

# REGULETTER

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## Bayer-Monsanto Deal Cleared but Conditions Apply

Recently the Competition Commission of India (CCI) cleared the acquisition of Monsanto by Bayer, with conditions. Earlier, CUTS International had sent comments, requesting CCI to look into the dynamic nature of the market and adhering to the global value chain approach.

The submission flagged the growing trend of vertical integration in both upstream and downstream of the global food value chain. Further, with the use of internet of things and Big Data, the structural dimension of the market is moving towards building super-platforms for one-stop solution, exposing it to newer competition concerns typical to digital platforms. This demands assessment of not only 'horizontal' relations between the market competitors but also 'vertical' interactions between different segments of the global food value chain.

Furthermore, the bundling of agro-chemicals with genetically engineered and hybrid seeds, strategic use of intellectual property rights etc. were part of the 'game' that CCI must keep in mind while reviewing.

Recognising competition as driver for innovation, CUTS submitted that the CCI must also review the possible impact of the deal on innovation in the market. It was argued that post-acquisition only three global integrated players would remain to compete in an industry with very high barriers to entry.

Bestowing importance to agro-biodiversity for sustainable agriculture and food security, CUTS argued that the consolidation in seed industry would lead to reduction of agro-diversity due to decreasing varieties of seed supply. This would also decrease consumers' choice and loss of opportunities to those agriculturists who could have earned more due to varietal distinctiveness. CUTS advocated for inclusion of 'public interest' (e.g. food security, farmers' welfare etc.) into the competition analysis viewing the nature of the products involved.

Except the agro-biodiversity aspects and inclusion of public interest concerns, the CCI did take into account almost all the aspects that CUTS submitted. It assessed horizontal and vertical overlaps resulting from the deal and the resultant possible conglomerate effects due to complementary product portfolios of the combining entities.

As remedy, the CCI proposed various conditions for allowing the acquisition. When Bayer undertook to abide by such conditions, the deal was allowed. Such conditions include: divestments; adhering to fair, reasonable and non-discriminatory licencing polices; not to bundle any of its products; maintaining non-exclusive distribution channels etc.

The American Antitrust Institute, which had similar concerns that of CUTS', has been sceptic that such remedies would not be effective in highly concentrated markets. It may not replace the competition lost by a merger. Hence, it advocated disallowing the deal, altogether. Interestingly, the US Department of Justice has also cleared the deal after Bayer settled for significant divestitures.

Now it need to be seen how CCI monitors and ensures that the proposed remedies are implemented by Bayer, consequently keeping the market competitive.



## Competition Regulation Takes Hold in Africa

The top ten economies by Gross Domestic Product (GDP) in Africa all have active competition regulation, save for **Angola** and **Nigeria** but those countries are in the process of establishing competition law regimes, which are expected to be up and running soon.

The Federal Competition and Consumer Protection Bill of 2017 was recently passed by the House of Representatives of Nigeria and Nigeria's Senate, which was now only awaiting presidential assent. And the Angolan National Assembly recently voted in favour of the Draft Bill on Competition, which will establish Angola's Competition Regulatory Authority.



Africa's top economies, including **Egypt**, **Algeria**, **South Africa**, **Morocco**, **Ethiopia**, **Kenya** and **Tanzania**, all had competition regulation. About 20 countries currently have functional competition law regimes, several more have enacted legislation but have no enforcement structures in place, and approximately 18 countries in Africa have no competition legislation.

([www.businessghana.com](http://www.businessghana.com), 18.04.18)

### Competition Law to Check IP Abuse

**India**, **Brazil**, **South Africa** and **China** (IBSAC) have urged all World Trade Organisation (WTO) members to share their national experiences on how competition law and policy can be used to deter practices such as collusive pricing which prevent generics from entering markets and raise prices of medicines.

The four countries, in a paper circulated at an on-going TRIPs Council meeting in Geneva, said that abuse of IP rights can be checked through competition law and countries must learn from each other, according to an official aware of the discussions at the meeting.

The debate, initiated by IBSAC focussed on how to enhance understanding of various approaches in the use of competition law and policy to prevent or deter anti-competitive practices. (BL, 08.06.18)

### Expanding Consumer Protection Role

The **Singapore** Parliament passed a bill expanding the Competition Commission of Singapore's (CCS) regulatory powers. In addition to administering and enforcing Singapore's Competition Act, the regulatory body will now administer consumer protection and unfair trade practice laws as well.

As a result of the change, the formerly named CCS will be known as the Competition and Consumer Commission of Singapore (CCCS), signaling an expansion of the body's power over Singapore's trade practices.

With a population of roughly 5.6 million, the city-state is recognised as a thriving global financial hub and offers a worthwhile opportunity for product manufacturers looking to expand distribution into Southeast Asia.

([www.klgates.com](http://www.klgates.com), 25.05.18)

### Responding to Market Imperfections

The **Angolan** parliament unanimously approved a new Competition Law, intended to respond to 'existing situations of market imperfection' in the Angolan economy, introducing 'principles and rules of sound competition in morality and ethics.'

The new law creates a Competition Regulatory Authority (ARC), which will be autonomous and have supervisory power over competition and price regulation. The specific structure of the ARC is still to be decided.

The new law regulates private enterprises, cooperatives, and state-owned companies, and reflects the main tenets of international commercial law. It also defines illegal practices that may hinder free competition in markets, and potentially damage the economy and society. (<http://snip.ly/blufs>, 20.04.18)

### Boosting Leniency Programmes

**Argentina**'s new Antitrust Law was approved on May 09, 2018. The new law introduces five significant changes that companies should consider while doing business in Argentina:

- Creates a self-regulated Antitrust Court entitled to impose sanctions, approve or prohibit economic concentration transactions.
- Updates penalties for breaching antitrust laws.
- Creates a leniency programme. Adopts the 'leniency-plus' approach.
- Establishes an *ex-ante* control system for economic concentrations, most widely adopted internationally.
- Increases the thresholds to notify an economic concentration transaction, which will significantly reduce the number of operations subject to approval. (CPI, 14.05.18)

### Closer to Antitrust Practice

An amendment to the Restrictive Trade Practices Law of **Israel** sponsored by Minister of the Economy and Industry Eli Cohen and the Antitrust Authority passed first reading in the Knesset.

The main aim of the amendment is to strengthen the deterrent power and the effectiveness of the Antitrust Authority and to focus its activity on promoting competition and reducing the cost of living.

The amendment seeks to update the law to take account of substantial changes that have taken place in the Israeli economy since it was enacted 30 years ago, and also to bring Israeli law closer to international antitrust practice. ([www.globes.co.il](http://www.globes.co.il), 22.05.18)

# South Africa: A Citizen in the Global Village of Competition Law

Stephen Langbridge\*

*The Competition Act is first and foremost national in its focus. Although the Act makes reference to international law obligations, participation in world markets and the role of foreign competition in the Republic, to look at the role of South Africa in competition law's global village, the key is not to be found in that language, but rather in the continuing development and application of South Africa's competition policy.*

Now in its 19<sup>th</sup> year, the South African authorities have enjoyed a leading status amongst developing competition law jurisdictions. The authorities have been recognised by peers in other jurisdictions, global bodies and practitioners, for their pioneering role in development of a comprehensive body of competition law and policy, often punching above their weight category, particularly in relation to the role of competition law in socio- and development economics. Some have taken fright at the suggestions advanced which appear to promote the well-being of local businesses and the public interest above consumer welfare as the true-north of anti-trust.

This development of law and policy as well as the well-earned status does not come about simply by practicing in one's back garden. There are MoU's enshrining cooperation with the EC, Brazil, Russia, India, China, Mauritius, Kenya and Namibia. In addition, South Africa has membership of the SADC, African Competition and BRICS fora. The authorities have also benefitted greatly from their active participation in ICN and UNCTAD networks and their staff continue to receive extensive training from leading world authorities and experts. The authorities learn from others and take an active lead in passing on their experience and challenging orthodox views.

While that may sound laudable, one might well ask what are the benefits and likely future implications within South Africa of the global participation? One aspect which stands out, is the acknowledgment by government in South Africa of the role of competition law as a critical policy tool, alongside other trade and industrial policies, in developing an inclusive economy poised for long term development and regional growth. International influence and participation can trickle down or pass through via competition policy.

Proposed changes from the studies and interactions have found their way into the draft Competition Amendment Bill in South Africa. The amendments propose to redress two main features in the economy: *excessive concentrations of ownership and control* and the need to open up *ownership and opportunity* for a greater number of South Africans,



but at the same time recognising that economies of scale in some markets are necessarily efficient and thus certain interventions are unlikely to be beneficial there.

Responses to and criticism of the proposals in the Amendment Bill have been received from a wide range of quarters, both local and international and will be evaluated by government. One aspect which is clear to any observer of the consultative process being followed by the lawmakers is that there will be change to the existing regime to deal with the identified objectives.

A difference in approach between authorities to the role of public interest in merger review is not at the expense of other forms of co-operation and common approach to multi-national transactions by the Commission. These may involve a common view on market definition and newer concerns such as the impact of innovation in competitive markets.

We should also recognise the global co-operation and participation by the South African agency with other agencies may enable enforcement against anti-competitive conduct in global cartels. Local authorities should beware of the seemingly attractive option of transplanting the views and findings of other authorities into the South African context. Peculiar facts specific to South African firms, markets and regulations, as well as differences in the casting and application of relevant law create a danger of wasted resources through attempts to trying to apply another country's evidence and findings in South Africa.

\* Corporate Law Attorney in Sandton, South Africa. Abridged from an article appeared in [www.competitionchronicle.com](http://www.competitionchronicle.com) on June 19, 2018

## ABUSE OF DOMINANCE

### Antitrust Case against Gazprom Ends

The EC Competition Commissioner Margrethe Vestager stuck with her controversial decision not to fine Gazprom on charges that it abused its dominance to rip off consumers in Central and Eastern Europe. Instead, the settlement will seek to change Gazprom's behaviour through a set of legally-binding commitments.

Gazprom agreed to change how it negotiates gas prices with countries in Central and Eastern Europe, in an effort to create a more competitive market. Customers will now have the right to ask for a price review if they believe they are paying Gazprom higher prices than on Western European gas hubs. If a deal is not struck within 120 days, an arbitrator overseen by the EU will then impose a competitive gas price.

Gazprom also agreed to drop clauses restricting customers' ability to sell gas across borders and create opportunities for more gas to flow to the Baltic states and Bulgaria.

([www.politico.eu](http://www.politico.eu), 24.05.18)

### CD Pharma Abused its Dominance

The Denmark Competition Council found that Swedish pharmaceutical distributor CD Pharma AB had abused its dominant position in Denmark by charging excessive prices.

Excessive pricing cases are among the more unusual in competition law and are notoriously complex given the

difficulty of proving that a price is excessive. CD Pharma is a pharmaceutical company that distributes Syntocinon, a labour inducing drug.

The Competition Council found that CD Pharma had abused its dominant position in contravention of Section 11 of the Competition Act and Article 102 of the Treaty of the Functioning of the European Union by charging the excessive price of Dkr945 per package of Syntocinon.

(*Lexology*, 05.04.18)

### Appeal against Pfizer Dismissal

The Australia's Competition and Consumer Commission (ACCC) has sought Special Leave from the High Court to appeal the Full Federal Court's judgment of May 25, 2018 which upheld the dismissal of allegations against Pfizer Australia Pty Ltd (Pfizer) by the trial judge.

The ACCC alleges that Pfizer misused its substantial market power and engaged in exclusive dealing conduct for an anti-competitive purpose in breach of the Competition and Consumer Act 2010.

The Full Court found that Pfizer took advantage of its substantial market power. However, the Full Court did not accept the ACCC's argument that Pfizer had engaged in conduct for the proscribed purpose of deterring or preventing competitors from engaging in competitive conduct or for the purpose of substantially lessening competition.

(ACCC, 25.06.18)

### National Cricket Board under Scanner

The Competition Commission of India (CCI) is reportedly investigating the Board of Control for Cricket in India (BCCI) for abusing its dominance by excluding a downstream competitor from bidding on cricket media rights.

The decision has come on a complaint filed by Pan India Infraprojects. In a 14-page order, the CCI said there is *prima facie* a case of abuse of dominant position by the BCCI which is in violation of competition norms.

"Thus, it appears that BCCI has abused its dominant position in the market of organisation of professional domestic cricket leagues in India by excluding the informant (Pan India Infraprojects) or any of its group companies from participating in tenders for media rights for IPL," the order said.

(*ET*, 06.06.18)

### Telefónica Hit by Heavy Fine

The Spanish National Authority for Markets and Competition (CNMC) has fined Telefónica €8.5mn for breaching its obligations as a wholesaler of broadband and terminal leased lines.

In a statement, CNMC says that the Basque government awarded Telefónica part of a contract, a bid for which could not have been matched by the cable operator Euskaltel.

Had Euskaltel offered the same amount, it would have made a negative return. Telefónica can appeal the fine within two months of its notification.

([www.broadbandtvnews.com](http://www.broadbandtvnews.com), 09.05.18)

## Google Penalised for Infringing Conduct

The European Commission (EC) is geared up to fine Google in a second anti-trust case of abusing its dominance via Android mobile operating system that could lead up to US\$11bn in penalty.

The EU investigation has found that Google imposed illegal terms on Android device makers "which harmed competition and cut consumer choice". Android is used in more than 80 percent of the world's smartphones and is vital to the group's future revenues as more users search on their mobile gadgets.

The EU began the anti-trust case in 2016, accusing Google of imposing licencing conditions for the Android OS. Google could be fined up to US\$11bn but the actual penalty may be less.



(IANS, 07.06.18)



## PRICE FIXING

### State Loan for Alitalia Probed

The European Union (EU) is investigating whether €900m in bridging loans to Alitalia from the Italian government were illegal under the bloc's state aid rules.

The Italian airline filed for bankruptcy on May 02, 2017 and was provided with two loans from the national government – €600m in May 2017 and a further €300m in October 2017.

Margrethe Vestager, EU competition commissioner said: "The commission has a duty to make sure that loans given to companies by Member States are in line with the EU rules on state aid. We will investigate whether this is the case for Alitalia."

There is no deadline to complete the investigation. Any illegal state aid would need to be repaid. (FT, 24.04.18)

### Hotel Booking Sites Face Action

Hotel booking sites must review the way they rank and display rooms, the UK's competition watchdog has said. Some sites may be making misleading claims about discounts, the Competition and Markets Authority (CMA) said.

The CMA has been investigating whether sites are misleading consumers since October and identified a number of areas of concern. The CMA did not name the companies it was investigating, but leading sites include Expedia and Booking.com.

The CMA said details on the sites about how many people are looking at a room, how many are left and how long a price is available can create a false impression of availability or rush customers into making a booking decision. (TG, 28.06.18)

### LG Accused for Smartphone Pricing

The Federal Antimonopoly Service (FAS) of Russia has fined LG Electronics RUS, a subsidiary of LG corporation, US\$39,200 for coordinating smartphone prices.

The electronics company was monitoring retailers with the use of a special programme for the control of prices for certain LG smartphones.

## Air NZ Fined in Air Cargo Cartel

Air New Zealand (Air NZ) has been penalised US\$15mn by an Australian Court for its part in a global air cargo cartel as part of an ongoing case by the Australian Consumer and Competition Commission (ACCC) involving 15 of the world's leading airlines.

The latest case involved an illegal agreement by Air NZ with other airlines to fix the price of fuel and insurance surcharges on air freight services from Hong Kong, and insurance and security charges from Singapore, to various locations, including Australian airports, between 2002 and 2007.

The Federal Court ordered Air NZ pay a US\$11.5mn penalty for price fixing fuel surcharges, plus US\$3.5mn for price fixing insurance and security surcharges. Air NZ has also agreed to pay US\$2mn towards the ACCC's legal costs. (JP, 27.06.18)



Moreover, the LG subsidiary regularly received reports on prices from retailers, which also used 'price robots' for the price control scheme, the watchdog announced.

The amount of fine was mitigated by the fact that the LG subsidiary stopped conducting unlawful activity before the launch of the case and assisted the FAS during the investigation. However, the lengthy period during which the violation was taking place was also taken into account. (CPI, 24.06.18)

### Petroleum Contracts Under Lens

The European Commission (EC) has opened an investigation into restrictions to the free flow of gas sold by Qatar Petroleum in Europe. The aim of the investigation is to establish if the sale of gas by Qatar Petroleum contracts contain any anticompetitive agreements or concerted practices, such as denying the importer of the gas in one territory the right to resell into another territory.

In response, Qatar Petroleum issued the following statement "Qatar Petroleum wishes to stress that it gives the highest importance to compliance with regulatory authorities in all geographical areas in which it operates. Qatar Petroleum looks forward to working with the European Commission to address any queries or concerns they may have in this regard."

(FT, 21.06.18)

### HP's Russian Subsidiary Guilty

The Federal Antimonopoly Service (FAS) has fined Russia's subsidiary of Hewlett-Packard (HP) company US\$40,000 for violation of competition legislation.

As the FAS found, several computer companies signed an anti-competitive agreement which resulted in price fixing at an open e-auction for the computers' system units supply for the Central Election Commission of Russia. The business activities of the firms were illegally coordinated by the Russian HP subsidiary.

(www.therecycler.com, 18.06.18)

### MTV Admits to Collusion

The Competition Commission of South Africa has urged media companies implicated in the 2011 media collusion investigation to pay their parts of the settlement.

MTV Networks Africa has agreed to a package of remedies totaling US\$1.14mn for its involvement in a South African advertising cartel.

The company is one of 28 media companies that have been referred to the Competition Tribunal for prosecution. The matter relates to an investigation that was initiated by the Competition Commission in 2011.

It found various media houses including Primedia and Media24 had agreed to offer similar discounts to advertising agencies that placed ads with certain members. (CPI, 20.05.18)

# How CCI should look at M&A Deals in Digital Economy

Nisha Kaur Uberoi\*



*M&A deals in the digital economy require antitrust authorities to scrutinise transactions on a holistic understanding of the market*

Internet firms have revolutionised the way in which business is conducted, across the globe and in India. Innovative technologies have benefited the economy and all stakeholders through a reduction in the dependency on cash (e-wallets) and by facilitating ease of access to services (online bookings).

Mergers and acquisitions (M&A) in the digital economy require antitrust authorities to scrutinise transactions on a holistic understanding of the market. Further, disruptive technologies that challenge the traditional markets must be analysed carefully while keeping in mind their pro-competitive effects and benefits to consumers.

## CCI's decisional practice relating to e-commerce

The Competition Commission of India (CCI) has played a key role in enabling businesses in the digital economy to thrive and grow while ensuring that innovation of the internet economy is not hindered. If the key objective of a merger is to acquire access to new data, which would result in higher concentration of data post-combination, this could potentially result in market foreclosure and creation of entry barriers, and would become a competition law concern. However, the regulator must evaluate the merger in terms of sufficiency of choices for consumers, innovation and improved quality products and services, while maintaining a fine balance in order to not impede M&A activity.

CCI has assessed several transactions relating to e-commerce marketplaces such as investments in Snapdeal and BigBasket, and the consolidation of Flipkart and eBay India. CCI observed that the e-commerce marketplaces offer better services to consumers in terms of discounts, more product offerings and doorstep delivery. This availability of choice to consumer and presence of multiple players has significantly contributed to the regulator concluding that investment and consolidation in the e-commerce market are not detrimental to competition.

Ongoing consolidation (Amazon's proposed bid to acquire a majority stake in Flipkart) will lead to interesting regulatory outcomes and CCI is likely to continue to test mergers using traditional tools of analysis while applying these to the specific factual matrix of the digital economy.

## Guidance from global experience

In 2005, MySpace was acquired by News Corp. for US\$580mn, followed by a US\$900mn advertising deal with Google in 2007. However, post the entry of Facebook, MySpace lost its relevance as the customers shifted to Facebook, and it was ultimately sold for US\$35mn in 2011. This demonstrates the transitory and dynamic nature of the market, where the new entrant/innovator/has the ability to

alter market dynamics. Globally, there has been increased interest in antitrust issues with respect to technology firms and the approach of other antitrust regulators is of significant relevance in today's inter-connected world to the CCI.

One such instance was Facebook's acquisition of WhatsApp that was considered and approved by the Federal Trade Commission and the European Commission (which reviewed the transaction as it met the jurisdictional thresholds of Cyprus, Spain and UK), but despite the acquisition affecting a combined amount of 1.7 billion users, it escaped the scrutiny of competition regimes based on turnover, such as, India — as digital companies tend not to have high turnover due to provision of free services.

Data can have pro-competitive and anti-competitive effects. When data becomes a source of market power, it can lead to a situation of a data advantage to the established players to the detriment of smaller or newer entrants. Conversely, data can address information asymmetry by increasing transparency.

The flip side of this is transparent markets are more prone to cartelization. Given that it is data and not market shares or turnover which will be the key in future mergers of this ilk, competition regulators are increasingly amending their merger control regimes to adapt to the unique situation of the digital economy.

It may be time for CCI to consider several alternatives (transaction value, users, data, etc.) to review merger thresholds for the digital economy to avoid a Facebook/WhatsApp-like situation.

\* Partner and National Head, Competition Law at Trilegal. The article appeared in the Livemint on April 12, 2018

# The Amex Ruling Cements the Domination of Big Companies

Barry Lynn\*

In 1776, Adam Smith published *The Wealth of Nations*, in which he attacked monopolies and argued that markets governed by the decisions of individual buyers and sellers make people and societies richer and freer. When Americans declared their independence from the UK that same year, a main grievance was that they had been exploited and manipulated by the British East India Company trading monopoly.

Over the next two centuries, the US built its political economy around the idea that markets are structured to put individual buyers and sellers in charge, not large intermediaries. A split Supreme Court overturned that. The court held, 5-4, that markets can have two 'sides', then used this reasoning to wedge giant middlemen back between sellers and buyers.

Unless Congress acts to reverse it, the decision in *Ohio v American Express* will make it harder to bring even the most rudimentary forms of antitrust complaints. This is likely to translate into higher prices and less choice. The decision would also shift control over markets away from individual buyers and sellers to companies, including internet platforms such as Google and Facebook that bring them together.

The Amex case started when the Department of Justice sued the credit card company for retaliating against merchants that steered customers towards other cards that charge retailers less. These 'swipe' fees total US\$42bn a year.

The lawsuit comes out of a long-held US approach to markets. Companies that provide vital transport, banking and communications services are regulated in a different way to the buyers and sellers. The basic goal has

been to ensure these service providers do not exploit their powerful position as middlemen either to gouge their customers or steal business from sellers who depend on them to reach markets.

To prevent such abuses of power, the US has at times regulated the prices that middlemen can charge. It has also sought to promote greater price competition among them, as the DoJ lawsuit was attempting to do. In some cases, the US has prohibited such middlemen from 'vertically integrating' into lines of business that put them into competition with their own customers.

The Amex ruling initially appears to stand in this tradition, stating that 'a two-sided platform offers different products or services to two different groups who both depend on the platform to intermediate between them'.

But then the majority strikes out on its own and declares that 'credit-card networks are best understood as supplying only one product — the transaction — that is jointly consumed by a cardholder and a merchant'.



*This decision will make it harder to bring even basic antitrust complaints*

The decision to treat merchants and cardholders as a single market means Amex can continue to charge what it likes. But there is a bigger danger that stems from the idea that a market can have 'two sides'. The ruling appears to bless the efforts of companies such as Google, Amazon and Facebook to dominate dozens of markets, including movies, news and music.

Rather than being required to serve sellers and buyers, these platforms will be free to manage these markets in pretty much any way they wish. As long as they can argue that their decisions serve the interest of the 'consumer', it does not matter what happens to the sellers.

If the court were to apply this reasoning to transport, it would find that, because a railroad connects Iowa farmers to Chicago grain buyers, it can treat the farmers however it wants, unless those farmers can prove that the railroad's actions harm buyers in Chicago.

The East India Company is back, this time supercharged with the data it has collected on all of us. Given the global reach of Google, Amazon and the other middlemen of the 21<sup>st</sup> century, the effects will be felt around the world.

\* Executive Director, Open Markets Institute. The article appeared in the Financial Times on June 27, 2018

## Fox's Sky Bid Cleared

The UK plans to approve a proposal by Murdoch's 21<sup>st</sup> Century Fox Inc. to acquire Sky Plc, the largest pay-TV provider in the country. The move gives Fox the clearance it needs to continue pursuing the transaction – but it is no done deal.



assets that includes Walt Disney Co. and Comcast.

Fox is trying to acquire the 61 percent of Sky it does not already own, while also fending off the Comcast bid. The US cable giant has made an offer that is 16 percent higher, but Fox now has the OK to increase its bid of US\$15.6bn.

(Bloomberg, 05.06.18)

### Infratel-Indus Form a Tower Giant

Bharti Infratel Ltd, the tower arm of India's largest telecom operator, and Indus Towers agreed to merge their businesses to create the world's largest tower company outside China.

The combined entity will own more than 163,000 towers, second only to China Tower. The merged company will be listed on the stock exchanges as Bharti Infratel is a publicly traded company.

Once the merger is completed, Airtel, which currently owns 53.5 percent stake in Bharti Infratel, will hold between 33.8 percent and 37.2 percent in the merged entity, while Vodafone India will own between 26.7 percent and 29.4 percent. Airtel and Vodafone India will have equal rights in the merged entity.

(Mint, 25.04.18)

### Building a New Media Powerhouse

US antitrust regulators conditionally approved Walt Disney's proposed US\$71.3bn purchase of key 21<sup>st</sup> Century Fox assets, boosting the chances for the tie-up to create a new media-entertainment powerhouse.

The US Department of Justice approved the deal subject to Disney selling 22 regional sports networks now owned by Fox.

In reviewing Disney-Fox, the Department of Justice said that an asset sale was needed because Disney and

Fox currently compete to sell cable sports programming in local markets around the US. The deal would have meant higher prices for these distributors, the agency said.

(NYT, 28.06.18)

### Tata Steel-Thyssenkrupp Seal Deal

Germany's Thyssenkrupp and India's Tata Steel signed a final agreement to establish a long-expected steel joint venture, the European steel industry's biggest shake-up in more than a decade.

Based in the Netherlands, it will be the continent's second-largest steelmaker after ArcelorMittal. It forms the core of Thyssenkrupp CEO Heinrich Hiesinger's plan to turn his steel-to-submarines conglomerate into a technology company.

The joint venture will not only address challenges of the European steel industry but is also the only solution to create significant additional value of around €5bn for both Thyssenkrupp and Tata Steel due to joint synergies which cannot be realised in a stand-alone scenario.

(IE, 30.06.18)

### Gray TV to buy Raycom Media

Broadcasting company Gray Television will acquire privately held Raycom Media in a cash-and-stock deal valued at US\$3.65bn.

The combined company will have 142 full-power television stations serving 92 markets, the third largest portfolio of stations and markets in the US. The combined company will have a presence in 24 percent of US households, compared to an estimated 65 percent for Sinclair's estimated 62 percent, after acquiring Tribune media.

Raycom President and CEO Pat LaPlatney will become Gray's president and co-chief executive officer, and current Gray CEO Hilton Howell will become executive chairman and co-chief executive officer after the deal closes.

(WSJ, 25.06.18)

### Creating Frozen Food Juggernaut

Conagra Brands, announced plans to acquire Pinnacle Foods in a cash-and-stock deal valued at about US\$8.1bn that furthers Conagra's transformation under CEO Sean Connolly and its push into frozen foods.

The purchase will give Conagra more exposure to one of the few bright spots in the grocery store: frozen food sales are growing after years of decline. Even millennials, known for their foodie tastes, are embracing frozen meals, which are convenient and less expensive than takeout.

More than half of Pinnacle's revenue comes from frozen brands including Birds Eye, Van de Kamp's and the Gardein line of vegetarian products.

(Bloomberg, 27.06.18)

### Nod to Walmart-Advent

Brazil's antitrust watchdog Cade approved buyout firm Advent International's acquisition of Walmart Inc's Brazilian operations, and sought no additional asset sales.

Earlier in June 2018, Walmart agreed to sell an 80 percent stake of its Brazilian unit to Advent, partially exiting an underperforming business and recording a noncash charge of roughly US\$4.5bn.

Advent plans to convert unprofitable hypermarkets into cash-and-carry wholesale stores and expand brands developed by Walmart in Brazil such as Maxxi and Todo Dia.

(Reuters, 22.06.18)

## RESTRUCTURING

### Enhancing Global Payout Capabilities

PayPal has agreed to acquire Hyperwallet, a leading global payout platform, for US\$400mn in cash, subject to certain adjustments.

The acquisition of Hyperwallet enhances PayPal's payout capabilities, improving the company's ability to provide an integrated suite of payment solutions to ecommerce platforms and marketplaces around the world.

According to Internet Retailer, marketplace sales accounted for more than 50 percent of global online retail sales in 2017. The transaction is expected to close in the fourth quarter of 2018.

(WSJ, 19.06.18)

### Microsoft Joins Education Start-up

Microsoft has acquired Flipgrid, a video discussion platform used by more than 20 million teachers and students around the world. Flipgrid is a platform that allows students to discuss and reply to topics with video clips at home or in the classroom.

The move shows Microsoft remains eager to win share in education, where Google's Chromebooks have become popular. Microsoft is making Flipgrid free of charge. Schools that already have subscriptions will receive prorated refunds.

The acquisition comes 1½ years after Microsoft announced a partnership with Today, Flipgrid integrates with many Microsoft products, including Teams for chatting with other people and OneNote for taking notes.

(CNBC, 18.06.18)

### Google and Carrefour Partner Up

French retailer Carrefour has announced a strategic partnership with Google that will enable new distribution models and commerce experiences for shoppers in France.

The partnership centers around three initiatives: A new buying experience from Carrefour across Google platforms; the opening of an innovation lab in Paris this summer in partnership with Google Cloud; and a training programme to accelerate the digital transformation of Carrefour Group.

The partnership enables Google to deliver its technology and skills in AI, cloud and new consumer shopping

interfaces to Carrefour, while the retailer offers its product expertise and knowledge in logistics and sales.

(CPI, 12.06.18)

### Uber is Sizing up Bike-Share

Uber is launching a bike-sharing service in partnership with JUMP, a startup that recently received the first and only permit to operate dockless bike-sharing in San Francisco.

JUMP's contract with the San Francisco Municipal Transportation Agency enables it to launch 250 of its dockless, electric bikes in San Francisco. After the first nine months of the programme, the SFMTA may allow JUMP to add an additional 250 bikes to its fleet.

Called Uber Bike, Uber customers will be able to book JUMP bikes within the Uber app. To be clear, the bikes will not be brought to people. Instead, riders are responsible for going to the location of the bike.

This partnership is a great way to get a much larger audience on bikes and help them understand their transportation options. This is Uber's first foray into the bike-sharing game.

(CPI, 10.06.18)

### Coinbase Acquires Keystone Capital

The cryptocurrency service Coinbase acquired Keystone Capital Corp, a California-based financial firm, in a move that will clear the path for it to operate as a registered broker-dealer.

The acquisition puts the San Francisco-based company on a firmer regulatory footing with the Securities and Exchange Commission, and positions it to offer both traditional equities and a broader range of blockchain-based securities.

While Coinbase is the largest US cryptocurrency exchange, it currently offers only four types of virtual currency, including Bitcoin and Ethereum. The limited selection reflects the company's cautious approach at a time when the SEC had indicated it regards most digital tokens as securities that must be registered. (NBC, 11.06.18)

### Sony in Deal for EMI

Sony would pay about US\$2.3bn to gain control of EMI to become the world's largest music publisher in an industry that has found new life on the back of streaming services.

The deal is part of Yoshida's mission to make revenue streams more stable with rights to entertainment content — a strategy that follows a major revamp by his predecessor which shifted Sony's focus away from low-margin consumer electronics.

The music business has enjoyed a resurgence over the past couple of years, driven largely by the rise of paid subscription-based streaming services. Sony is trying to get hold of more intellectual property in the entertainment industry.

(CPI, 23.05.18)

## Renault-Nissan Alliance on Hold

The partnership between French carmaker Renault and Japanese carmaker Nissan is temporarily put on hold, as both manufacturers are reviewing the ownership structure of its alliance.

As a result, the partnership would not see the day if light until 2020. The carmakers are examining ways to consolidate the Renault-Nissan-Mitsubishi alliance.

In March 2018, Renault-Nissan Chairman Carlos Ghosn announced that both companies will share technology, resources, man-power and direct these towards research on new-energy vehicles, autonomous driving and car-sharing services.

Both the manufacturers already share platforms and technology. Ghosn had revealed the alliances plan to double their synergies to 10 billion Euros by 2022. However, all these were part of the initial discussion and nothing concrete came out of it.



# AT&T Ruling Reinforces Judicial Independence

Gillian Tett\*



When Donald Trump swept to power 18 months ago and started attacking companies, business leaders cowered. No longer; or at least, not as much.

Consider the case of AT&T. For more than a year, the telecoms company battled the US Department of Justice (DoJ) over its planned US\$85bn purchase of Time Warner. The DoJ argued this vertical merger was anti-competitive; AT&T insisted that the media landscape is changing so fast that competition would be best preserved if incumbents were allowed to consolidate to do battle with digital giants such as Amazon and Netflix.

In my view, there are strong legal arguments on both sides. And American law complicates the issue because antitrust decisions generally focus on whether deals will lead to higher consumer prices. That is crazily outdated: many tech companies now barter services for data, without collecting money, and the dangers posed by monopolies no longer revolve purely around economics, but also information control.

However, the judge in the AT&T case, Richard Leon, seemed untroubled by shades of grey. He ruled on Tuesday that the AT&T deal could proceed, without any conditions at all, in a 172-page ruling that excoriated the DoJ's case.

This is a watershed moment for antitrust law. But it may contribute to a turning point in the dance between business and the US president. Here's why: Trump warned in 2016 during a campaign policy speech that the AT&T bid is "a deal that we will not approve in my administration because it's too much concentration of power".

Nobody has proven in public that political pressure from Trump swayed the DoJ; Makan Delrahim, who heads antitrust

enforcement, vehemently denied he was acting at the behest of the president.

But one thing that is crystal clear is that the judge was not cowed by Trump. To put it another way, the DoJ lost badly; but the concept of an independent judiciary emerged victorious.

That will embolden companies to make more deals. US companies have already unleashed plenty of mergers and acquisitions this year. Borrowing is (still) dirt-cheap, money is being repatriated from overseas, the private equity world has more money than it knows what to do with, and corporate executives are scrambling to respond to digital disruption.

Global M&A has already topped US\$2tn this year, a record.

But even amid this boom, some companies have been sitting on the sidelines, nervous about the seemingly capricious nature of the policy climate. Now they may feel ready to act.

However, the decision is likely to have another consequence: it will encourage business to become a little more blasé about Trump's threats. When he first took office, his unpredictable attacks on companies (and everyone else) left many executives frozen in horror. But this shock has slowly, but surely, subsided over time.

That does not mean that business considers Trump's actions to be 'normal', or his threats desirable. But these days many executives seem to treat the White House melodramas as if they existed in a parallel universe. Cable television may breathlessly track Trump's tweets, but business leaders view it more like a reality television show, somewhat divorced from the 'real' economy.

This stance may be dangerously naive. Trump has unleashed so many attacks on US institutions, including the courts, that there is a risk he will undermine them in the long term. It is not healthy that morale at the DoJ is at a rock-bottom low. And the White House drama may yet have practical – damaging – actions in areas such as trade.

But what business leaders learnt this week was that Trump's bark is not always followed by a bite. Leon's ruling was not swayed by presidential threats. The AT&T case shows that America still only has one king: the law. That merits a loud cheer – no matter how worried you might feel about the power of big tech, or AT&T's ability to make this debt-laden deal work.

\* US Managing Editor, Financial Times. Abridged from an article appeared in the Financial Times, on June 15, 2018

# The 'Big Four' Auditors Have Life Far Too Easy

Jonathan Ford\*

How tough can life really be at the top of a 'Big Four' auditing firm? You inhabit a world where not only must customers by law buy your product, but, happily, one where the most lucrative also seem wedded to dealing with only the biggest practices — whether out of snobbery, the need for international audit coverage, or just the nebulous sense that investors might otherwise disapprove.

The one nightmare you have is that a giant accounting scandal could somehow bring retribution. Your size and reach makes you a tempting target. But even here, that same oligopoly rides faithfully to the rescue. Since the demise of Arthur Andersen — the fifth pillar of what was until 2002 the big five accountants — the authorities have helpfully thrown a cordon sanitaire around the survivors, fearing the descent into an even more dominant big three.

It is why when KPMG was found to be peddling illegal tax schemes in the US in 2005, it was let off with no more than a slap on the wrist by the authorities. Or why the whole big four — PwC, EY, KPMG and Deloitte — emerged from the furnace of the financial crisis with just a minor singeing.

There is, however, one nagging blot on this landscape. Each successive scandal raises the same awkward questions. Does this comfortable structure really promote audit quality? And by allowing a few giant firms to dominate the profession; has control of this systemically important industry been handed to a few self-interested actors — concerned mainly with preserving their own privileges rather than promoting the public good?

The collapse of the British outsourcing firm Carillion is the latest scandal to cause these worries. Despite absorbing expensive advice and assistance from all of the big four at a princely cost of £51m over a decade, its failure has been dominated by allegations of financial misreporting. How did the auditors, the giant KPMG, express no concern over reported profits of £150m just months before it emerged these were illusory?

Markets only function when participants perceive some threat to their position if they fail to perform or innovate. Yet in auditing, the moat between the big four and the rest is only widening, despite recent moves designed to reduce conflicts and spark more rivalry. Brought in after the crisis, these oblige quoted companies periodically to re-tender audits.



In March, Britain's fifth-biggest firm, Grant Thornton, announced it would no longer tender for audits of FTSE 350 companies. It said that all retendered contracts were simply being passed reflexively around the big four.

Add to all that the regulator's well-known "light touch" approach to the top firms, and you have a situation where big four partners may no longer feel they have to look over their shoulders. That makes them vulnerable to the blandishments of a high-paying client, whose boss has a life-changing bonus riding on its next figures, and some daring calculations to push. Rather than holding themselves and clients to the most exacting standards, the oligopolists can use their influence to shrug off liability, introduce overly complex disclosures and procedures that need heavy investment, and find ways to introduce "tick box" formulas into what should be principled rules.

Would break-ups change all this? Potentially yes, if investors were also prepared to step up and be both more demanding of audits, and rewarding of quality. The present arrangement, in which the company chooses the supplier of the audit rather than the (passive) investor, is unhealthy, leading to the sort of conflicts which bedevil, say, the US health insurance market.

The practical challenges are not insuperable. The big four claim theirs is a special market that needs scale because of the global demands. But there is little difference to legal services. And there are plenty of international law firms. Nor is it impossible for Britain to act unilaterally. The big four are global alliances built on national partnerships. Britain could catalyse wider action by leading the way.

\* City Editor, Financial Times. Abridged from an article appeared in the Financial Times, on May 22, 2018

## India-dedicated Investment Fund Launched

The Industrial and Commercial Bank of China, a top state-run Chinese bank has launched China's first India-dedicated publicly offered investment fund, urging the Chinese to invest heavily stating that the Indian economy is entering the "golden age of economic take-off".

The move, regarded as significant by observers to boost investments in India, comes just about a fortnight after the first ever informal summit between Prime Minister Narendra Modi and Chinese President Xi Jinping at Wuhan, where the two leaders sought to give a new direction to the bilateral ties to tap their economic potential.

The fund, named as the Industrial and Commercial Bank Credit Suisse India Market Fund, will "invest in exchange-traded funds listed on more than 20 exchanges in Europe and the US that are based on the Indian market."



(Tol, 14.05.18)

### FDI Inflows to India Decline in 2017

Foreign Direct Investment (FDI) to India declined to US\$40bn in 2017 from US\$44bn in the previous year, said UNCTAD'S World Investment Report 2018.

"FDI inflows to South Asia contracted by four percent to US\$52bn, owing to a drop in inflows to India" the report said. As per the UNCTAD, the foreign inflows to India decreased from US\$44bn in 2016 to US\$40bn in 2017.

Cross-border M&A sales, however, rose from US\$8bn to US\$23bn driven by a few large deals in extractive and technology related industries.

The report said the Petrol Complex Pte Ltd (Singapore), owned by Rosneftegaz (Russian Federation) acquired a 49 percent stake of Essar Oil Ltd, the second largest privately owned Indian oil company, for US\$13bn.

(BS, 07.06.18)

### China in Africa !

China is scaling back investment in Ethiopia in the face of rising foreign exchange shortages and government debt, highlighting the fragility of the African nation's economy as the new Prime Minister prioritises political reform to quell three years of deadly social unrest.

For much of the last decade Ethiopia has been a leading investment destination in sub-Saharan Africa, particularly for China. But Beijing's waning enthusiasm for the region's fastest-growing economy reflects the

challenges facing Abiy Ahmed, the prime minister, as he juggles demands from a public hungry for both democracy and development and myriad vested interests.

Business people, diplomats and bankers said Chinese entities, which have loaned more than US\$13bn between 2006 and 2015 for everything from roads and railways to industrial parks, were now taking a "more cautious approach" to Ethiopia.

(FT, 03.06.18)

### Trade War Undermines Investments

One of Europe's leading industrialists has warned that the US decision to slap tariffs on steel and aluminium and the growing prospect of a trade war will force businesses to question their investment plans.

Jacob Wallenberg, whose family controls companies such as Ericsson and Saab with combined revenues of more than US\$130bn said that the US action risked undermining both global supply chains and the rules-based system of international trade.

His words carry weight as the Wallenberg family is one of Europe's biggest investors as well as being a long-time proponent of free trade, owning stakes in everything from stock exchange Nasdaq and drugmaker AstraZeneca to airline SAS and consumer appliance group Electrolux.

Electrolux was the first company to demonstrate the potential fallout from Donald Trump's new tariffs when in March it put on hold a US\$250m

investment in a cooking factory in Tennessee.

Wallenberg, who chairs the family investment vehicle, Investor, as well as being Deputy Chairman of Engineer ABB and telecoms group Ericsson, drew parallels with Brexit. He also sounded the alarm over global supply chains where finished products are made up of parts drawn from numerous countries around the world.

(FT, 04.06.18)

### Driving Cross-border Investment

Rising trade tensions are dragging down long-term cross-border investment by companies around the world, UN figures showed. Global foreign direct investment fell by 23 percent in 2017 and is expected to grow only modestly, if at all, this year, the UN said in its latest World Investment Report.

Threatening this year's picture are the growing prospects of a trade war between the US and China and the EU. The US imposed steel and aluminium tariffs on the EU, Canada and Mexico. It is due to release lists of tariffs and investment restrictions against China and is also threatening to impose import taxes on the US\$190bn of cars brought into the US from overseas annually.

FDI – a measure that includes acquisitions and investments in factories by foreign companies – has not yet recovered to the peak it hit before the global financial crisis a decade ago.

(FT, 06.06.18)

## SECTORAL REGULATION

### Breaking up Electricity Monopoly

Israel's government approved a reform to open the electricity sector to new competition and break up the monopoly held by its state-owned power utility. The government, together with Israel Electric Corp (IEC) and its workers, agreed on sweeping changes to end a 22-year stand-off.

The move requires that a new law be drafted in Parliament. IEC, which for decades has managed every aspect of electricity from running power plants to connecting households, agreed to sell five of its power stations over five years and form a subsidiary to manage two yet-to-be-built power stations.

System management and planning will be taken away from the utility and sold to a different government-owned company.

(Reuters, 18.05.18)

### New Data Protection Rules in Effect

The General Data Protection Regulation (GDPR) that gives citizens of the European Union (EU) more rights to control their personal information came into effect. With the new regulations in force, companies working in the EU, or any association or club, must now get express consent to collect personal information, or face hefty fines.

At a time when several technology companies have come under the scanner for misuse of personal data of users, the new EU legislation, passed in April 2016, is seen as an attempt by the European lawmakers to restrict the powers of the technology companies.

The new regulations give the users of tech companies the right to see what information about them are being collected and also have them deleted if they wish so (also see page no. 17).

(BL, 25.05.18)

### Comments on 5G Spectrum Invited

The National Communications Commission (NCC) of Taiwan has initiated a public consultation on 5G spectrum planning and auction preparation. Industry stakeholders and interested parties are invited to give comments. NCC Chair Nicole Chan stated that the commission will be submitting its final analysis of the public consultation to the Executive

Yuan in July 2018. The premier will then issue a further decision on 5G spectrum.

Further to its 2017 Taiwan Communications Market Report of April 2018, the NCC's request for comment indicated that the 3<sup>rd</sup> Generation Partnership Project would finalise Release 16 by 2020 and that 5G products may be mature enough to meet market needs in the third quarter of 2019.

It also referred to the progress being made in Germany, South Korea, Japan, China, Australia and the US towards planning for 5G spectrum.

(ILO, 20.06.18)

### Transport Code Approved

The Transport Code is one of the government's key initiatives in Finland. The code's main purpose is to create a growth environment for business digitalisation and promote transport business by deregulation.

The code will reform the regulation of all transport modes, so that the regulation itself will not become an obstacle to digitalisation, automation and new innovations.

The preparation of the first stage started in November 2015. In September 2016 the government submitted the bill to Parliament and preparation for the second stage began.

The first stage of the code will enter into force on July 01, 2018. However, the provisions relating to intelligent transport systems based on Directive 2010/40/EU entered into force on October 01, 2017, and the provisions on opening essential data have applied since January 01, 2018. (ILO, 09.05.18)

### New Bill for Clinical Research

The importance of clinical research for developing new treatments and discovering cures for diseases is indisputable. However, the degree to which patients benefit from participating in clinical trials and whether they should have post-trial access to experimental treatments are highly disputed, especially in Brazil, where free universal healthcare is a constitutional right.

The House of Representatives is discussing clinical research and post-trial access as part of a new legislative bill. Under the existing bill, sponsors must provide their patients with products that benefit their health at no cost and for an unlimited period.

As Congress is likely to propose and make amendments, senators should re-examine the bill before voting on it. Further, it must be sanctioned by the president (with or without vetoes).

(ILO, 23.05.18)

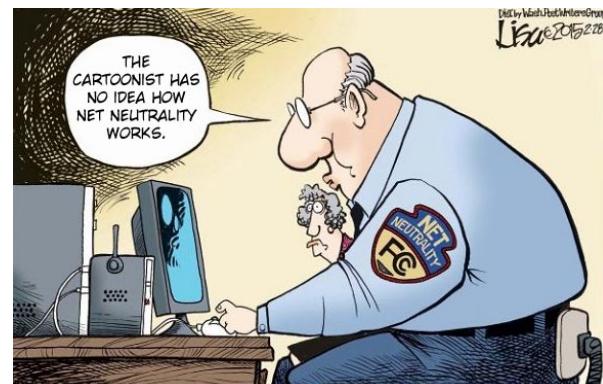
## Net Neutrality Officially Ends

The US Federal Communications Commission (FCC) announced that its reversal of the 2015 Open Internet Order, known as net neutrality, will officially take effect on June 11, 2018.

The decision to end net neutrality was made by the FCC in late 2017 by a 3-2 vote headed up by FCC Chairman Ajit Pai.

Under net neutrality, broadband internet is required to be regulated as a utility, preventing ISPs from throttling, slowing, or speeding up certain websites or services based on paid partnerships with companies.

When the new rules go into effect on June 11, providers will be legally able to adjust the speed of content to benefit companies from which they stand to profit.



(CPI, 11.06.18)

# UK's Retailers are too Quick to Blame Business

John Kay\*



The Financial Times

It is a remarkable fact, but few businesses ever seem to fail because of excessive leverage, misconceived strategies, or inability to meet the needs of their customers. They struggle because banks unreasonably refuse further credit, or because of unseasonable weather, or some unexpected adverse effect, such as a terrorist attack. Most often, however, their difficulties are the result of some insufficiently supportive government policy. The corporate executive who says “we got it wrong” is as rare as the politician who makes a similar admission.

Pressure on the retail sector has been intensifying for a decade. In the years of the credit boom finance was cheaply and readily available to fund new property development. It was also readily and cheaply available for leveraged private equity purchase of retail chains. But since 2008 consumer expenditure has stalled. Shopping has become a diminishing fraction of household spending, and online sales have grown.

So the weakest retailers have been struggling — the dowdy department stores; the groups with financing structures too precarious to survive any setback. And surely it should not be a surprise that the market for imported tat and wholesalers’ overstocks at £1 per item has its limits. Even the stronger chains have had to review their less profitable stores.

All that is an appropriate market response to evident overcapacity. There will be fewer retailers, fewer shops and less popular high streets and shopping malls will struggle until some sort of equilibrium is restored. So where do business rates come into it all?

Business rates are levied on a notional rental value of commercial property, and the rate of tax (the multiplier) is

increased annually in line with the retail prices index. These assessed rental values are subject to revision every five years. The effect of revaluations is to leave the total rates bill unchanged but to redistribute it in line with changes in relative rental values. The latest revision, which had been postponed for two years to avoid an unwanted clash with a general election, came into effect in April 2017. Some pay less, but those who pay more make more noise.

The critics of business rates have the wrong end of the stick. First, and fundamentally, they have failed to recognise that the core problem is one of overcapacity in retailing. Shopkeepers are victims of their own historic hubris, not government greed. Second, those critics have not thought through who would be the main beneficiaries of the relief they seek. The gains would not go to struggling discounters and outmoded department stores. The winners would be the holders of the most valuable land in England. Think of the big landowners of central London and your thoughts should turn to the Queen, the Duke of Westminster and Land Securities.

So what should be done about business rates? The government is in the early stages of a programme to restore control of business rates to local authorities. While this seems welcome, it carries the danger that irresponsible councils will see local business as a cash cow to offset inadequate Central Government funding. The government has also proposed to revalue at three rather than five-year intervals. This would probably reduce the volume, even as it increased the frequency, of cries of pain.

*Shopkeepers railing against the levy should look a bit closer to home*

Recent years have seen two reports on the future of high streets. One, by retail consultant Mary Portas, suggested a range of policies to sustain the *status quo*. Another, more perceptive, from Bill Grimsey, former head of Wickes, Iceland and Focus DIY, took a broader perspective. We want vibrant centres in our cities and towns. But not streets lined with identical collections of outlets of the same chain retailers. Think of high streets as community hubs rather than shopping malls.

\* Contributing Editor, Financial Times. Abridged from an article appeared in the Financial Times, on July 06, 2018

### Remuneration Policies in Banking

The Bank of Italy recently commenced a public consultation on the proposed amendments to Regulation 285/2013 on remuneration policies in the banking sector.

The main aim is to align the regulation with the European Banking Authority Guidelines of December 2015(1) and ensure compliance with Articles 74(3) and 75(2) of the EU Capital Requirements Directive (2013/36/EC). The consultation ended on May 14, 2018.

The proposed amendments to Regulation 285/2013 apply to both banks and investment firms, in line with the joint regulation issued by the Bank of Italy and the Italian Companies and Exchange Commission. (ILO, 20.04.18)

### Financial Technology Institutions Law

The US Congress passed the bill on the Financial Technology Institutions Law in Mexico, with 265 votes in favour, nine abstentions and 61 votes against.

The Senate had unanimously approved the bill with 102 votes in favour, and sent it to Congress for analysis. Congress made no amendments to the bill.

On March 08, 2018 the President signed and enacted the bill. The law was published the next day in its final form in the *Federal Official Gazette*. The law seeks to build a regulatory framework that will encourage the development of innovative financial services; increase the level of competition and financial inclusion; and place Mexico at the forefront of the industry. (ILO, 06.04.18)

### Regulating Private Lending

The China Banking Regulatory Commission (CBRC) issued the Circular on Matters concerning Regulating Private Lending and Maintaining Economic and Financial Order (10/2018), which came into effect on the same date. Officials of the relevant government agencies also held a press conference to answer reporters' questions on the circular.

The circular was formulated in accordance with the Banking Regulation Law; the Law on Commercial

Banks; the Criminal Law; and the Measures for the Clampdown of Illegal Financial Institutions and Illegal Financial Operations.

The circular establishes the basis for clarifying credit rules and prohibiting illegal private lending.

(ILO, 08.06.18)

### Reviewing Banking Oligopoly

The Australian competition regulator said it plans to review the powers of the country's four largest banks, amid concerns that lending caps have cut competition and high barriers to entry have stifled rivals.

The move is the latest sign Australia's 'Big Four' banks, which

control about 80 percent of the home lending market, face greater scrutiny and regulation to correct abuses of power following years of scandals and corporate wrongdoing.

The scope of reviews was still being decided, but they would likely focus on the power of the four largest banks, barriers to entry in the industry, and constraints on consumers switching between banks, the ACCC said.

The reviews come on top of an ongoing judicial inquiry into Australia's financial sector which has already revealed the banks abused their power and routinely breached laws when issuing home loans, credit cards and other consumer loans.

(Reuters, 11.04.18)

## US Banks: "Too Big to Fail" just Shrunk

Preeti Varathan\*

Republicans have been gunning to dismantle the 2010 Dodd-Frank Act from the moment it came into existence. US President Donald Trump promised to do "a big number" (paywall) on it, calling the Wall Street reform act a 'disaster.'

The Dodd-Frank Wall Street Reform and Consumer Protection Act was a colossally large, 2,300-pager piece of financial reform. The Act created a number of new government agencies, like the Financial Stability Oversight Council and the Consumer Financial Protection Bureau, entities Trump has vociferously critiqued as decimating financial institutions. The Act also curtailed speculative trading, effectively separating the investment and commercial sides of banks. And it eased the financial and legal lives of whistleblowers.



Many of those unprecedented, tough standards will remain intact. What the new bill takes a hammer to is which banks, if any, are thought of as systematically important financial institutions-Dodd-Frank lingo for too big to fail. In the newest version of the bill, only banks with US\$250bn or more in assets fall under that jurisdiction. That's fewer than 10 banks (paywall) in the US.

The new bill, if signed by the President, is a boon for smaller banks. Whether the latest version of Dodd-Frank maintains its muscle, though, is ultimately up to the Federal Reserve, which gets large discretion in determining the size and scope of regulation for medium and small banks. In his senate confirmation hearing, Fed chair Jerome Powell let on just what he thought of the current necessity of Dodd-Frank legislation.

\* Atlantic Editor Fellow at Quartz.

The article appeared in the Reuters, on May 23, 2018

# Technology Suppresses Banks' Appetite for Mega-Deals

Sam Theodore\*



The finance industry has been waiting for large cross-border bank mergers since the EU voted for banking union five years ago. Unlike the wild-eyed years before the global financial crisis, such deals, the market believes, will be conducted with efficiency and transparency, governed by tougher regulations and, in the eurozone, closely supervised by the European Central Bank.

Hints of that consolidation may at last be emerging. The Financial Times reported that UniCredit's chief executive had been seeking a merger with Société Générale. And last month it emerged that Barclays had been talking privately about a possible merger with rival international banks, including Standard Chartered, in response to pressure from an activist investor.

But in truth there is still little excitement around large-bank mergers and acquisitions. The memory of the abysmal pre-crisis mega-deals lingers, among them the 2007 acquisition of ABN Amro by a Royal Bank of Scotland-led consortium that ended up costing UK taxpayers £45bn and Dutch taxpayers nearly €22bn. Or the foolishly acquisitive strategy of public-finance group Dexia that ended in a multi-billion-euro government bailout.

With the possible exception of UniCredit's Jean-Pierre Mustier, most bank executives seem to lack appetite for transformational mergers. That is partly because, since the financial crisis, the "hunter" bank leader who chased acquisitions and risky diversification has gradually been replaced at most European lenders by the "farmer" chief executive, tilling and pruning the local backyard.

Ironically, it is the ECB and other public-sector bodies such as the IMF that have changed their tune and are now urging consolidation. Banking authorities have not historically been keen proponents of M&A among large banks. But now they hope to address over-capacity in the system and resuscitate the ailing eurozone.

Some industry participants suspect that the ECB's cross-border supervisor would welcome having more cross-border groups to supervise to strengthen its umbrella role. That would make it easier to challenge national politicians, who are more interested in solutions for their own countries. 2017's Italian bank bailouts were a case in point.

If deals do emerge, a large dose of market concern is warranted. Consolidation is necessary for smaller and undiversified retail banks which, faced with years of ultra-low interest rates and subdued volume growth, can barely eke out a profit. This has already occurred with Spain's regional savings banks, or cajas, but is still a work-in-progress among second-tier banks in Italy and the many co-operative and savings banks in Germany.

Despite the ECB's siren calls and the recent back-channel discussions, it remains unlikely that we will see large M&A transactions any time soon. If deals do emerge, a large dose of market concern is warranted. A few caveats come to mind.

First, banks must become more efficient to fend off competition. But the challenge is coming from new digital apps and business models. Rather than combining with an old-fashioned distributor (in other words, another bank), today's wisely managed lender is investing in buying fintech companies or building its own digital capacity. As customers switch in droves to smartphone banking, that wisely managed bank thinks twice before taking on more brick-and-mortar branches.

Second, financial products have become increasingly commoditised. Demand for customised products has diminished since the financial crisis and many services can be more easily replicated through technology. EU payment services rules mean that our wisely managed bank will be able to provide services to a broader range of customers on other banks' open platforms.

Third, banks remain concerned about the regulatory and political treatment of cross-border mergers. Who can blame them? There are legitimate uncertainties about the structures set up to deal with failing banks and the ability of lenders to transfer capital and liquidity across jurisdictions. The banking union is still viewed with suspicion by many European governments, even those of a non-populist persuasion. If the fear factor returns, politicians will circle the home wagons first.

Fourth, mergers do not necessarily reduce excess capacity. In France, a highly consolidated market, most banks exhibit a poor level of cost efficiency compared with other countries. So, for now, the "farmer" chief executive may still hold the upper hand.

\* Managing Director, Scope Ratings' Financial Institutions Group. Abridged from an article appeared in the Financial Times on June 05, 2018

# US Should Borrow from Europe's Data-Privacy Law

*The GDPR's premise, that consumers should be in charge of their own personal data, is the right one*

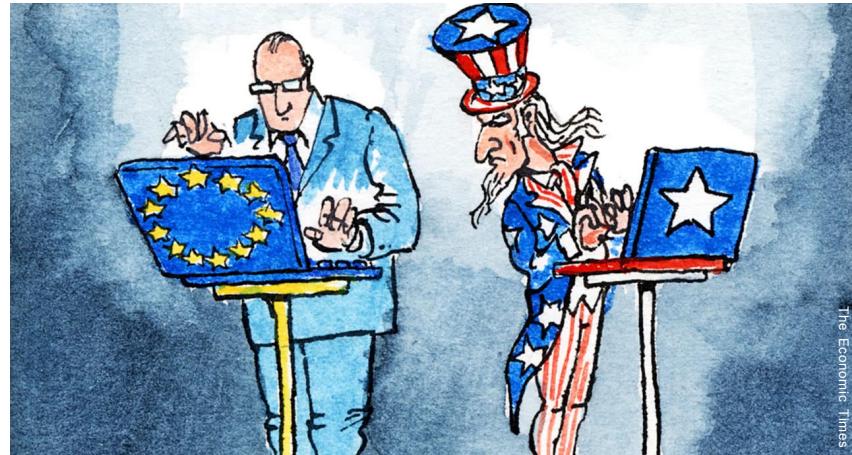
US looks to the bureaucrats of Brussels for guidance. Commercial freedom appeals more than dirigisme. But when it comes to data privacy, the case for copying the best bits of the European Union's approach is compelling.

The General Data Protection Regulation (GDPR) is due to come into force next month. It is rules-heavy and has its flaws, but its premise that consumers should be in charge of their personal data is the right one. The law lets users gain access to, and to correct, information that firms hold on them. It gives consumers the right to transfer their data to another organisation. It requires companies to define how they keep data secure. And it lets regulators levy big fines if firms break the rules.

US has enacted privacy rules in areas such as health care. But it has never passed an overarching data-protection law. The latest attempt, the Consumer Privacy Bill of Rights, introduced in 2012 by the Obama administration, died a slow death in Congress. The GDPR should inspire another try.

The failings of America's self-regulatory approach are becoming clearer by the week. Large parts of the online economy are fuelled by data that consumers spray around without thought. Companies' arcane privacy policies obfuscate what they do with their users' information, which often amounts to pretty much anything they please. Facebook is embroiled in crisis after news that data on 87 million users had been passed to a political-campaign firm. Identity-theft is widespread; the annual cost to American consumers exceeds US\$16bn, according to some estimates.

These scandals are changing the calculus about the benefits of self-



regulation. Opponents of privacy legislation have long argued that the imposition of rules would keep technology companies from innovating. Yet as trust leaches out of the system, innovation is likely to suffer. If consumers fret about what smartphone apps may do with their data, fewer new offerings will take off — especially in artificial intelligence.

The need to minimise legal fragmentation only adds to the case for America to adopt bits of the GDPR. One reason behind the new rules in the EU was to harmonise data-protection laws so that firms can do business across Europe more easily. America is moving in the opposite direction. States that have detected a need for greater privacy are drafting their own laws. California, for instance, has pending legislation that would establish a data-protection authority to regulate how the state's big tech firms use Californians' personal data.

Internationally, too, America is increasingly an outlier. Any American firm that serves European customers will soon have no choice but to comply with the GDPR; some firms plan to employ the rules worldwide. Other

countries are adopting GDPR-style laws. A similar regime on both sides of the Atlantic would help keep data flowing across borders. The alternative, of a regulatory patchwork, would make it harder for the West to amass a shared stock of AI training data to rival China's.

## Putting the personal into data

America need not adopt the GDPR wholesale. The legislation is far from perfect. At nearly 100 articles long, it is too complex and tries to achieve too many things. The compliance costs for smaller firms, in particular, look burdensome. In addition, parts of the GDPR are out of step with America's constitutional guarantee of free speech: a 'right to be forgotten' of the kind that the new law enshrines will not fly.

But these are arguments for using the GDPR as a template, not for ignoring the issue of data protection. If America continues on today's path, it will fail to protect the privacy of its citizens and long-term health of its firms. America's data economy has thrived so far with hardly any rules. That era is over.

\* This article appeared in the Leaders section of the print edition under the headline 'Copy that' of the Economist on April 25, 2018

# From War Room to Boardroom. Military Firms Flourish in Sisi's Egypt

Reuters Staff

*An employee puts a 'Made in Egypt' sticker on a boxed refrigerator at Helwan Company for Metallic Appliances (Factory 360) on the outskirts of Cairo, Egypt February 20, 2017.*



These days he issues orders from an office that overlooks the Nile, as chairman of the Maadi Co. for Engineering Industries, owned by the Ministry of Military Production.

Maadi was founded in 1954 to manufacture grenade launchers, pistols and machine guns. In recent years the firm, which employs 1,400 people, has begun turning out greenhouses, medical devices, power equipment and gyms. It has plans for four new factories.

"There are so many projects we are working on," said Abdel Meguid, a 61-year-old engineer, listing orders including a 495 million Egyptian pound (US\$28mn) project for the Ministry of Electricity and an Algerian agricultural waste recycling contract worth US\$400,000.

Maadi is one of dozens of military-owned companies that have flourished since Abdel Fattah al-Sisi, a former armed forces chief, became president in 2014, a year after leading the military in ousting Islamist President Mohamed Mursi.

The military owns 51 percent of a firm that is developing a new US\$45bn capital city 75 km east of Cairo. Another military-owned company is building Egypt's biggest cement plant. Other business interests range from fish farms to holiday resorts.

In interviews conducted over the course of a year, the chairmen of nine military-owned firms described how their businesses are expanding and discussed their plans for future growth. Figures from the Ministry of Military Production - one of three main bodies that oversee military firms - show that revenues at its firms are rising sharply. The Ministry's figures and the chairmen's accounts give

rare insight into the way the military is growing in economic influence.

Some Egyptian businessmen and foreign investors say they are unsettled by the military's push into civilian activities and complain about tax and other advantages granted to military-owned firms. The International Monetary Fund warned in September 2017 that private sector development and job creation "might be hindered by involvement of entities under the Ministry of Defence."

Egypt's government counters that private companies are operating on an even playing field and that the military is filling gaps in the market, as it did during a shortage of infant formula in 2016. Then the military helped by importing supplies and has since announced plans to build a formula plant. Sisi says the military can deliver large, complicated projects faster than the private sector.

In 2016, the military and other security institutions were given exemptions in a new value-added tax (VAT) law enacted as part of IMF-inspired reforms. The law states that the military does not have to pay VAT on goods, equipment, machinery, services and raw materials needed for the purposes of armament, defence and national security.

The Ministry of Defence has the right to decide which goods and services qualify. Civilian businessmen complain that this can leave the system open to abuse. Receipts for a cup of coffee at private sector hotels, for example, add 14 percent VAT. Receipts at military hotels do not. Employees at the military-owned Al-Masah Hotel in Cairo told Reuters that no VAT was charged when renting venues for weddings and conferences.

*Abridged from an article appeared in Reuters, on May 16, 2018*

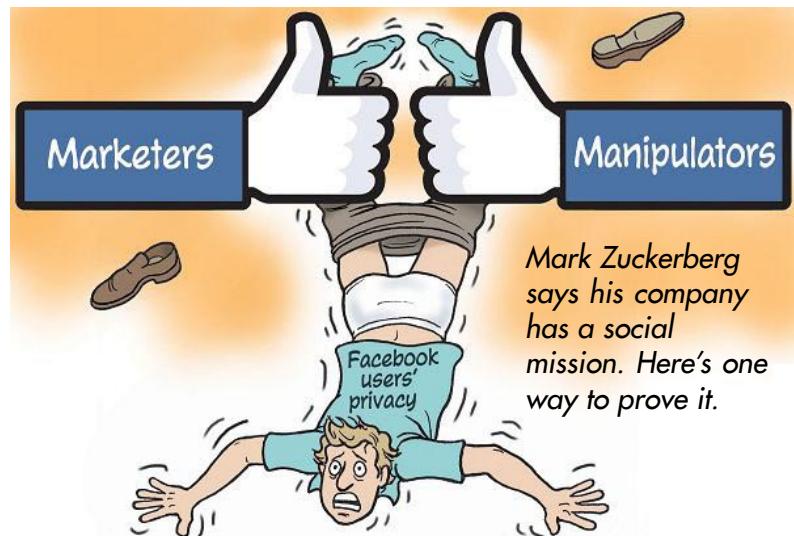
## Facebook Should Be a Nonprofit

Kara Alaimo\*

Facebook users have no way to opt out of advertising because the company's business model would not allow it, the company's chief operating officer, Sheryl Sandberg, said in a "Today Show" interview. If users could request that their data not be used for advertising purposes, then Facebook would have to be 'a paid product,' Sandberg said. But beyond the alternatives Sandberg laid out — Facebook users can either be targeted with ads, or pay Facebook to avoid them — there is a third option: Facebook could become a nonprofit organisation.

If the idea of internet companies eschewing opportunities to make money with advertising sounds crazy, consider this: Some of the first proponents of the idea were the founders of Facebook and Google. In his book 'The Know-It-Alls: The Rise of Silicon Valley as a Political Powerhouse and Social Wrecking Ball,' journalist Noam Cohen reports that Facebook chief executive Mark Zuckerberg originally did not want ads to show up in a person's news feed unless a friend had liked a particular product. He changed course, Cohen says, under pressure to deliver profits to investors.

Similarly, in a 1998 paper Google's founders, Sergey Brin and Larry Page, warned about the dangers of ad-supported search engines, predicting that they would be 'inherently biased towards the advertisers and away from the needs of the consumers.' For example, they wrote, a search engine that sold ads to a cell-phone company might feel pressure to suppress negative search results about cell phones.



But internet users need to see information like this in order to make informed decisions as consumers. Commercial considerations alone should not determine what shows up on our Facebook news feeds or Google searches. We also need accurate and balanced reporting in order to perform our civic duties — not the fake news which has circulated on Facebook of late and pieces from sources we already agree with, which the author and activist Eli Pariser says leave us in 'filter bubbles' and have contributed to America's heightened political polarisation.

43 percent of Americans often get news online and 67 percent of Americans turn to social media for news, according to a 2017 Pew Research Center survey. The raisons d'être of social media platforms should be to share vital information, provide a forum for public discussion, and help connect the world — not just to sell ads to politicians and corporations.

It wouldn't be unheard of for an internet heavyweight to reinvent itself as a nonprofit: One example is Wikipedia. The internet encyclopedia, which was originally funded by a dot-com company, is now run by a nonprofit organization. Ann Ravel, a lecturer at the University of California, Berkeley Law School, said a company like Facebook could convert to nonprofit status by buying out shareholders and complying with the IRS requirements for 501(c)(3) organisations.

Facebook is often the first to claim that it is driven by a social mission. In an interview with Fast Company last year, Zuckerberg said, "I think the core operation of what you do should be aimed at making the change that you want ... What we are doing in making the world more open and connected, and now hopefully building some of the social infrastructure for a global community — I view that as the mission of Facebook." There's a name for an organisation with a pro-social mission. It is called a nonprofit.

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The article appeared in The Hindu Business Line, on April 13, 2018



## Economic Regulations, Competition, and Consumer Protection in Ancient India

By Pradeep S Mehta

It is learned that the Ancient India was a 'mixed economy' adhering to the socio-economic philosophy of a 'welfare state'. In general, the state was both regulator and competitor, including state enjoying monopoly over certain sectors, such as mines and mineral. This article introduces the audience to the ancient Indian ethos, where dharma (duty) was the backbone of the civilisation that made the society righteous and duty-centred. The article gives an overview of ancient India's economic activities along with a short account of sectoral regulations. Besides, the article presents a competition analysis of the then regulations. It analysed the state monopolies, state as regulator and competitor, the prevalence of the guild system, differential regulatory treatments, price control, treatment of cartels and consumer protection.

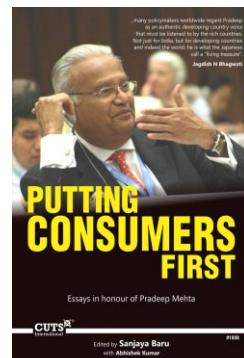
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### Festschrift

## Putting Consumers First

This volume is an anthology of analytical essays edited by Dr Sanjaya Baru with Abhishek Kumar, and penned by experts from around the world on trade, regulation, governance and other issues relevant to economic policy. The volume has been compiled in honour of Pradeep S Mehta, founder Secretary General of CUTS International on the occasion of his 70<sup>th</sup> birth anniversary to commemorate his lifetime contribution to consumer welfare in India and globally.

Book your copy at: <https://www.amazon.in/Putting-Consumers-First-Dignitaries-around/dp/8182572592>



## PolicyWatch



The April-June, 2018 issue of this quarterly newsletter carries a cover story entitled, "The Role of Competition Policy for Development", which mentions that competition policy can not only guide competition authorities in identifying and disincentivising anti-competitive practices, but can also correct distortions to competition induced by other policies.

It also encompasses a trade feature by Gireesh Chandra Prasad entitled, "From Demonetisation to GST to Cashless Payments, Economy gets more Formal", which states that though demonetisation and GST led to short-term pain in economic activity, positive changes in key metrics of the Indian economy are visible over a period of time.

A special article by Kaushik Basu dubbed, "The Ethics of Reducing Inequality in Society" recommends that to face the challenge of economic insecurity there should be a balance between ensuring equality and poverty eradication.

This newsletter can be accessed at: <http://www.cuts-ccier.org/pw-index.htm>

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- Content
- Number of pages devoted to news stories
- Usefulness as an information base
- Readability (colour, illustrations & layout)

### Sources

BL: The Hindu Business Line; BS: Business Standard; CNBC: Consumer News and Business Channel; CPI: Competition Policy International; ET: Economic Times; FT: The Financial Times; IANS: Indo Asian News Service; IE: Indian Express; ILO: International Law Office; JP: Jakarta Post; NBC: National Broadcasting Company; NYT: New York Times; TG: The Guardian; Tol: Times of India; WSJ: Wall Street Journal

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