetary Fund.

The final bill is a significant progression from the previous act, and aligns Portuguese law with that of the European Union. Under the new law, Portugal's Competition Authority will have greater investigatory powers and the merger control rules will also be amended. The law will also give the authority the power to raid the homes of company employees as well as corporate offices. *(GCR, 10.05.12)*

HK Introduces Competition Law

Hong Kong is introducing a law that for the first time gives the government power to punish companies for acting against fair and free competition.

The Competition Ordinance, passed by lawmakers makes anticompetitive behaviour – such as price fixing and agreements to limit production – illegal. Hong Kong is the last developed economy to introduce such a law.

The bill took over two years of revisions to be voted into law. Apart from objections by some parts of the business community, opposition lawmakers argued that it lacked teeth and should not have excluded public entities. *(FT, 15.06.12)*

Malaysia Issues Three Sets of Guidelines on Competition

– Lim Chong Kin*

Five months after the Competition Act 2010 came into force on January 01, 2012 the Malaysia Competition Commission (MyCC) issued the final version of three guidelines it had previously made available for public consultation in 2011. The Guidelines provide clarity on key procedural and substantive matters under the Act, and outline MyCC's enforcement approach and priorities with regard to the relevant provisions of the Act. Businesses should pay heed to MyCC's positions set out in the Guidelines to ensure that they have a holistic understanding of their competition compliance obligations in Malaysia.

Guidelines on Chapter 1

Chapter 1 of the Act sets out the prohibition against anticompetitive arrangements or understandings, decisions by associations and concerted practices. Both anticompetitive agreements with competitors and anticompetitive agreements between undertakings at different levels of the production or distribution chain are prohibited if they have the "object or effect of significantly preventing, restricting or distorting competition in any market" in Malaysia.

For all other agreements, MyCC will assess the extent to which these agreements have a "significant" anti-competitive effect in a Malaysian market. Unlike in Singapore, where vertical agreements are generally excluded from the scope of its prohibition against anticompetitive agreements, in Malaysia vertical agreements are caught by the Section 4 prohibition. Resale price maintenance (RPM) is singled out as a type of vertical agreement against which MyCC will act strongly.

Guidelines on Market Definition

The Market Definition Guidelines set out the approach MyCC will use to define the relevant market.

MyCC indicates that market definition is relevant for the purpose of identifying all the competitors of the subject of the complaint and determining whether there is a significant anticompetitive effect in that market; determining whether an enterprise is dominant in a market and is therefore capable of abusing this dominant position; and determining the relevant turnover of the infringing party in order to assess the amount of the financial penalty in the event of an infringement decision.

MyCC also indicated that enterprises which can potentially supply the focal products and its substitutes in less than 12 months would normally be included in the definition of the relevant market. MyCC states that market definitions used in other countries may provide a useful starting point, although ultimately local conditions will guide MyCC's determination of the relevant market.

In this regard, cases from Singapore, the UK and the EU will be likely to carry some persuasive force (given the similarities in the laws between Malaysia and these countries).

Guidelines on Complaint Procedures

The third set of Guidelines issued by MyCC sets out the procedures for parties seeking to file a complaint. Among other things, the Complaint Guidelines state MyCC's policies in relation to the treatment of confidentiality, including the possibility that MyCC may need to reveal the source of the complaint and/or the information provided during the course of its investigation. MyCC will retain the discretion to decide whether to launch a formal investigation in response to a complaint, based on a consideration of its strategic priorities.

Conclusion

The release of final Guidelines marks an important milestone for MyCC in its development as a new competition agency. The final Guidelines reflect MyCC's endeavours at putting together a meaningful, balanced set of Guidelines that is useful for businesses while still affording MyCC flexibility in its enforcement approach. Given that it is still early days and there is a lack of case precedence in Malaysia, the final Guidelines provide vital and much needed clarity for businesses as they seek to ensure they remain compliant with competition law in Malaysia.

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* *Leading Antitrust Lawyer in Singapore. Abridged from an article that appeared in the* Mondaq, *on June 06, 2012.*

ABUSE OF DOMINANCE

Eni Offers Commitments in Probe

Energy group Eni has offered commitments to allay the Italian Competition Authority's concerns that the company is abusing its dominant position in the gas transportation market. The company offered to grant its competitors more access to Italy's gas pipelines after the authority alleged that Eni prevented other gas importers from accessing supply.

The authority, which began investigating Eni after receiving a complaint from some of the company's largest customers, opened a market test of the commitments.

Eni offered to auction off transportation quotas for 4 billion cubic meters of gas a year until 2017. The company will either allow its competitors to directly transport gas through the pipeline, or swap gas pools that its rivals bought in central Europe's gas markets with equal amounts of gas that Eni owns in Italy. *(GCR, 13.06.12)*

Ukraine Issues Record Fine

The Antimonopoly Committee of Ukraine (AMC) fined spirit producer Ukrspirt for abuse of dominance – the largest sanction ever imposed on a state-owned company. According to the AMC, in 2010 Ukrspirt increased its overheads by increasing the salaries of its staff from 1.4 to 4 percent of its net income. Ukrspirt subsequently raised its commission fees by 15 percent, which led to a similar increase for consumers.

The AMC began its investigation following complaints from several alcohol producers that purchase ethylated spirit from Ukrspirt. Its fine represents 10 percent of its annual turnover – the maximum penalty available to the authority for abuse of a dominant position. *(GCR, 01.06.12)*

PostNL Cleared of Dominance

The Netherlands Competition Authority (NMa) ruled that mail company PostNL did not abuse its dominant position in the country's postal market, confirming a decision made in December 2009.

The NMa found no evidence that PostNL delivered mail below actual costs, nor that it had favoured its subsidiary Netwerk VSP by allowing it to access PostNL's network for free. The authority also said the market structure since its original decision had changed significantly as Netwerk VSP no longer delivers addressed mail.

(http://postandparcel.info, 22.05.12)

BSkyB's Findings Backtracked

The UK's Competition Commission found that British Sky Broadcasting is no longer dominant in the market for pay-TV movies, reversing its decision of 2011. The CC said Sky's relationship with six major Hollywood studios "no longer provides Sky with a material advantage over its rivals in the pay-TV retail market".

The Commission provisionally ruled that Sky was stifling competition in the pay-TV movie market through its long-running purchase of the exclusive rights to the recent movies of all six major Hollywood film studios.

(FT, 24.05.12)

EC Investigates Rail Dominance

The EC has opened formal proceedings against Deutsche Bahn over concerns that the rail group is abusing its dominant position and harming competition among train operators.

DG Comp is investigating whether discounts offered by Deutsche Bahn's subsidiary DB Energie favour the company over its competitors. DB Energie is the only provider of traction current in Germany. It supplies Deutsche Bahn and other companies that operate trains on the railway network.

The Commission is concerned that DB Energie's pricing strategy increases the operating costs of Deutsche Bahn's rivals for both passenger and freight transportation, preventing them from competing on a level playing field. *(GCR, 13.06.12)*

SISTIC's Verdict Upheld

In a landmark decision, the Competition Appeal Board (CAB) issued its decision in the appeal brought by SISTIC.com Pte Ltd (SISTIC) against the Competition Commission of Singapore's (CCS) decision that SISTIC contravened Section 47 of the Competition Act for abusing its dominant position via a series of exclusive agreements.

The CAB has upheld CCS' finding that SISTIC had abused its dominant position in the market for open ticketing services in Singapore to both event promoters and ticket buyers. The CAB further agreed with CCS' decision to impose a financial penalty on SISTIC but varied the quantum of the said financial penalty.

(www.ccs.gov.sg, 01.06.12)

Minicom Probes Bralirwa

The Rwandan Ministry of Commerce is probing beer brewers and soft drinks bottlers Bralirwa in suspected cases of anticompetitive behaviour. A number of importers of beers from the East African region complained that agents of Bralirwa, which for years during past regimes enjoyed a total monopoly on beer and soft drinks sales in Rwanda, have been engaged in behaviour that includes intimidation of wholesale, or retail outlets dealing in beers like Bell, Tusker and other imported brands.

Such intimidation includes forcibly and repeatedly warning to small beer distributors or retailers stocking non-Bralirwa brands to desist, or they (Bralirwa) would withhold their own brands, as well as other support the firm usually provides. Bralirwa officials denied and said that they scrupulously adhere to the rules and regulations governing commerce in Rwanda.

(TRF, 21.05.12)

CARTELS

ACCC to Probe Fuel Collusion

The Australian Competition Watchdog has begun a formal investigation into whether major fuel retailers are involved in price fixing. The Australian Competition and Consumer Commission (ACCC) has concerns over petrol retailers' current practice of frequently exchanging private and comprehensive price information.

The ACCC believes the arrangement may be lessening competition by allowing petrol retailers to quickly signal price movements and monitor competitors' responses. The ACCC considered it appropriate to inform the public that it is undertaking this investigation given the significant public interest regarding petrol pricing.

In 2007 the ACCC's petrol price inquiry found an imbalance in pricing transparency which affected competition. The watchdog expects the current investigation will be complex and could take some time.

(ABC News, 04.05.12)

India Blasts Explosive Cartels

The Competition Commission of India (CCI) fined three makers of agricultural chemicals almost ₹3.2bn (US$60mn) for colluding to rig public tenders, making this the third cartel it has punished with hefty penalties in 2012.

The CCI fined United Phosphorus ₹2.5bn (US$48mn), Excel Crop Care ₹640mn (US$12mn) and Sandhya Organics Chemicals ₹16mn (US$300,000) for agreeing to coordinate their bids for the provision of aluminium phosphide tablets, a pesticide, to the Food Corporation of India.

Another company, Agrosynth Chemicals, escaped a fine because it did not coordinate its tender bids with its competitors after 2007. The agency is only allowed to prosecute anti-competitive behaviour after 2009, when India's Competition Act came into effect.

(GCR, 25.04.12)

Malaysian Airlines Deal Failed

MASkargo agreed to pay a penalty to the ACCC legal costs in five installments over two years to settle an alleged price fixing litigation.

Under the terms of the settlement, MASkargo admits that it reached an understanding with certain airlines regarding the level of fuel surcharges from 2002-2005, security surcharges from 2001-2005 and customs fees from 2004-2005, to be applied in relation to the supply of services from Indonesia to Australia.

MAS and MASkargo were served with a Statement of Claim by the ACCC. The settlement ends the ACCC's claims against MAS and MASkargo in relation to the alleged price fixing of surcharges relating to certain air freight services.

(DE, 15.06.12)

Chile Backs Refrigerator Fine

Chile's Competition Tribunal (FNE) fined appliance maker Whirlpool US$10mn in the country's first cartel case triggered by a leniency application. The fine is the second-highest fine the tribunal has ever imposed, next to US$38mn levied on two of the country's largest pharmaceutical companies in January for colluding to fix the price of drugs.

The company argued that prices rose "due to market reasons and not hypothetical collusion". It said the fines requested by the FNE were disproportionately high, at more than three-times the company's annual sales in Chile.

(GCR, 18.06.12)

Nestle Deny Price-Fixing

Nestle Malaysia dismissed accusations of anticompetitive acts by the Federation of Malaysian Consumer Associations. Nestle said it does not engage in any price-fixing activities in the trade. The statement was issued following a complaint filed against the company to the MyCC for engaging in unfair trading practices.

It also stated that under its Brand Equity Protection Policy, price dictation was limited to "loss leader selling" activities by some retailers. This meant that products may be sold at a loss to attract customers to buy other products at regular prices. However, Nestle stated that it would be "guided accordingly by any directives that the MyCC may issue in due course".

(NST, 22.05.12)

France Ends Mobile Cartel Saga

The French Supreme Court has rejected Orange's final appeal in the mobile phone cartel case, confirming a fine imposed by the French Competition Authority and putting an end to the long-running proceedings.

The case, which also included allegations of market sharing, led to fines being imposed on the companies. It also prompted a series of appeals by telecoms operators, resulting in three decisions by Paris's Court of Appeal and three more by the Supreme Court. In June 2011, the court amended its decision, confirming Orange's fine for the third time.

(GCR, 31.05.12)

Apple Sued on e-book Prices

Apple has hit back at the US Department of Justice's antitrust division's allegations that it conspired to fix and raise the price of e-books, claiming the accusations are "simply not true" and that its entry into the e-book market in fact helped cultivate competition.

www.postnoon.com

Apple said that the launch of the iBookstore in 2010 fostered innovation and competition, breaking Amazon's monopolistic grip on the publishing industry. Since then customers have benefitted from e-books that are more interactive and engaging.

Apple stands accused of negotiating most favoured nation contracts with five publishers which locked them into an agency pricing model. This allowed publishers rather than retailers to have direct control over e-book prices and allegedly meant the publishers were able to coordinate identical price hikes.

(Mint, 12.04.12)

FINES & PENALTIES

First Raid Obstruction Punished

Greece's Competition Commission (HCC) fined a flour producer and its association in its first sanction for obstructing a dawn raid. The HCC fined the Association of Greek Flour Industries, which groups several flour makers, and Kaplanidis Mills for failing to cooperate with the authority in 2010.

At the time, the HCC carried out inspections at their premises as part of a cartel investigation. The authority says the association misled HCC officials during the inspections. The enforcer also accused Kaplanidis Mills of removing key documents.

The Commission conducted the dawn raids to gather information on whether the two parties colluded to share information on flour prices, together with another flour producers' association and several other companies, including Greece's largest flour producer Loulis Mills.

(GCR, 18.06.12)

Pet Food Manufacturers Accused

The French Competition Authority imposed fines on three leading pet food manufacturers: Nestlé Purina Petcare France SAS, Royal Canin SAS and Hill's Pet Nutrition SNC. The undertakings were found to have carried out, between 2004 and 2008, anticompetitive practices in relation to their independent wholesalers on the French markets for the sale of dry dog and cat food in breach of Article 101 TFEU and its equivalent provision under French law.

The Authority noted that the wholesalers of Nestlé Purina and Royal Canin were not free to set their own prices and that both manufacturers had engaged in concerted practices with their respective wholesalers aimed at fixing resale prices. *(Mondaq, 10.04.12)*

Tougher Fines on Monopolies

Estonian Competition Authority is proposing to introduce tougher sanctions on companies that abuse their monopolistic position on the market, saying that current sanctions are too soft and the statute of limitation of violations is too short.

Märt Ots, Chairman of the Competition Board said that a case in point is Estonian postal company Eesti Post that was found to repeatedly have violated its monopolistic position on the market, but has done little to amend its ways. Eesti Post was fined several times in 2011 by the competition authority.

(www.balticbusinessnews.com, 05.06.12)

Endesa Hit with Penalties

Spain's National Competition Commission (CNC) has fined utility company Endesa for alleged anticompetitive practices in the electricity market, once again bringing overlaps between competition law and sector regulation into the limelight.

The CNC accused Endesa, Spain's largest electricity company, of switching some of its customers' accounts to contracts more favourable for the company without their consent. According to the Commission, this distorted competition for the provision of electricity. Endesa, which is owned by Italian electricity group Enel, rejects the allegations and says it informed customers before switching their accounts.

(www.globalenergyreview.co.uk, 15.06.12)

Carrefour Loses Polish Appeal

Carrefour lost its bid to annul a fine imposed by Poland's Office of Competition and Consumer Protection for failing to comply with merger commitments. Poland's Court of Appeal ruled that Carrefour must pay a fine for failing to divest two stores within the deadline set by the authority. The divestiture was part of the remedies imposed by the office in 2007 to clear its takeover of retail chain Ahold.

The authority ordered Carrefour to sell nine stores within 18 months to avoid excessive concentration. Carrefour objected, saying the reason for the delay was beyond its control and it could not be held liable for the violation, but the authority rejected the argument. The company appealed against the decision, but the court has now confirmed the authority's ruling.

(GCR, 22.05.12)

Sued for Competition Law Violation

Unlike the EC, the Netherlands Competition Authority is authorised to impose fines on individuals for competition law violations. The authority would take account of companies picking up the tab for their employees' individual fines when deciding on a potential downward adjustment of the company's fine.

It warned that a company paying fines levied on individual employees could even result in an increase in the company's fine. The Association of General Practitioners recently found out that the authority means business: its basic fine was increased by five percent because it had promised to pay the fines imposed on two of its officials.

(ILO, 03.05.12)

Israel Gets More Fining Powers

Israel's government has updated its competition law by giving the Antitrust Authority the ability to impose administrative fines for antitrust violations, significantly boosting the agency's enforcement potential.

The general director of the authority will be allowed to impose fines of up to 8 percent of a company's turnover or a maximum of US$6.3mn and of up to US$260,000 on individuals.

The agency can impose penalties for violations such as taking part in anticompetitive agreements, abusing a dominant position, failing to notify a merger, breaching commitment decisions and failing to submit information required by the authority.

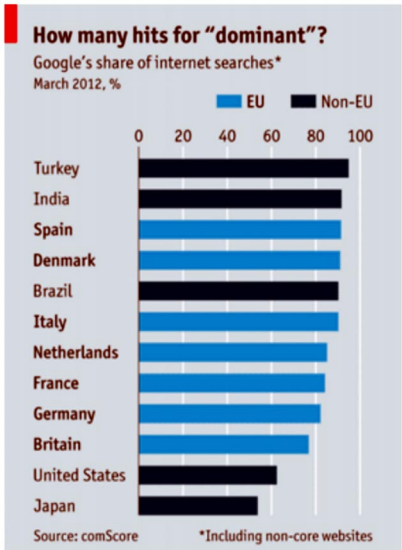
Lower fines can be imposed on smaller companies and for lesser violations such as the refusal to provide information. Fining decisions can be appealed to the Antitrust Tribunal, but the payment of penalties will not be suspended.

(GCR, 17.05.12)

Over to You, and Hurry

The Economist

The European Commission puts the ball into Google's court



Joaquín Almunia has been in no rush. It is more than two years since Google's competitors started complaining to him about the giant online-search company. Eighteen months ago Almunia, the European Union's Competition Commissioner, began a formal investigation. Several times a decision has seemed imminent. On May 21, 2012, Almunia said he wanted to get a move on. "I believe", he said, "that these fast-moving markets would particularly benefit from a quick resolution."

Almunia did not present a formal case (a "statement of objections" in Eurospeak), but offered Google a chance to settle. He has four main areas of concern, and wants the company to propose remedies to each "in a matter of weeks". If he is not satisfied, the formalities will resume. Then he will impose his own answers and maybe a fine, too.

Google is Europe's biggest search engine, scooping about 85 percent of queries. In America, its home country, it scores a paltry two-thirds (see chart). Almunia suspects that Google abuses its dominant position.

His first concern is that Google favours its own specialised searches – for restaurants or flights, or comparing the prices of consumer goods – ahead of others. Second, he worries about its use of content such as restaurant or hotel reviews from competing specialists. Google "may", he says, be copying without permission. Google thinks this has been resolved; its competitors (and the commission) are not so sure.

Third, Almunia is vexed by exclusive agreements between Google and other website-owners, such as magazine publishers or broadcasters. When users type entries into the sites' search boxes, Google serves up the advertisements that appear alongside the results; rival suppliers do not get a look in. Fourth, the commissioner is concerned that advertisers cannot easily transfer campaigns from Google's AdWords platform to rival systems. He thinks the terms of Google's contracts with software developers may be to blame.

Almunia's job is to protect consumers, not Google's rivals. To complicate matters, people do not pay for search; their clicks trigger payments by advertisers to Google and its rivals. Google's critics say that the unwitting clicker is losing out. If Google pushes its rivals down its displays or snaffles their reviews, so that users stay with its own services, consumers may not get the best deals or information.

Google replies that its software simply provides the most useful searches. If its own services come top, so be it. Even so, it has been saying for a while that it is willing to talk: a long fight after two years of skirmishing suits neither it nor the commission. Now, without paying too high a regulatory price, it has to placate Almunia.

Not only him. America's Federal Trade Commission is also looking at claims that Google unfairly favours its own services. The FTC means business: last month it appointed Beth Wilkinson, a lawyer who prosecuted Timothy McVeigh, the Oklahoma City bomber, to its Google team.

Regulators are not always beastly to Google. On May 19, 2012, the firm said that China had followed America and the EU and approved its takeover of Motorola Mobility, a maker of mobile phones whose main attraction is its 17,000 patents. The deal, worth US$12.5bn, was completed on May 22, 2012. Still, on both sides of the Atlantic, Google is in for a busy summer.

– *The news item appeared in* The Economist *on May 26, 2012.*

China Targets SouthGobi Move

China's largest aluminium producer intends to acquire SouthGobi Resources, a Mongolia-focused coal company listed in Toronto, for up to US$901m – the biggest investment yet by a Chinese mining company in Mongolia as China seeks to tap the vast resources of its neighbour.

Chalco, a Hong Kong-listed subsidiary of the Chinese state-owned metals and mining group Chinalco, intends to offer US$8.26 per share to acquire a stake of up to 60 percent in SouthGobi, which trades in Hong Kong and Toronto. The deal could pave the way for more Chinese investment in the Gobi desert, which sits in southern Mongolia right on the common border. *(FT, 03.04.12)*

AstraZeneca Seals Ardea Deal

AstraZeneca is set to acquire US biotechnology company Ardea Biosciences in a US$1.3bn deal, as the Anglo-Swedish pharmaceutical group attempts to secure future sales before patents for key medicines expire.

AstraZeneca will acquire lossmaking Ardea – which has a drug under test for gout – for US$32 a share, valuing the California-headquartered company at US$1.26bn, including net cash.

Ardea has specialised in developing Lesinurad, a compound which acts as a selective inhibitor to help regulate high levels of uric acid in the bloodstream.

AstraZeneca plans to file for approval in the US and EU to market the compound as a new medicine in the first half of 2014, and also wants to "develop and commercialise" Lesinurad in China and Japan. *(WSJ, 24.04.12)*

SAP Picks Up Ariba

German software company SAP announced its intention to buy US cloud computing company Ariba for approximately US$4.3bn. The transaction will be subject to regulatory approval in the US and several other jurisdictions. A filing will not be made before the European Commission because the deal does not meet EU merger thresholds.

SAP is Europe's largest software company and the world's largest maker of enterprise software, used by businesses to manage internal operations and relations with customers. California-based Ariba is the second-largest cloud vendor by revenue, and coordinates commerce transactions and other business interactions between companies globally. *(FT, 24.05.12)*

Sony/EMI Wins EU Approval

The European Commission approved Sony's purchase of EMI's music publishing business, with conditions that the company divests the publishing rights to four catalogues and the works of 12 contemporary artists. The deal creates the largest business of its kind and reduces the number of major music publishing companies from four to three.

Competition Commissioner Joaquín Almunia said: "Sony and Mubadala have offered to divest valuable and attractive catalogues containing bestselling titles as well as works of successful and promising authors…competitive dynamics in the online music publishing business will be maintained so as to ensure consumer choice and cultural diversity." *(GCR, 19.04.12)*

Banks Eye Four-way Merger

Four Spanish savings banks are working on a merger supervised by the Ministry of Economy that could create the country's fifth-largest lender with assets of US$338bn. Banco Mare Nostrum, Liberbank, Unicaja and Ibercaja have been encouraged by the Spanish government to devise a tie-up between some or all of the lenders to create a more solvent group.

The government has stressed that any merger will be based on solvency, rather than size.

Meanwhile, Spain's five largest banks will set aside US$18bn in new provisions following the country's fourth reform programme for its lenders since the start of the financial crisis. No bank has yet said it will take financial aid from the state as a result of the new provisions. *(FT, 15.05.12)*

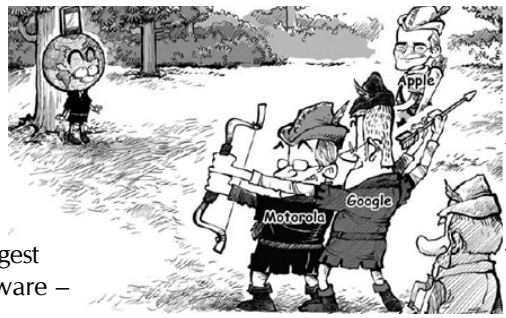
Simple takes Slim into California

América Móvil, Latin America's largest telecoms operator by subscribers, plans to broaden its presence in the US market by purchasing a California-based mobile operator, marking its second acquisition.

The purchase of Simple Mobile, which is owned by Deutsche Telekom's American subsidiary T-Mobile USA, should deepen América Móvil's already solid growth in the US.

América Móvil now has 246m mobile subscribers and operates in 18 countries throughout the Americas. The Simple Mobile deal would hand Slim more than 1m additional customers in the world's largest economy, boosting Tracfone's existing 20m subscribers. *(FT, 11.05.12)*

Google/Motorola Gets Green Light



http://usa.chinadaily.com.cn

Google has cleared the final hurdle leading to its acquisition of Motorola Mobility, after China's Ministry of Commerce (Mofcom) passed the deal with conditions. Mofcom approved the US$12.5bn deal providing that Google does not impose restrictions on the use of its Android operating system for at least five years. The clearance follows approval in the US, Europe, Korea and Israel.

Google's takeover of US-based telecoms company Motorola is the largest in its history and its first acquisition of a company that makes hardware – including mobile phones and tablet computers.

The deal gives Google access to more than 17,000 of Motorola's patents – including essential mobile patents Motorola has licenced to rivals through standard-setting organisations. *(GCR, 21.05.12)*

Bharti Airtel Acquires Qualcomm

Bharti Airtel acquired 49 percent stake in Qualcomm's broadband wireless access (BWA) business in India. Under the agreement, Bharti Airtel made an initial investment of about US$165mn to acquire 49 percent interest in Qualcomm Asia Pacific's India entities that hold BWA licenses in Delhi, Mumbai, Haryana and Kerala.

The present deal has been made partly by way of acquisition of 26 percent equity interest held by Global Holding Corporation and Tulip Telecom and the balance by way of subscription of fresh equity in those entities

This partnership will combine the strength of Bharti's national telecom footprint and Qualcomm's technological leadership in the Long-Term Evaluation Time-Division Duplex (LTE TDD) space. *(BS, 24.04.12)*

Vodafone Agrees C&W Takeover

Vodafone agreed a US$1.6bn takeover offer for Cable & Wireless Worldwide, although it could face opposition after C&WW's largest shareholder refused to back the deal. The acquisition would make Vodafone the second-largest network operator in the UK behind BT, from fourth previously, and would double the size of its corporate telecoms business.

It would also give Vodafone ownership of one of the UK's largest fixed-line networks that can carry its calls and data to broadcast masts for transmission to mobile phones, as well as 260,000 miles of undersea cables that has been rumoured to be a potential sale for Vodafone in future. Vodafone played down any potential use of C&WW's historic tax losses and capital allowances. *(FT, 28.04.12)*

Facebook to Buy Instagram

Facebook Inc., the world's biggest social networking service, agreed to buy the Instagram mobile photo-sharing application for about US$1bn in cash and stock, its biggest acquisition yet. The deal marks the first time Facebook has acquired a product and company with so many users.

Facebook is bolstering its features as it prepares for an initial public offering (IPO). The company plans to raise US$5bn in the IPO, making it the biggest Internet offering on record. The IPO would value Facebook at as much as US$100bn, according to people familiar with the matter.

Instagram, introduced in October 2010 by Kevin Systrom and Mike Krieger, has more than 30 million registered users. Instagram has added an application for Android phones, building on its following among users ofApple Inc.'s iPhone. *(Mint, 10.04.12)*

DaVita Purchase Physician Group

DaVita, a US company that runs dialysis clinics, is to acquire HealthCare Partners, which operates physician groups in several US states, for US$4.42bn, marking the latest merger in the rapidly consolidating healthcare sector.

The cash-and-stock deal will give DaVita a way to broaden its reach beyond its core dialysis business. DaVita has been working to expand its dialysis business, as a growing number of people with diabetes are expected to need treatment for their kidneys.

The acquisition comes as US healthcare companies have been seeking more "integrated" approaches to treating patients and have been seeking greater scale. *(FT, 22.05.12)*

Nestle to Buy Pfizer's Baby Food

Nestle, the world's biggest food group, is closing in on a deal to buy Pfizer's infant nutrition business for up to US$10bn to boost its business in China and extend its lead in the world of formula milk for babies.

The Pfizer unit is a high-growth US$2.1bn turnover business with over 70 percent of sales in emerging markets and a key position in China, and has attracted the attention of the three largest players in the infant milk formula sector.

If the deal is concluded it would be positive for Nestle and also may help Danone's shares as there has been concern that the French group might pay a huge price for the business and massively leverage up its balance sheet. *(ET, 19.04.12)*

Molson Coors Wins StarBev

Molson Coors, the US-Canadian brewer whose brands include Coors Light and Carling, is to buy StarBev, the eastern European beer maker, for US$3.31bn. The acquisition, from private equity group CVC, will help the beermaker expand as it seeks to extend sales beyond its core territories of the US, Canada and the UK. Starbev's core markets are in central and Eastern Europe.

The deal was about buying growth and profitability: Starbev makes profit margins of 30 percent at the level of earnings before interest, tax, depreciation and amortisation, double the level that Molson Coors achieves.

The brewer is planning to use StarBev, whose flagship beer is the Czech brand Staropramen, as a platform for growth and to sell its existing brands such as Carling. *(FT, 04.04.12)*

Rosneft & Exxon in Joint Venture

Rosneft is expected to finalise a groundbreaking joint venture with ExxonMobil that will grant the US oil major access to vast Russian Arctic reserves in exchange for the Russian state oil champion winning entry to resources in North America.

The deal will grant Exxon access to joint development of deposits in Russia's Kara Sea, which could hold 36 billion barrels of oil, while Exxon will offer Rosneft access to projects developing unconventional hydrocarbon resources in North America.

The finalising of the venture was contingent on the Russian government mapping out a new tax regime for developing offshore projects. *(FE, 16.04.12)*

Culture Key to Cos. Advantage

Seven of the companies in the top 10 holdings of Aberdeen's Asia Pacific Equity Fund have been in the portfolio for more than 10 years. Some have been there for more than 15 years, said Hugh Young, who heads up Aberdeen Asset Management's Asia operation and is also group head of equities.

He reckons portfolio turnover is about 15 percent a year, "and the bulk of that will be topping and tailing the holding". This approach to fund management could be labelled old-fashioned: holding stocks for the long term based on conviction has become relatively rare in the modern benchmark-driven fund industry, where annual portfolio turnover rates of 100 percent or more are common.

Corporate governance issues are one of the guiding principles for share selection. One of Aberdeen's basic rules is to avoid companies with discriminatory shareholder structures. It also looks beyond whether companies have ticked certain corporate governance boxes.

(www.proactiveinvestors.co.uk, 15.06.12)

Gupta Trial to Feature Corp. Stars

Lloyd Blankfein, Warren Buffett and other well-known chieftains of corporate America might be called to testify at the insider trading trial of former Goldman Sachs Group Inc and Procter & Gamble Co director Rajat Gupta.

Gupta was charged with leaking confidential information to his onetime friend, Galleon Group hedge fund founder Raj Rajaratnam, while serving on the Goldman and P&G boards in 2007 and 2008.

Gupta denied the charges and pleaded not guilty to five counts of securities fraud and one count of conspiracy. If convicted, he could face up to 25 years in prison.

(Reuters, 18.05.12)

Boosting State Firm Disclosure

Vietnam's state-owned companies, accounting for a third of the economy, are set to begin publishing audited earnings as the government boosts oversight and reassures investors after losses and corruption scandals.

The companies will all have to publicly post results online at least once a year under rules expected to be signed by Prime Minister Nguyen Tan Dung. The regulations will also detail ministries' responsibility over companies as well as potential penalties.

(www.businessweek.com, 31.05.12)

Cos. to Comply with Anti-corruption

Directors must ensure their company complies with anti-corruption legislation, and that its corporate culture is one of willing compliance and ethical decision-making rather than box ticking.

Directors, especially those who sit on the boards of international companies, are being charged with fostering an ethical corporate culture and ensuring that proper compliance systems and internal controls are in place. With the focus on corporate governance and the increasing stringency of anti-corruption laws, regulatory compliance is high on board agendas.

(www.trust.org, 28.05.12)

Walmart Hit by a Bribery Scandal

Walmart has been hit by a bribery scandal involving its Mexican business. Executives paid bribes of around US$24mn to gain permits for new stores and, most damagingly, executives at the group's headquarters allegedly covered up evidence of the activity.

Mexico is one of Walmart's best performing big emerging market. It has expanded rapidly in the country and now has around 2,000 stores, making it Mexico's largest private sector employer.

The company sees its international markets as its most important avenue for future growth, so a spotlight on how it is achieving that growth may be particularly damaging, and has seen its share price dip by five percent. Walmart launched an investigation into whether some of its employees had violated the Foreign Corrupt Practices Act.

(BR, 24.04.12)

Code on Corporate Governance

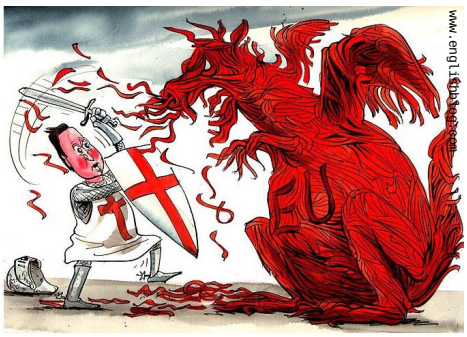
With the notable exception of the US, countries around the world have developed corporate governance codes. The typical approach is to require companies listed on the major exchanges to either comply with the provisions of the code or explain why they do not. Some, as in Malaysia, require companies to explain how they have complied.

The Securities Commission Malaysia has released an update of its code, first issued in 2000 and updated in 2007. It "sets out the broad principles and specific recommendations on structures and processes which companies should adopt in making good corporate governance an integral part of their business dealings and culture". The code "advocates the adoption of standards that go beyond the minimum prescribed by regulation".

(http://sustainablebusinessforum.com, 17.05.12)

EU to Cut Red Tape Meet Impasse

Brussels reforms to cut red tape and relax reporting requirements for business are being blocked and potentially seriously delayed by a political row over anti-graft rules for natural resource companies.



The European Parliament is refusing to enter talks to finalise one of the EU's most obvious growth-friendly initiatives because of objections to member states backing softer disclosure rules for oil and mining groups.

This impasse is endangering the goal of completing the reforms this summer, which make quarterly reporting voluntary for most listed companies in the EU and place stricter limits on information demanded from small and medium sized enterprises.

(FT, 03.06.12)

Industry Changes Spur SRI Development

– Penny Shepherd*

Amid the turmoil of wider industry restructuring, an exciting new era for sustainable and responsible investment (SRI) is emerging.

Market conditions, shifting asset allocation choices, cost pressures and forthcoming regulatory changes are all driving investment management houses to restructure. This is affecting industry strategies in ways that go well beyond SRI. Meanwhile, well-placed practitioners report a quiet revolution in the proportion of asset managers engaging with responsible investment approaches.

For example, Mercer recently published details of its environmental, social and governance (ESG) ratings for some 5,000 investment strategies globally. Although only nine per cent of strategies attracted the highest ratings, less than half of public equity strategies now featured in the lowest quartile.

As these two trends interact, a polarisation may be developing between major investment houses offering integration and engagement and medium sized and boutique institutions providing more specialist strategies.

Look, for example, at recent changes at Aviva Investors. The organisation has decided to make a strategic shift away from active equity management and retail distribution. It intends to cut 12 per cent of its global workforce with the majority of the reductions in London. What did it do about SRI?

First, it promoted its head of SRI engagement to chief responsible investment officer and reaffirmed its commitment to responsible investment. Of course, asset owners and their advisers will look carefully at how this change is implemented.

www.innovationmanagement.se

There are tremendous opportunities for innovation in the investment industry

Meanwhile, there was a clear disconnect between the new strategy and the Aviva Investors Sustainable Future funds. They are mainly London-based actively managed equity products with a retail-focused client base. As a result, a new institutional home is being sought.

Consider also developments at Henderson Global Investors, which recently restructured its approach to managing SRI funds. It faced clear rationalisation pressures given the breadth of its product portfolio after integrating New Star and Gartmore. As neither specialised in SRI, this business decision was not surprising.

Reflecting what may become a wider trend, the specialist team moved to Wheb Asset Management, part of a sustainable investment group also covering private equity and infrastructure. But dedicated Henderson staffing to support the UK Stewardship Code and the Principles for Responsible Investment remained unchanged.

In recent years, investment houses have developed new funds, often under the banner of cleantech, environmental, thematic or impact investing. About 130 such funds are now available to UK retail investors according to the Worldwise Investor website. The European Commission's interest in improved consumer information on sustainability strategies and social impact could act as a further stimulus.

But are there threats on the horizon? A few issues stand out.

Firstly, client demand for high quality asset stewardship remains a key concern. Today, the UN-backed Principles for Responsible Investment have often become a short-listing requirement but anecdotal evidence suggests that demand for effective implementation remains patchy. So it is excellent news that the role of asset owners will feature in the Financial Reporting Council's forthcoming consultation on fine-tuning the UK Stewardship Code.

Secondly, the case for improved UK retail distribution support is clear. A greater proportion of sustainable investment funds from medium sized investment houses in the future may result in less consumer access through banks and building societies.

At the same time, implementation of the Retail Distribution Review may reduce independent advice on such funds. So there are tremendous opportunities for both innovation within the investment industry and intervention by the broader sustainability and corporate responsibility community.

Finally, responsible restructuring offers an important and, in some ways, new challenge for thoughtful investment managers seeking to reshape their business while demonstrating high standards in treating customers fairly.

* *Chief Executive, UK Sustainable Investment and Finance Association. The article appeared in the* Financial Times, *on March 26, 2012.*

Philippines Assured of Investment

The Philippines obtained US$2.5bn worth of investment during President Benigno Aquino III's visits to Britain and the US. From UK, he said, the assured investments to be put in the Philippines could at least be US$1.5bn and this could even increase to US$2.5bn. The expected investments from the US could reach to at least US$1bn.

Aside from the investments, Aquino said his trips to London and Washington also resulted in Manila's deeper bilateral relations with the two countries. He said that the Philippines will also receive US$30mn under the Partnership for Growth Programme that will support poverty alleviation projects. *(www.english.news.cn, 10.06.12)*

Net Foreign Investment Down

Net foreign investment in Pakistan fell by 61 percent to US$721mn in the first 11 months of the current fiscal year owing to energy crisis, unclear economic policies and worst law and order situation in the country.

According to the State Bank of Pakistan (SBP), net foreign investment, which comprises FDI and Foreign Portfolio Investment (FPI), continues to decline because of domestic as well as international issues.

The SBP revealed that net foreign investment in Pakistan posted a decline of 60.6 percent or US$1.11bn to US$721.4mn during July-May of fiscal year 2011-12 compared with an investment of US$1.832bn in corresponding period of last fiscal year 2010-11. *(www.aaj.tv, 16.06.12)*

India to Woo Foreign Investors

In a bid to attract more dollars into Indian financial markets, the Finance Ministry has allowed Qualified Foreign Investors (QFIs) to keep money here as long as they wish before investing in shares.

The Ministry has also decided to create a separate investment limit of US$1bn for such category of investors to put money in corporate bonds and mutual fund debt schemes. This will be apart from the US$20bn investment limit for Foreign Institutional Investors (FIIs).

Along with QFIs and FIIs, the government has also permitted individual investors and investor associations from the Gulf countries to invest as QFIs into the Indian equity market. *(BL, 29.05.12)*

Indonesia Boosts Investment

Indonesia is scouting for investments in India as part of its efforts to promote a new investment policy to boost the economy in the Islamic nation. Setting a new target of US$45bn for bilateral trade with India, Indonesia is exploring investment avenues in small states like Uttarakhand with an eye on sectors like education, information technology, infrastructure, SMEs and consumer goods.

India is investing in Indonesia in sectors like mining, automotives and machinery, clothing, agriculture and chemicals. India is the largest buyer of crude palm oil from Jakarta. India exports refined oil products, wheat, rice, sugar and steel to Indonesia. *(BS, 05.04.12)*

Myanmar Finalises Investment Law

Myanmar has finalised a new foreign investment law as it seeks to exploit what the International Monetary Fund (IMF) has described as an "historic opportunity" for it to become the next Asian boom economy.

Recent democratic reforms have led the international community to ease sanctions on Myanmar, long dominated by a military dictatorship, and given rise to hopes that it could follow its neighbours in an economic boom.

The IMF issued a report, based on the fund's annual consultations with Myanmar after the government gave permission for publication for the first time. Meral Karasulu, IMF mission chief for Myanmar, said the approval pointed to the government's "willingness to re-engage with the international community". *(FT, 09.05.12)*

Amendments to Investment Act

The Canadian Minister of Industry has proposed amendments to the Investment Canada Act to bolster enforcement and increase the transparency of aspects of the review process. The amendments would authorise the Minister to accept a security bond in connection with undertakings provided by foreign investors.

The security would be provided as a surety against penalties that could be ordered by a court for any future non-compliance with any undertakings. This change provides incentive to investors to negotiate even more precise undertaking commitments to increase compliance certainty and minimise the likelihood of penalties being ordered and the security being realised.

(Torys LLP, 04.05.12)

Foreign Investment in UK Slumps

Britain is on the brink of losing out to Germany as Europe's No 1 destination for foreign direct investment (FDI) after the financial crisis took its toll on projects in the City of London. The annual snapshot by overseas investors from Ernst & Young found that Britain's heavy reliance on investment by Wall Street firms has led to a drying up of spending.

Britain saw a seven percent drop in inward investment in 2011, with the financial services sector seeing a 15 percent drop. Germany, by contrast, saw inward investment rise by 15 percent and was twice as successful as the UK in attracting investors from the BRIC countries – Brazil, Russia, India and China.

The report demonstrated how dependent the UK was on a small number of countries – especially the US – and sectors, such as financial services, for the majority of its projects. *(TG, 21.06.12)*

China Opens Door Wider to Foreign Investors

– Robert Cookson*

Rise in the upper threshold on foreign investment seen as a positive move

Global financial institutions will be allowed to play a more active role in China's equity markets if the new reformist head of the country's securities regulator gets his way.

Guo Shuqing, who became chairman of the China Securities Regulatory Commission (CSRC) signalled his intent by more than doubling the amount of money that foreign institutions can invest in China's capital markets.

The CSRC announced that international fund managers would be allowed to invest a combined total of US$80bn in China's capital markets, up from the previous limit of US$30bn, in an expansion of the so-called Qualified Foreign Institutional Investor (QFII) scheme.

While the amounts involved are small – foreign investors own just one percent of the free float in China's equity market – the quota increase shows that China is intent on liberalising its capital account, albeit gradually and on its own terms.

Notoriously volatile, the Shanghai and Shenzhen stock markets are rife with insider trading and are largely driven by speculators who chase short-term trends with little regard for stock valuations. By bringing more institutional investors into the market reformers hope to bring more sophisticated and professional research and investment techniques.

But few people expect that foreign groups will be able to pile into Chinese equities any time soon.

Fraser Howie, co-author of Red Capitalism and other books on China's stock markets, says that while Beijing has increased the total available QFII quota from US$30bn to US$80bn, not all the US$50bn of new quota will be handed out at once.

Beijing allocates quotas to individual institutions on a case-by-case basis in what participants say is an opaque and unpredictable process. Only institutions with at least five years of experience in asset management and US$5bn in assets under management are eligible, although there are rumours that these requirements could be relaxed in 2012.

Since its launch in 2002, the QFII scheme has expanded only gradually and in stops and starts. As of the end of March, 158 institutions from 23 countries had been approved to invest a total of US$24.6bn.

There are signs, however, that Beijing will allocate investment quotas more rapidly now that the upper threshold has been raised. The CSRC has already stepped up the pace of QFII approvals since Guo took control. Some 15 foreign institutions were granted a record US$2.1bn of quotas in the past month alone, compared with US$1.9bn for the whole of 2011.

Guo is able to get things done faster than his predecessor, partly because of his close relationship with Wang Qishan, China's vice-premier in charge of economic and financial affairs, market participants say. Their relationship, the thinking goes, has allowed the CSRC to co-ordinate its operations much more closely with other regulators such as the People's Bank of China and the State Administration of Foreign Exchange (Safe), speeding up the pace of reform. Safe is in charge of granting investment quotas for QFII licences issued by the CSRC.

What next? Besides foreigners, Beijing has been looking to broaden the range of domestic institutions that can invest in the country's capital markets. In March 2012, Guangdong, a province in the south of China, mandated US$15.9bn of its pension funds to the National Council for Social Security Fund – the first time that local pension funds have been channelled into areas other than government bonds and bank deposits.

Some analysts reckon that one factor driving Beijing's latest batch of policies is a desire to boost the Shanghai stock market, which has tumbled 62 percent since its bubble-era peak in October 2007. The Communist party has long tried to manage asset prices through regulatory means.

Speaking at a conference in Beijing in February, Guo made the remark that Shanghai blue-chip stocks were showing "exceptional value". Foreign investors should take note.

* *Asia Markets Reporter, Financial Times. Abridged from an article that appeared in the* Financial Times *on April 05, 2012.*

Gas Exploitation in Colombia

The Colombian Ministry of Mines and Energy is responsible for ensuring the provision and distribution of natural gas in an efficient and stable manner for all inhabitants of the country. Act 142/1994 aims to ensure the availability of an efficient energy supply.

Article 59 of the Law on International Trade of Natural Gas (812/2003) allows the government to impose limits or set up instruments to ensure the domestic supply of gas in compliance with existing contracts. Decree 2687/2008 regulates the export of natural gas in order to guarantee a domestic supply; under this decree, producers and marketers of natural gas may dispose of proved reserves only when the reserve-to-production ratio is greater than seven years.

(ILO, 30.04.12)

ANATEL Approves Bid for 4G

Brazil's telecommunications regulator (ANATEL) approved the bid notice for the 2.5 gigahertz (GHz) radio frequency band, to be used for the provision of 4G technology, and the 450 megahertz (MHz) radio frequency band, designed to improve coverage in Brazil's rural areas.

The bid notice, which is yet to be published by ANATEL, is expected to establish that winners in the 2.5 GHz bands must serve the municipalities designated as host and sub-host cities of the 2013 Confederations Cup by April 2013, and of the 2014 World Cup by December 2013.

In relation to the 450 MHz band, the bid notice stipulates that the construction and availability of infrastructure under the industrial exploitation regime must cover at least 30 percent of municipalities by June 2014, and 100 percent of municipalities by September 2015. *(ILO, 09.05.12)*

Modernising Brazil's Port

The Brazilian Federal Government is preparing to launch a set of measures designed to modernise Brazil's port infrastructure. First, auctions will be held for new public terminals. A draft resolution for organisation of auctions has been submitted which provides for the presentation of technical and economic feasibility studies for the project and a concession contract with a 25-year term.

Second, a bidding process has been announced for the 98 terminals that were leased before the enactment of the Ports Law 1993, the contracts of which have already been terminated or will end shortly, and which do not admit the possibility of extension. Third, a review of contracts of delegated ports will be carried out. *(ILO, 20.06.12)*

New Regulations on Power Supply

The Indonesian government issued the Regulation on Electric Power Supply Business Activities (14/2012), which implements certain articles of the Electricity Law (30/2009). The regulation divides the electrical power supply business into two categories: supply for public needs and supply for private or own use.

Both business categories require licences – an electric power supply business licence for the former and an operating licence for the latter. Business licences may be issued for a maximum of 30 years, while the maximum duration of an operating licence is 10 years. The regulation replaces Regulation 10/1989 (as amended) and applies with effect from January 25, 2012. *(ILO, 30.04.12)*

Ofgem Delays Fuel Reforms

Ofgem, the energy regulator, is delaying reforms to the domestic fuel market, a move that leading utility companies hope will give them time to prevent bans on discounts they say benefit consumers.

Among discounts under threat is the "dual-fuel" reduction in bills offered by the "big six" utilities to customers who buy both domestic fuels from the same supplier.

The marketing of discounts for customers paying by direct debit and online also remains under review following concerns that companies are discriminating against "sticky" customers less likely to switch supplier, in part because of poorer access to credit. *(FT, 10.06.12)*

Insurance Fraud a Crime

A bill to amend the insurance provisions contained in the 1865 Commercial Code of Chile should be enacted in the near future. This bill will also amend the Criminal Code, as it will establish insurance fraud as a specific crime by adding a new Paragraph 10 to Article 470, which describes several specific types of fraud.

This new paragraph details all wilful misconduct related to obtaining insurance coverage fraudulently or the fraudulently collecting insurance indemnities, specifically where an act of malice is involved.

Since insurance fraud has no special classification at present, it is treated as a general type of fraud, which makes it difficult to pursue because it requires criminal elements to be present. *(ILO, 29.04.12)*

EU Cuts Mobile Roaming Tariffs

The cost of using mobile phones when travelling within Europe will be reduced from July after cuts to roaming costs were agreed by European Union policy makers.

The charge for using data services such as email and web browsing will be capped at 70 cents a megabyte, a fraction of the US$2.5-US$6.2 charged by most operators across the EU. The cap will fall to just 20 cents by 2014, all but eliminating a lucrative sideline for telecoms operators. Many of their share prices dropped after the agreement.

It is the first time that retail caps are to be imposed on data services for smartphones and tablets. Voice calls have been regulated by the EU since 2007, but will also be affected by the new rules. *(FT, 29.03.12)*

Obama in Push on Oil Market Abuse

– Anna Fifield* & Gregory Meyer**

Plans to strengthen supervision of the oil markets and increase penalties for market manipulation have been unveiled by the Obama administration in a bid to show that the White House is acting to curtail high petrol prices. "I call on Congress to pass a package of measures to crack down on illegal activity and hold accountable those who manipulate the market for private gain at the expense of millions of working families," said President Barack Obama.

Obama's US$52m plan is part of an "all of the above" energy strategy, aimed at increasing the US's use of alternative energies and curtailing its reliance on fossil fuels. The strategy has been pilloried by the Republican party, which immediately derided announcement as a political gambit and as further evidence of the heavy-handed regulation promoted by the Obama administration.

Mitt Romney, the presumptive Republican nominee for president, condemned Obama's announcement as a "gimmick" and defended the role of speculators in the market.

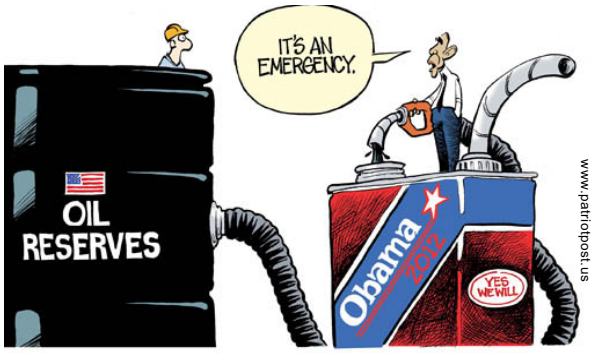
The measures are the latest effort by the Obama administration to crack down on market abuses, and come ahead of the summer driving season, when high petrol prices inflict the most pain

John Boehner, the Republican speaker of the House of Representatives, said the administration already had the tools to crack down on market manipulation, a signal that the measures have little chance of being passed by Congress in 2012.

"Where is his Federal Trade Commission? Where is the SEC?" Boehner said. "Instead of just another political gimmick, why doesn't he doesn't he put his administration to work to get to the bottom of it?" But senior administration officials said the measures aimed to detect and deter illegal manipulation by speculators, a practice that many Democrats say is partly to blame for the high cost of petrol.

The five components of the package include asking Congress for an immediate increase in funding to support at least a sixfold increase in the surveillance and enforcement staff for oil futures market trading at the Commodity Futures Trading Commission (CFTC) and for funding for computer upgrades to strengthen monitoring of energy market activity.

The administration also wants a 10-fold increase in maximum civil and criminal penalties for manipulative activity in oil



futures markets, from US$1m to US$10m, and not just for every violation but for every day a violation occurs. The president is asking Congress to give the CFTC authority to direct exchanges to raise margin requirements to address increased price volatility or prevent excessive speculation or manipulation, a change it says will help limit disruptions and reduce volatility in oil markets.

Finally, through executive actions the CFTC will be charged with looking for patterns and to better understand trading activity in energy markets. The US government launched a nationwide investigation into oil markets after the spike of 2008, but has only brought two cases since then – and in both cases federal regulators alleged the manipulation caused only a tiny impact on prices.

Gregory Mocek, a former CFTC enforcement director said the announcement seemed to be a political reaction to higher gasoline prices. But Randa Fahmy Hudome, an energy consultant and former Bush administration energy official, said that speculators were having an impact on the market.

Obama's announcement comes as global crude prices hover near US$120 a barrel, prompting political leaders in western countries to consider an array of responses, including the possible release of strategic oil reserves.

Although prices at the pump have stabilised, a gallon of petrol still costs an average of US$3.92, up 78 cents from a year ago, according to the Energy Information Administration. This is perilously close to the politically sensitive US$4 a gallon mark, a level that the White House will want to avoid as Obama's re-election campaign gets under way.

A recent CNN survey found that 24 percent of respondents blamed Obama for high petrol prices, while 21 percent thought the Republicans were at fault. The majority blamed oil companies or foreign countries.

* *US Political Correspondent, Financial Times*
** *Reporter, Financial Times*

The article appeared in the Financial Times*, on April 18, 2012.*

Regulation of 'Shadow Banks'

The global crackdown on "shadow banking" could include a requirement that any financial institution extending credit and relying on short-term funding must be regulated like a bank. The proposal is one of 10 steps that Paul Tucker, the Bank of England official helping shape the worldwide reform effort.

To prevent cheating, shadow banks should be prohibited from using client assets to finance their own business and their use of cash collateral should be more tightly regulated.

Banks, in turn, should be protected from failures in the shadow sector by tougher liquidity rules that would force banks to hold additional cash and easy-to-sell assets when they lend to other financial institutions. *(FT, 27.04.12)*

Breaking Up Bank Monopoly

China's premier called the country's big banks a monopoly that needed to be broken to get money flowing to cash-starved private firms, as the nations' economy appears to have skidded to its slowest growth in three years.

China's state banks make money far too easily, state media quoted Premier Wen Jiabao as saying in comments that reignited debate over the role of banking in cushioning the descent of the high-flying economy, the world's second largest. Frankly, banks make profits far too easily.

As the economy has slowed, the role of state banks in rationing credit has come more into focus. They prefer to lend to other state firms, starving smaller entrepreneurial companies that must then borrow from informal lenders at high rates. *(ET, 05.04.12)*

Trading Desks Face Regulations

The size and scale of the surprise US$2bn loss at JPMorgan Chase is likely to accelerate plans by global regulators to force banks to improve their trading risk models – a move that could sharply push up costs and capital requirements for large banks worldwide.

While initial reactions to the JPMorgan loss focused on how it could reshape the US debate over implementing the "Volcker rule" ban on proprietary trading, the misstep by one of the world's largest banks could have far broader consequences.

The Basel Committee on Banking Supervision, which sets global rules, has already sought a replacement for Value at Risk and looked at additional capital requirements to cover potential damages that are not adequately measured by existing models.

(FT, 14.05.12)

US-UK Eye Reaction to Bank Failure

Regulators and central bankers in the US and UK are crafting the world's first concrete plans to protect the broader financial system in the event that any of seven leading cross-border banks were to collapse.

The "resolution plans", being worked on by the Bank of England and the Financial Services Authority in the UK and the Federal Deposit Insurance Corporation in the US, have focused on "top-down bail-in" measures.

These would see the authorities take over a failing group and force its shareholders and bondholders to take losses while keeping critical operating companies open. *(FT, 21.05.12)*

EU to Cap Bankers' Bonuses

Bankers' bonuses across Europe would be capped at no more than their fixed salaries under strict new curbs sought by senior lawmakers in response to continued public anger over financial sector pay. In a sign that Brussels is hardening its stance on banker pay, EU parliamentarians are drawing up new caps on bonuses to be included in the bloc's latest bank capital rules.

The move comes as research from the pan-EU banking regulator reveals huge disparities in bonus sizes across the region and big differences in enforcing existing EU pay rules, which limit the upfront cash portion of a bonus to 25 percent of the total. *(FT, 13.04.12)*

UK Bank Regulator to be Beefed up

Britain's banking regulator could be handed new powers to enforce government recommendations on how the country's largest banks should ring fence their retail and investment operations.

UK Finance Minister George Osborne is expected to say that prescriptive regulation is not the best way to improve the safety of Britain's banks as he hands powers to the new Prudential Regulation Authority, which will be run by the Bank of England, to decide how much extra capital the retail arms of banks should hold to safeguard the sector.

Britain has forced its banks, many of which needed taxpayer help during the 2007-09 financial crisis, to hold core capital equivalent to 10 percent or more of risk-weighted assets, well above global new rules that do not come into force until 2013. *(Reuters, 10.06.12)*

Pressure Mounts on Freddie and Fannie

The US regulator overseeing state-controlled home loan financiers Fannie Mae and Freddie Mac said that the companies are being pushed to accept losses to keep big US banks from writing down their holdings.

The dispute revolves around the kind of loans financed by Fannie Mae, Freddie Mac and big US lenders – and who will foot the bill for writing down the mortgage principal owed by borrowers with negative equity. Fannie Mae and Freddie Mac finance home purchases by buying loans from lenders that are fully secured by properties.

During the US property bubble, US banks gave loans to borrowers who used the equity in their homes as collateral. But when the property bubble burst millions of homeowners with so-called "second mortgages" found themselves deeply underwater. *(FT, 26.03.12)*

Banks that are too Complex to Exist

– Gillian Tett*

www.themoderatevoice.com

The 21st century financial system is simply becoming "too complex to depict"

Why did JPMorgan Chase's top management fail to spot the US$2bn-plus losses brewing in the chief investment office in 2012? There is no shortage of potential explanations: a cover-up by traders, flawed computer models, poor accounting, lax oversight and excessive complacency have all been blamed.

To get another perspective, one should look at a fascinating piece by Henry Hu, a Law Professor at the University of Texas entitled, *'Too Complex to Depict? Innovation, Pure Information and the SEC Disclosure Paradigm',* Texas Law Review June 2012.

Until 2011, he was working at the Securities and Exchange Commission (SEC) to develop systems to clean up financial markets. On the basis of that, he has reached some unorthodox, if not radical, conclusions about the nature of "transparency", whether at JPMorgan or anywhere else.

Until now, as his paper argues, regulators and politicians have generally presumed that the best way to make markets more transparent is to place a bigger reporting burden on "intermediaries" – namely banks, asset managers, companies and so on.

For in the "SEC disclosure paradigm", Prof Hu argues, these intermediaries were considered the main channels for information about "the underlying financial reality". Thus, if only they could produce more accurate reports, investors and regulators would get a better idea of how the world works. Or so the theory went.

There was precedent to back this up. Although Prof Hu does not explore this, after the crash of 1929 regulators forced companies to become dramatically more transparent in offering documents and corporate reporting. This was crucial for rebuilding confidence in equity markets.

So much so that some senior bankers have argued in recent times that this lesson should be replayed today. Prof Hu is rather cynical about whether this can work. The reason is that technological advances and financial innovation have not only made financial flows and instruments so complex that they are hard to depict, but also financial intermediaries themselves are so complex that they are ill-placed to make sense of shifting information flows.

80 years ago, companies might have been able to offer equity investors real transparency on their results; today even JPMorgan struggles to understand what on earth is going on inside its derivatives book.

Thus, even if JPMorgan wanted to "come clean" about its controversial positions in CDX IG 9, say, this is becoming increasingly tough. As Prof Hu says, the 21st century financial system is simply becoming "too complex to depict".

So is there any solution? Prof Hu offers a glimmer of hope by noting that the same technological advances that have fostered financial complexity might – possibly – provide some answers too.

This summer, the SEC is due to start receiving a flood of data about hedge fund positions for the first time. But it is so short of resources, its staff barely know how to handle this deluge.

So that leads to another, controversial conclusion: if some banks today are "too complex to depict", then perhaps it is time to recognise that they are also "too complex to exist," as Prof Hu says.

Or, to put it another way, if you want a reason to break up the banks, you do not need to worry just about "too big to fail"; the real danger today is that financial institutions and markets are becoming "too big to understand" – and thus need to be shrunk and simplified.

Some bankers would never accept this; Jamie Dimon, head of JPMorgan, has long scorned such a line of thought. But personally, I think Prof Hu's instincts are correct.

In the meantime, I look forward eagerly to seeing the explanatory report that JPMorgan has promised to provide about its loss. If nothing else, it will show exactly why Prof Hu's argument about the "SEC disclosure paradigm" needs to be debated – and beyond just the SEC.

* *Journalist, Financial Times. Abridged from an article appeared in the* Financial Times*, on June 07, 2012.*

Global Standards are Still a Far-Off Goal

– Phil Davis

What happened to co-operation sans frontières? Global cooperation on standards dates from the early 19th century, when it led to significant improvements in maritime safety, including the universal adoption of longitude and the metre, among others.

But at a time when the world is desperate for global standards the will to create and enforce them seems to be absent. Rules that will shape the financial system for decades to come are proliferating without obvious global co-operation or harmonisation, creating the danger that the financial system will be no safer after their adoption.

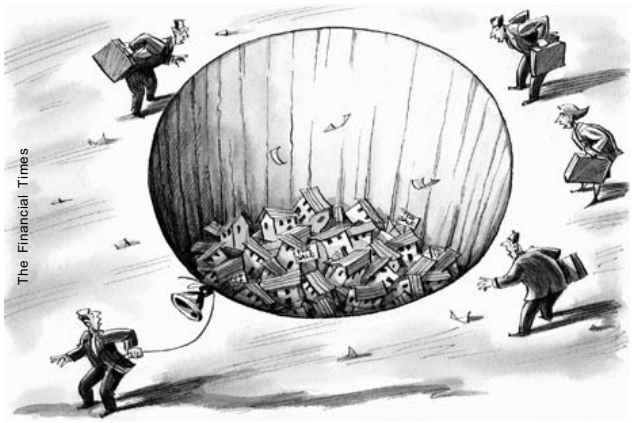
A number of high-level initiatives exist. The Regulatory Policy Committee was established in December 2009 by the Council of the OECD and there is EU-US dialogue through the High Level Regulatory Co-operation Forum. There is also the Transatlantic Economic Council (TEC) and the EC Directorate of Trade. But the investment community is highly sceptical about the effectiveness of any of these institutions.

The G20 has effectively commandeered the regulatory agenda since the financial crisis broke, but its mechanisms for executing the many commitments agreed are not clear either. There is a will to act, but at the moment there is more communication than co-ordination. The top guys in most countries are aware of the overlaps and underlaps between regulations, but for political and other reasons they can't do anything about them.

Politicians are not only flexing their muscles to rein in financial services but also the perceived danger from foreign entities and individuals. The politics are, to some extent, informed by the different cultural approaches in the US and Europe.

A single solution to all the obstacles to global regulatory co-ordination probably does not exist. In fact, it is questionable whether it is actually in the interests of the various stakeholders to find a solution at all. After all, it suits governments to defend their own patch and it also suits big companies – which have the ear of governments – to have more regulation. They protest against it publicly, but it can give them a competitive advantage over smaller, resource-constrained rivals.

A less sceptical view is that it will take time for global regulators to get to know each other and deepen their ties. Once they do, harmonised global regulation moves closer to reality. Perhaps, in the end, the current self-serving approach of the trading blocs will inadvertently provide a solution in that where one bloc or country leads, the rest of the world will be compelled to follow.


The Financial Times

There is a plethora of regulatory bodies but they are not coordinating with each other much, yet

A positive example of this is the global expansion of Undertakings for Collective Investment in Transferable Securities (UCITS) funds. Once a purely European construct, they are now widely distributed in Asia and are also used by US, Australian and South African fund groups doing business globally.

UCITS are great framework that has brought a lot of confidence to clients. Asia has looked at them and realised they are a great standard. It has been a great way of harmonising the global funds industry."

US constructs include the creation of Employee Retirement Income Security Act (ERISA) funds in 1974, the standard US pension vehicle, which led to the global custody system. Similarly, in 2005 the New York Federal Reserve cleared the settlement backlog for credit default swaps by calling in the 14 biggest bank dealers and telling them to devise a systemically safe system. Within two months, tough new settlement rules had been imposed on the rest of the world. Meanwhile, Foreign Account Tax Compliance Act (FATCA) while universally disliked, may yet serve as a global blueprint for governments to clamp down on tax evasion.

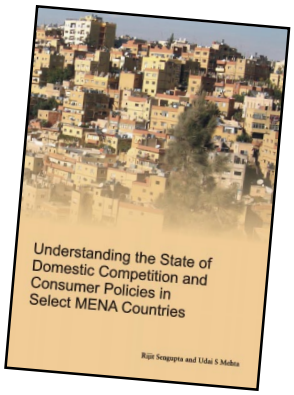
So while the SEC currently refuses to carry out Alternative Investment Fund Managers supervision, for instance, I think we will eventually see co-operation. Essentially, if the EU or the US acts, the other bloc and the rest of the world will follow.

– *Abridged from an article that appeared in the* Financial Times*, on April 08, 2012.*

Publications

Understanding the State of Domestic Competition and Consumer Policies in Select MENA Countries:

Report of a 'Scoping Mission' undertaken in Algeria, Egypt, Jordan, Lebanon, Morocco, Syria and Tunisia



In order to develop a deeper idea (and a subsequent initiative on competition and consumer protection issues) CUTS undertook a needs assessment mission in seven countries of the Middle East and North Africa (MENA) region (namely Algeria, Egypt, Morocco, Tunisia, Jordan, Lebanon and Syria).

The mission was undertaken jointly with the Arab Network for Environment and Development (RAED) which is based in Egypt, but has a network of CSOs in all the above-mentioned countries.

A report collating the discussions and the information gathered over the course of the mission has been prepared which highlights both challenges and opportunities that exist in terms of promoting competition reforms and protecting the interest of the consumers in the countries.

The report would be discussed and disseminated within and outside the region, so that a discourse on competition and consumer protection can emerge in some of these countries and the region.

The report will be released at the United Nations Conference on Trade and Development Intergovernmental Group of Experts (UNCTAD IGE) Twelfth Session on Competition Law and Policy at Palais des Nations, Geneva on July 10, 2012.

The report can be viewed at: www.cuts-ccier.org/pdf/Competition_and_Consumer_Policies_in_MENA_Countries.pdf

Forthcoming

Competition and Regulation in India, 2011

CUTS initiated a project entitled, 'India Competition and Regulation Report' (ICRR 2011) to assess the importance and effectiveness of regulatory of regulatory institutions, awareness among consumers and other stakeholder groups in India. It is the third biennial report (2007 and 2009) that maps status of competition across Indian markets and focusses on six emerging sectors, i.e. Microfinance, Natural Gas, Retail, Real Estate (residential), Road Transport (passenger transport) and Telecommunications. Further, it also covers certain general issues, such as political economy of regulation and essential facilities doctrine etc.

This study is an important contribution towards enriching the available literature in the public domain and encouraging a dialogue to promote a healthy and competitive environment as evolving an appropriate regulatory culture is always a learning curve.

The first report, published in 2007 lay down the rationale for a holistic competition policy and law regime in India and also looked at some sectors, such as telecom and electricity in the area of infrastructure and in the equally crucial area of social infrastructure like health care and education, as case studies.

The second report, published in 2009 is an effort to educate the public and the policy community about the effect of these various facets of public policy on competition and regulation. It focuses on the evaluation of quality of regulation in five sectors: power, ports, civil aviation, agricultural markets and higher education.

Sources

ABC News: Australia Broadcasting Corporation; BL: The Hindu Business Line; BR: Business Respect; BS: Business Standard; CD: China Daily; DE: Daily Express; ET: Economic Times; FE: Financial Express; FT: Financial Times; GCR: Global Competition Review; ILO: International Law Office; NST: New Straits Times; TG: The Guardian; TN: The News; TRF: The Rwanda Focus; WSJ: Wall Street Journal

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