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Markets Should Work for Consumers

There has been considerable debate about the goals of competition. Proponents of one school of thought have advocated that the purpose of competition is to foster greater economic and market efficiency. Pundits from the other have maintained that the main purpose of competition is to ensure consumer welfare.

www.ssl.marketplace.org

It was good to see that that this year's Intergovernmental Group of Experts (IGE) meeting on Competition Policy organised by UNCTAD in Geneva on July 08-10, dedicated a whole session on "The benefits of competition policy on consumers". In a sense it should serve to dispel any misgivings about the close relation between competition policy and consumer welfare.

The fact that UNCTAD chose to highlight this subject in this year's IGE is a testament to the work that UNCTAD has done on the subject, especially across the developing world, where this link is probably more pronounced.

In the background paper that was prepared by UNCTAD for this session (*http://unctad.org/meetings/en/SessionalDocuments/ciclpd27_en.pdf)*, it was highlighted that competition policy addresses the supply side of the market and aims to ensure that consumers have adequate and affordable choices. Whereas, consumer policy tackles demand side issues and aims to ensure that consumers can exercise those choices effectively. It further observed that competition policy aims to make markets work for consumers through its core elements: law enforcement and advocacy. The United Nations Guidelines for Consumer Protection (2003) further emphasises the link between competition and consumer protection and states, "Governments should encourage fair and effective competition in order to provide consumers with the greatest range of choice among products and services at the lowest cost."

The keynote speaker in this session was Professor Caron Beaton-Wells from the University of Melbourne. She observed that there has been movement from the traditional view that competition and consumer protection policies are disjointed, to the contemporary view that these are closely connected. She gave examples of countries as varied and different as Australia (Australian Competition and Consumer Commission), UK (Competition and Markets Authority) and Zambia (Competition and Consumer Protection Commission) to illustrate this point. These countries have developed hybrid laws and/or hybrid agencies to help achieve the common goal of consumer welfare through a coordinated approach between competition enforcement and protection of consumers' rights.

As part of the UNCTAD IGE 2014, competition regimes of three countries (Namibia, The Philippines and Seychelles) were peer reviewed. Two of the three delegations (Namibia & Seychelles) included a representative of a consumer organisation. This further corroborates why it is critical, especially in the developing world, to bear in mind consumer interests while implementing national competition regimes.

Vibrant Competition

The Minister of Trade and Employment, Abdou Kolley disclosed that the Ministry of Trade has always been working hard to ensure vibrant competition in Gambian markets, which is why it spearheaded the passage of the Competition Act 2007.

The Act is out to enforce fair competition in all areas of the economy based on the interest of consumers and promoting increased productivity, innovation, sustained economic growth and development of the country.

The Minister further said the benefits of competition in markets are rarely questioned and as a Ministry they are aware that market competition is the life force of a modern economy.

(www.allafrica.com, 12.06.14)

Improving Coordination

The Irish Competition and Consumer Protection Bill 2014 was published by the Minister for Jobs, Enterprise and Innovation. The Bill makes a number of key changes to the application of competition and consumer protection law in Ireland, and may be enacted soon.

To improve co-ordination between consumer protection and competition policies, the Bill dissolves the Competition Authority and the National Consumer Agency to establish a combined competition law and consumer protection body known as the Competition and Consumer Protection Commission.

The Bill does not change the main Irish competition and consumer law requirements and rights, which include the prohibition on anticompetitive agreements and abuses of dominance; and the consumer law prohibitions on unfair, misleading and aggressive commercial practices. *(IT, 23.06.14)*

Adopting Competition Law

A new Federal Economic Competition Law recently approved by the Mexican Congress will come into effect on July 07, 2014. The new law comes after an amendment to Article28 of the Mexican Federal Constitution, which bans monopolies and monopolistic practices and seeks to strengthen competition in Mexico.

An autonomous body will be in charge of investigation proceedings. By doing this, the new law creates a mechanism to guarantee independence of the commissioners in their decision-making process.

The new law includes a process that aims to resolve competence conflicts between the Competition Commission and the Federal Telecommunication Institute, the two main Mexican competition agencies. *(JD, 22.06.14)*

Amending Competition Act

Following a 2013 Constitutional Court decision, Slovenian Parliament has enacted a new regime in relation to antitrust inspections of the Competition Protection Agency.

The agency is now required either to seek a court order or to obtain consent from the undertaking under investigation (and its respective employees) before each investigation. This is in contrast to the previous regime, whereby the agency itself could implement an order on the commencement of an investigation.

The respective amendments to the Prevention of Restriction of Competition Act were adopted on April 28, 2014 and came into force on May 07, 2014, following publication in the Official Gazettes. *(ILO, 19.06.14)*

Extending Leniency Programme

Poland's Parliament has approved sweeping amendments to the country's antitrust law, giving the Office of Competition and Consumer Protection (UOKiK) greater power to impose fines on individuals while extending the leniency programme.

Under the new law, partial/full leniency will extend to any participant of a collusive agreement provided that they cooperate with the authority and provide information on illegal activities.

The new Act also introduces a 'leniency plus' system. Parties that are not the first to report their collusion may receive an additional 30 percent reduction if they inform UOKiK of any other anticompetitive behaviour are involved in. *(GCR, 18.06.14)*

Updating Merger Rules

The Competition Commission of India (CCI) announced changes to its merger regulations, which expand both its jurisdiction and the right to appeal against its findings.

The new rules give CCI more discretion to choose which deals it examines by introducing a regulation that can force companies to file merger paperwork based on the 'substance of the transaction' rather than whether it meets merger thresholds.

The amendment also removes the regulation's offshore exemption provision. *(GCR, 04.04.14)*

HK Setting Enforcement Agenda

Hong Kong's Competition Commission has released a report outlining its future enforcement agenda, including when it expects the country's Competition Ordinance to come into force.

The report includes further guidance on the Commission's role and what anticompetitive activity it will investigate under the ordinance. It states that the Commission's enforcement will be based on a list of 'severity factors' that will determine whether it should open an investigation.

In terms of resolving cases, the report says minor infringements will be mostly dealt with leniently through warning notices and administrative orders prohibiting the anticompetitive conduct. In more serious cases, the Commission may seek binding commitments from the violators or refer the case to the Competition Tribunal to seek fines and other redress. *(Law360, 09.05.14)*

Competition Regulators in Africa Demand Respect

Chris Charter*

Africa's developing economies present a compelling proposition for investors and companies that wish to expand their horizons and tap new markets. Some expect African consumer spending to reach the US$1.5tn mark by 2020; others project sub-Saharan Africa's gross domestic product will surpass China's within a decade.

Tempering the obvious opportunities are numerous challenges: different languages, legal systems, cultures and levels of economic sophistication, together with social and political flux. They all combine with the sheer size of the continent to indicate a clear need for due diligence when contemplating a push into Africa.

The first scramble for Africa at the end of the 19th century was characterised by a distinct lack of rules and regulations, with colonists making things up as they went along. However, one legacy of the colonial era is an abiding taste for bureaucracy. This time around, those wishing to stake a claim will need to do so within a regulatory paradigm jealously guarded by the state. One particular area of burgeoning regulation is competition law.

The rationale for competition regulation in Africa lies somewhere between a hunger for foreign currency and a genuine desire to ensure that fledgling but growing economies are responsibly cultivated and free from abuse, monopolisation and extractive foreign investment policies.

Between 1990 and 2013, 26 African countries enacted dedicated competition law regimes, and that number continues to grow.

Of these, many previously "toothless" enforcers are now gearing up actually to administer the law, spurred on by treaty obligations, international best practice and the support of global networks such as the Organisation for Economic Co-operation and Development and the International Competition Network.

A few cases in point:

- Botswana's Competition Authority opened its doors in 2011, and now has 33 staff members, including 15 economists and four lawyers. The past two years, in particular, have been prolific, with more than 20 dawn raids conducted and market inquiries launched into the retail, poultry and cement industries. On the merger front, the authority has sought to block mergers that are perceived to narrow the empowerment of citizens, citing public interest in having sufficient local shareholding in key markets such as insurance and health care.
- Kenya's current Competition Act came into force in 2011. While its enforcement record has been patchy until recently, it is clearly gearing up to make an impact. New filing fees for mergers will alleviate budgetary constraints. The Competition Authority of Kenya announced its intention to probe players in the agricultural sector (tea and coffee) as well as to launch an investigation into the edible oils market, in which local prices have been unresponsive to reductions in the cost of imported feedstock.
- The competition commissions of Namibia and Mauritius have both announced plans to introduce a formal corporate leniency policy to bolster their cartel busting capabilities, while the Zambian authority is moving from its preoccupation with consumer protection and mergers to competition enforcement, having recently imposed fines for price-fixing in the vehicle repair industry, and it has conducted dawn raids on two fertiliser companies.
- The African Competition Forum (ACF) tabled reports on the key sectors of sugar, poultry and cement in a number of countries, including Botswana, Namibia, Tanzania, Kenya, South Africa and Zambia. The ACF began as a loose convention of African regulators, but is now a formal network covering 41 out of the 54 African states. Although it has no enforcement powers of its own, it provides a regular forum for regulators to swap notes and get up to speed with enforcement priorities and best practice throughout the continent. The ACF is also likely to help accelerate the introduction of competition laws in countries without them.

Although there have been various attempts to harmonise African competition laws and policy to facilitate free trade and consistency, the fact is that even where the law appears familiar, policy, process and implementation can vary significantly.

Whether competition law brings regulatory certainty or red tape is a question of perspective. Either way, as the law of the jungle becomes substituted for the rule of law, companies that take heed and conduct themselves responsibly within the regulatory paradigm can only prosper.

* *Director for Competition at Law Firm Cliffe Dekker Hofmeyr. Abridged from an article that appeared in* Business Report, *on May 29, 2014*

ABUSE OF DOMINANCE

"Big Six" under Lens

The UK's Competition and Markets Authority (CMA) has opened a politically sensitive and wide ranging investigation of competition among the country's "Big Six" energy companies.

Sector regulator Ofgem said that the investigation should ensure proper competition in the market to the benefit of consumers "once and for all". The "Big Six" are the UK's major energy companies, namely: Centrica, EDF, E.ON UK, Npower, Scottish Power and SSE.

Ofgem expects the CMA to investigate whether there is sufficient competition between the Big Six, whether there are barriers to entry and the relationship between the companies' supply and energy generation businesses. *(GCR, 26.06.14)*

Intel's Appeal Demolished

The EU General Court has ruled in a thorough dismissal of Intel's challenge against its record abuse of dominance fine. The Commission imposed a €1.06bn penalty on the US microchip maker in 2009 for employing rebate and loyalty arrangements with customers that excluded its rival, Advanced Micro Devices, from the market.

The judgment rejects Intel's arguments that the Commission failed to establish that the rebates and rewards had an anti-competitive effect and did not take into account mitigating factors, such as the limited extent of the arrangements.

Intel, which has already paid the fine, is disappointed with the decision but has yet to evaluate it fully. It has 70 days to lodge an appeal before the European Court of Justice.

(www.cityam.com, 13.06.14)

Cracking Whip on Retail Chains

The Competition Authority of Kenya (CAK) has cracked the whip and fined retail chains Tuskys and Ukwala for engaging in what it said were unfair trade practices.

According to the Authority, the two firms colluded in setting retail prices of items in their supermarkets in a manner that undermined fair competition in the retail sector.

The retailers had gone into an agreement where Tuskys was to manage some outlets on behalf of Ukwala without seeking approval from the Competition Authority, which is against the law.

The CAK noted that the arrangement, which allowed Tuskys to manage three Ukwala Supermarket stores for a period of nine months, amounted to a horizontal restrictive practice.

(www.standardmedia.co.ke, 03.06.14)

Unilever Targeted in Probe

Unilever has agreed to change its distribution practices to avoid a fine and close an investigation by Chile's National Economic Prosecutor (FNE).

In a settlement approved by the country's Competition Tribunal, Unilever has agreed to stop exclusionary business practices across several retail markets to settle claims that the company abused its dominance.

The FNE referred the case to the tribunal asking the court to fine the company US$20mn for imposing anticompetitive arrangements on suppliers.

The investigation initially included the laundry detergent market – Unilever has a 70 percent stake of the supermarket detergent sector, and an 80 percent market share in the wholesale supply of laundry detergent to smaller grocery stores. *(LL, 06.05.14)*

DLF Under Scanner Again!

Fresh from its tribunal victory against the same company, the CCI has opened a new investigation of real estate developer DLF, this time for alleged abuse of dominance in its contracts with purchasers of commercial office space.

The CCI received a complaint from a purchaser of five commercial offices at DLF's Corporate Greens development in the Gurgaon district of New Delhi. The informant alleges that DLF is abusing its dominance by placing 'unilateral, one sided and unfair' conditions on purchasers, the CCI says in its order.

These include DLF being able to unilaterally abandon its development project without any reason given to the buyers, and its liability would only be to refund the deposit paid by the buyer with nine percent interest added.

(Mint, 24.06.14)

Beverage Co. Punished

The Turkish Competition Authority has fined UK alcoholic beverage company Diageo €14 million for abusing its dominance in the market for raki. Raki, an aniseed-based spirit, is Turkey's national alcoholic drink.

The enforcer says following a lengthy investigation it found that Mey Icki, Diageo's Turkish subsidiary, abused its dominant position in the raki industry by acting in a manner which excluded competitors from the market.

The full decision has not yet been made public and as such details are scarce. The fine represents 1.5 percent of Diageo's turnover in Turkey in 2013.

(GCR, 20.06.14)

Google Hit by Antitrust Lawsuit

An independent app store has filed an antitrust complaint against Google's Android mobile platform with the European Commission, claiming the search leader is shutting rivals out of the app market.

Portuguese company Aptoide is the world's largest third-party app store and serves the Android platform.

The Economist

It claims Google is abusing its dominant position in the Android market to block rivals in the market for Android apps and steer users towards its own app store, Google Play. This includes allegedly tying essential Android services to the Google Play store and restricting access to Aptoide's website in Google's Chrome web browser.

(www.pcworld.com, 17.06.14)

CARTELS

ArcelorMittal to Settle US Lawsuit

ArcelorMittal will spend US$90mn to settle a price-fixing lawsuit that alleged US steelmakers violated federal antitrust laws.

A class action lawsuit in the US District Court for the Northern District of Illinois alleges ArcelorMittal, US Steel and several other major steelmakers conspired to raise prices by slashing output between 2005 and 2007. AK Steel Corp., Gerdau Ameristeel Corp. and Commercial Metals Co. previously had settled for a total of US$15.9mn.

ArcelorMittal agreed to help prosecute the case against steelmakers who have not settled: Nucor, Steel Dynamics, SSAB Swedish Steel Corp. and US Steel. The company is bound to provide documents and witnesses to prove the alleged conspiracy. *(www.nwitimes.com, 19.06.14)*

KFTC Fines Turf Bid Riggers

Korea's Fair Trade Commission (KFTC) has fined 17 artificial turf manufacturers €5.3mn for colluding to rig bids on more than 200 public projects. Five of the companies may now face criminal prosecution.

Five companies have been referred to the public prosecutor for criminal cartel prosecution. The KFTC found that the companies colluded in 255 tenders issued by the PPA on behalf of numerous local governments and schools.

The enforcer says the five companies in each tender would agree between them who would win the bid at a fixed price, and the remaining four would continue through the process to ensure the result. *(GCR, 02.06.14)*

Mauritius Targets Beer Conspiracy

In its first public cartel investigation, the Competition Commission of Mauritius (CCM) is investigating whether two beer companies agreed to divide the markets of Mauritius and Madagascar between them.

The CCM says it has reasonable grounds to believe that Castel Group, through its subsidiary Stag Beverages, agreed to stop the manufacture and supply of beer in Mauritius in return for Phoenix Beverages Ltd taking the same action in Madagascar.

The alleged conspiracy left PLB as the only beer producer in Mauritius. Once the investigation is completed, Meetarbhan will submit her report to the CCM's commissioners, who will decide if there has been a breach of the law. *(GCR, 16.05.14)*

Japan Rips up Cardboard Cartel

Japan's Fair Trade Commission has (JFTC) issued fines and cease-and-desist orders to more than 60 companies for allegedly fixing the price of corrugated cardboard.

The companies were found to have colluded to raise prices across three defined product markets: corrugated cardboard, corrugated cardboard boxes and specialist corrugated cardboard boxes made for specific customers.

The JFTC says the manufacturers used the industry's trade association as a conduit to hold secret meetings and implement the cartel. The enforcer imposed fines 61 companies and issued 61 cease-and-desist orders, although not all the companies were fined for each product group. *(GCR, 20.06.14)*

UNIQUE COMPETITION ACTIONS

Singapore

The Competition Commission of Singapore (CCS) fined three Japanese bearings' manufacturers and their Singapore subsidiaries €5.4mn for price fixing and information exchange. It is the enforcer's first-ever decision in an international cartel investigation. The sanctions also mark the first time – the watchdog has taken on companies, based outside Singapore.

CCS was alerted to the price-fixing after receiving an application by Koyo Singapore Bearing Ptd Ltd, a subsidiary of Japan's JTEKT Corp, under its leniency programme, which grants partial or full immunity from financial penalties to the applicant. More international cartel decisions are expected in near future, including the freight forwarding investigation, in which the CCS issued a provisional decision in April 2014.

(Reuters, 27.05.14)

Brazil

Brazil's Administrative Council for Economic Defence (CADE) imposed far-reaching fines and structural remedies on members of a cement cartel. Six companies, six individuals and three industry organisations have to pay €1bn and divest certain assets. The fines are the largest ever issued by CADE's Tribunal and is also the first time that CADE has imposed a structural remedy in a cartel case.

The companies are prohibited from co-operating on projects or buying assets from one another for five years. The companies have already announced their intention to contest the ruling. *(Reuters, 29.05.14)*

Egypt

An Egyptian court ruled to fine the Egyptian Company for Mobile Services (Mobinil) for lack of cooperation with the Egyptian Competition Authority (ECA). The decision upholds a previous ruling which imposed a fine of US$10.3mn on the mobile operator on charges of failing to provide the ECA with information, it requested.

The latest ruling is a victory for ECA, affirming its jurisdiction over the telecommunications sector against an appeal by the company, which had claimed that the right belonged solely to the National Telecommunications Regulatory Agency.

(AO, 01.06.14)

FINES & PENALTIES

Foreign Lens Makers Fined

China's National Development and Reform Commission (NDRC) has fined five international glass lens and contact lens makers, including Johnson & Johnson and Essilor, €2.3mn for resale price maintenance. Two others were reprieved after helping with the investigation.

The offending companies – which also included Nikon, Bausch & Lomb and Carl Zeiss – were found to have set up anticompetitive agreements with their suppliers. The NDRC opened its investigation in August 2013, focusing on the cities of Shanghai, Beijing and Guangdong.

The agreements included clauses in contracts forcing suppliers to strictly adhere to the manufacturers' retail price suggestions and imposing a minimum price, the enforcer says.

(www.foxnews.com, 29.05.14)

Fining Guidelines Published

In an effort to encourage transparency and to increase the predictability of its decisions, Italy's Antitrust Authority has published a draft of its fining guidelines and has asked the antitrust community to share its thoughts.

The Authority hopes that the guidelines will clarify how it decides fines so that parties can understand the reasoning behind the decision.

According to the draft guidelines, the authority will fine lawbreakers a maximum of 30 percent of the value of the sales affected by the unlawful conduct, multiplied by the duration of the infringement in years. The Authority will determine the percentage based on the seriousness of the offence. *(GCR, 17.06.14)*

Electronic Cos. Penalised

Austria's Federal Competition Authority (FCA) has imposed fines totalling €1.63mn against three electronics companies for imposing restrictions on online retailers, with other companies still facing punishment in the weeks ahead.

The FCA fined SSA Fluidra Austria €50,000, Pioneer Electronics Germany €350,000, and Media-Saturn €1.23mn. The FCA levied the fines against the companies for imposing anti-competitive vertical resale price maintenance agreements on merchants from 2009 to 2013.

The agreements restricted retailers' ability to set prices for the online sale of electronic goods such as radio receivers and electronic pond and swimming pool cleaners. *(GCR, 16.06.14)*

Record Fine in Milk War

Finland's market court has imposed a record-breaking fine on the country's biggest milk processor, agreeing with findings that the company used predatory pricing strategies.

The market court accepted the Finnish Competition and Consumer Authority's (FCCA) request to impose a €70mn fine on milk company Valio. It is the highest fine levied on a single company for violations of Finnish competition law.

During the investigation, the FCCA looked at the company's internal calculations. The investigation revealed that the raw milk costs in the company's calculations were influenced by the company's market power rather than the efficiency of the milk production. *(GCR, 27.06.14)*

Leniency Case Yields Initial Fine

The Competition Commission of Mauritius has recommended fines of approximately €487,000 and €158,000 be imposed on Phoenix Beverages Ltd and Stag Beverages, respectively, for their involvement in a cartel.

This is the country's first cartel investigation to be made public, and the first time a party has used its leniency programme. Phoenix and Stag have been accused by the Commission of colluding to divide the Mauritian and Madagascan beer markets between the two manufactures.

The alleged agreement between the parties involved Stag leaving the Mauritian market, allowing Phoenix to dominate the country's beer market. Both companies assisted the Commission with its investigation.

(www.africanantitrust.com, 26.06.14)

Motorola Mobility Escapes Fine

Motorola Mobility has been found guilty of breaching European Union (EU) competition law but escaped a fine from EU regulators. Motorola Mobility will have to drop legal injunctions against Apple over so-called standards-essential patents (SEPs).

SEPs are patents that the holders declare essential to the implementation of technology standards such as those for 3G or GSM mobile devices, or H.264 video streaming.

The company escaped a fine because there is no Commission decisional practice or EU court case law regarding the matter at issue, and national courts within the EU reached different conclusions on the matter.

(www.computerworld.com, 29.04.14)

Gazprom Violates Merger Terms

In its largest single fine to date, Lithuania's Competition Council has sanctioned Russian oil giant Gazprom for violating the terms of a merger. The Council fined Gazprom €36mn for reneging on conditions attached to its purchase of shares in AB Lithuania a decade ago.

The Council found that Gazprom refused to negotiate with AB Lithuania on natural gas exchange contracts for 2013 to 2015, preventing the company from buying natural gas from other suppliers.

AB Lithuania was trying to implement a 'gas swap agreement', under which natural gas, acquired for a cheaper price in Western Europe, would have been imported to Lithuania.

Gazprom's refusal to negotiate a natural gas exchange contract prevented AB Lithuanian from purchasing natural gas at reduced rates. As the company uses natural gas to produce electricity, this could have led to higher prices for Lithuanian consumers. *(www.article.wn.com, 10.06.14)*

Taxi Apps should be Hailed for Breaking the Cabby Cartel

John Kay*

Taxi licensing illustrates how regulation intended to serve the public is hijacked

They are taking to the streets in Paris. They have secured a ban in Brussels. They have gone to court in Berlin. Taxi drivers across Europe are united against Uber – a Silicon Valley start-up, backed by Google and Goldman Sachs, whose app-based car service is being rolled out internationally.

The regulation of taxi services arouses emotions. My local French driver asked recently: "What do London cabbies do when they retire?" He explained that his colleagues rely on the onward sale of taxi licences to fund their pensions. In New York, the value of a taxi medallion now exceeds US$1m. London, however, issues licences freely to anyone who passes "The Knowledge", the demanding test of London's geography required of drivers of the distinctive black cabs.

www.supercabby.co.uk

Some regulation of taxis is necessary. The nature of the service they provide means that many of its users are vulnerable. They are disabled, or women who need a safe trip home late at night, or foreign tourists who have no idea what is a reasonable fare from the airport to the city. Beware Oslo, where even the metered fare will max out your credit card.

Taxi licencing illustrates regulatory capture, the phenomenon by which regulation intended to serve the public is hijacked by industry interests. As every passenger knows, drivers are voluble, and enjoy a certain solidarity; their clients, however, are diffuse and diverse. In 1978 a protest by cab drivers brought central Dublin to a halt. The Irish government responded by agreeing to freeze the number of taxis on the streets of the city. Over the next two decades the Irish economy grew strongly and Dublin became notorious for taxi queues. There was even a serious proposal to erect taxi shelters across the city, so that waiting citizens could shelter from the Irish rain.

So long as regulation ensures that vehicles are safe and drivers honest, it is difficult to see how the public interest could ever be served by restrictions on numbers. Britain's Office of Fair Trading reached this conclusion in 2003. But the lobbyists prevailed; the parliamentary transport committee issued an extraordinary attack on the OFT report, and the government decided to do nothing. The Law Commission reiterated the OFT's finding in 2012, but by the following year had modified its advice and suggested that there might be a case for restricting supply, although it gave little guidance as to what that case was.

In Paris, cab numbers are tightly controlled and there are virtually no private hire vehicles. Taxis are mainly used by business people and journeys per head are less than a third of what they are in London or New York. Lower socioeconomic groups rarely use cabs in France – in London and New York they do, extensively – and there are large areas of Paris where a taxi service is in effect unavailable. That elitist outcome is strikingly similar to the experience of another regulated industry, civil aviation, where service was confined for many years to business travellers and the affluent, until deregulation and the internet made the emergence of low-cost airlines first possible and then inevitable. The parallels with the development of Uber are clear.

But the problem of the French driver's pension remains. The American economist Gordon Tullock described "the transitional gains trap": the policy of restricting numbers is foolish but cannot be abandoned without wiping out the hard-earned savings of drivers. One might have less sympathy for investors; most New York cabbies rent rather than own licences. In Dublin, the Irish government established a hardship fund to help compensate drivers who had been counting on the value of the licence to supplement their retirement income, or had recently taken out a loan to purchase a licence. Politicians should beware of policies that are easy to implement and costly to reverse.

* *Britain's Leading Economist. Abridged from an article that appeared in* The Financial Times, *on April 23, 2014.*

Omnicom-Publicis Abandon Merger

With the companies still awaiting Chinese antitrust approval, Omnicom and Publicis announced they have ended their plans to merge. Omnicom and Publicis were waiting for Mofcom approval for their US$35 tie-up

Sources opine that the Ministry of Commerce's delay in approving the US$35bn deal was one of several factors that led to the decision to part ways, along with cultural clashes and difficulties in gaining European approval for the company's tax structure.

Scale Matters

The deal, which would have created the world's largest advertising agency, required antitrust clearance in 15 jurisdictions. By February 2014, all agencies other than Mofcom had granted their unconditional approval. *(IE, 09.05.14)*

Merck to Seal Consumer Unit Deal

Merck & Co., the second-biggest US drugmaker, agreed to buy Idenix Pharmaceuticals Inc. for about US$3.85bn to expand its experimental pipeline for hepatitis C treatments.

Idenix's lead drug, IDX21437, works similarly to Gilead Science Inc.'s Sovaldi, which won US regulatory in December and costs US$84,000 for a 12-week course of treatment. Prior to the development of Sovaldi, hepatitis C treatment entailed a regimen of two or more antiviral drugs with many side effects.

Merck is racing Gilead, Johnson & Johnson and AbbVie Inc. to establish a strong presence against a disease that affects an estimated 170 million people worldwide and carries a potential market of US$20bn a year.

(WSJ, 09.06.14)

Henkel Expands Laundry Brands

Henkel has agreed to pay €940m for French laundry and cleaning products company Spotless, in further evidence that the German consumer goods group is seeking acquisitions to strengthen its position in both mature and emerging markets.

The maker of Persil detergents and Schwarzkopf shampoos said the Spotless deal would improve its position in France and Italy, where makers of laundry care products have relatively high margins and stable prices. It also provides another indication that European companies are more willing to spend their cash on acquisitions, as the region's economic prospects improve. *(FT, 05.06.14)*

A Global Coffee Powerhouse

Mondelez International and DE Master Blenders 1753 have agreed a deal to create a global coffee powerhouse with annual sales of more than US$7bn, and challenge market leader Nestlé.

Under the terms of the deal, Mondelez, the US snacks group, will receive US$5bn in cash from DE Master Blenders for its coffee business and a 49 percent equity stake in the new company, to be called Jacobs Douwe Egberts.

The combined company will bring together the world's second and third-largest coffee groups, which own brands including Jacobs, Carte Noire, Gevalia, Kenco and Millicano – and hold top market share in more than two dozen countries. *(FT, 09.05.14)*

Sopra to Acquire Steria

French IT services companies Steria and Sopra will merge to create a European organisation that can compete in a sector that is being transformed through the digitalisation of business.

The merger, which is described as a 'friendly tie-up', will create a group with €3.1bn sales, 35,000 staff and customers in 24 countries. It is also expected to cut operational costs by €62m a year.

Steria is the better known brand in the UK, with sales worth over €700m, compared with Sopra's €80m UK sales. The deal could also help Steria expand into Scotland, where Sopra has a bigger business. *(FT, 09.04.14)*

Dixons and Carphone to Combine

Britain's Carphone Warehouse and Dixons Retail have agreed a £3.8bn merger to make the most of an increasing convergence of smartphones and consumer electronics in people's lives.

Combining Carphone, Europe's biggest independent mobile phone retailer, and Dixons, Europe's No. 2 electricals retailer, would create a group with turnover of about £12bn, 2,900 stores and 45,000 staff.

More consumers are connecting their smartphones to household devices such as music players and televisions or home appliances like ovens, heating systems and even washing machines

The combined group will be able to provide the technology products, as well as the content and connections they need, and services such as installation, insurance and trouble-shooting. *(FE, 15.05.14)*

AT&T to Purchase DirecTV

AT&T plans to pay US$48.5bn to buy DirecTV, the top US satellite TV operator, in a bid for growth beyond an increasingly competitive cellular market.

The deal comes as Comcast Corp awaits regulatory approval of its US$45bn bid for Time Warner Cable Inc, a transaction that has the potential to transform the television landscape by creating a new cable and broadband Internet powerhouse.

To facilitate regulatory approval, AT&T will sell its roughly 8 percent stake in Carlos Slim's America Movil. DirecTV has some 18 million customers throughout Latin America, in addition to its 20 million US subscribers.

(IE, 19.05.14)

Dufry to Buy Duty-Free Rival

Dufry, the Swiss duty-free store operator, is to buy its local rival Nuance Group for US$1.73bn in a deal that will allow Dufry to expand in the busy Mediterranean market and cement its position at the top of the global airport retail industry.

The deal scuppers plans to list private equity backed-Nuance, in a decision highlighting how initial public offering markets have become less appealing for private equity funds seeking to offload their stakes in companies.

Dufry said the deal, the group's biggest acquisition, would give it a portfolio of almost 1750 shops in 239 airports in 63 countries. The combined group will have sales of close to 15 percent of the global airport retail market. *(FT, 05.06.14)*

Zimmer in Deal for Rival Biomet

Zimmer, the maker of the eponymous walking frame, has agreed to acquire Biomet for US$13.35bn, combining the two providers of medical products in a cash-and-stock transaction that suggests the deal making frenzy in pharmaceuticals is spreading more broadly in healthcare.

The deal would create by far the biggest maker of hip and knee implants and accelerate consolidation in the medical technology sector, which faces the same pressure as big pharma to increase competitiveness as governments and healthcare providers try to push down prices.

Under the terms of the latest deal, Biomet shareholders will receive US$10.35bn in cash and Zimmer stock worth US$3bn. *(FT, 25.04.14)*

Device Makers in a Race to Merge

Medical device companies are eyeing more consolidation after Medtronic agreed to buy Covidien in a US$42.9bn deal that highlights pressure on the industry to increase scale and efficiency.

The deal was the latest example of a US company acquiring an overseas competitor to lower its corporate tax burden – in this case through Medtronic moving its headquarters to Ireland, where Covidien is based.

However, analysts said tax savings were only part of the motivation for a deal that showed how the year 2014's rush of acquisitions in the pharmaceuticals industry has begun to spread to medical device companies. *(FT, 17.06.14)*

Emperador to Buy Whyte & Mackay

United Spirits Ltd., controlled by Diageo Plc, will sell its British whisky business Whyte & Mackay to the Philippines-based liquor company Emperador Inc. for £430mn (around ₹4,375 crore) in a deal that will help India's largest distiller reduce its debt of nearly ₹8,000 crore.

The sale needs the approval of the UK's Competition Authority, the Office of Fair Trading (OFT), and Indian regulators. USL was forced to put Whyte & Mackay on the block after OFT raised concerns in November about the impact of Diageo's acquisition of USL, on whisky prices in the UK.

OFT had been worried that the merger between Diageo and USL may lead to whisky price increases in the UK because Diageo – the world's biggest distiller – and Whyte & Mackay controlled a significant part of the market. *(Mint, 10.05.14)*

Singapore Clears Airline JV

The Competition Commission of Singapore (CCS) has approved the airline alliance between national carrier Singapore Airlines and Air New Zealand. While finding the alliance could raise competition issues, the CCS says the net economic benefits to Singapore outweigh these concerns and granted clearance.

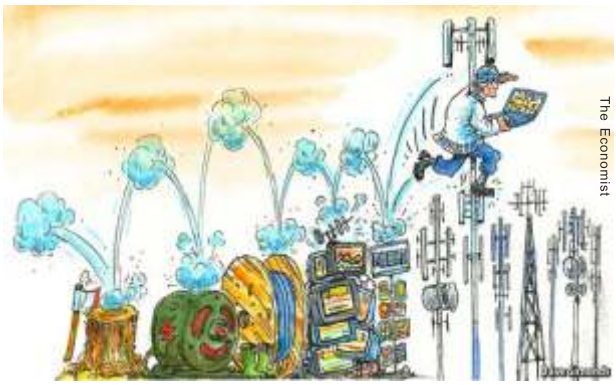
The airlines notified the CCS of the proposed venture, which would see the carriers expand both their networks through code-sharing agreements. The alliance would offer air passengers a wider choice of journey options and increase capacity on the popular Singapore to Auckland route.

The venture is the first to be approved following the Commission's market study of the Aviation Industry, which found that airline alliances had improved competition. The CCS in future would rely less on benefits derived from airline joint ventures in the US and EU and place less emphasis on airfare decreases. *(GCR, 22.04.14)*

Microsoft-Nokia Clears Chinese Hurdle

Microsoft's proposed US$7.4bn acquisition of Nokia's mobile phone business is moving closer to the finish line, having just won approval from China's Ministry of Commerce. It is a key milestone for the transaction, which sailed through the US and European approval processes with little difficulty or delay.

The deal is expected to close this month with 15 regulatory authorities around the world having signed off on it. Nokia announced that China was green lighting the sale without requiring drastic changes to its main technology patent practices – although several conditions would have to be met. *(FT, 09.04.14)*



Deal or No Deal?

Vikash Batham*

Pfizer's Proposed Takeover of AstraZeneca

US pharma major Pfizer in its quest to create the world's largest drugs company has been pushing AstraZeneca the Anglo Swedish pharma giant based in UK for a takeover since late in 2013. The deal, if successful, would be the largest foreign takeover of a British firm. Pfizer first approached AstraZeneca in November 2013 for this tie-up that would rank as one of the industry's biggest ever. The companies talked again early in 2014, and further in April, after Pfizer increased its previous offer.

Why does Pfizer want AstraZeneca so much?

Buying AstraZeneca would allow Pfizer to be domiciled its tax base in the UK, this will help to lower its corporate taxes. Corporate taxes in the UK are much lower around 20 percent but in the US, companies pay 38 percent of profits in similar taxes. That could save Pfizer US$1bn corporate tax every year.

The proposed takeover of AstraZeneca would dramatically boost Pfizer's presence in primary care including respiratory and diabetes, oncology among other areas. It would also offer significant cost rationalisation opportunities. The combined power of both companies will bring improved treatments for conditions such as cancer, heart disease and diabetes. There are the view of Morgan Stanley.

Pfizer's intentions were so profound that it has raised the final takeover bid for the British company from £63bn to £70bn after AstraZeneca top bosses earlier rejected its offer hinted and that it was undervalued.

Not a smooth ride though

Ever since Pfizer pursuing this hostile takeover there has been growing concern in Britain, and also in Sweden, where AstraZeneca has some of its roots. Politicians and policy makers in UK argued about national interest and expressed concerns that the deal could lead to job losses and delays in the development of life-saving drugs. AstraZeneca, currently, has around 6,700 British-based staff. The Swedish government, too, raised concerns echoing views aired by British lawmakers.

Though Ian Read, Scottish-born Chairman and CEO of Pfizer has assured that it will keep AstraZeneca's British research facilities open for at least five years and to keep 20 percent of its research staff in the UK. However, there were concerns among British parliamentarians that there will be job cuts and reductions in the combined companies' research and development portfolio.

Another typical aftermath is the competition concerns arise out of such big mergers. A merger of this magnitude will create a huge firm having dominant position in the market, which might completely ruin other small research-based pharmaceutical firms. Less competition mean higher prices and for that reason alone the competition element has to be the driving force behind any deal being successful or blocked. The EC will come in to play and make the decision based on competition angle if the bid succeeds.

What lies ahead?

The bigger question is what powers does the British politicians have to block the deal if it harming public interest? The UK has for long repelled protectionism to keep an open and free market economy, so to what extent can the government do to stop Pfizer buying AstraZeneca would be interesting to watch.

As per the provisions of the UK Enterprise Act, 2002 a merger deal can be restricted when the public interest consideration are at stake, i.e. if it affects national security or financial stability – which the proposed deal does not. The only other option is if the law could be amended to include scientific research and development as public interest.

However, such discussion would only be relevant if AstraZeneca approves the offer which so far they have not. AstraZeneca has raised a number of concerns about the potential tie-up, but the main sticking point appears to be what constitutes an appropriate price for AstraZeneca and assurance of continuity of jobs and its drugs development.

Pfizer's approach throughout in its pursuit of AstraZeneca appears to have been fundamentally driven by tax incentives and not much by sustainable research and development focus of the units in UK and that is what worries the latter's board and the politicians.

Pfizer can raise its bid or launch a hostile takeover offer in which it appeals directly to AstraZeneca's shareholders to sell who have so far displayed disappointment over AstraZeneca's approach.

* *Senior Programme Officer, CUTS Centre for Competition, Investment & Economic Regulation.* *This article was written before the deal did not materialise.*

Takeovers Test French State's Clout

– Hugh Carnegy and Anne-Sylvaine Chassany

Globalisation set to prevail over 'Made in France'

The flurry of spectacular deals involving French companies with the takeover of Lafarge, the cement group, by Holcim of Switzerland poses an awkward challenge to President François Hollande's Socialist government.

News of the Holcim-Lafarge deal came just days after Arnaud Montebourg, the government's most outspoken advocate of anchoring French business on home soil, was promoted to economy minister, extending the reach of his previous powers as industry minister.

Montebourg, a self-proclaimed state interventionist, wasted no time in wading into the other big deal when Vivendi, the media group, sold its big mobile telecoms unit SFR for €17bn to Altice, the Netherlands-quoted cable TV group, shunning a rival offer by Bouygues that was heavily favoured by the minister.

Having earlier attacked Patrick Drahi, Altice's founder, for not being tax resident in France, Montebourg issued a menacing statement saying the government would remain "extremely vigilant" over Altice's commitments on employment in France.

With Montebourg at the helm of a revamped economy ministry, the government's campaign to use the state's political and financial clout to influence industrial developments is only set to increase.

Earlier in 2014, it stepped in to prevent PSA Peugeot Citroën, the ailing carmaker, from slipping out of French control by spending •800m of taxpayers' money to acquire a 14 per cent stake in the company to match an equivalent investment by Dongfeng, the Chinese auto group.

In 2013 Montebourg also vetoed a deal by Orange, the state-controlled telecoms operator, to sell Dailymotion, the successful French video streaming start-up, to Yahoo, arguing that such valuable new-economy expertise should not be sold to a competing US internet giant.

Since Hollande came to power, the government has set up BPI, a public investment bank, to concentrate the state's ability to fund, invest and intervene in companies with the aim of reversing a long trend of industrial decline.

Montebourg, a longstanding critic of globalisation, champions a "Made in France" policy and lambasts the EU for not doing enough to protect European companies from foreign competition.

He advocates a policy of "economic patriotism" that was vividly illustrated in 2005 when the then centre-right administration warned off PepsiCo from making a bid for yoghurt-maker Danone.

But increasingly the juggernaut of the market looks set to prevail over a government that is weakened by France's highly constrained public finances, particularly where it has no direct state stake.

French companies have become global and the government's capacity to direct and weigh in mergers and acquisitions are increasingly limited. It's worrying to see headquarters of French heavyweights such as Lafarge and Publicis moving abroad. On the long run, it means decisions will be made abroad and top executives and talents will also move.

There were only the mildest protests last July when Publicis, the French advertising group, announced a US$35bn merger with its larger rival Omnicom of the US that will place the combined operations under a Dutch holding company.

Vivendi doggedly persisted with its sale of SFR to Altice, its board voting unanimously, despite the state's noisy opposition, which included wheeling out the Caisse des Depots, the "armed wing" of the finance ministry, to offer capital backing for Bouygues' bid.

Altice Chief Patrick Drahi remarked that Montebourg's threats a few weeks ago about French banks possibly becoming reluctant to lend to his group for patriotic reasons had fallen flat.

Likewise Bruno Lafont, Chief Executive of Lafarge stated that he only informed the government of his deal with Holcim after news of it had leaked to the media.

He made strong play of saying Lafarge was "not quitting France". But added pointedly, in what might have been a direct riposte to the "economic patriots": "What counts is that we are creating a 21st century business. We will be a European group, a global champion, based in two core countries, France and Switzerland."

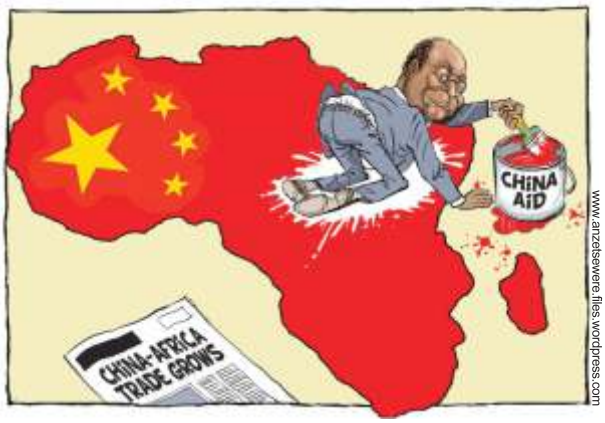
– *The article appeared in the* Financial Times*, on April 08, 2014.*

China to Enhance Investments in Zambia

Zambia is set to see increased Chinese investment in the coming years due to the country's favourable investment climate, visiting Chinese Vice President Li Yuanchao said.

Li, who started a four-day official visit to Zambia Wednesday, said many Chinese private investors have expressed delight on the investment climate in Zambia, adding that the Chinese government will push more of them to invest in the Southern African country.

Li further said a reduction in industrial labour disputes between Chinese firms and local workers in Zambia was a good indicator that Chinese investors started appreciating local labour laws and points to further increase in investment from China. *(www.livetradingnews.com, 22.06.14)*



New Foreign Investment Law

The Cuban government published the new foreign investment law. Some regulations and other norms accompanying the law also appeared in the Gaceta Official's Extraordinary Edition No. 20, earlier than expected.

In a change from the previous foreign investment law, Article 17.2 allows foreigners to invest in 'real estate destined to housing and buildings dedicated to individual residences'. Article 17.1 allows investors to obtain 'the property or other real rights.'

The law seems to open up much of Cuba's housing sector to foreign investment. Article 17.1 grants the option of buying "homes and buildings, dedicated to housing or to tourism."

The wording seems to suggest Cuba not only allows investors to buy into new projects purposely built for foreigners, such as luxury golf course and marina town houses and apartments, or upscale condos in Havana, but also existing residential real estate. *(CS, 16.04.14)*

India to Lure Foreign Capital

The move to improve foreign investors' ability to invest in Indian companies has been welcomed as a positive shift that will bolster the country's capital markets.

India's Ministry of Finance announced it would ease the rules for non-listed Indian companies wanting to issue depositary receipts, which allow domestic companies to raise capital from overseas investors without embarking on a full foreign stock market flotation.

The changes have been hailed as groundbreaking, but investment professionals believe they are unlikely to lead to an immediate inflow of capital from foreign investors without further government reforms to bolster the economy. *(FT, 25.05.14)*

FDI Picks up in Europe

Europe experienced a significant pick-up in foreign direct investment (FDI) in 2013, as fears of a protracted recession in the region receded.

Research by Ernst & Young, which tracks FDI projects in Europe, found these reached a record high in 2013. The region received €223bn in FDI, up 25 percent year on year. Nearly 4,000 FDI projects, up from 3,800 in 2012, created 166,000 jobs.

The positive data, however, conceal some less encouraging findings. Although investment by Brazil, Russia, India and China reached an all-time high of 313 projects, most FDI in Europe remains intra-regional, driven by companies with headquarters in one European country investing in another. *(FT, 27.05.14)*

Improving Investment Climate

The Law on Amendments to Certain Legislative Acts of the Republic of Kazakhstan to Improve the Investment Climate (the Law) has been adopted in Kazakhstan.

The main provisions of the Law (i.e., tax issues and investment subsidies) come into force on January 01, 2015, with the remaining provisions to take effect on June 24, 2014. The amendments offer an incentives package for new projects in industries of prime importance.

The Law introduces changes to certain legislative acts, including the Tax Code, the Land Code, the Law on Investments, and the Law on Employment of Population.

(www.lexology.com, 23.06.14)

IFC Investment in Africa

Of the US$25bn of its world investment portfolio, the International Finance Corporation, which is a member of the World Bank Group focused on private sector development, says Africa accounts for US$4.5bn of the amount.

Liberia is one of the countries in the sub-Saharan Africa benefiting hugely from IFC interventions In Liberia. The first consideration is the building of an environment which will allow private sector to participate in the economic activities.

The IFC is working with the Commerce Ministry in support of small and medium enterprises activities, and at the same time has been instrumental in the establishment of the Commercial Court.

IFC also helped in establishing the ASACUDA system at the Ministry of Finance intended to aid the government in its customs and excise operations. *(www.allafrica.com, 20.06.14)*

US Expanding Corporate Foreign Bribery Probes

– Aruna Viswanatha

US government agencies that have been probing banks' hiring of children of powerful Chinese officials are expanding existing investigations in other industries across Asia to include hiring practices, four people familiar with the matter said.

The Justice Department and the Securities and Exchange Commission have been asking global companies in a range of industries including oil and gas, telecommunications and consumer products for information about their hiring practices to determine if they could amount to bribery, these people said.

Qualcomm Inc, mobile chipmaker, said it could face a civil action from U.S. authorities over alleged bribery of officials associated with state-owned companies in China. It also said it found instances in which 'special hiring consideration' was given to people associated with state-owned companies or agencies in China.

The Justice Department and SEC declined to comment on whether they have expanded their probes.

Some of the new inquiries have zeroed in on hires in China, South Korea and southeast Asia, including Singapore, two of the people familiar with the probes said.

It was not clear how many companies were involved in the expanded probes and the people, who declined to be named because details of the investigations are not public, did not name specific firms.

Hiring issues have become a focus in bribery probes as a matter of course, sources said. That reflects a change in the wake of the investigation into whether JPMorgan hired children of China's state-owned company executives with the express purpose of winning underwriting and other business, they added.

If employees were hired at the direction of an official at a state-run company who was in a position to grant a U.S.-linked company business, the American firm could run afoul of the Foreign Corrupt Practices Act (FCPA), a 1970s law that bars bribes to officials of foreign governments, for instance.

Proving corrupt intent on the part of both the officials and the companies hiring the workers would be difficult, though, defence lawyers predicted.

Charles Duross, who led the Justice Department's FCPA unit until January, when he joined the law firm Morrison & Foerster, said a job offer could constitute a 'thing of value' under the law but the challenge would be proving a *quid pro quo*.

In the wake of the JPMorgan probe, the SEC had sent letters to Morgan Stanley and other banks, including Goldman Sachs and Citigroup, seeking information about their hiring practices.

The new inquiries involve employees who were potentially qualified for their jobs, and performed work, as well as 'no-show' jobs, where people do not do work for which they are paid.

A Singapore-based lawyer said that companies across Asia have been reviewing hiring practices as a result of the probe into banks, but the lawyer said he was unaware that anyone was involved yet in a formal investigation.

– *Additional reporting by Matthew Miller in Beijing and Rachel Armstrong in Singapore, editing by Caren Bohan and Peter Henderson. The article appeared in the* Business Standard *on April 26, 2014.*

'Good Governance' is Good for the Wallet

Avoiding companies with the worst corporate governance is good for the wallet. But getting worked up about environmental and social factors has been a complete waste of time, in terms of investment returns, over the past five years.

The findings come courtesy of Hermes Fund Managers, a leading proponent of factoring environmental, social and governance (ESG) issues into investment decisions.

Hermes' analysis of the MSCI World equity index in the five years to December 2013 found that well-governed companies outperformed poorly governed ones by an average of 0.3 percentage points a month. However the impact of the E and S factors was less useful.

The Hindu Business Line

"The E and the S are statistically insignificant; there is no relationship," said Lewis Grant, senior portfolio manager at Hermes, which manages US$43.5bn and has a further US$163bn under stewardship.

"When a company wants to change, it can't change its E or S behaviour overnight, but I certainly believe over the long term the E and the S will matter," added Grant. "It is not good governance that leads to outperformance, but poor governance that leads to underperformance," said Grant.

In the US-centric technology sector, the worst-governed companies, by Hermes' measures, actually outperformed other technology stocks by 0.7 percentage points a month. *(FT, 12.05.14)*

Food Sector on Target in Israel

The Israeli Parliament passed the Advancement of Competition in the Food Sector Law 2014. Its main objective is to increase competitiveness in the food sector in order to reduce product prices for consumers. While this objective is noble, it is unclear whether the law will appropriately and effectively achieve it.

The law adopts two approaches to achieve its objective. First, it prohibits, limits and regulates certain practices that could potentially be used by major suppliers or retailers to limit competition.

Second, it empowers the antitrust commissioner to intervene when retail markets are geographically concentrated and authorises him, among other things, to order dominant retailers to divest or limit their natural expansion. *(ILO, 24.04.14)*

Nationwide Broadband Strategy

The Nigerian Communications Commission (NCC) is implementing a strategy for nationwide broadband network deployment, described as the 'next-generation broadband network', on the basis of an open access model.

The NCC has also announced that it plans to licence seven regional infrastructure companies to facilitate the deployment of critical information and communications technology infrastructure in Nigeria's six geopolitical zones.

The NCC has now announced that two of the proposed seven infracos will be issued with licences in September 2014, after they have met the NCC's requirements. These requirements are expected to be publicised shortly.

(ILO, 25.06.14)

Scope for Healthcare Inquiry

South Africa's Competition Commission has published guidelines to its private healthcare inquiry, promising to consider the effect of the public sector in its work.

The public health sector was excluded from the original guidance published by the Commission. But in a new statement, the panel says it considers it important to review how the public and private healthcare sectors interact and what, if any, constraints exist between the two that affect competition in the private health sector.

The inquiry, made possible through provisions awarded by the Commission in 2013, is a response to the escalating cost of private health care in South Africa, made worse by high concentration, the rapid consolidation of hospital groups, and a reduction in medical aid schemes. *(GCR, 03.06.14)*

Competition in Motor Insurance

Drivers responsible for accidents should pay less to cover the cost of their victim's replacement car, the UK's Competition and Markets Authority (CMA) has recommended.

The proposed measure is one of several designed to help increase competition in the private motor insurance market. The CMA suggests introducing a cap on the charges passed to the insurer of a driver who has caused an accident and must cover the cost of another driver's replacement car.

The CMA also proposes a crackdown on price comparison websites, with a ban on price parity agreements that stop insurers from making their products available to consumers elsewhere more cheaply.

(GCR, 12.06.14)

Rules on Aeronautical Registry

The Brazilian Civil Aviation Agency (ANAC) promulgated a number of new regulations relating to the functioning of the Brazilian Aeronautical Registry (RAB) in November 2013. Several of the new regulations will be of interest to both Brazilian operators and non-Brazilian lessors and holders of security interests.

In addition, ANAC promulgated regulations concerning the issuance of authorising entry point codes for International Registry filings and for the use of irrevocable deregistration and export authorisations on March 21 2014.

The new regulations are a positive step towards achieving additional clarity on a variety of issues and demonstrate the RAB's responsiveness to the aviation finance community.

The next step towards clarity will be publication of the RAB's rules on the issuance of authorising entry point codes for international registry filings and the use of irrevocable deregistration and export authorisations, which it is hoped will be finalised soon. *(ILO, 02.04.14)*

New Dawn Raid Guidelines

The Dutch Competition Authority (ACM) has published new digital dawn raid guidelines specifying how it uses its powers to inspect and copy digital media. The guidelines also contain safeguards regarding legally privileged data.

The ACM, like the EC, has been increasing its focus on digital data during dawn raids. Thus, it is important to prepare for a potential dawn raid regarding not only a company's hard-copy files, but also its IT system. A designated IT representative and a general document management policy are also advisable.

The new dawn raid guidelines establish the legal safeguards that the ACM inspectors will observe while collecting digital data. Unlike European Commission officials, the ACM inspectors will secure the data at the company and further investigate the data at the ACM's premises. *(ILO, 03.04.14)*

EU Passes Net Neutrality Law

Finally, the Europeans did something even their mighty friend, the United States, could not achieve. The European Parliament voted to stop internet providers from charging for preferential access to their networks, a step cheered by consumer groups but bemoaned by the telecommunications industry.

The bill on 'net neutrality' will force internet providers to treat all traffic the same, regardless of its source. That will prevent major telecom and internet providers such as Vodafone and Deutsche Telekom from reserving the best of their network for their own services, or selling the lions' share of bandwidth to big companies like Google and Netflix, while leaving a slower internet for everyone else.

European Commission Vice President Neelie Kroes, who proposed the bill, said it will help "to get rid of barriers and to make life less expensive" for consumers.

But while startup companies, consumer groups and online freedom activists welcomed the bill, large European telecommunications companies protested, saying they are increasingly operating at a disadvantage to counterparts in the US, where a similar law was shot down in 2014.

The European bill must pass a final hurdle before it becomes law: approval by the leaders of EU countries at a Council of the European Union meeting, likely in October.

"Now the pressure turns to European leaders to listen to the people — not Vodafone, Orange, Deutsche Telekom and Telefonica," said Luis Morago of activist group Avaaz.

"The beauty of this is that everybody with a laptop and an internet connection can conquer the world," said Wienke Giezeman of Amsterdam startup WappZapp, which offers a personalised video service. He helped launch a campaign called "Startups for Net Neutrality" to lobby for the bill's passage.

Telecoms say law will impair investments

Telecommunications companies, on the other hand, warned of dire consequences if net neutrality is enacted in all European countries. So far, only the Netherlands and Slovakia have adopted strong national net neutrality legislation.

"Europe's telecoms operators are facing decreasing revenues ... compared with operators in the US and Asia," said the GSM Association, an industry group for mobile phone companies. Etno, an industry group of European telecommunications network operators, said the law will hurt consumers' access to not only on-line medical services and education, but "would also affect existing services such as IP-TV, tele-presence and Virtual Private Networks for businesses."

Chairman Luigi Gambardella predicted "a dangerous situation, in which the European digital economy will suffer and EU businesses will be put in a difficult competitive situation with respect to other regions of the world."

The bill on 'net neutrality' will force internet providers to treat all traffic the same, regardless of its source. That will prevent major telecom and internet providers from reserving the best of their network for their own services, or selling most of their bandwidth to big companies, leaving a slower internet for everyone else.

European policy appears to be departing from the route taken in the US, where net neutrality rules imposed by the FCC were struck down by a court in January. The following month, Netflix struck a deal with Comcast to pay for preferential treatment of Internet traffic bearing its film streams.

Netflix complained Comcast had left it little choice but to pay or see the quality of its service deteriorate. Comcast shot back that Netflix should pay, because it uses so much bandwidth. According to estimates by Canadian Internet monitoring firm Sandvine, Netflix and Google's YouTube together account for about half of all US internet traffic.

After the US law was struck down, Europe's Kroes tweeted: "Maybe I (should) invite newly disadvantaged US startups to EU, so they have a fair chance."

Etno estimates telecommunications companies will lose US$9.6bn in operating profit through 2020 as a result. Of course, that loss is consumers' gain.

– *The news item appeared in the* cbcnews *on April 03, 2014.*

Regulation on Hedging Transactions

Bank Indonesia has issued a new regulation on hedging transactions. The Regulation on Bank Hedging Transactions enacted in October 2013, is expected to encourage the use of derivatives as a tool to hedge foreign currency exposure, and subsequently to reduce foreign currency spot transactions and ease pressure on the rupiah.

Exemptions for the netting settlement will also prevail for business actors that use a bank's services in accordance with Bank Indonesia regulations concerning foreign exchanges against the rupiah.

The regulation affirms the permission given to state-owned entities to enter into hedging transactions, as provided in the Ministry of State-Owned Companies Regulation.

Through this regulation, it is hoped that the volatility of the rupiah can be reduced and the role of the domestic foreign exchange market in stabilising the rupiah exchange can be increased.

(ILO, 09.05.14)

Verification Numbers Introduced

The Central Bank of Nigeria (CBN) has introduced a bank verification number scheme into the banking system. The scheme aims to revolutionise the country's banking and payment systems.

The bank verification number scheme is designed to address issues to ensure the safety of depositors' funds; avoid losses through the compromise of personal identification numbers; prevent identity theft; check fraud; and include illiterate persons in the banking system.

The CBN plans to roll out the scheme to 1,000 bank branches in Lagos State, Nigeria's commercial capital. The success (or otherwise) of this rollout will determine how it will be implemented in other states. *(ILO, 27.06.14)*

Laws to Shut Problem Banks

European lawmakers have finally signed off on new laws to make it easier to shut problem banks after long wrangling over rules for an industry blamed for triggering the worst economic slump in a generation.

The scheme introduces new rules making it easier to shunt losses onto the bondholders and even large depositors of failing banks although the conundrum of what to do if a very large bank wobbles remains.

There will also be an obligation for countries to ensure that schemes are in place to guarantee the first €100,000 in any savings account, although no European backstop is foreseen should they fall short. *(BL, 15.04.14)*

Regulator to Oversee Banks

Ecuador's National Assembly began reviewing a proposal from the government for a new monetary and financial code that some economists have said could hurt the profits of private-sector banks.

The proposed bill was sent to the National Assembly. The bill would create a so-called Board of Monetary and Financial Regulation, which would be made up of government ministers. The board would establish minimum liquidity requirements, as well as the size of loans and the amount of credit that should be sent to each sector.

It would also regulate external borrowing limits and establish conditions and limits on the holdings of foreign assets by banks. The new regulations are necessary to create jobs and support economic growth.

(WSJ, 26.06.14)

Deutsche Fears Forex Probe

Deutsche Bank has warned the continuing investigations by global regulators into whether foreign exchange rates were manipulated could have a "material" effect on the lender.

The Frankfurt-based bank said its financial exposure to the misconduct probes – in which multiple global banks are under investigation by authorities around the world – could be material. It added that its reputation could also suffer as a result

Deutsche has suspended five traders located in the Americas as part of an internal investigation into whether foreign exchange markets were manipulated, while other employees have received other disciplinary measures. *(FT, 06.06.14)*

Banks Need Simpler Rules

The over-regulation of the banking sector is making it harder for new entrants to gain a foothold in the market, says the Netherlands' Authority for Consumers and Markets (ACM) in a report that advocates for changes to the banking system across the continent.

The ACM recommends reducing and simplifying the rules the Dutch Central Bank imposes on retail banks. At present, sector regulation and supervision is the same for all banks regardless of size, irrespective of the fact that the bankruptcy of a small bank is less harmful to the economy than that of a large bank.

The recommendation is one of nine designed to improve competition in the Dutch banking sector in response to an annual report commissioned by the Ministry of Finance. *(GCR, 12.06.14)*

'Too Big to Fail' Subsidy

The banking industry is fighting back against recent studies showing the largest companies still enjoy funding advantages because of the perception they are "too big to fail", which assumes a government bailout in a crisis.

The Clearing House Association, a US bank trade group representing JPMorgan Chase, Citigroup, Bank of America and other institutions, on Thursday released the findings of an independent study it commissioned, which showed that funding advantages for the largest banks had disappeared by 2013.

The Economist

The differing views on whether too big to fail still exists remains a controversial issue, five years after the financial crisis. Bank critics, including some US lawmakers, use too big to fail studies showing continuing subsidies as reasons to push for greater capital requirements or a break-up of the biggest banks. *(FT, 11.04.14)*

Provisions of UK Enterprise and Regulatory Reform Act Take Effect

Kevin Robinson* and Richard Ellison**

The competition provisions of the UK's Enterprise and Regulatory Reform Act (ERRA) came into effect on April 01, 2014. The ERRA introduces amendments to the Enterprise Act 2002 (EA), substantially altering the way in which cartel offences will be investigated and prosecuted in the future and making it easier to prosecute individuals criminally. Furthermore, as part of the government's strategy to promote long-term economic growth by, amongst other things, strengthening and streamlining existing tools for combating anticompetitive behaviour, the ERRA also abolished both the Office of Fair Trading and the Competition Commission. Their main functions were transferred to a single entity – the Competition and Markets Authority (CMA).

New competition provisions may make it easier to prosecute cartel offences, but add additional exclusions and defences

Background

The concept that cartel behaviour should be prohibited and punished has been a part of UK law since the Competition Act 1998 (CA), when UK legislation was harmonised with applicable EU Treaty competition rules.

However, the ERRA has brought about changes to two particular aspects of UK regulation that go even further than the EU Treaty rules. First, any (civil) penalties imposed by the competition authorities could only be levied against companies, with no recourse being available against the individuals who entered into the anticompetitive agreements. Second, it was not a criminal offence in the UK to be connected to cartel behaviour, unlike in the US, where there has been a cartel offence since the Sherman Antitrust Act was passed in 1890 and even earlier in certain states.

Although the EA sought to address some of the perceived deficiencies of the CA by criminalising dishonest agreements between individuals that amounted to cartel behaviour, in practice, it had very little impact because proving dishonesty has been very challenging. There have only been two prosecutions under the EA since it came into force. The first was a case involving marine hoses in 2008, in which there was a guilty plea, and the second was the prosecution of four airline executives that collapsed in 2010.

No "Dishonesty" Requirement

One of the ERRA's most far-reaching changes is that there does not need to be "dishonesty" for a cartel offence to have been committed. Accordingly, for conduct taking place after April 01, 2014 the prosecution no longer needs to prove dishonesty to secure a conviction if a company or individual was knowingly involved in one of the categories of a criminal cartel agreement. This amendment should dramatically reduce the burden on the prosecution and lead to a much higher conviction rate.

Exclusions and Defences

Although 'dishonesty' as an element of the offence has been removed, statutory exclusions and defences for individuals have been added. The ERRA introduces a new twofold structure. The first part identifies those circumstances in which a cartel offence will not be committed. The second part sets out the following three possible defences:

- At the time of making the arrangement, the individual did not intend to conceal it from customers.
- The individual did not intend the nature of the agreement be concealed from the CMA.
- Before making the agreement, the individual took reasonable steps to ensure that the nature of the arrangements would be disclosed to professional legal advisers for the purpose of obtaining advice before making or implementing the agreement

Conclusion

The abolition of the requirement to prove dishonesty is likely to cause alarm to those who now run a much higher risk of being convicted of a cartel offence when engaging in prohibited behaviour. Although introducing various new exemptions and defences may be seen by some as a *quid pro quo*, it is difficult to see how companies will be willing voluntarily to disclose confidential commercial matters that could potentially harm their businesses.

These developments will have significant implications and internal practices and policies will need to be amended accordingly.

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– *Abridged from an article that appeared in the* National Law Review, *on April 04, 2014.*

Globalisation Still Favours Richest Countries

Leonid Bershidsky

In finance, the emerging economies account for 37 percent of global inflows but 38 percent of outflows

Reading between the lines of a just-released optimistic report on global flows of goods, services and finance by the McKinsey Global Institute, one can conclude that the developed world is benefiting more from globalisation than the developing one. Emerging economies, however, are working doggedly to reverse that trend.

The institute, an arm of the **McKinsey and Co.** management consultancy, has accumulated a detailed database on cross-border flows between 195 countries from 1980 to 2012. It says the global flows in 2012 reached US$26tn, or 36 percent of global gross domestic product, a 50 percent bigger share than in 1990. According to the report, the cross-border flows account for 15 to 25 percent of global economic growth each year, but the most "connected" countries reap most of the benefits.

That list is topped by Germany, Hong Kong and the US. The only developing country in the top 10 is Russia, and that is probably a statistical fluke. Russia has been propelled into ninth place by big migration numbers. But those numbers are an ambiguous imperial legacy rather than an achievement: Russia has a visa-free regime with its formerly Soviet neighbours.

The emerging economies now account for a much bigger share of all global flows than they did in 1990:

The quality and direction of these flows, however, matters more than their size, and these are, for now, in favour of the developed world.

In finance, the emerging economies account for 37 percent of global inflows but 38 percent of outflows. Money from the poorer countries is flowing into richer ones, in large part due to the active purchase of foreign assets by central banks. Those purchases grew 11 percent a year from 2002 to 2012.

In goods trade, the emerging world's share is 41 percent of exports and 38 percent of imports, but if commodities and raw materials are taken out, exports become smaller than imports — US$4.2tn compared with US$4.3tn. On the surface, that situation is improving because emerging markets now account for a third of what McKinsey terms "knowledge-intensive flows"— those in goods and services that require more research and development than labour. That relatively high share, however, is mostly a reflection of China's huge electronics exports. McKinsey's definition of "knowledge-intensive" leads to a bit of a distortion. Cheap televisions and even mobile phones are no more "knowledge-intensive" than toys or textiles, but they vastly improve the emerging world's statistics.

We think of the Internet as the great equaliser, but in fact, despite large numbers of Internet users, emerging countries account for a disproportionately small share of cross-border traffic in data and communications:

McKinsey says this is mainly because of infrastructure problems such as less access to broadband, but there are other important reasons such as language barriers and the prevalence of local platforms, such as Yandex in Russia or Alibaba in China. For 2004 to 2009, McKinsey attributes 1.5 percent of GDP growth for the BRIC quartet (Brazil, Russia, India and China) to the Internet, compared with much larger percentages for developed economies.

The developed world has taken better advantage of globalisation so far, but the emerging economies are no longer its passive resource base. More and more cross-border trade is occurring among them, rather than across the north-south divide:

Besides, the emerging world is actively learning. China and India together account for 28 percent of the total number of students sent abroad at 21 percent and 7 percent, respectively. They go mainly to the US, the UK, France, Australia and Germany. Their job is to close the gap, to make their countries greater beneficiaries of globalisation. The day when these nations are done emerging is coming. For now, the developed world can still enjoy the benefits of the order it has created.

– *The article appeared in the* Mint *on May 05, 2014.*

How America Became Uncompetitive and Unequal

Lina Khan* and Sandeep Vaheesan**

Since the early 1980s, executives and financiers have consolidated control over dozens of industries across the US economy. From cable companies and hospitals to airlines, grocery stores and meatpackers, where once many small and mid-size businesses competed, today we see a few giants dominate. They use their power to raise prices, drive down wages and foreclose opportunity. Wealth is transferred from consumers, workers and entrepreneurs to affluent executives and shareholders.

The ongoing debate in America over economic inequality is a vital one. But it is incomplete. The challenge is not limited to the decline of organised labour, tax cuts for the well-off and the increased power of Wall Street. The lack of competition in many sectors of the US economy is also a powerful driver of economic disparity.

Take the US$2.5tn healthcare industry, where rising costs are fuelled in good part by consolidation. A frenzy of mergers starting in the 1990s has meant that most Americans today live in areas where there is little competition among hospitals. Studies show that after merging, hospitals routinely raise prices.

The same is true in other sectors. Meagre competition among cable providers and the growing market power of large content owners have enabled Comcast, Time Warner Cable and others to raise the price of subscriptions at close to three times the rate of inflation since 2008. High-speed broadband presents a similar picture: Americans now pay more than double what European consumers pay.

While dwindling competition hurts the vast majority of Americans, for the well-off it often proves a path to huge


The Washington Post

payoffs. Indeed, it has even become a basic formula for successful investing. Many factors drive the inequality of wealth and income in America, but decreased competition matters because the concentration of economic power also concentrates political power, which in turn positions dominant companies to reshape economic policies in ways that further favour them.

Unfortunately, most of the research on the impact of competition on economic performance in America relies on theoretical models, with few empirical studies examining how competition affects outcomes such as innovation and social well-being. There is even less academic work on the links between uncompetitive markets and inequality. The scant research that does exist indicates there is a connection: Multiple studies in the 1970s and 1980s indicated that oligopoly and monopoly power redistributed income from consumers to more affluent business owners. Concentration has increased vastly since then.

In contrast to today, Americans in the Gilded Age openly recognized the connection between monopoly power and inequality. They enacted the Sherman Antitrust Act in 1890, and the Clayton Antitrust Act and the Federal Trade Commission Act in 1914, to safeguard themselves from concentrated economic power, which they believed posed a threat akin to political autocracy.

In practice, this counter revolution unleashed a wave of horizontal mega-mergers and transformed competitive markets into ones largely controlled by a few big players. Remarkably, this transformation of the American economy occurred with hardly any input from Congress. In the decades since, every administration has continued to embrace the goal of "efficiency" foremost, resulting in extremely permissive enforcement.

We can restore a more fair and competitive economy. To do so, we must realise, first, that intense concentration across our markets contributes to inequality. Second, we must recognise that we have the right to use laws to neutralise the power of these corporate giants.

The Justice Department and the Federal Trade Commission could rewrite merger guidelines to make it easier to block deals that would hurt competition and foreclose opportunity. They could also stop outright more anticompetitive mergers, rather than allowing them in exchange for certain conditions. Using its broad legal mandate, the FTC could, in addition, issue stronger rules against anticompetitive tactics that we previously treated more harshly, such as exclusive dealing and predatory pricing.

Though signs abound, the relationship between uncompetitive markets and inequality is largely ignored. Let's not forget that earlier generations overcame the concentrated wealth and power of the Gilded Age by restoring competitive markets, a pillar of economic and political democracy. We can do it again.

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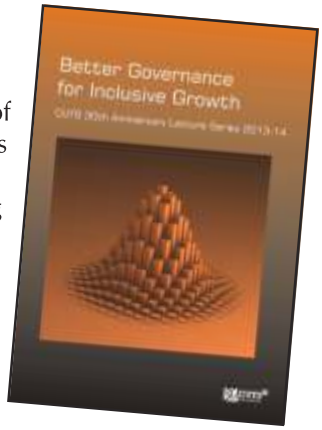
– *Abridged from an article that appeared in* The Washington Post *on June 13, 2014.*

Publications

Better Governance for Inclusive Growth

CUTS 30th Anniversary Lecture Series 2013-2014



To mark its 30th Anniversary, in 2013-14, CUTS International organised a series of lectures around the world, engaging eminent scholars and practitioners with the topics of its interest and work on Trade, Regulations and Governance.

This Lecture Series examined whether the resources are adequate in meeting contemporary and emerging development challenges; is political will lacking and why it may be so and what are the macro-micro gaps in addressing development challenges and how they may be bridged. The content of this volume not only covered the views and concerns of non-state actors on contemporary issues in development discourse but also, and more importantly, it provides a much needed direction to strengthen the state and civil society relationship through historical evidence, and not just views.

Furthermore, one of the aims of this Lecture Series was to shape the organisation's future interventions in promoting inclusive growth within and across borders. It helped the organisation in articulating its Vision for the next 25 years.

www.cuts-international.org/30thAnniversaryLectures/pdf/Better_Governance_for_Inclusive_Growth.pdf

Economiquity

The April-June 2014 issue of Economiquity carries an article entitled, 'Improving Trade Connectivity in South Asia' in its cover story which states that it is imperative to expand the idea of connectivity in the context of regional trade to include financial and informational aspects. South Asian countries trade with each other far less than they could. The high cost of doing trade in the region, among the highest in the world, is the prime deterrent of trade among South Asian countries.

A special article by Martin Wolf states Inequality damages the economy and efforts to remedy it are, on the whole, not harmful.

Another special article by Peter Drysdale states that Regional Comprehensive Economic Partnership (under the umbrella of ASEAN) is dominating thinking about regional integration. Yet trans-regional FTAs, like the proposed TPP, are only a small step, incidental to realising the potential of Asian economic integration.

Besides, it highlights important news and views on economic issues from different parts of the world with a view to keep the trade and development community abreast of the latest. Broadly, it covers Economic Issues; Trade Winds; Development Dimensions and Environment & Economics. It also contains articles of well-known researchers and policy influencers.

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

We want to hear from you...

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

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

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

Sources

AO: Ahram Online; BL: The Hindu Business Line; CS: Cuba Standard; FE: Financial Express; FT: Financial Times; GCR: Global Competition Review; IE: Indian Express; ILO: International Law Office; IT: Irish Times; JD: Jones Day; LL: Latin Lawyer; WSJ: Wall Street Journal

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