REGULETTER

A Quarterly Newsletter

CUTS International

Volume 16, April-June 2015

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Special Articles

Advocating Competition in the Pharmaceutical Sector

There has been considerable debate about the goals of competition across the globe. Competition is important because it brings efficiency and compels industry to provide higher quality goods and services at lower prices. Competition is the essence of any market and pharmaceutical sector is no exception. In the pharmaceutical industry, competition can motivate brand companies to create new and improved medicines and encourage generic companies to offer less expensive alternatives.

Competition-related issues in pharmaceutical industry are highly contentious world over and regularly discussed at global platforms on competition. It was good to see that this year, the Intergovernmental Group of Experts (IGE) meeting on Competition Policy organised by UNCTAD in Geneva in July dedicated a roundtable session on "The Role of Competition in the Pharmaceutical Sector and its Benefits for Consumers".

The deliberation highlighted that pharmaceutical sector makes a valuable contribution in improving the public health by developing, producing, distributing and marketing the pharmaceutical products. A competitive market provides consumers access to good quality medicines at comparatively lower prices. Competition also forces companies to invest more in research and development for developing better quality and new drugs, which may contribute to improvement in the quality of life of consumers.

The UNCTAD meeting addressed the issue of competition in the pharmaceutical sector and its role to enhance consumer welfare and economic efficiency. The keynote speaker, Sven Gallasch, University of East Anglia, UK focussed on difficulties that the complex regulatory structure of the pharmaceutical industry poses to competition policy enforcement. He highlighted the need for coherence between intellectual property, patent policy and antitrust scrutiny, in order to successfully foster innovation in the sector for the well-being of the society at large.

The panellists brought to the participants' attention a number of issues dealing with national strategies for regulating the pharmaceutical industry and relevant cases of enforcement of competition law in the sector. Issues such as price reform and liberalisation, competitive entry of generic drug manufacture into the market, pay-for-delay agreements, and universal access to healthcare were also addressed.

A background paper prepared by UNCTAD for this session states that in order to benefit from competition, consumers must be empowered to activate it, which may be achieved through consumer education, as well as facilitating consumer access to information and enhancing the capacity of consumers to assess information accurately to make an optimal decision. Competition, regulatory and consumer policies should reinforce each other in achieving their common goals.

CUTS Centre for Competition, Investment & Economic Regulation
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First Foray in Antitrust Legislation

The **Philippine** Congress has passed, and President Benigno Aquino III is expected to sign into law, the Philippine Competition Act. The law, which aims to safeguard fair and competitive market conditions, marks the nation's first foray into antitrust legislation.


www.dlapiper.com

Under the new law, practices that allow entities to restrict market competition through anti-competitive agreements and abuse of a dominant position will be prohibited and parties will be required to obtain clearance for certain mergers and acquisitions. It additionally prescribes administrative and criminal penalties for violations of these prohibitions. The Act also establishes the Philippine Competition Commission, which will implement and enforce the national competition policy. *(www.dlapiper.com, 18.06.15)*

Merger Reforms Proposed

Israel's Antitrust Authority has suggested amendments to its merger control regime that would allow companies to voluntarily notify mergers that fall below the country's pre-merger notification thresholds if lawyers think they may be a target for antitrust scrutiny.

The amendments would also raise the country's mandatory pre-merger notification threshold. The draft would allow the authority to prohibit mergers that do not meet the pre-notification thresholds if they threaten competition.

If the changes go ahead, companies will be expected to judge for themselves whether the merger is likely to raise competition concerns before deciding whether to notify the authority. *(GCR, 23.04.15)*

Bridging 'Compliance Gap'

The **UK** Competition and Markets Authority (CMA) has recently published the findings of research it commissioned to examine UK businesses' understanding of competition law.

The aim of the research was to gauge businesses' awareness of competition law, their understanding of anti-competitive behaviours and the resulting penalties, businesses' preferred sources of information about compliance, and the awareness of the CMA and what it does.

The report concluded that there is a significant "compliance gap" as 85 percent of businesses think that they should comply with competition law because it is the right thing to do ethically – as opposed to being under a legal obligation to do so. *(NLR, 10.06.15)*

Improving Competition Law

The **Australian** Competition and Consumer Commission (ACCC) and the **Japan** Fair Trade Commission (JFTC) signed a Co-operation Arrangement, designed to improve international competition law enforcement activities.

The Arrangement builds upon the Japan-Australia Economic Partnership Agreement, which commenced on January 15, 2015. The ACCC looks forward to working closely with Japan on a range of competition law enforcement activities, particularly global mergers and cartels.

This agreement paves the way for increased co-operation and investigative assistance between the agencies on competition matters which affect Australian or Japanese markets. *(www.jftc.go.jp, 30.04.15)*

Disseminating Competition Culture

Saudi Arabia's Council of Competition has published a range of guidelines to encourage competition across the gulf state's economy, taking international best practices into consideration.

The Council said the information would help raise awareness and disseminate the culture of competition among the business sector. The guidelines are part of a recent trend to improve Saudi Arabia's competition regime.

The first book provides advice to companies on how to comply with Saudi competition law and the second on exchange of information between competitors. The third targets government sectors and public procurement. *(GCR, 16.06.15)*

Fine-tuning Anti-trust Rules

Hungary's National Assembly has approved a series of amendments to its competition law which once in force, will change how smaller companies are sanctioned for first time infringements of antitrust rules.

Under the amended law, small and medium-sized enterprises (SMEs) that breach Hungary's competition rules will now face a warning instead of a financial penalty, so long as the offence does not infringe EU competition law, involve public procurement cartels or affect vulnerable consumers.

The warning will include an obligation on the offending company to introduce an internal compliance programme, with the aim of preventing future infringements. *(GCR, 10.06.15)*

Amendments to Competition Law

The **Romanian** Competition Council (RCC) has recently published a proposal for amendments to the Competition Law consultation on its website. In addition to fine-tuning aspects related to areas such as prohibited agreements and practices, abuse of dominance, merger control, privilege and dawn-raids, the proposed amendments would also introduce several substantial changes.

The amendment that the RCC now intends to introduce states that an undertaking can no longer benefit from the reduction of the fine obtained in case it subsequently challenges the fine in court.

The RCC's draft for amending the Competition Law is subject to public consultation. It remains to be seen what the reaction of the business community and practitioners will be, as the amendments may affect key issues of interest for future or on-going investigations. *(Lexology, 09.06.15)*

Anti-monopoly Law in China is Very Much a Work in Progress

Tom Mitchell*

In the annals of anti-monopoly case law, Chinese rice noodle and tableware cartels do not rank up there with the Standard Oil trust, the petroleum cartel that was famously prosecuted in 1911 under the US Sherman Antitrust Act.

But in time these two much lesser known cartels, targeted by Beijing regulators shortly after the implementation of China's 2010 Anti-Monopoly Law, may become famous in their own right. They were among the first cases in an enforcement campaign that has since ensnared the likes of Mercedes-Benz and Qualcomm. It could also soon have implications for multinationals' ability to safeguard intellectual property in the world's most coveted market.

In both instances, the National Development and Reform Commission imposed small penalties for price collusion on more than a dozen rice noodle makers and service providers that wash, sterilise and wrap tableware in plastic for restaurants.

The NDRC's investigations into allegedly anti-competitive behaviour by domestic firms culminated with an Rmb200 million fine for China's largest liquor maker, Wuliangye, two years ago. But it takes rather more money to get the attention of multinationals, and the NDRC achieved just that in 2013 with the first in a series of investigations against foreign manufacturers of milk powder, auto parts, premium cars and semiconductors.

Foreign firms accused of anti-competitive behaviour by the NDRC have generally been hit with much higher fines than their domestic counterparts. Qualcomm agreed to pay a Rmb6.1bn penalty in February, while Mercedes and Audi were fined Rmb350m and Rmb250m respectively.

In all three instances, the fact the penalties could have been much worse has blunted some of the criticism that the NDRC has been deliberately targeting foreign companies – a charge the regulator has consistently denied.

Qualcomm's penalty could have required much more costly changes to its business model. The San Diego company's shares actually rose on the news. Mercedes and Audi, meanwhile, were penalised for infractions in just one province each. In theory, they could have had to pay much more had NDRC's investigators ferreted out wrongdoing in all of China's 32 provinces, autonomous regions and directly administered municipalities.

So what next now that the NDRC has so effectively got its intended message across? Only one previously disclosed investigation has yet to be resolved – that involving Microsoft and the State Administration of Industry and Commerce, which also polices aspects of the 2010 Anti-Monopoly Law.

The rules, designed to 'prohibit abuse of intellectual property rights to eliminate or restrict competition', were promulgated early in May 2015 and take effect on August 01, 2015. Just as western regulators have occasionally forced operators of telecoms networks and electricity grids to share their 'essential facilities' with competitors, the SAIC could compel 'dominant' companies to share intellectual property when it constitutes 'an essential facility of manufacturing and business operations'.

If it were to do so, the SAIC would be following the EU in applying the essential facilities doctrine to intellectual property. But the EU has only forced companies to share intellectual property in a very small number of exceptional circumstances, while the US has refused to do so.

In a rare public comment on the new rules, one SAIC official has said the regulator will be 'cautious' in applying them. For multinationals wary of being forced to transfer technology in China, the uncertainty is a worrying but useful reminder that the country's anti-monopoly law is very much a work in progress. Very few if any of them took note of the implications for their own industries of the NDRC's prosecutions of the domestic rice noodle and tableware cartels. It is a mistake that they should not make twice.

* *Beijing-based Reporter for the Financial Times. Abridged from an article that appeared in the* Financial Times*, on May 19, 2015*

ABUSE OF DOMINANCE

Safaricom to Acquire Dominance

Airtel **Africa** CEO Christian de Faria has criticised Kenya's competition and telecommunication regulators for not declaring mobile operator Safaricom a dominant provider. This has made it difficult for Airtel to compete and become profitable.

Airtel is also demanding allocation of 4G spectrum, arguing that Safaricom is already enjoying the first-to-market advantage having been allocated the bandwidth in 2014.

Airtel Kenya CEO Adil El Youssefi said failure by regulators to declare Safaricom dominant has made it the only profitable mobile firm in Kenya. El Youssefi said Airtel has not made a shilling in profit in the five years since Airtel took over the network, despite investing millions of dollars in the market.

The two Kenyan regulators signed an MoU that brought to an end a battle over who has powers to monitor the abuse of dominance in the telecommunication sector.

(www.telecompaper.com, 16.06.15)

Auchan Breaches Trade Rules

The **Hungarian** Competition Authority imposed a fine on retailer Auchan for abusing its significant market power under the Trade Act. This marks the highest fine ever imposed in the sector by the Competition Authority.

The Competition Authority found that Auchan had unilaterally imposed a fee on its non-food suppliers without providing a service in return, simply to ensure that their products were included or remained in Auchan's stock.

The charge came in the form of a so-called 'after-sale price discount' – previously labelled an 'end-of-year bonus' or 'fix bonus' – which was included in Auchan's annual contracts with about three-quarters of its non-food suppliers. The Authority concluded that the discount, regardless of its name, amounted to a unilaterally imposed listing fee. *(ILO, 11.06.15)*

Nestlé to Answer Allegations

The Competition Commission of **Pakistan** sent the local unit of the world's biggest food company a statement of objections for allegedly hiking Lactogen and Cerelac prices without justification.

The regulator said that its enforcement action is particularly significant as both are products used for infants and that 'parents are significantly affected by price fluctuations'.

The move follows a commission investigation of Nestle, which began in March. It suspects the Swiss company abused its dominance in two relevant domestic markets: Pakistan-produced infant formula and follow-on milk, and packaged cereal-based baby products.

(GCR, 05.06.15)

Plugging Plug on Electricity Prices

Bulgaria's Commission on Protection of Competition has fined three electricity distribution companies for allegedly exploiting their dominant market positions by charging excessive prices to cable operators to use their low-voltage grid.

CEZ Distribution Bulgaria, JSC Energy Pro Networks and EVN Bulgaria Electricity Distribution all imposed discriminatory and arbitrary prices on cable operators that used the low voltage network to transmit electricity, distorting competition and harming consumers.

The enforcer brought separate cases against the three foreign-owned, privately run electricity distributors, who each hold a regional monopoly over electricity grids in three of Bulgaria's six geographical "planning" regions. The investigation began following a complaint from Bulgaria's Association of Cable Operators.

(GCR, 05.06.15)

Amazon to Hamper Innovation

The **EU**'s Antitrust Chief Margrethe Vestager has warned Amazon against using its strong position to hurt its competitors, days after launching an investigation into the company's e-books distribution practices.

The probe will initially focus on the largest markets for e-books in the European Economic Area, namely e-books in English and German. The company is currently the largest distributor of e-books in Europe.

Vestager said that Amazon should not use its strong position to close the door behind it and prevent companies with new ideas from contesting the market. That would hamper innovation, reduce investment and ultimately reduce choice for the final consumer.

(www.cbronline.com, 16.06.15)

EU Objects Abuse of Power by Gazprom

The **European Union** (EU) Competition Commissioner Margrethe Vestager announced that the European Commission has sent a statement of objections to Gazprom, alleging the Russian energy company abused its dominance in eastern Europe.

The Commission suspects Gazprom of partitioning national gas markets in Eastern Europe – where it is dominant if not the monopolist – with the aim of preventing cross-border trade. This has the effect of inflating prices, the Commission explains.

The Russian government is the majority shareholder in Gazprom and the SO comes against the backdrop of deteriorating relations between the EU and Russia over the crisis in Ukraine and Crimea. *(GCR, 22.04.15)*

Nothing to Stand On

"Give me a place to stand on, and I will move the Earth." So Archimedes explained the power of levers in the physical world. The digital realm has levers of its own: 'platforms', the technological fulcrums upon which many businesses can be built. Control of an important platform is a source of economic power. Microsoft used the power of its Windows operating-system platform to shape the destiny of an entire industry – and to capture an outsized share of its profits. Some worry that Google's dominance of the web-search business lets it perform a similar trick today.

Europe is right to worry that it lacks big digital platforms. But reining in Google is no solution

Europe is taking no chances. On April 15, 2015 the European Commission sent a 'statement of objections', an indictment of sorts, to Google, accusing it of abusing its dominant position in the internet-search market and reviving an antitrust case that has dragged on for five years. A day earlier Günther Oettinger, the European Union's Digital Commissioner, gave a speech arguing that it was necessary to "replace today's web search engines, operating systems and social networks."

In Europe, Google handles more than 90 percet of web searches, making it the place to be for many advertisers. Whether it has harmed consumers by using its dominant platform to steer them away from rival services and towards its own, such as Google Shopping, is at the heart of the case. In contrast to the previous competition commissioner, Joaquín Almunia, the new one, Margrethe Vestager, clearly thinks it has.

Instead of getting bogged down in negotiations with Google over how exactly it should redesign its search-results pages to give rival services more prominence, Vestager wants the case to set broad principles of fairness that Google would have to adhere to. For now she has narrowed the scope of the case to the firm's shopping service: if the outcome is that Google has to abide by certain principles over this matter, these could then be applied in others, such as whether Google makes it hard for advertisers to take their data to other platforms. She has also launched a separate formal investigation of Android, Google's mobile operating system, amid allegations that it forces device-makers to give its smartphone apps preferential treatment.

In the search case the statement of objections may not become public for many months, and even then it will only appear in a redacted form. But an inadvertently leaked report from America's Federal Trade Commission, which ultimately decided not to sue Google, suggests the firm has a case to answer: it says that Google purposely demoted rival sites. But the statement is not a final decision. And if the European Commission limits what Google can do, and especially if it imposes a fine (it can levy up to 10 percent of annual revenues, or US$6.6bn), the case may go to court and drag on for years.

The commission's move against Google is not overtly political and protectionist. However, it is part of a broader trend. As Oettinger's speech shows, Europe is belatedly discovering its failure to develop many of the platforms underpinning the online economy. Much of the world's digital territory has in effect been ceded to America without a fight.

The big danger, Oettinger warned, is that as the world relies ever more on platforms operated by Google and other American firms, they may be able to repeat this trick in areas that have hitherto been Europe's forte: fashion, energy and luxury vehicles, for instance.

That worry is understandable. But rather than trying to rein in American firms, European politicians should focus on fixing what is holding back the old world's most promising platforms: the lack of a common digital market. Today only 15 percent of consumers shop online across borders within the EU. To set up Europe-wide operations, an e-commerce firm has to jump through numerous bureaucratic hoops, from tax rules to labour laws, in each country. If Europe wants to be America's equal in the creation of new technological platforms, it needs to recognise the importance of scale. America, with its large and open domestic market, has it. Europe does not.

– *The news item appeared in* The Economist *on April 18, 2015*

CARTELS

Procter & Gamble in Dirty Dealings

The **Greek** Competition Commission fined Procter & Gamble for offering rebates to major retailers of baby diapers in exchange for a fixed amount of shelf space.

The decision was made by a 3-2 majority of commissioners. Xenophon Paparrigopoulos, at Potamitis Vekris in Athens, who acted for Procter & Gamble, said that there is 'extensive and strong' dissent from the two no votes, which includes the Vice President of the Commission.

Sources opined that the two commissioners voted against the fines because the case concerned rebates relating to a portfolio of different goods, rather than one specific product. There is no set legal precedent for the authority to rely on in this respect, the source adds.

(GCR, 29.04.15)

Hospital Bid Riggers Punished

Norway's Competition Authority (NCA) fined an alleged cartel for bid rigging and price fixing, after its members abused an agreement with a public hospital that gave the companies exclusive bidding rights on electrical service contracts.

Norwegian companies Arro, Caverion and Pettersen declined to bid against each other on nine separate tenders, ensuring they won contracts from Vestre Viken Hospital Trust in central Norway. The hospital accepted the artificially inflated bids, believing them to be competitive.

Christine Meyer, Director General, NCA stated that secret collusion is difficult to detect because communication is often oral, and the participants are careful in hiding their tracks. The companies started by exchanging emails, but quickly became more sophisticated, exchanging USB data sticks in car parks. *(GCR, 30.04.15)*

Penalty on Auto Manufacturers

The Competition Commission of **Pakistan** (CCP) imposed a penalty on Pakistan Automobile Manufacturers Authorised Dealers Association (PAMADA) for indulging in collusive price-fixing in the relevant markets for automobile body repair and paint jobs, and genuine automobile spare parts, as well as restricting competition in the market for trained and experienced technical and sales staff in the automobile sector.

It was found that PAMADA had taken decisions to fix the rates for automobile body repairs and paint jobs, which were circulated by PAMADA to all its members for implementation.

In relation to the market for trained and experienced sales and technical staff, CCP observed that PAMADA has imposed a policy, whereby, its members are to seek no-objection certificate from previous employer before hiring a former employee of a fellow automobile dealer. *(CCP, 14.04.15)*

Mercedes-Benz to Pay Fines

German premium car maker Mercedes-Benz was fined US$56.49mn for price fixing, the highest antitrust fine slapped on automakers by China so far. Mercedes-Benz reached agreements with local dealers to enforce minimum prices for the company's E Class and S Class sedans as well as some auto parts.

Mercedes-Benz played a 'leading role' in the pricing monopoly and gave warnings or reduced support to dealers if they refused to cooperate in enforcing the minimum prices.

Mercedes-Benz dealers in Nanjing, Wuxi, and Suzhou, three cities in Jiangsu, were also fined for price fixing, the provincial price bureau said.

Mercedes-Benz said that it fully respects and accepts the findings and punishment decision, and will comply immediately. At the same time, it has developed a series of targeted reform measures guided by the law enforcement authorities. *(FT, 24.04.15)*

GSK and Sanofi Slammed

India's competition enforcer has ordered pharmaceutical companies GlaxoSmithKline and Sanofi to pay US$8.9mn fine for colluding to raise the price of vaccine bids, despite strong objections from the defendants that there were legitimate, independent business reasons for boosting prices.

India's Competition Commission imposed the fines, after finding that GSK and Sanofi manipulated a 2011 tender by India's government to provide meningitis vaccines to Indian Muslims making the Hajj pilgrimage to Mecca.

An Indian subsidiary of UK-headquartered GSK must pay €8.4mn, the lion's share of the fine. French pharmaceutical giant Sanofi's Indian operations will pay the outstanding €418,000, according to an order.

(GCR, 08.06.15)

Alibaba Fined for Pricing Violations

Chinese e-commerce company, Alibaba, has been slapped with US$129,000 fine by the price bureau in Zhejiang province for violations by third-party sellers in promotions on its e-commerce websites.

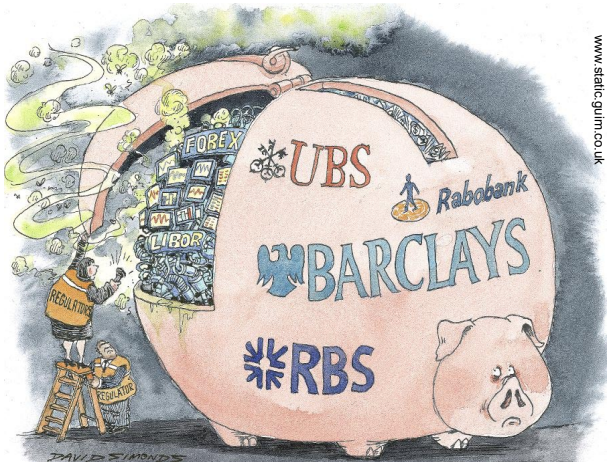
Pricing is handled by third parties and not directly by Alibaba, the group stated, but it would in any case enforce price rules and regulations with sellers in order to protect consumers.

The 27,000 vendors that featured on Alibaba's Singles' Day sites hope to boost sales and increase customers, but many have complained that discounts and rivalry undercut the benefits.

Alibaba does have difficulties from time to time regulating its e-commerce empire, that now includes Taobo, Tmall, Juhuasuan and the original service at Alibaba.com. *(BS, 18.04.15)*

Major Banks Hit with Record Fines

Five global banking giants, including British banks – Barclays and Royal Bank of Scotland, have been slapped with record fines totalling US$5.7bn (£3.7bn, €5.1bn) for rigging foreign exchange markets. Barclays, RBS, Citigroup and JP Morgan all submitted guilty pleas to the US Department of Justice (DoJ). UBS was granted immunity in the current probe for being the first to cooperate with antitrust investigators, although it did plead guilty to charges related to interest-rate manipulation. The banks were accused of fixing benchmark foreign exchange rates by colluding in online chat rooms to make transactions simultaneously minutes before rates were set.



www.static.guim.co.uk

What were the fines?

Barclays has agreed a total of £1.53bn in fines with both US and UK authorities including a record £284.4mn to the UK's Financial Conduct Authority (FCA) the group pleaded guilty to a violation of anti-trust law in the US.

Royal Bank of Scotland will pay £430mn to US authorities. It comes on top of a £399mn penalty in November 2014, including £217mn by the FCA and £186mn by the US Commodity Futures Trading Commission.

UBS was also included in the US DoJ's investigation. The Swiss bank was fined US$545mn, which will be paid to the DoJ and the Federal Reserve (Fed). UBS was able to avoid criminal charges for forex rigging because it received conditional immunity for reporting misconduct to DoJ and promising full cooperation in the investigation.

JPMorgan announced settlements with the US DoJ and Fed relating to the Firm's foreign exchange trading business. Under the DoJ resolution, JPMorgan will plead guilty to a single antitrust violation and pay a fine of US$550mn. Under the resolution with the Fed, the Firm will pay a fine of US$342mn and has agreed to the entry of a Consent Order.

Citicorp will pay US$925mn, the highest criminal fine, as well as US$342mn to the US Fed. Its traders participated in the conspiracy from as early as December 2007 until at least January 2013, according to the plea agreement. Traders at Citi were part of a group known as "The Cartel" or "The Mafia," participating in almost daily conversations in an exclusive chat room and coordinating trades and otherwise fixing rates.

Bank of America has been fined US$30mn by US regulators, who accused the bank of violating consumer protections for members of the military in collecting debts. The regulators say the bank violated the law protecting service members by taking improper legal action against military customers for delinquent credit card accounts and overdrafts. The improper practices allegedly occurred from January 2006 to the present.

Deutsche Bank, Germany's largest lender, was fined US$2.5bn by US and British authorities. It was ordered it to fire seven employees in the eighth global settlement of alleged benchmark interest rate rigging. The penalty – the biggest in a seven-year investigation – has shredded the banking industry's reputation.

HSBC has been ordered to pay a record £28m and been given a final warning by the Geneva authorities for 'organisational deficiencies' which allowed money laundering to take place in the bank's Swiss subsidiary. The settlement means the Swiss will not prosecute HSBC or publish the findings of their investigation into alleged aggravated money laundering.

Lloyds is reportedly due to be fined a record sum for mis-handling PPI complaints, as the bill for the scandal continues to rise. The fine would be the latest blow to the bank, which has already paid billions to settle mis-selling claims, and could open the door for thousands of historic cases being reopened. The FCA is preparing to fine Lloyds, which also owns Halifax and Bank of Scotland.

Are penalties enough to prevent banks' bad behaviour?

Concerns were raised whether fines and settlements are effective deterrents to fraudulent behaviour. Five banks will pay the US DoJ and the Fed fines, yet they could continue to do business as usual, thanks to settlement terms and waivers against stiffer actions from DoJ and SEC.

The right to pursue a banking business is 'a privilege' that is supposed to be limited to honest bankers. The rule with large banks is that the SEC always waives – it does not matter how bad the violations are. This is a serial recidivism.

The real problem is the culture inside banks. Although banks are the least trusted institutions in the US, most people who work in banks are good and honest people. It seems that a minority of people within banks contribute to the poor culture.

Next page: 'Global Banks Punished for Manipulation'
by John M Connor

– *Compiled from various sources (Newspapers and Internet)*

Global Banks Punished for Manipulation

John M. Connor*

Five of the world's biggest banks, JPMorgan Chase, Citi, Barclays, the Royal Bank of Scotland, and UBS, have agreed to pay US$5.6bn in fines for manipulating the foreign exchange market. This comes at the end of a 19-month investigation by the US DoJ

In the past six months, seven global banks have been penalised US$10.3bn for price fixing, bid rigging, and jointly manipulating perhaps the largest financial market in the world. And more penalties are on the way.

FX trading is an important source of revenues for global banks. Such revenues amounted to US$12 to US$22bn annually for the ten largest banks during 2008-2014. Because five or six large banks came to control more than half of all the world's FX trading, collusion became feasible.

In early 2013, the large Swiss bank UBS AG sought antitrust leniency from US, UK, and other competition authorities for its illegal FX schemes. In June 2013, the UK's new Financial Conduct Authority opened a formal investigation, followed later that year by Swiss, EU, German, and US government agencies. In most of those jurisdictions, criminal probes are open. After internal investigations by leading banks, by February 2014 some 21 of their FX traders and supervisors had been fired. It seems very likely that large numbers of FX traders and their supervisors will be criminally charged for fraud and antitrust violations.

These investigations moved very fast, given the complexities of international cooperation among the prosecutors. On November 12, 2014, government regulators in the US, UK, and Switzerland simultaneously announced the imposition of 11 civil penalties totalling US$4.33bn on six banks: Citicorp, JPMorgan, Bank of America, UBS, RBS, and HBSC. The collusion endured from 2007 to 2013.

We now know that Barclays Bank refused to accept civil penalties in 2014, a decision it must now regret. Behind the scenes, the same banks were negotiating furiously with the US DoJ over whether to agree to plead guilty to the felony crime of price-fixing conspiracy and accept huge fines, as well as additional civil penalties from other market regulators.

On May 20, 2015, the DoJ and four other government units announced a second wave of harsher penalties on most of the same six banks. This time, penalties amounted to US$5.97bn. Five of the six banks will plead criminally guilty, including Citicorp, which must pay a US$925mn US fine, by far the largest in world antitrust history. For the first time, the Federal Reserve Bank of the US imposed six civil penalties that totalled US$1.85bn for the banks' 'unsafe and unsound practices' in FX trading.

The UK's Financial Conduct Authority also imposed its largest fine ever - on Barclays Bank. Indeed, Barclays becomes the world record-holder in terms of total price-fixing penalties. It now owes US$2.38bn to US and UK regulators.

The perpetrators of the FX cartel face a certain future of unrelenting demands for ever greater penalties. The German financial regulator, the South African Competition Commission, and the EC have not yet completed their investigations of FX market manipulation.

The EC has a history of imposing antitrust fines that are well above US fines for the same cartel violations. Because DoJ fines were US$2.8bn and total US fines exceeded US$9.7bn, the EU's forthcoming fines may well fall into the US$3.0 to US$5.0bn range.

In addition, settlements of the banks with civil damages suits filed in the US typically exceed criminal fines by a large margin. Settlements by private parties will very likely top US$4.0bn.

In sum, monetary penalties for FX market manipulation could easily surpass US$15 to US$20bn in a few years. Is this shockingly large figure likely to deter future violations of competition laws by big banks?

Sadly, the history of the banking and finance industries offers no solace. Big banks in many nations have cartelised at least 65 markets in the past 20 years, and the number of such markets has accelerated in the past five years. So far, the US$31bn in antitrust penalties has failed to quash cartel formation in the banking sector. Either the lure of excessive profits is too large, or the chances of being caught and severely punished is too remote in banking.

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* *Expert Economist, OnPoint Analytics, Inc. Abridged from an article that appeared in* The Financial Express, Dhaka *on May 24, 2015 and* The Hindu Business Line *on June 24, 2015*

Orange Acquires Jazztel

The EC has approved the acquisition of Jazztel by Orange, subject to the full implementation of a number of commitments by the latter to ensure effective competition on the fixed internet access services markets.

The Commission had concerns that the takeover could have led to higher prices for fixed internet access services for Spanish consumers. The vast majority of fixed internet contracts in Spain are bundled with a mobile component so that a new entrant will need access to a mobile network to compete effectively.

Orange has also committed to grant to the purchaser of the FTTH network wholesale access to its mobile network including 4G services, unless the purchaser already has access to a mobile network.

(www.broadbandtvnews.com, 20.05.15)

Shell-BG Pact Agreed

Royal Dutch Shell and BG Group announced that US regulators officially approved their proposed US$70bn merger. The energy companies said the Federal Trade Commission waived the antitrust waiting period, effectively clearing the only hurdle to the deal in the US.

The proposal still requires approval from other nations in which BG operates, including China, Brazil, Australia and the EU. Shell and BG in April announced what would be the third-largest oil and gas industry transaction in history.

The global collapse in oil prices provided an opportunity for larger companies like Shell to acquire additional assets. The companies hope to complete the merger by early 2016.

(www.chem.info, 16.06.15)

CVS Health to Hold Omnicare

The US-based CVS Health Corporation agreed to acquire Omnicare, the leading provider of pharmacy services to long term care facilities, for a total enterprise value of approximately US$12.7bn, which includes approximately US$2.3bn in debt.

With the acquisition of Omnicare, CVS Health will significantly expand its ability to dispense prescriptions in assisted living and long term care facilities, serving the senior patient population.

CVS Health will also expand its presence in the rapidly growing specialty pharmacy business. Omnicare's complementary specialty pharmacy platform and clinical expertise will augment CVS Health's capabilities and enable CVS Health to continue to provide innovative and cost-effective solutions to patients and payors.

(BS, 22.05.15)

Food Distributor Merger Off

A merger between food distributors Sysco and US Foods has collapsed just days after the Federal Trade Commission (FTC) won a preliminary injunction blocking the deal.

Sysco's US$3.5bn bid to buy US Foods is off after US District Court Judge Amit Mehta granted the FTC's request to put the brakes on the deal, citing concerns over how it would affect the restaurant business and consumers.

Sysco will be required to pay US$300mn in so-called break-up fees to US Foods. It is not uncommon for companies to put such fees into their tentative merger deals to ensure there are incentives to finalise a transaction.

(www.usatoday.com, 29.06.15)

AT&T DirecTV Nears Regulatory OK

AT&T and DirecTV are poised to combine to become America's largest paid TV provider as reports indicate regulators will approve the US$48.5bn merger, which aims to increase video online services but would also inspire more large deals and decrease options for consumers.

The DoJ is ready to announce that the deal has cleared its review of any antitrust concerns. The Federal Communications Commission, which screens deals to determine if they are in the public interest of consumers, is also preparing to approve the deal.

To address public interest concerns about the deal the combined firm would have to agree to conditions that it would observe the commission's net neutrality rules, expand access to rural broadband, and agree to maintain access to diverse programming,

(www.usnews.com, 02.07.15)

GE-Electrolux Deal Challenged

The US DoJ will seek to stop Electrolux proposed acquisition of the appliances business of General Electric (GE Appliances). Electrolux contests vigorously this effort by the DoJ to oppose the transaction. The review of the proposed acquisition will now continue in a court procedure.

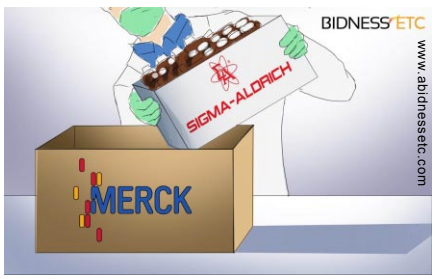
Electrolux entered into an agreement to acquire GE Appliances, a well-known manufacturer of kitchen and laundry products in the US, for a cash consideration of US$3.3bn.

Electrolux does not agree with the DoJ's assessment that the acquisition will harm competition. It has already obtained regulatory approval in Brazil, Canada and Ecuador. The transaction is subject to filing requirements in a few more countries in Latin America.

(www.evertiq.com, 02.07.15)

Merck's Sigma-Aldrich Agreement

The EC has given its approval for Merck's planned acquisition of US-based life science company Sigma-Aldrich. The EU clearance, which is subject to certain conditions, follows the recent antitrust approvals in Japan and by the Chinese Ministry of Commerce. In addition, Merck has already secured antitrust clearance from the US, Taiwan, South Africa, Russia, Serbia and Ukraine.



In September 2014, Merck had signed a definitive agreement to acquire Sigma-Aldrich for US$17bn, establishing the company as one of the leading players in the US$130bn global life science industry.

The acquisition is a key element in Merck's 'Fit for 2018' transformation and growth programme aimed at strengthening the company's three growth platforms, healthcare. *(BS, 16.06.15)*

Vodacom-Neotel Gets Green Light

South Africa's Competition Commission has recommended to the Competition Tribunal that a merger worth 7 billion rand (US$575.95mn) between mobile operator Vodacom and fixed line operator Neotel be approved.

The antitrust authority also wants Vodacom, who would control Neotel after the merger and use it to roll out high-speed fibre and next-generation mobile services, to commit 10 billion rand in infrastructure spending within the next five years and guarantee a return for Neotel's black empowerment shareholders.

Vodacom would also not be allowed to use Neotel's spectrum to sell mobile services to any of its customers for a period of two years.

(Reuters, 30.06.15)

LinkedIn Seals Education Accord

LinkedIn is to acquire the online learning business Lynda.com for about US$1.5bn, as the social network expands offerings for its audience of professional users.

Lynda.com, a California-based company, has created hundreds of thousands of video tutorials in multiple languages, helping people to learn 'software, technology, creative and business skills to achieve personal and professional goals'. Users pay a subscription of up to US$375 a year to gain access to online courses that have been created by more than 1,000 authors.

The companies believe strongly that the growing skills gap is one of the biggest challenges to the future of the global economy. Lynda's courses will be integrated with the LinkedIn site.

(FT, 09.04.15)

Western Union Buys MoneyGram

Western Union Co. is in early-stage talks to acquire smaller rival MoneyGram International Inc., people with knowledge of the matter said, as both companies contend with stiff competition from upstart money-transfer companies.

Western Union and MoneyGram — the two dominant players in the remittance industry — are facing price competition as companies including WorldRemit, TransferWise and Wal-Mart Stores Inc. give their customers new options for moving cash.

MoneyGram reported a loss of US$72mn in the first quarter, compared with a profit of US$39mn in the year-earlier period. *(Mint, 07.05.15)*

Charter to Gain Bright House

Charter Communications Inc. agreed to buy cable operator Bright House Networks LLC for US$10.4bn in cash and stock, the latest deal in a rapidly consolidating pay-television industry.

Bright House is the sixth-largest cable operator in the US and serves approximately 2 million video customers in central Florida, as well as Alabama, Indiana, Michigan and California.

Charter, currently the country's fourth-largest cable operator would become the second-largest cable operator after the deal. Bright House Networks provides Charter with important operating, financial and tax benefits, as well as strategic flexibility.

(WSJ, 01.04.15)

BlaBlaCar Buys Corpooling Rivals

BlaBlaCar is buying its strongest competitor in Europe as the online ride-sharing company looks to consolidate its position on its home turf while continuing to expand worldwide.

The French company announced deals to buy the German group Carpooling.com, its main European rival, as well as Hungary-based AutoHop. The combined entity will make BlaBlaCar the leading ride-sharing service in Europe, where it will control more than a 90 percent share of large markets such as Germany, Spain and Italy.

It will also create one of the world's biggest ride-sharing services with 20m users across 18 markets. BlaBlaCar operates as an online marketplace, pairing motorists with passengers needing a lift between cities. It is one of the companies at the vanguard of the 'sharing economy', which encourage individuals to offer services to others. *(FT, 15.04.15)*

Intel Agrees to Purchase Altera

Intel agreed to buy Altera for US$16.7bn as the world's biggest chipmaker seeks to make up for slowing demand from the PC industry by expanding its line-up of higher-margin chips used in data centres.

By combining with Altera, Intel will be able to bundle its processing chips with the smaller company's programmable chips, which are used, among other things, to speed up Web-searches.

The integration of Altera's chips with Intel's will create a new class of products giving customers a significant improvement in performance, lower costs and a lot more flexibility. The transaction is the third big one in the highly fragmented chip industry in 2015. *(Reuters, 01.06.15)*

Noble's Rosetta Treaty Reopens

Noble Energy, the US oil and gas group, is to buy Rosetta Resources for about US$3.7bn including debt, in the first acquisition of a significant US shale oil producer since the fall in crude prices in the second half of 2014.

The agreed deal is a sign of how financially weaker shale oil producers unwilling or unable to finance enough drilling to keep their production from falling can be compelled to accept a bid as the best option for investors.

The all-share deal gives Noble its first shale positions in the Eagle Ford and the Permian Basin, both in Texas and two of the heartlands of the US oil boom. *(FT, 12.05.15)*

Engaged Tone

The Nokia-Alcatel merger represents the triumph of hope over experience

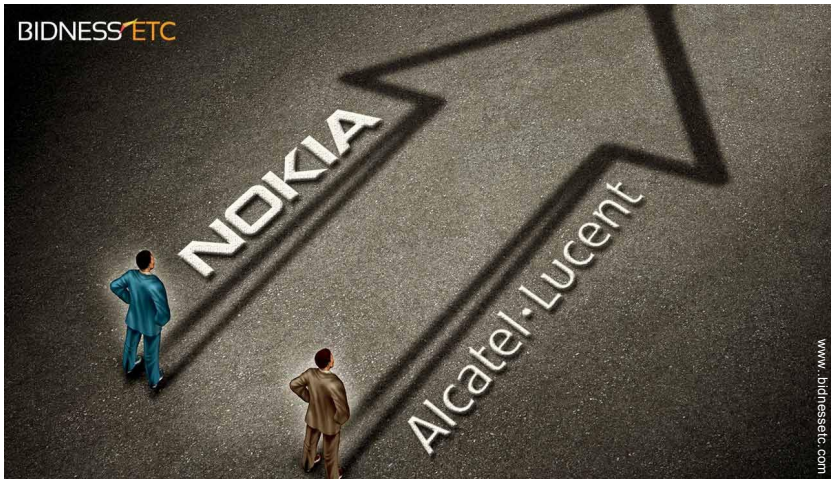
Mergers among telecoms-equipment makers have a terrible record. In 2006 Alcatel, a troubled French telecoms conglomerate, was pressed to merge with Lucent Technologies, a descendant of America's telecoms colossus, AT&T. The messy result burned cash for eight years and caused its share price to tumble by almost 75 percent.

Nokia's experience of togetherness was hardly happier. In 2007 the Finnish firm formed a joint venture with Siemens which staggered on until Nokia bought out its German partner in 2013. So news that Nokia and Alcatel-Lucent had agreed to tie the knot, though not unexpected, caused eyeballs to roll.

It makes sense nonetheless. Nokia is back in profit and Alcatel-Lucent is on its way there, but each firm is too small on its own to compete in the global telecoms-equipment market. This is now dominated by two firms — Ericsson of Sweden and Huawei of China.

Nokia's and Alcatel-Lucent's combined turnover last year was €26bn (US$34.5bn), more than Ericsson's SKr228bn (US$33bn). But the merger is "primarily about scope, not scale," says Risto Siilasmaa, the Chairman of Nokia. The two firms are complementary.

Alcatel-Lucent is strong in internet routers, for example, but its wireless business is small. Nokia's wireless-networks business, by contrast, is almost too dominant: it now accounts for 88 percent of revenues because the Finnish firm sold its handset business to Microsoft in 2014. Alcatel-Lucent is stronger in America, thanks to its historic roots, while Nokia is somewhat more Euro-centric. They could help each other make a better fist of things in China.



Even so, there is much that could, and on past experience may well, go wrong. For a start, cross-border mergers frequently lead to culture clashes — and both Alcatel and Nokia are already coping with some queasy cultural mixes from their earlier mergers. Michel Combes, the former's chief executive, argues that both companies are thoroughly international, and Nokia now has more French heads of business lines than Alcatel-Lucent. However, €900m-worth of operational synergies must be found by the end of 2019. And Bengt Nordstrom of Northstream, a consulting firm, worries that it will take cost-cutting to achieve these, and that this will make cohabitation trickier.

This is no merger of equals. Nokia is buying Alcatel in a straight exchange of 0.55 'new Nokia' shares for one in Alcatel-Lucent. Nokia's shareholders will end up with 66 percent of the new company, and its chairman and chief executive will assume the same positions in the combined group. Its brand will be Nokia and its headquarters in Finland. Yet the French government, which on past protectionist form would have been expected to kick up rough, has given the deal a warm welcome.

That is partly because Nokia has promised not to cut any more jobs than Alcatel-Lucent was already planning to, under the recovery plan it had been carrying out before the merger was agreed. Indeed it has pledged to create a further 500 research jobs in France, and to finance digital and telecoms innovation. It is also, no doubt, because Alcatel-Lucent has had its back to the wall for so long that it is hard to conceive of any better fate for it. Most of all it reflects the French government's ardent belief that Europe needs more digital champions on a scale to take on the world, and win.

Still, it is strange that two weeks ago Emmanuel Macron, France's economy minister, intervened to prevent Orange, its biggest telecoms firm, from selling Dailymotion, a video-hosting site, to a Hong Kong buyer, prompting a rival offer from Vivendi, a French firm, instead. If Dailymotion is a strategic national asset it is hard to see why Alcatel, a stalwart of France's blue-chip CAC-40 index until its recent decline, is not.

– *The news item appeared in* The Economist*, on April 18, 2015*

Asia Drives Investment Surge by Emerging Economies

Shawn Donnan*

www.media.economist.com

Foreign direct investment by emerging economies surged almost a third last year as companies sought opportunities abroad to make up for slowing domestic growth, according to new UN figures.

The data highlight one of the big developing trends in the global economy?

Once a target for multinational companies eager to invest and reap the benefits of their rapid growth, emerging economies are becoming rivals to the US and Europe as a source of investment.

The flow of funds from emerging economies hit a record $US484bn in 2014, an increase of 30 per cent on the year before, according to figures compiled by the Geneva-based UN Conference on Trade and Development (UNCTAD).

That surge was driven almost entirely by Asian investors, with developing Asia accounting for $US440bn in outbound investment in 2014 and overtaking North America and Europe as the world's biggest regional source of foreign direct investment.

Behind that is a big shift in China in particular, said James Zhan, the Head of Investment for UNCTAD.

China was second only to the US in the national league tables for foreign direct investment as Hong Kong and the mainland accounted for $US266bn in outbound funds in 2014.

That status is a reflection of a remarkable shift in China's place in the world. A decade ago, mainland China saw 18 times more inbound than outbound investment, said Zhan but in the year 2014, for the first time, outbound investment overtook that coming into China.

Zhan said the importance of China as a source of investment was only likely to grow. The advent of a China-led Asian Infrastructure Investment Bank and Beijing's plans to promote a new Silk Road through central Asia to Europe would inevitably bring more investment by companies.

"Eventually the investment will by carved out by firms," he said.

But slowing growth at home was also acting as an incentive for Chinese companies to look abroad, Zhan said and the same was true for investors from other emerging economies such as Russia. Despite the ratcheting up of sanctions and the crisis in Ukraine, Russian companies invested $US56bn offshore in 2014, the same as France.

Investments by multinational companies in developed economies such as the EU, US and Japan were flat last year at $US792bn. While there had been "modest increases" in investment by European and US companies, offshore bets by Japanese companies fell 16 per cent in 2014, according to the UN.

Once a target for multinational companies eager to invest and reap the benefits of their rapid growth, emerging economies are becoming rivals to the US and Europe as a source of investment

The composition of investments in 2014 was also telling. More than half of the investments made in 2014 by companies from developing economies were in equity and amounted to new projects or acquisitions.

However, up to 80 percent of the FDI outflows from companies based in developed countries were in the form of reinvested earnings and the result of record cash reserves held by their foreign subsidiaries, according to the UN figures.

There are signs that investors' confidence is increasing, Zhan said. A survey by McKinsey, the consultants, due next month alongside UNCTAD's global investment report, had found rising sentiment among companies in even developed economies, he said.

* *World Trade Editor, Financial Times. The article appeared in* The Financial Times*, on May 18, 2015*

US Tech Giants Questioned

Brussels has given notice that it will be scrutinising some of the large US tech groups to see if their practices are either anticompetitive or too intrusive on people's right to privacy.

The draft plan for a 'digital single market' says that the EU will probe such areas as how search results are affected by paid advertising and whether companies like Netflix, Whatsapp and Skype are providing unfair competition to traditional media and telecoms companies.

The fact that the companies concerned are all American is leading a number of politicians in the US to criticise the EU's action as another form of trade protectionism. They point out that it may not be coincidence that Europe currently boasts precious few such companies that have helped to disrupt markets with better online solutions to people's needs.

(BR, 30.04.15)

Cutting Corporate Tax

Indonesia is considering cutting its corporate tax rate to as low as 17.5 percent from 25 percent to attract more investment from companies that are operating in the region.

The corporate tax cut being considered will bring it closer to its neighbour, Singapore, which offers 17 percent. The proposed tax cut, which will apply to all companies, may hurt tax collection in the short term, but 'in the not so long term. Investment is needed to drive economic growth.

During his presidential campaign in 2014, President Joko Widodo had pledged to increase tax collection to 16 percent of gross domestic product from about 12 percent partly by cracking down on tax avoidance. *(Mint, 11.05.15)*

Measures to Combat Corruption

Two-thirds of defence companies show little or no evidence of having programmes to combat corruption, according to an extensive study of the industry.

Dassault Aviation, a key partner for Britain in the development of unmanned fighter aircraft, is among the worst in disclosing what it does to prevent corrupt practices, said Transparency International in its second anti-corruption.

The two-year study measures the transparency and quality of anti-corruption programmes in 163 defence companies around the world.

The report also highlights growing concern over a lack of transparency surrounding so-called offsets, the side deals demanded by governments as a condition for awarding defence contracts. *(FT, 27.04.15)*

Tobacco Firms to Pay for Damages

British American Tobacco, Philip Morris International and Japan Tobacco International have been hit by a ruling on two class action lawsuits on behalf of a million Canadian smokers who claimed they were not aware of the health risks.

The companies were ordered to pay CAD$15.6bn. All three companies have said that they will appeal the damages award. Such actions are likely to add impetus to the continuing growth of e-cigarettes as an alternative that has many fewer health impacts.

However, at the same time as such alternatives are a major source of growth in developed markets, tobacco companies continue to invest heavily in markets where health concerns have not yet come to the fore. *(BBC, 02.06.15)*

KPMG over BNY Mellon Audit

The UK's accountancy watchdog has launched an investigation into KPMG's audit of the Bank of New York Mellon, two months after the world's largest global custody bank was hit with a record UK fine for mixing its own funds with those of clients.

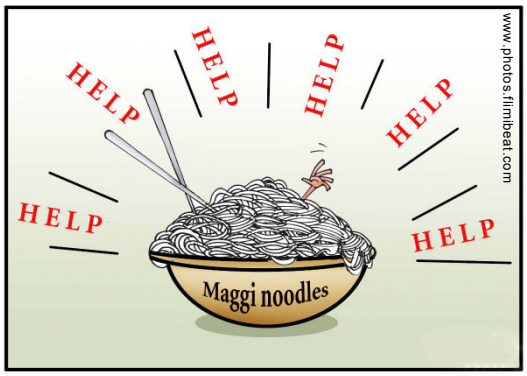
The Financial Reporting Council will probe the way KPMG audited client money arrangements at the Bank of New York Mellon London Branch and a subsidiary, Bank of New York Mellon International Limited.

BNY Mellon admitted violating client asset rules over a five-year period, from 2007 to 2011. As the bank's auditor, KPMG examined whether BNY Mellon's custody arrangements complied with UK client asset rules.

(FT, 24.06.15)

Nestle Accused for Food Contamination

The Indian government has filed for damages against Nestlé after fears of lead in the Maggi Noodles brand led to a ban on the product by the Food Safety and Standards Authority of India (FSSAI).

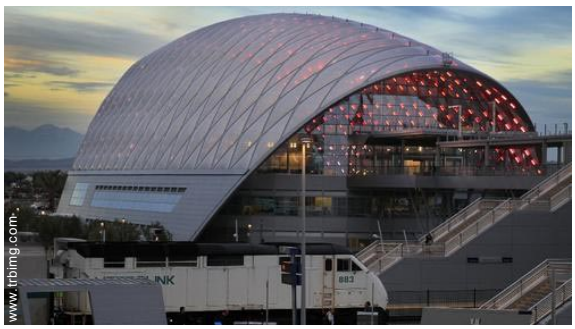


Nestlé has said that its noodles which, although not traditional to India, have become popular as a staple food by many Indians, are safe to eat. The FSSAI disagreed after tests of 29 samples showed 15 with more lead than legal limits. It described the product as 'unsafe and hazardous for human consumption.'

The company voluntarily recalled the noodles from sale hours before the ban was implemented, but is seeking to engage the FSSAI on how lead tests are conducted. Such argument about technicalities has fallen far short of reassuring consumers, however, and sales of Nestlé's Maggi brand has suffered as a result. So far, other Nestlé brands such as Nescafé have escaped association.

Whilst Nestlé has been targeted for this action, the authorities are undertaking checks against other instant noodle brands.

(BR, 08.06.15)



Air Carrier Liability: A Perspective

The **Nigerian** aviation industry has evolved from a means of transportation into a vehicle of commerce with great benefits to economic growth. In view of this pivotal role, ensuring aviation safety is paramount.

The need to provide adequate compensation for air travellers in the event of damage to their person or luggage – while also preventing excessive or spurious claims against aviation operators – has led to the development of an international regime regulating the quantum of liability borne by air carriers in the event of accidents and the consequent harm to passengers and their luggage.

The regulations provided by the Civil Aviation Act aim to ensure that local aviation practice is in line with international best practices. *(ILO, 20.05.15)*

Rail Competition Gains Momentum

When a train used to reach a **European** border, the driver would have to get off, walk to the rear carriage and change the tail lights to meet the requirements of the country he was entering.

That practice has all but ended, a casualty of the drive by the European Union over the past two decades to create a single EU railway that not only makes it easier to cross borders but also seeks to ensure competition on lines by ending the monopolies of state-controlled train operators.

This could provide big growth opportunities for operators such as Stagecoach, Go-Ahead and National Express of the UK, and Keolis of France. The EU passenger rail market generates £200bn in annual revenue, according to Arriva, a subsidiary of Deutsche Bahn, and the financial crisis increased momentum in some countries to open up their railways to private operators to secure savings in public spending. *(FT, 18.05.15)*

Antitrust Guidelines for Auto Sector

China recently started drafting a set of antitrust guidelines for the auto sector, the first such rules devised for a specific industry. The antitrust authority under China's National Development and Reform Commission (NDRC) invited industry groups, such as the China Association of Automobile Manufacturers and the China Automobile Dealers Association to the meeting.

The NDRC's decision to adopt guidelines rather than other forms of regulations would carry greater authority. The introduction of guidelines takes less time and the NDRC will hold the power to interpret the rules.

The introduction of guidelines on fair competition practices, on the other hand, is expected to help sort out the auto sector, which has developed based on questionable practices, said Shen Jinjun, head of the China Automobile Dealers Association.

(www.wantchinatimes.com, 02.07.15)

Broadband Policy Implemented

In addition to its spectrum release for the fourth-generation (4G) Long-Term Evolution (LTE) schedule in upcoming years, the National Communications Commission (NCC) of **Taiwan** has announced a parallel move to improve broadband access available to general users for fixed-line networks.

Between 2015 and 2017, the NCC plans to release by auction up to a total of 360 megahertz (MHz) in the 2,600MHz, 1,900MHz, 2,100MHz and 850MHz frequency bands for mobile broadband licenses. Existing 4G LTE operators will soon face another spectrum competition in the third quarter of 2015.

Meanwhile, the NCC has taken an aggressive approach encouraging leading 4G LTE operators which are also incumbents in the second-generation (2G) mobile phone market to transfer 1,800MHz of licensed use from 2G to 4G *(ILO, 15.04.15)*

Gas Sector Opened to Investors

Ukraine's Parliament approved a law that intended to break monopolies and lure badly needed investment into the country's lucrative but opaque natural gas sector.

The 'natural gas market law' approved by a majority of almost two-thirds, aims to boost competition and transparency in one of the most troubled sectors of Ukraine's recession-battered and war-torn economy.

Described by one lawmaker as a 'moment of truth' demonstrating parliament's determination to break the longstanding hold of oligarchs over Ukraine's politics and economy, the new law brings Ukraine's gas market into line with the EU's Third Energy Package, which aims to boost competition in the energy sector.

(FT, 10.04.15)

Plans for Digital Single Market

Plans to reverse the fragmentation of internet shopping and other online services have been unveiled by the **EU** executive, which called for a digital single market in Europe covering everything from e-commerce to broadband spectrum, courier and parcel delivery rates, and uniform telecoms and copyright rules.

Setting out an ambitious digital strategy that will run into fierce resistance in some of the 28 EU countries, the European Commission Vice-President, Andrus Ansip, said Europe would be left behind if it did not create a level playing field for internet shoppers and firms.

Expected to take years to even partially realise, the proposals would also boost digital services across the EU, which lags far behind the US. Currently, not a single market leader among internet providers in the EU is European. *(TG, 06.05.15)*

GlaxoSmithKline Chief Seeks Immunity from Sector's Herd Mentality

Jonathan Ford*

Sir Andrew Witty has withdrawn from anti-cancer therapies to grow non-drugs side

Mergers and acquisitions may involve vast sums of money but they are as prone to fashion as anything else. Indeed, when it comes to deals, it is often striking how willing corporate bosses are to follow trends rather than step back and risk standing out from the herd.

The pharmaceuticals world is in the grip of two dealmaking crazes. One involves manufacturers of generic and branded, but off-patent, remedies seeking efficiencies through cost-crunching deals with similar businesses.

The other is for big, research-led pharma groups to buy smaller innovative rivals. The idea is to restock pipelines with exciting new biological compounds that treat conditions such as cancer. Bidders hope that if they get the right product and bring it smartly to market, they can make a mint.


Financial Times

As one of the world's biggest, research-led drug companies, GlaxoSmithKline might be expected to be in the thick of the action. Like other representatives of 'Big Pharma', it has struggled to justify its vast market cap with a big enough pipeline of drug discoveries. From being the world's biggest drug company at the time of its merger in 2000, it has dipped to number seven.

Its boss, Sir Andrew Witty, is, moreover, under pressure. Since he became chief executive in 2008, GSK's total return to shareholders is less than half that of the Standard & Poor's 500 index. Some investors would quite like to see him go. But under Andrew's leadership, GSK is pursuing a different path. Instead of supplementing in-house research with bought-in ideas, he has been cutting projects and withdrawn from one of the hottest new areas of drug discovery: anti-cancer therapies.

This is not because he thinks the drugs won't work. Rather it is the economics of healthcare that GSK finds challenging. The industry depends for much of its revenues on markets in Europe and North America, selling to national health systems and private healthcare payers.

These are markets with stagnating populations and increasingly stretched health budgets. Many of the industry's profits come from selling at premium prices to a small number of US consumers. Were this premium to erode, or the cost inflation that supports it to stagnate, the economics of drug discovery could unravel. Many of the deals being concluded at multibillion premiums would make little sense.

Instead Sir Andrew is touting an alternative: this is to grow GSK's non-drug side, which includes vaccines and consumer healthcare.

It was this desire, for instance, that led the group to swap its oncology drug business last year for the vaccine operations of Novartis, the Swiss drug giant. Sir Andrew's bet is that selling vaccines and consumer products into global healthcare markets will offer faster and less risky growth than the crowded and expensive market to sell costly drugs.

It is too soon to tell whether Sir Andrew is right about drug prices. While European buyers have been squeezing pharma companies, and President Barack Obama's reforms have brought a new cost consciousness to the US system, the American premium has yet to crack.

There are, however, other things to like about his plan. Focusing GSK's drug discovery efforts may help to deal with one of the main disappointments of Big Pharma: that larger research departments tend to be less productive, not more. Concentrating on vaccines doesn't look such a bad idea either: discovery costs are lower than drugs and the vaccine market is growing faster.

John Maynard Keynes once observed that in many walks of life, it is 'better for reputation to fail conventionally than to succeed unconventionally'. Most bosses follow this dictum and it is rare for one to flout it – especially when others are avidly implementing the fashion of the day. Hopefully, GSK's investors will be patient and give Sir Andrew's idiosyncratic strategy time to play out.

* *Chief Leader Writer, Financial Times. Abridged from an article that appeared in* The Financial Times, *on May 11, 2015*

Credit Risk in Banking Sector

Risk in the **US** banking sector is increasing because lenders are easing underwriting standards for some auto, business, and commercial real-estate loans, the Office of the Comptroller of the Currency (OCC) said in its semi-annual report on emerging risks.

The report, which focused on lending data and regulators' observations from the second half of 2014, said competition pushed banks to make more exceptions to their lending and underwriting policies.

"Bankers need to be cognizant of the long-term implications of some of the risks they are taking," said Darrin Benhart, the OCC's Deputy Comptroller for supervision risk management.

Benhart said the comptroller's office does not see systemic risk from any one of the lending categories, but if the economy slows down "any one of them would be a contributor to a potential broader systemic issue."

In commercial real estate, banks are facing competition not only from other banks but also from life insurers, private-equity firms, and others, the OCC said.

As a result, banks are easing underwriting standards, including by loans with options including interest-only payments for borrowers.

The OCC is monitoring other emerging risks, such as potential losses banks could face from the oil and gas industry, which is paring production in response to falling prices. *(WSJ, 30.06.15)*

Kenya 3rd Financial Sector in SSA

Kenya now has the third-largest financial sector in sub-Saharan Africa, the World Bank has said. The global financier, however, says there is need for further structural reforms to enable the country achieve its true development potential.

The bank's country partnership strategy for Kenya and the government's Vision 2030 identify access to finance as critical to enhancing the prospects for growth, regional competitiveness and shared prosperity.

Consequently, the World Bank Group board of executive directors approved an International Development Association credit of US$37mn for the country's financial sector support project to strengthen the legal, regulatory and institutional environment.

The initiative is aimed at helping Kenya improve financial stability and increase affordable and long-term financing. The World Bank will continue to support efforts to increase financial access to improve the environment for private investment, which plays a critical role in Kenya's development.

(www.kenyathegoodnews.com, 04.05.15)

Code to End 'Shocking' Fees

Regulators in the **United Arab Emirates** have published a new code of conduct aimed at improving standards among financial services providers. This comes amid widespread concerns that expatriate investors in Dubai and the UAE are being ripped off by financial advisers.

The new code published by the Emirates Securities and Commodities Authority calls on financial services providers to uphold the highest professional and moral standards and to protect the interests of their clients at all times.

Many have been highly critical of the fees payable on international bonds by investors in the UAE. These can include initial charges of up to 8 percent, annual 'establishment' charges of 1.5 percent for the first five to 10 years, and opaque annual 'investment' charges of up to 3 percent.

Sam Instone, Chief Executive of AES International, a wealth manager based in the UAE, welcomed the code, which is based in part on the UK regulator's Treating Customers Fairly initiative first published in 2006.

(FT, 26.04.15)

"Too-Big-to-Fail" Banking Problem

Regulators are worried that patchy application in **Europe** and beyond of new rules to solve the problem of banks that are 'too big to fail' could make it harder to avoid a repeat of the mayhem that followed the collapse of Lehman Brothers.

They point to likely inconsistencies in how banks will be treated under the rules that are being written, not only between European authorities in and outside the euro zone but also in jurisdictions further afield such as the US.

Even if these problems can be overcome, regulators also fear clearing houses that will increasingly handle deals in the US$630tn financial derivatives and swaps market could become a new generation of too-big-to-fail institutions.

Policymakers around the world are now forcing banks to build up safety cushions that are big enough that they could ride out a future crisis, or could be allowed to fail without fear of setting off a systemic meltdown.

The policymakers are putting their faith in two measures. New 'resolution' mechanisms are being introduced for the restructuring or orderly winding down of a collapsing bank so that vital parts of its business, such as customer accounts and payments, could continue operating.

Banks are also being forced to sell 'bail-in' bonds to investors. Holders of the bonds agree to bear losses if the bank's core capital falls to a dangerously low level during a crisis. Investors might alternatively have their bonds converted into shares in the bank, but the public should not be called on to fund a rescue, as in the past.

(FE, 18.05.15)

Technology Will Free Customers from Broken Banks

Philip Augar*

The trouble with writing rules is that they can quickly be overtaken by technological change. In 1907, The Hague Peace Conference solemnly prohibited the discharge of missiles from balloons; the first flight of a military aeroplane took place a year later. In its attempt to oversee the more mundane battlefield of Britain's banking market, the country's antitrust regulator needs to avoid a similar mistake.

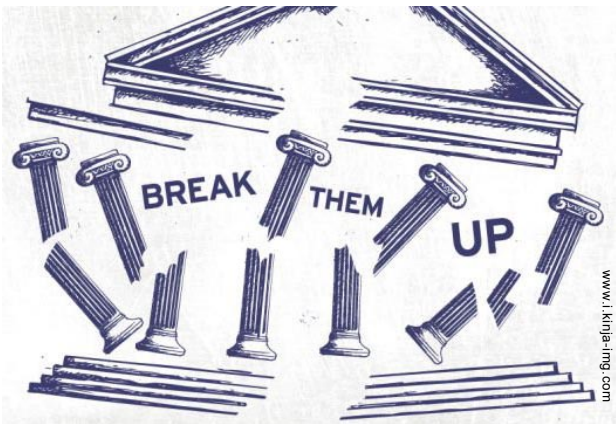
The Competition and Markets Authority (CMA) is the latest in a long line of competition and parliamentary inquiries into banking, beginning with Sir Donald Cruickshank's report for the Treasury in 2000 and repeated at regular intervals. These reports make sorry reading. The problems they reveal are persistent but the cure has been elusive.

They gather dust on the shelves for two reasons. First, government support for reform has faded in the face of lobbying from those with the most to lose. Second, proposed remedies have focused on the symptoms of a failing banking market not the cause.

The symptoms are embedded and largely unchanging market shares, a uniform product offering based on bank accounts that are provided free of charge so long as the holder remains in credit, and widespread customer dissatisfaction. Remedies such as capping market shares, introducing price controls and seeding challenger banks do not tackle the cause of the problem, which is that a formidable barrier to entry prevents a competitive retail banking market from taking root.

Actually, there are two barriers. One is the branch network, 80 per cent of which is controlled by a handful of big banks. Historically, banks depended on branches to attract and retain customers — even now, new banks need branches to compete with established players. But the switch to mobile and online banking has the potential to change that as specialist digital banks such as Atom and payments companies such as PayPal threaten to bypass the branch.

Online banking in the form currently offered by the major banks is mainly a way for customers to pay bills, receive funds and transfer money between accounts. But online lending is growing fast. At the moment, it mostly involves relatively small scale unsecured lending on credit cards and current accounts. But it will not be long before internet-based players start competing on big-ticket items such as mortgages. Customers with good credit will increasingly borrow online, and challenger banks will find the branch network a much less formidable barrier to entry.



A 'national grid' would end the big banks' control of infrastructure

The payments system is the means by which money is moved around the banking system, and in the UK is owned and controlled by the banks. Outsiders find its mechanisms expensive and cumbersome. The regulator has vowed to "open up the payments industry, making it easier for a wider range of parties to access payments systems".

This apparently arcane change has the potential to open up banking. If it could be further allied to a 'national banking grid' then the conditions would exist for a more fluid and innovative banking market. This grid could include front-end technology, the payments system and account switching. It could centralise functions such as registers dealing with fraud and money laundering. It would administer standard industry-wide terms and conditions, ending the confusion that currently arises from lengthy and incomprehensible missives from our banks.

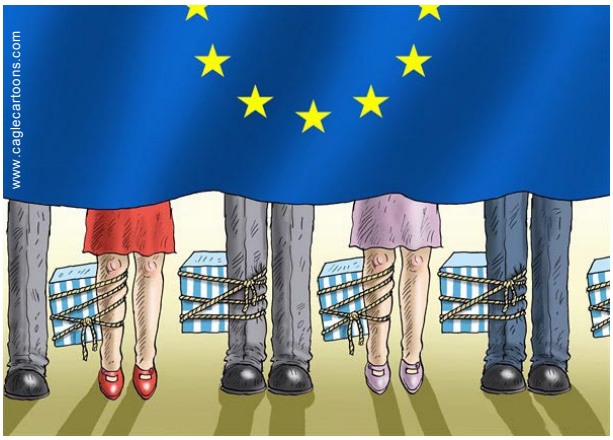
The CMA is due to publish its provisional findings and possible remedies for any failure of competition in retail banking in September before issuing its final report in April 2016.

If the CMA does its job, the next government will have a major opportunity to mend Britain's broken banking market once and for all. This could be the banking report to end all banking reports. But if the government or the CMA flinches, the UK will continue to worry about bombs from balloons long after the rest of the world has moved on.

* *Non-Executive Director at TSB, a British Bank. Abridged from an article that appeared in* The Financial Times*, on March 31, 2015*

A Primer on the Greek Crisis

Anil Kashyap*



Greece from the mid-1990s until 2014 was constantly spending more than it was collecting in tax revenues. Because of these deficits, the country borrowed to cover the shortfalls and its debt burden was steadily rising. From that point onward, the world began to wonder if Greece really could pay the debt that it had issued or needed to default. Its borrowing costs rose sharply and the country began looking for ways to reduce its required debt payments and end its borrowing addiction.

By the spring of 2010 the excessive debt problem became unbearable and there was open speculation that Greece would default. The new lending came from two sources in 2010, a fund that was raised from European governments and the International Monetary Fund (IMF).

The European Central Bank (ECB) also provided support to Greece in two ways. First, it allowed banks in Greece to borrow from it by posting bonds guaranteed by Greece as the collateral. Second, it bought some Greek government bonds in the open market.

In the time since Draghi's statement three important things happened in Greece. First, Greece made further substantial progress on closing its deficits. Second, the economy contracted for two more years as the reforms failed to deliver higher growth. The third major development, however, was that the public lost confidence in the incumbent government and its lenders.

The Tsipras government wanted three types of changes. First, it wanted to restore some of the spending cuts that had been enacted. Second, it wanted to reverse some of the revenue hikes that the past governments had instituted. Finally, it wanted outright forgiveness of some of the debt that had accumulated.

There are two sources of objections that the creditors have with Tsipras' requests. First, countries such as Italy, Portugal, Spain, and Ireland, had to undertake similar types of adjustment as in Greece. Second, even if there was some way that Greece could be helped without setting a precedent, the officials do not trust the Greeks to carry through with any plans.

The ECB decided it could no longer keep accepting additional collateral from the Greek banks that was guaranteed by the Greek government. Greece has closed the banks so that depositors cannot take out all of their money.

Greece must either find a new lender, which seems very unlikely, or survive with very little credit for a while. If there is a no vote, Greece will likely stop payments on all debt. Being cut off from credit markets, it will now be forced to match its spending to the revenue it is receiving.

What is likely to happen next in Greece? The outcome of the referendum now becomes critical. If the public votes "yes", then perhaps the existing government will be able to reopen the banks and conclude a deal. But, if the public sides with Tsipras government, then there will be a very sharp recession over the next few months.

If IMF's loan is not repaid, then it will continue to pursue its claim against Greece. Greece will not be able to borrow internationally until it makes peace with the IMF. So the IMF will eventually be repaid. This could take years.

The loans made to Greece are extended by the Greek central bank, which in turn borrows from the ECB. So the ECB will have a large claim against the Greek central bank that is likely to turn into a significant loss.

The ECB can definitely continue even if Greece defaults. The ECB has provisions set aside to cover some losses. It also is making lots of profits on the bonds it owns.

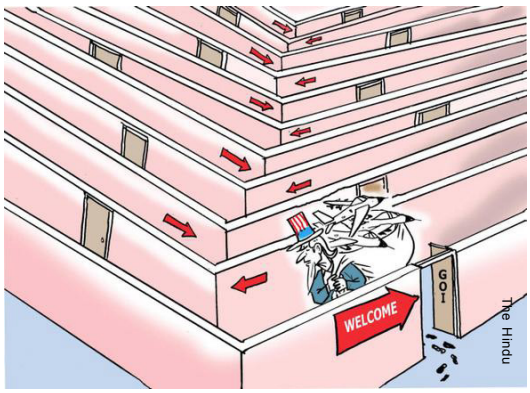
Greece should have defaulted in 2010. Its debt burden then was unsustainable and nothing since then has changed this. Once the bad rescue of 2010 was undertaken, it was inevitable that some form of debt relief was going to be necessary.

* *Professor, University of Chicago, Booth School of Business. Extracted from a research paper posted on to the website of University of Chicago on June 29, 2015*

Too Little Competition on the Screen Hurts Customers

Hilary Stout*

In the vast realm of unhappy cable customers, Time Warner Cable subscribers stand out as an especially miserable bunch. The company, which has near monopolies in some of the country's largest markets, including parts of New York City, scores dead last on consumer satisfaction surveys, not only for cable but for all industries.



The US cable sector is dominated by single carriers in most regions

Now, with Time Warner Cable back in play after Comcast abandoned its US$45bn takeover, many of the company's more than 15 million subscribers are resigned to frustration, stuck for now with the company they love to hate and wondering if any future deal could be any better.

It is an apprehensive time for cable customers in general. Despite regulators' objections to the huge Comcast deal, analysts say they expect continued consolidation in an industry where single carriers already dominate most regions. No sooner had the door shut on the Comcast deal than reports emerged that Charter Communications, the regional cable operator backed by the billionaire John C. Malone, was exploring a new bid for Time Warner Cable, its second in less than two years.

Some predict consumers will lose no matter who buys whom. "If you're selling consumers something they can't live without, and you're subject to neither oversight nor competition, consumers aren't going to be happy," said Susan P. Crawford, co-director of the Berkman Centre for Internet and Society at Harvard.

The plight of Time Warner Cable customers showcases the frustration. It is why despite the overpowering opposition to the Comcast deal from consumer and corporate groups, lawmakers and regulators, there were also disappointed sighs from people like Candice Kilpatrick of Brooklyn after the proposed merger collapsed.

Kilpatrick said her neighbourhood had no cable and broadband service provider other than Time Warner Cable and that its service was "so terrible" that she downgraded her package to just Internet, which she needed for her job and which she still found slow and expensive.

Comcast is no model of customer service either, scoring just above Time Warner Cable on those customer service surveys, but Kilpatrick said she had hoped the combined company would somehow provide more "juice."

Some of the frustration with big, expensive cable television packages has helped to fuel the trend of cord-cutting and increasing competition from different services, with newcomers like Apple TV, Hulu and Amazon, and single-channel offerings like HBO Go. Still, users need strong Wi-Fi and Internet access, pressuring Time Warner Cable, Verizon and others to improve the delivery of streaming services.

Analysts say that the ill-fated Comcast deal could lay the groundwork for significant improvements in customer service and satisfaction at Time Warner Cable.

The company spent the last year preparing its network to be turned over to Comcast in the best shape possible. Today, said Richard Greenfield, a media and technology analyst at BTIG: "Broadband speeds are higher. Customer service has improved. I think they've gone out of their way to invest in their consumer experience to position for if the deal didn't happen they could simply move forward."

In an interview, Robert D. Marcus, the Chief Executive of Time Warner Cable, listed improvements to customer service he said the company began in 2014. They include introducing TWC Maxx to roughly 10 markets, including New York and Los Angeles, which he called a 'tremendous improvement of customer service across the board.'

Mr. Marcus said that the company was focussed on increasing broadband speeds to industry-leading levels, and that Time Warner Cable's standard tier of service was faster than Comcast's standard tier. Whether Charter will have more success than Comcast in acquiring Time Warner Cable is not at all clear.

But if the companies do combine, Amy Yong, an analyst at Macquarie Capital, said Charter held promise for Time Warner Cable subscribers, citing areas where she said Charter did better – interface, search and discover, speed.

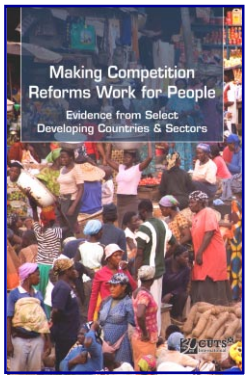
* *Reporter, The New York Times. Abridged from an article that appeared in* The Hindu Business Line, *on April 26, 2015*

Publications

Synthesis Report

Making Competition Reforms Work for People

Evidence from Select Developing Countries & Sectors



This Synthesis Report is published under the CREW project. The Report presents the cross-country experience from the staple food and bus transport sectors respectively, together with associated emerging lessons. It illustrates an emerging pathway, which is the medium through which competition reforms could lead to consumer and producer welfare. It also presents some illustrations to highlight how competition and regulatory reforms in the sectors have had implications on women's social and economic empowerment and concludes.

The report was released on the sidelines of the 7th Review Conference of the UN Set on Competition Policy at UNCTAD in Geneva on July 08, 2015.

http://www.cuts-ccier.org/CREW/pdf/Making_Competition_Reforms_Work_for_People-Evidence_from_Select_Developing_Countries_and_Sectors.pdf

Policy Watch

The April-June 2015 issue of PolicyWatch encompasses cover story entitled 'There is a Gap between Policy and Practice' which states that the Government of India must undertake an in-depth evaluation of its policy proposals, estimate the required technical and financial resources, people, structures, and processes for converting its ideas into practice.

The newsletter also covers an exclusive interview of Rakesh Garg, Telecom Secretary (India) who opines that over-the-top companies have been around as long as mobile phones and telecom companies will earn from increased data usage. It also encapsulates a Special Article 'Still Too Many left without Cover' mentioning the fact that with the Indian Prime Minister's Jan Dhan Yojna having its massive outreach of 15.3 crore households, each blessed with a bank account to the record time of eight months, has evoked euphoria.

Besides, the newsletter carries regular sections on Infrastructure, Trade and Economics, Governance and Reforms, Corporate Governance, Report Desk, Competition Insight etc.

http://www.cuts-ccier.org/pdf/pw_Apr-June2015.pdf

We want to hear from you...

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

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

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

Sources

BBC: British Broadcasting Corporation; BS: Business Standard; BR: Business Respect; CCP: Competition Commission of Pakistan FE: Financial Express; FT: Financial Times; GCR: Global Competition Review; ILO: International Law Office; NLR: National Law Review NYT: New York Times; TG: The Guardian; WSJ: Wall Street Journal

Published by **CUTS Centre for Competition, Investment & Economic Regulation (CUTS CCIER)**
D-217, Bhaskar Marg, Bani Park, Jaipur 302016, India
Ph: +91.141.2282821, Fax: +91.141.2282485, Email: c-cier@cuts.org, Website: www.cuts-ccier.org
Printed by: Jaipur Printers P. Ltd., M.I. Road, Jaipur 302001, India.