

# REGULETTER

A Quarterly Newsletter



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## Don't Strangle Indian e-Commerce

### Inside this Issue

In View of Changing Biz Climate .....	2
AB InBev 'Abusing Dominant Position' .....	4
Uber to Unwind Merger with Grab .....	5
Amazon Acquires Grocery Chain .....	8
Alibaba Grows into Russia .....	9
'Made in China' Policy .....	13
The Clock is Ticking for Banks ..	15

### Special Articles

European Competition Law is Hurting Consumers – Tom Struble .....	3
Views on how a Few Firms' Dominance Affects Market Structure – Anil Sasi .....	7
Make the Global Economy Work for All – Lawrence H Summers .....	17
The Mystery of the Missing Competition .....	19

E-commerce in India is facing huge buoyancy, both in terms of the market and policy space. In terms of the market, the majority investment in Flipkart by US retail giant Walmart, and a substantial proposed investment by Alibaba in Reliance Retail recently made news. Some pundits say that some of these moves may result in market distortions. Apparently, vested interests are muddying the waters.

On the other hand, the government has prepared a draft National Policy Framework on e-Commerce in India which has captured myriad views from different stakeholders, from which a sensible market-friendly policy has to be carved out.

The process was very good in that a large number of views were taken on board, but they are yet to be distilled.

Globally, the retail e-commerce sector has been growing. It needs to expand in India as well, without threatening the livelihoods of small neighbourhood retailers. Growth in e-commerce can boost local manufacturing and catalyse 'Make in India.'

Why did the Department of Commerce

deal with it? It had to do so because this is an issue which is being debated at the WTO as a likely agenda for an agreement in the future.

Foreign vs. domestic investors is another issue. Pitting the two against each other is a weak argument as our policy should be to keep the market open to investment from any source, subject to some sectoral restrictions. Concerns have been raised that large foreign companies can dominate the market through deep discounts and monopsonistic practices in their procurement from small businesses and farmers.

To deal with both these issues, we have the Competition Act. Besides, the state can also be a party in lodging a case at the Competition Commission of India if it comes across any violation. Most importantly, what makes anyone think that large domestic firms would not or do not indulge in such distortionary practices?

The third issue is RuPay versus other payment modes. The government should not promote a branded good owned by banks when there are competitors in the market. After all, the government, thankfully, does not promote MTNL or BSNL.

Data localisation is the fourth issue. The draft framework mandates that data generated by users in India from various sources, such as e-commerce platforms, search engines, social media, etc., are required to be stored in India. This will neither benefit the government nor consumers of data. The government's objectives of accessing data for law enforcement purposes can be met without restricting the free flow of data.

The fifth issue is an e-commerce regulator. Any anti-consumer practice can be dealt with under the new Consumer Protection Act and the Central Consumer Protection Authority to be established under it. This authority can also deal with collateral issues.

Let us proceed without fear or favour. New laws to protect people are sometimes necessary — but let us not strangle e-commerce with them.



The Indian Express



## MACRO ISSUES

### Bill to Shake up Business

The South African Competition Amendment Bill was officially introduced in the National Assembly. This Bill details far-reaching changes to the existing Competition Act, and empowers the competition authorities to intervene in markets where they deem it appropriate.

The main objective of the amendments as detailed in the bill, is to address high levels of economic concentration in the economy and the existing ownership profile of the economy.

Amongst other things, the bill focusses on the ability of small and medium sized firms to participate in the economy and seeks to drive deconcentration and transformation in markets. ([www.businesstech.co.za](http://www.businesstech.co.za), 12.07.18)

### Remedy Constitutional Defects

Malta's government is consulting on a series of amendments to its competition law, in part to remedy constitutional defects brought to light in 2016.

It is being proposed that the Competition and Consumer Appeals Tribunal will be abolished, and instead, decisions made by the regulator may be challenged before the Civil Court (Commercial Section).

The Court of Appeal decided in May 2016, that certain provisions of

the Competition Act were unconstitutional. It was deciding a case the Federation of Estate Agents had instituted, feeling aggrieved by the Director for Competition's decision to proceed against it over alleged breaches of the law. (CPI, 15.08.18)

### Competition in Public Procurement

The Mexican Federal Competition Commission (FECC) issued its Competition Agenda for Public Procurement, in which it presented its findings regarding competition issues that arise during the public procurement process.

In the agenda, the FECC also proposed certain courses of action (both administrative and legislative) to promote effective competition in public procurement. The FECC recently initiated investigations into possible public tender collusions in several markets.

Notably, competition issues in the public procurement sphere may be the result of acts of corruption between individuals or companies and public officials. (ILO, 30.08.18)

### Cartel Leniency Policy Guidelines

The New Zealand Commerce Commission (NZCC) published amended cartel leniency policy guidelines, updating its previous guidelines from 2011.

## In View of Changing Biz Climate

The Indian government has constituted a panel to review the competition law. The committee would review 'the Competition Act/Rules/Regulations, in view of changing business environment and bring necessary changes, if required.'

Announcing the setting up of the Competition Law Review Committee, the government said it is in pursuance of its objective of ensuring that legislation is in sync with the needs of strong economic fundamentals.

The committee would also look into international best practices in the competition fields, especially anti-trust laws, merger guidelines and handling cross border competition issues.

(ET, 30.09.18)



While the changes are mostly cosmetic, the updated guidelines indicate a potential change in the NZCC's approach towards penalty discounts for second-in applicants that seek to fall within the NZCC's cooperation regime.

The NZCC's updated guidelines do not introduce substantive changes to the NZCC's 2011 guidelines, but rather reflect its efforts to make the guidelines more user friendly – including by clarifying what is expected of parties through the NZCC's immunity or cooperation processes.

(ILO, 19.07.18)

### Counteracting Monopoly

The updated Law on counteracting monopolistic activities and developing competition is now in force in Belarus. The mechanisms prescribed in it are designed to promote fair competition in the market and encourage producers to improve the quality of goods.

The law, in particular, introduces a ban on copying or imitating a corporate style. A separate chapter is devoted to unfair competition. The Ministry of Antimonopoly Regulation and Trade looked into more than 100 appeals in 2017. Every fifth appeal was related to violations of the antimonopoly legislation. ([www.belarus24.by](http://www.belarus24.by), 03.08.18)

### 'No-deal' Merger Review

The UK government published its highly-anticipated technical guidance on merger review and anti-competitive activity which will apply in the case of a 'no-deal' Brexit (the 'Guidance').

It provides market players with some form of practical advice and insights on what to expect, how cases are likely to be divided between the EU and UK regimes, how UK competition law will develop, and suggests in what ways post-Brexit competition damages actions in the UK courts may change.

This Guidance follows on from the previously released 'no-deal' state aid guidance forming part of a larger suite of 'no-deal' Brexit guidance papers released by the government in recent weeks.

([www.covcompetition.com](http://www.covcompetition.com), 17.09.18)

# European Competition Law is Hurting Consumers

Tom Struble\*

Antitrust law is designed to police unfair business practices that stifle competition and harm consumers. However, if done incorrectly, antitrust law can itself stifle competition and harm consumers by punishing conduct that looks unfair but actually produces benefits that far outweigh any associated harms.

Unfortunately, the Europeans seem to be getting it dreadfully wrong these days. Eager to protect small businesses (usually domestic) from their stronger competitors (usually foreign), the European Commission (EC) repeatedly intervenes in the market in ways that stifle competition, reduce innovation, and hurt consumers. Consider, for example, its recent case against Google.

In July, the EC fined Google over US\$5bn for the way it licences the Android mobile operating system to device manufacturers. Three allegedly harmful practices have been identified: Tying Google's Search and Chrome apps to the Play Store in a software bundle; sharing Google's Search-app revenues with manufacturers who exclusively pre-install the app; and preventing manufacturers from offering both Android devices and devices that run on variations, or 'forks,' of the open-source Android operating system (such as Amazon's Fire OS, for example).

It is easy to see how these restrictions harm certain competitors in the mobile ecosystem, but it is also easy to see how they all benefit consumers. First, consider Google's tying practices.

Google ties the Play Store to its Search and Chrome apps in a bundle, so manufacturers who want the Play Store pre-installed on their Android devices must also pre-install the Chrome and Search apps. Manufacturers can also pre-install competing apps (such as Bing and Firefox), but Google's bundle ensures that any Android device with the Play Store also has at least one browser app and one search app pre-installed, allowing consumers to start using their new devices right out of the box without having to search for and download new apps. That's a clear benefit to consumers, but the EC has nonetheless sought to outlaw this type of bundling, in a clear break from how American officials handled the similar antitrust case against Microsoft in the late 1990s.

When Microsoft was convicted of tying Internet Explorer to the Windows operating system in ways that stifled competition from alternative browser apps, the remedy was not to prohibit the tying but simply to prohibit Microsoft from using licensing or software restrictions that make it difficult or even impossible for users to switch to alternatives.



Google was one of the primary beneficiaries of that case and it intentionally designed Android to avoid antitrust liability by making it the most open, flexible, and differentiated platform in the world. Breaking apart Google's software bundle would not give consumers any added choices or make switching between competing apps any easier, but it could make Android devices more expensive and more difficult to set up and use. That seems like a net loss for consumers. The Commission's complaint over exclusive pre-installation and revenue sharing is similarly misguided.

The Commission found that practice illegal because it harms competition among application developers, but consider the effects this will have on the rest of the market. Prohibiting revenue-sharing deals between Google and Android manufacturers may benefit competing application developers, but at the expense of both manufacturers and, more important, consumers. That also seems like a net harm to consumer welfare, but this is what passes for competition law in the EU.

And finally, consider the Commission's complaint over forking. Giving manufacturers complete freedom to both use and fork Android as they wish may help them differentiate their products and services, which could boost competition among device manufacturers. However, such fragmentation would come at an immense cost to consumers and to app developers.

Whether European competition law and the recently implemented General Data Protection Regulation (GDPR) truly are mercantilist policies designed to fleece foreign businesses and protect domestic firms is up for debate, but they do fit the pattern of an undeclared trade war.

As Senator Mike Lee observed, "appropriate competition policy should serve the interests of consumers and not be used as a vehicle by competitors to punish their successful rivals." Hopefully someday soon Europeans will realize that fundamental truth, because their current version of competition policy is hurting consumers.

\* Technology Policy Manager, R Street Institute. Abridged from an article that appeared in the National Review on September 06, 2018



## ABUSE OF DOMINANCE

### EDP Manipulates the Market

The Competition Authority formally has accused **Portugal's** dominant energy supplier, EDP, of abusing its position in the energy market to overcharge customers by €140mn.

The Authority accused the now privatised company of manipulating the electricity billing system to hike prices for domestic and business users, illegally increase its profits by doing so.

The case concentrates on the years 2009-2013 and focuses on the complex CMEC payment system where customers have been charged for power stations on stand-by in case they are needed.

*(www.algarvedailynews.com, 03.09.18)*

### Royal Mail Breaches Competition

Royal Mail has been fined a record £50m by the **UK** communications regulator for breaching competition law when it discriminated against its only major rival for delivering letters.

Oftcom said the company had abused its dominant position by penalising wholesale customers that sought to deliver bulk mail, such as bank statements and council tax demands door to door.

The penalty followed an investigation into a complaint by

Whistl about changes Royal Mail made to wholesale customer contracts in early 2014, including price increases.

*(TG, 14.08.18)*

### GDA Penalised for Misconduct

The Competition Commission of **India** (CCI) has imposed a penalty on the Ghaziabad Development Authority (GDA) for abusing its dominant position in the relevant market of "provision of services for development and sale of low cost residential flats under affordable housing schemes for the economically weaker sections in the district of Ghaziabad".

The CCI held that the GDA had violated Section 4(2)(a)(i) of the Competition Act by raising the cost of flats meant for Ghaziabad's economically weaker sections from ₹200,000 in 2008 to ₹750,000 in 2015 without including an enabling provision in either the scheme brochure or the allotment letter.

While imposing a penalty of ₹10,060,794 on the GDA, the CCI also directed it to cease and desist from indulging in abusive conduct in future.

*(ILO, 06.09.18)*

### SABAM Increased Tariffs

The Brussels Commercial Court ruled that the Belgian Society of Authors, Composers and Publishers (SABAM) had abused its dominant position. SABAM was subsequently ordered to cease and desist its practices.

Since 2017, SABAM had increased its tariffs for concerts and music festivals to 17 percent for average-sized festivals and 37 percent for large festivals, with the pricing for small festivals remaining the same.

The claimants argued that SABAM had abused its dominant position by suddenly and significantly increasing its prices without reason; determining its prices based on the festival's total turnover, including turnover relating to activities and costs that were unrelated to music; and insufficiently considering the use of music not covered by SABAM asked average or large-sized festivals.

*(ILO, 02.08.18)*

### Watchmakers' Investigation Closed

The **Swiss** Competition Commission (COMCO) has decided not to open a formal investigation into watchmakers including Swatch, LVMH and Richemont over the supply of spare parts for independent watch repair shops.

The European Commission had concluded that such agreements were neither unacceptable nor an abuse of market dominance. An EU court has already rejected an appeal of that decision, COMCO said.

A preliminary investigation had been opened in Switzerland following complaints from small independent watchmakers and customers about restrictions to the supply of spare parts by major watch manufacturers.

*(www.swissinfo.ch, 28.08.18)*

### Qualcomm-FTC Seek Settlement

After being slapped with a US\$774mn fine for antitrust violations, Qualcomm has reached an agreement with **Taiwan's** Fair Trade Commission (FTC) to remedy the situation.

The dispute arose after Taiwan's regulator said that the chip maker abused its monopoly power over smartphone modems by putting higher patent licensing fees on companies that use the devices in their products.

Under the new agreement, the fine has dramatically dropped but the company is now required to work with the Taiwanese government on rolling out 5G capabilities in the country along with building new manufacturing plants there.

*(www.theverge.com, 10.08.18)*

## AB InBev 'Abusing Dominant Position'

**A**lheuser-Busch InBev is set to receive a fine from the **European Commission** for preventing cheaper beer imports into Belgium.

In 2017, the EC claimed that AB InBev was abusing its market dominance and blocking the brands Jupiler and Leffe from entering Belgium

more cheaply from France or the Netherlands.

With its dominant position in the Belgian beer market, the Commission alleged that AB



InBev has pursued a deliberate strategy to prevent supermarkets and wholesalers from buying Jupiler and Leffe at lower prices in the Netherlands and France, and from importing them into Belgium.

*(Reuters, 23.09.18)*

**PRICE FIXING****Pharma Price Fixing Probed**

The Namibian Competition Commission (NaCC) launched an investigation into price fixing against the Pharmaceutical Society of Namibia (PSN) and over 200 registered pharmacies countrywide.

The investigation is based on allegations that the PSN, a voluntary association of pharmacies, has a rule that requires pharmacies to impose a uniform 50 percent mark-up on the dispensing of medicines. Mark-ups refer to the margins or profits that pharmacies add to the costs of acquiring drugs.

Information provided to the commission suggests the PSN 'strictly enforces' the 50 percent mark-up requirement, and warns pharmacies of possible sanctions for supposedly transgressing ethical rules and making themselves guilty of 'touting' if such pharmacies deviate from the requirement.

(TN, 26.09.18)

**Steelmakers Hit with Fines**

South Korea's six largest steel companies were fined a combined total of US\$105mn by the antitrust watchdog for fixing the prices of steel reinforcement bars.

According to the Fair Trade Commission, the six steel producers fixed prices by reducing discounts during the period from May 2015-December 2016, significantly lowering the market price of steel rebar.

The six local steel manufacturers included Hyundai Steel and Dongkuk Steel Mill. In addition, the FTC plans to report five of the six companies – all except for YK Steel – to prosecutors.

Steel rebar is used in reinforced concrete and reinforced masonry structures. It is frequently used in civil engineering and construction.

(KH, 03.09.18)

**Heathrow Slapped with Penalties**

Heathrow Airport will pay fine for restricting competition on parking prices in a lease with the operator of a Terminal 5 hotel.

The fine, to be imposed by the UK Competition and Markets Authority

**Uber to Unwind Merger with Grab**

The Competition and Consumer Commission of Singapore (CCCS) proposed fines on ride-hailing firms Grab and Uber, provisionally finding that their merger had reduced competition and suggesting remedies such as the sale of their car-leasing businesses.

It also warned that it may require the companies to unwind the merger depending on whether the remedies are successful but added a reversal may not be feasible, citing Uber's exit from the market after the deal.

Uber sold its Southeast Asian business to bigger regional rival Grab in March in exchange for a stake in the Singapore-based firm, following similar deals by the US firm in China and Russia.

(Reuters, 05.07.18)



www.Philkotse.com

(CMA), comes after the regulator's investigation into the airport's agreement with the Arora Group for the lease of Arora's Sofitel hotel at Terminal 5. This included a clause restricting how parking prices should be set by Arora for non-hotel guests.

The CMA investigated whether the pricing restriction prevented the Arora Group from charging non-hotel guests cheaper prices than those offered at other car parks at the airport.

(TT, 19.09.18)

**Chicken Suppliers Slammed**

About 13 distributors of fresh chicken have been fined for price-fixing and agreeing not to compete for customers, the largest total financial penalty in a single case to date, the Competition and Consumer Commission of Singapore (CCCS) said.

Fresh chicken distributors import live chickens from farms in Malaysia and slaughter them in Singapore, selling the fresh chicken products to customers, such as supermarkets and restaurants.

The 13 distributors collectively supply more than 90 percent of fresh chicken products in Singapore, with an annual combined turnover amounting to about half a billion dollars.

(CPI, 08.09.18)

**Individual Directors Targeted!**

The Hong Kong Competition Commission brought its third case before the Competition Tribunal since

the competition law came into effect in December 2015.

But this time, with a big difference. The Commission is, for the first time, asking the Tribunal to impose penalties against two directors allegedly involved and issue a director disqualification order against one of them.

The Commission alleged that three construction companies allocated customers and coordinated pricing in the provision of renovation services at a public housing estate. It has not specified the level of penalty that it is asking the Tribunal to impose on the companies or the directors.

(www.bakermckenzie.com, 24.09.18)

**Ryanair's Baggage Faces Music**

The Italian competition watchdog announced an inquiry into Ryanair's new baggage policy, which charges passengers for taking hand luggage.

From November 01, 2018 all passengers will have to either upgrade to priority boarding for £6-£8 to bring hand luggage up to 10kg into the cabin or pay £8-£10 to check the bag into the hold. Every passenger can still bring one small personal item into the cabin with them as long as it fits under the seat in front.

The watchdog claims the new policy could amount to unfair commercial practice because it changes the final price of the ticket and does not allow for true comparison to other airlines' fares.

(BBC, 21.09.18)

# Why Digital Cartelisation will be a New Challenge for the Anti-Trust Regime

Vaibhav Choukse\*



*The existing competition law instruments are generally sufficient to counter this, but they could be modernised — instead of being overhauled — and applied more efficiently*

The digital revolution has led to a significant growth in companies' ability to capture, store and analyse data of their customers and competitors to price products and services by taking into account a vast set of factors. With the help of a pricing algorithm, companies can track online prices; adjust them instantly to undercut prices offered by competitors; modify products being offered to consumers; or assist consumers to find the lowest price.

Several recent antitrust proceedings point to the fact that competition regulators around the world have begun to look at possible anti-competitive effect of algorithms. There has been a considerable debate on both side of Atlantic on the way in which use of algorithms results in anti-competitive effects on the market.

An algorithm enables digital decision-making, by converting digital inputs into digital outputs. Algorithms carry the potential of self-learning, amending rules depending on data gathered from past interactions/experiences. They are designed to achieve particular goals, and it is the people who determine the goals and then choose or design the appropriate algorithms to achieve the goals.

From a legal perspective, the use of algorithms to execute a cartel has the

same effect as a cartel executed by humans: humans are guilty for agreeing to fix prices, while the computer merely facilitates the task which humans would otherwise have carried out. In a recent speech, European Commissioner for Competition, Margrethe Vestager asserted that "companies can't escape responsibility for collusion by hiding behind a computer programme".

There have already been few decisions that show how competition law, as it stands, can deal with algorithms: Poster and Frames cases in the UK and Topkins case in the United States. In these cases, competing online sellers adopted specific pricing algorithms and computer software to coordinate prices for posters they sold through Amazon.com. The algorithm coordinated changes to the prices for posters and ensured that the prices remained in conformity with the cartel agreement. Because of this conduct, consumers faced the same prices for the same products regardless of what seller they chose, thereby eliminating any price competition among the online sellers.

In hub-and-spoke type of cartels, the competing firms (the spokes) use a common third-party algorithm (as the hub) to determine pricing and react to changes in the market. Professors

Ezrachi and Stucke, in their book, spoke of a scenario involving Uber to illustrate this. Uber drivers don't compete among themselves over price; some drivers might be willing to offer you a discount, but Uber's algorithm determines your base fare and when, where, and for how long to impose a surcharge. This by itself is legal. But, as the platform's market power increases, this cluster of similar vertical agreements may create a classic hub-and-spoke conspiracy, wherein the algorithm developer, as the hub, helps orchestrate industry-wide collusion—leading to higher prices.

Proof of agreement is key in determining whether the conduct between competitors amounts to a cartel. Under the competition law, an agreement can be a mere arrangement or understanding, notwithstanding that it is in writing, or legally binding. The competition law does not prevent companies from using information available in the market to "adapt to existing and anticipated conduct of their competitors".

If pricing practices are illegal when implemented offline, they are very likely to be illegal when implemented online as well. Companies should be on their toes when using software tools such as pricing or monitoring algorithms that check and adjust prices automatically. It is imperative that the CCI take cautious steps in assessing new market practices and ensuring that the appropriate distinctions are drawn between varying practices.

Most commentators argue that the currently available competition law instruments are generally sufficient, but that they could be modernised (instead of being overhauled) and applied more efficiently. Hence, until the CCI run into "un-addressable" problems that require novel approaches there seems to be no basis for changing competition rules.

\* Partner, Competition Law at J Sagar Associates. Abridged from an article that appeared in the Financial Express on August 13, 2018

## Views on how a Few Firms' Dominance Affects Market Structure

Anil Sasi\*

At their latest annual meeting in Jackson Hole, Wyoming, US central bankers and economists focused on the changing market structure on account of the growing dominance of a few successful 'superstar' companies and the resultant impact on wages, inflation and growth.

This has forced new words such as 'monopsony' and the 'Amazon effect' into the lexicon as bankers attempted to substantiate the problem of low wage growth and sluggish investment spending.

The Amazon effect has been coined to describe fast-changing pricing algorithms by the online retailer and its rivals, which could potentially lead to bigger swings in inflation — a bugbear for central bankers.

### Jackson Hole papers

The symposium comes in the backdrop of overwhelming evidence of the growing clout of the world's biggest companies. Key papers presented at the Jackson Hole Economic Policy Symposium include one by Alan Krueger, a Princeton economist, which argued that monopsony power is most likely part of the apparent puzzle of why wage growth is low.

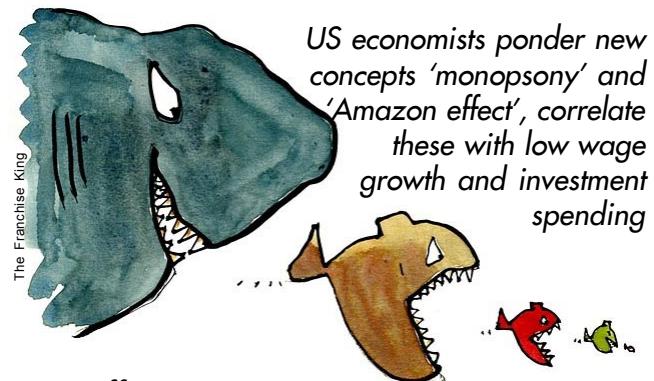
Nicolas Crouzet and Janice Eberly of Northwestern University, in another paper, noted that with the investment of modern corporations taking the form of intangible capital low interest rate policies by central banks over the last decade failed to prompt more capital spending.

MIT professor John Van Reenen analysed changes in market structure and contributors to business concentration while Harvard economist Alberto Cavallo presented evidence that algorithms used by Amazon and other online retailers, with their constantly adjusting prices, may result in increased fluctuations in overall inflation in the event of movements in currency values or other factors.

### Concentration and inequality

French economist Thomas Piketty's central message of a world of widening inequality perhaps set the ball rolling on this debate, especially his assertion that the level of inequality in the US was 'probably higher than in any other society at any time in the past, anywhere in the world.'

An analysis in *The Economist* in 2016 showed that two-thirds of American industries had become more concentrated in the 2000s. A 2017 paper by Gustavo Grullon, Yelena Larkin and Roni Michaely reported that in the last 20 years, over three-quarters of US industries have become more concentrated and bigger companies have captured greater market share.



### Amazon effect

At Jackson Hole, MIT's Van Reenen presented a paper that found that in recent decades, the 'differences between firms in terms of their relative sales, productivity and wages appear to have increased in the US and many other industrialised countries.'

According to his paper, the growth of platform competition in digital markets has led to dominance by a small number of firms such as internet search (Google), ride sharing (Uber), social media (Facebook, Twitter), operating systems for cellphones (Apple, Android), home sharing (AirBnB), etc. The paper asserted that there is more competition 'for the market' rather than 'in the market.'

Cavallo's paper showed how online competition, with its shrinking margins, algorithmic pricing technologies, and the transparency of the web, can modify and twist the pricing behaviour of large retailers and affect aggregate inflation dynamics.

### Beyond interest rates

Northwestern's Crouzet and Eberly, in their paper, focussed on the need to look beyond other levers than interest rate, such as strengthening competition regulation and intellectual property rights enforcement, and encouraging the development of markets for intangible assets. According to them, the rise of factors such as software, intellectual property, brand, and innovative business processes, collectively known as 'intangible capital,' may have enabled the rise in industry concentration over the last two decades.

### The message

For global central bankers gathered in Jackson Hole in 2018, most of the academic work was focussed on piecing together an explanation for why the ultra-low interest rates put in place after the 2007-2009 financial crisis failed to lift business spending as much as expected, resulting in slower than expected economic growth. The message was an overwhelming assertion that as big firms get bigger and pack in more firepower, rate cuts as a policy tool may pack much less punch than before.

\* Senior Editor, *Indian Express*. Abridged from an article that appeared in *The Indian Express*, on September 03, 2018

## Amazon Acquires Grocery Chain

Amazon, along with private equity firm Samara Capital, will acquire Indian supermarket chain More for an undisclosed sum. The transaction was valued at more than US\$583mn.



expanding its grocery offerings in India, and as the company anticipates that the market will account for over half of its business in India in the next five years.

(CPI, 20.09.18)

### Creating Value in Gold Mining

Randgold Resources Ltd. and Barrick Gold Corp. have agreed to an all-share merger that will create an US\$18.3bn gold-mining giant.

The combination of Barrick and Randgold will create a new champion for value creation in the gold mining industry, bringing together the world's largest collection of tier one gold assets, with a proven management team that has consistently delivered among the best shareholder returns in the gold sector over the past decade.

The combined group will own five of the world's top 10 tier-one gold assets with two potential tier-one gold projects under development or expansion.

(ET, 24.09.18)

### Apple Finalises Shazam Purchase

Apple has confirmed its acquisition of Shazam is now complete, nine months after it was first announced. Apple and Shazam have a long history together.

Shazam is one of Apple's biggest acquisitions — both in music and overall — and underscores the amount of investment that the iPhone maker is willing to put into expanding its role as a force not just in hardware, but in the services that run on that hardware.

The deal comes three weeks after the EU finally gave a green light to the deal after Apple first made its intention to buy it public.

(TC, 24.09.18)

### Comcast Wins Auction for Sky

The UK regulators say Comcast has beat 21<sup>st</sup> Century Fox in a rare auction that allowed both sides to bid for European broadcaster Sky.

After three rounds of bidding behind closed doors, Comcast offered the higher price of US\$22.58 per share, the equivalent of nearly US\$39bn. Fox offered US\$20.47 per share.

The regulator set up the auction to reduce uncertainty for Sky. It now gives Sky shareholders a firm bid to evaluate after Fox and Comcast engaged in a series of counteroffers.

Sky is Europe's largest pay-television operator, with 22.5 million customers in seven countries.

(NYP, 22.09.18)

### SiriusXM to Buy Pandora

SiriusXM has acquired Pandora in an all-stock transaction valued at approximately US\$3.5bn.

The combination brings together SiriusXM's base of over 36 million subscribers across North America and 23 million+ annual trial listeners, and Pandora's 70 million monthly active users.

Executives said they expected to offer SiriusXM programming, which includes popular radio personalities like Howard Stern, on Pandora as part of new audio packages, while also seeking to bolster Pandora distribution in cars.

(FT, 24.09.18)

### Nod to Healthcare Mega Mergers

The US Department of Justice has cleared Cigna's US\$67bn takeover of Express Scripts. The approval clears a key obstacle to the deal, which still requires approval from regulators in 13 states before it can be completed.

Cigna, a health insurer, announced the takeover of Express Scripts, a pharmacy benefit manager. Shares in Express Scripts jumped 4.2 percent on the news while those for Cigna were 1.9 percent higher.

CVS Health and Aetna, which are also awaiting regulatory approval for their own US\$69bn tie-up, also got a boost to their shares. CVS is up 1.5 percent while Aetna gained 1 percent.

(FT, 18.09.18)

### Fashion Houses to Combine

Fashion company Michael Kors is buying Versace, the Italian luxury brand, for US\$2.12bn. The two fashion houses made the announcement one day after speculation spread about a potential deal. The acquisition of Versace is an important milestone for Kors.

Following the deal, Michael Kors will change its corporate name to Capri Holdings, in what it described as a nod to the 'iconic, glamorous and luxury destination.'

Michael Kors plans to grow Versace's sales to US\$2bn annually, open more stores, improve the brand's e-commerce services, and expand its accessories and footwear businesses.

(NPR, 25.09.18)

### Greenlight to Linde-Praxair Merger

Industrial gases company Linde announced that the company's US\$83bn merger with Praxair has received another regulator's approval.

Linde's announcement stated that China has approved the merger, leaving the companies waiting for approval from European, US, and South Korean authorities.

The companies are both in the process of selling various assets to win the three remaining regulators' approval.

(Reuters, 30.09.18)

## RESTRUCTURING

### Glencore-Chevron Deal Approved

South Africa's Competition Tribunal conditionally approved Glencore's proposed US\$973mn acquisition of Chevron's subsidiary in the country, all but scuppering a rival bid from China's Sinopec.

Chevron sold its 75 percent stake to state-owned Sinopec in 2017, before miner and commodities trader Glencore swooped in after reaching a deal with minority shareholders, who backed it and exercised preemptive rights on the sale.

The conditions for the proposed merger include the preservation of jobs after the deal and the continuation of retirees' medical aid subsidy among others.

(Reuters, 13.09.18)

### Cargill Expands Polish Presence

Cargill has entered the Polish poultry market for the first time, as it has acquired Polish poultry producer Konspol for an undisclosed figure.

As part of the deal, Cargill will purchase the Polish assets of Konspol's food and fresh chicken business and acquire Konspol's portfolio of branded and private label products, as well as its customer and supplier relationships.

Konspol has more than 1,700 employees in Poland and operates a feed mill, five broiler farms and two processing complexes. The acquisition will increase Cargill's production capacity and proximity to existing customers to offer expanded value-added and poultry products. Upon completion of the acquisition, Cargill plans to continue to grow and develop the business.

(CPI, 16.09.18)

### Chipmaker Renesas Buying IDT

Japan's Renesas Electronics announced had agreed to buy Integrated Device Technology for US\$6.7bn, its second major acquisition as it deepens its push into semiconductors for self-driving cars.

Renesas is second only to NXP Semiconductors NV in auto-related chips and commands 30 percent of the global market for microcontrollers used in cars. But it is weak in so-called analog chips which process signals

from things such as sound, light, or temperature into digital data.

Renesas Chief Executive Bunsei Kure said adding IDT would strengthen his company's presence as a supplier of system-on-a-chip products for vehicles equipped with advanced driver-assistance systems and autonomous-driving technology.

(WSJ, 11.09.18)

### Rail Merger Still on Track

Siemens and Alstom are confident that their rail merger will proceed and be completed on time in 2019 despite objections raised by Australia's Competition and Consumer Commission (ACCC).

The ACCC expressed concern that the merger could lead to higher prices by lowering competition for heavy rail signaling projects in the country.

Siemens and Alstom's plan to create a Franco-German rail champion has also raised concerns in Europe, where the European Union's antitrust regulator has opened a full-scale investigation.

(Reuters, 06.09.18)

### Enhancing Global Coffee Market

Coca-Cola will acquire the UK coffee chain Costa, the second-largest coffeehouse in the world, for about US\$5.1bn, as soda companies reconfigure their businesses while

consumers shift away from sugary, carbonated drinks.

The Atlanta-based beverage giant described the proposed deal as a necessary entryway to the expanding global coffee market.

Coca-Cola announced it was open to additional expansion into new markets and would consider new product formats following the acquisition of Costa. "The acquisition will expand the existing Coca-Cola coffee lineup by adding another leading brand and platform.

(BS, 02.09.18)

### Japan Tobacco Snaps up Akij Group

Japan Tobacco Inc. agreed to buy a Bangladeshi cigarette maker for US\$1.5bn, taking its acquisition strategy to one of the fastest-growing economies in Asia.

The Japanese company is acquiring the tobacco business of Akij Group, the second-largest cigarette maker in Bangladesh with about 20 percent share of the market.

"With this investment, we continue to accelerate our expansion in emerging markets that matter," Mutsuo Iwai, Japan Tobacco's Executive Vice President, said. "Akij's substantial market share places us straight at the No. 2 position in Bangladesh."

(Bloomberg, 06.08.18)

## Alibaba Grows into Russia

Alibaba, the Chinese eCommerce giant, inked a deal with the Russian Direct Investment Fund and Mail.ru Group to create AliExpress Russia.

Alibaba is creating a US\$2bn joint venture to boost its eCommerce business in Russia, with local investors controlling the joint venture. Alibaba will add its domestic operations of Tmall and AliExpress into the joint venture, with Mail.ru owner Alisher Usmanov's Megafon selling its 10 percent stake in Mail.ru to Alibaba for 24 percent of the new venture.

Alibaba will access Mail.ru's audience via two social networks in the country. Pandao, a mobile platform for selling Chinese goods in Russia, will also be rolled into the Alibaba venture.

(Bloomberg, 11.09.18)



## Moulding of a Mega Steel Merger

Vidya Ram\*



Top executives at Tata Steel and German industrial conglomerate ThyssenKrupp gathered in Brussels to mark the long-awaited merger of their European steel assets – spread across Germany, the Netherlands and Britain – to create a new ‘steel champion.’

The route to the merger have been drawn-out, heated, and even riven with uncertainty. First the talks centred on Tata Steel’s ability to offload its UK pension liabilities – separating the company’s costly £15bn British Steel Pension Scheme was seen as a make or break moment for the potential merger. The company achieved this with a £550mn payment to the scheme, and issuing the pension’s trustee with a 33 percent stake in Tata Steel UK.

Union concerns on company commitments to jobs and maintenance of facilities also persisted, while in the last few weeks, activist investors at ThyssenKrupp threw in another potential spanner, raising concerns that given a recent dip in profitability at Tata Steel’s European operations, the deal was stacked too favourably in Tata’s favour.

Nevertheless, the agreement was reached, and gained ThyssenKrupp’s strategy board approval within the first half of 2018 as the companies had estimated. While still a 50:50 merger, should an IPO occur, proceeds would be allocated on a 55:45 percent basis in favour of ThyssenKrupp – an arrangement that both firms insisted kept to the “structure” and “philosophy” of the joint venture.

The Tata Steel-ThyssenKrupp agreement, as it stands, involves compromise by all sides. Up to 4,000 jobs, split roughly between the two companies – will go from the 48,000-employee strong joint entity. But in agreements struck with unions in the UK there will be no compulsory redundancies until 2026 and a commitment to spending millions on one of the blast furnaces at Port Talbot whose future had looked uncertain.

Tata Steel, while standing firm against investor efforts to rejig the deal entirely, gave ground to ThyssenKrupp through the IPO arrangements that would also give the German firm say over the timing of any IPO. Much work of course remains to be done: the venture is yet to gain the approval of Europe’s Competition Commission, discussions with which are commenced. While insisting they had to respect the commission’s processes, the firms appeared confident about this aspect – noting that

conversations with the regulator had been going on over the past two years, during the course of which asset sales by the companies had taken place.

### Raising barriers

The European nations voted overwhelmingly (25 in favour with 3 abstentions) to support European Commission proposals to introduce a mixture of tariffs and quotas as trade defence measures to limit the impact of the US tariffs under Section 232 of the US Trade Expansion Act. The Commission has had to balance competing lobbying from the steel sector on the one hand – and on the other some industries in Europe which have been arguing against steel safeguard measures.

While less directly obstructive, the UK government too has faced criticism from industry, unions and politicians, over the lack of a solid strategy to support the domestic steel industry – including the sealing of a long-awaited sector deal that would involve commitments from the government, and industry.

The significance of a sector deal was stressed by a major steel conference organised by the Community union in northern England earlier this year, which also pointed to other very UK-specific challenges, including energy prices, which are among the highest for the energy-intensive industry in Europe.

### The Brexit factor

There is of course also further uncertainty about the implications of Brexit – not just on potential tariffs and the costs of trading with Europe, but also Britain’s ability to protect its industry. Earlier in 2018, the steel industry raised concerns that post-Brexit trade legislation might not defend steel companies adequately and could water down the anti-dumping and anti-subsidy measures that the EU had put in place.

The good news is that ThyssenKrupp and Tata Steel have insured themselves somewhat to the vagaries of individual markets: from around a third of Tata Steel’s European operations, Britain will now just account for three out of 22 million tonnes of steel produced by the joint group.

\* London Correspondent, *The Hindu*. Abridged from an article that appeared in *The Hindu Business Line* on July 07, 2018

## Walmart-Flipkart deal is official now

### Here are 10 key takeaways

*Walmart will pay US\$16bn for an initial stake of 77 percent in Flipkart, valuing the e-tailer close to US\$20bn. The remainder of the business will be held by some of Flipkart's existing shareholders.*

The US\$16bn Walmart-Flipkart deal marks a milestone in the world's largest e-commerce deal ever. The Bentonville, Arkansas-based global retail behemoth signed a definitive agreement to become the largest shareholder in Flipkart Group. The latest deal puts Walmart directly on the map of India's growing e-commerce market - estimated to be around over US\$200bn by 2026 - against the likes of the US e-Com player Amazon. Here are top 10 key takeaways from the deal.

- 1. Majority Stake:** Walmart will pay US\$16bn for an initial stake of 77 percent in Flipkart, valuing the e-tailer close to US\$20bn. The remainder of the business will be held by some of Flipkart's existing shareholders, including Flipkart co-founder Binny Bansal, Tencent Holdings Limited, Tiger Global Management LLC and Microsoft Corp. Walmart's investment includes US\$2bn of new equity funding, which will help Flipkart accelerate growth in the future.
- 2. More Investors to Join in:** Walmart and Flipkart are also in discussions with additional potential investors who may join the round, which could result in Walmart's investment stake moving lower after the transaction is complete. Even so, the company would retain clear majority ownership. Tencent and Tiger Global will continue on the Flipkart board, joined by new members from Walmart.
- 3. Aim to Become Publicly-Listed:** The new Walmart-owned entity's immediate focus will be on serving customers and growing the business. The company will also aim to transition into a publicly-listed, majority-owned subsidiary in the future.
- 4. E-com to Grow Four Times:** Walmart expects India's e-commerce market to grow at four times the rate of overall retail, and with well-known platforms such as Myntra, Jabong and PhonePe, Flipkart is uniquely positioned to leverage its integrated ecosystem, said Walmart.
- 5. Win-Win for Both Firms:** The deal is a win-win for both the companies. Flipkart's supply chain arm, eKart, serves more than 800 cities, making 500,000 deliveries daily. In the fiscal year ended March 31, Flipkart recorded GMV of US\$7.5bn and the net sales of US\$4.6bn representing more than 50 percent year-over-year growth in both cases.



- 6. Best Price to Maintain Distinct Brands:** The new entity and Best Price will maintain distinct brands and operating structures. Krish Iyer, president and chief executive officer of Walmart India, will continue to be the head of its business through Best Price stores. Walmart India operates 21 Best Price cash-and-carry stores, with more than 95 percent of sourcing coming from India, aiding suppliers, creating skilled jobs and contributing to local economies across the country, said the retail giant.
- 7. New Board Announcement Soon:** The final make-up of the board has yet to be determined, but it will also include independent members. The board will work to maintain Flipkart's core values and entrepreneurial spirit, while ensuring it has strategic and competitive advantages.
- 8. Big 'Make in India' Push:** Walmart said it supports small business and 'Make in India' through direct procurement as well as increased opportunities for exports through global sourcing and e-commerce. The company aims to partner with *kirana* owners and members to help modernise retail practices and adopt digital payment technologies.
- 9. Local Outsourcing, Better Logistics:** The company would support farmers and develop supply chains through local sourcing and improved market access. Its primary focus would also be on reduced food waste by improving waste management practices and investing in supply chains, especially cold storage.
- 10. Major Player in Indian Market:** The Flipkart investment transforms Walmart's position in a country with more than 1.3 billion people, strong GDP growth, a growing middle class and significant runway for smartphone, internet and e-commerce penetration, said the company.

*The news item appeared in the Business Today on August 08, 2018*

# Why Auditors are under Scrutiny from Regulators and Investors, Globally

Ravi Ananthanarayanan\*

It is not just India – auditors across the world find themselves under scrutiny from the governments, regulators and investors. Enhanced disclosures, lower conflict of interest and regulations to improve the quality of audit are in the works. How effective these are could also offer lessons to India.

The International Forum of Independent Audit Regulators conducts an annual survey on the quality of audits. Its 2017 survey that covered 120 firms and 918 audits showed that 40 percent of audits had at least one 'finding'. A finding here refers to a fault that may affect the quality of the audit. That's a fairly large number.

One of the main issues concerns the separation of the audit and consulting work that the top firms offer to the same companies. These fees form a substantial part of the revenue of the top four auditing and advisory firms globally. For long, there have been concerns that this creates a conflict of interest. Audit firms claim they ensure that this conflict is managed without compromising the quality of audit.



*One of the main issues concerns the separation of the audit and consulting work that the top firms offer to the same companies*

In the UK, the collapse of Carillion Plc was investigated by a joint committee of the UK Parliament. The company entered liquidation in January, with nearly £7bn of liabilities and with £29mn in cash. Its 2016 accounts were certified by KPMG as true and fair; but in September 2017, the company announced a reduction in the value of its contracts by £1.05bn – which

equalled the combined value of six years of profits.

The committee report mentions that KPMG audited the company for 29 years, but did not qualify their audit opinions.

It says the warning signs were visible in the form of questionable assumptions about contract revenue and accounting of goodwill. It failed to exercise professional scepticism in the face of aggressive accounting practices, says the report.

The committee has recommended to the government to refer the statutory audit market to the Competition and Markets Authority, to break the Big Four (Deloitte, Ernst & Young, KPMG and PriceWaterhouse Coopers) into smaller audit firms and the separation of audit arms from those providing other professional services.

In South Africa, KPMG has lost 20 audit clients since the start of 2017, reported the Financial Times, partly due to new rules on mandatory auditor rotation and also to issues over KPMG's work for South Africa's controversial Gupta family.

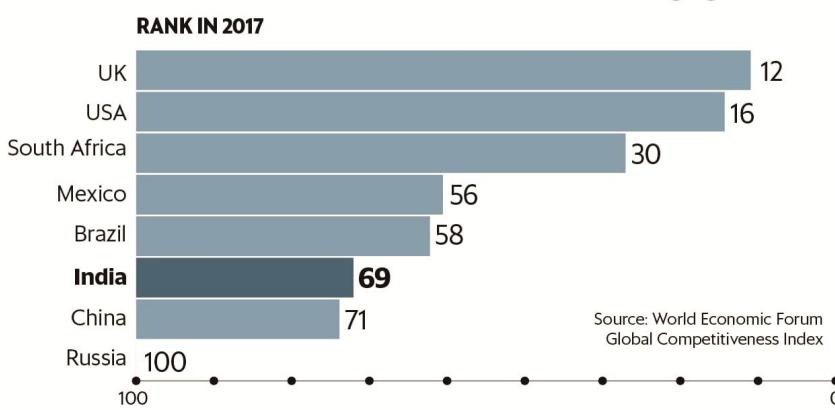
In another case, in the US, General Electric's (GE's) auditor for 109 years – KPMG – came under pressure, after GE disclosed a US\$6.2bn charge to increase insurance reserves and also a US\$15bn provision for insurance policies. These disclosures disappointed investors, who then called for the auditors to be replaced.

It was in 2001 that Enron Corp.'s accounting scandal broke and affected its auditors – Arthur Andersen. That cut down the Big Five to Big Four.

Even so many years after that incident, the audit function is found wanting.

## PECKING ORDER

India is better than Russia on the global competitiveness index, but trails behind developed countries and some emerging markets.



\* Business Journalist. The article appeared in The Mint on August 16, 2018

## SECTORAL REGULATION

### Need for a Waste Regulator

The Irish Competition and Consumer Protection Commission (CCPC) review recommends that a regulator should licence waste firms and set prices where necessary, and be backed by strong enforcement powers.

Rejecting the findings, Conor Walsh secretary of the Irish Waste Management Association (IWMA) said the market for waste collection services was fully functioning and working for the benefit of consumers. Members of the IWMA collect 75 per cent of household waste currently managed in Ireland.

He said that since waste collection services were privatised, consumers have benefitted from increased collection services as well as the introduction of recycling, compost collections and reduced costs.

(IT, 28.09.18)

### Breaking up Electricity Monopoly

Israel passed a law to open the electricity sector to new competition and break up the monopoly held by its state-owned power utility.

The reform was approved by the cabinet in June after the government, Israel Electric Corp (IEC) and its workers agreed on changes to end a 22-year stand-off. The legislation passed in parliament in an overnight vote.

IEC, which for decades has managed every aspect of electricity from running power plants to connecting households, agreed to sell 19 production units in five sites over five years and form a subsidiary to manage two yet-to-be-built power stations that will run on natural gas.

(Reuters, 19.07.18)

### Regulating Internet Data Prices

South Africa is considering regulating the price of internet data as part of efforts to bring costs down and shore up the country's ailing economy.

Chief Executive of the Independent Communications Authority of South Africa (ICASA) Willington Ngwepe's comments come after complaints from consumers about the cost of data in Africa's most advanced economy.

Ngwepe said ICASA will launch a market inquiry, which is likely to be

completed between 8 and 18 months. The inquiry is expected to help the regulator work out how and which features in the industry need to be regulated.

Five main companies dominate South Africa's wireless broadband market, including MTN and Vodacom, which control about 70 percent of the market. Fixed-line operator Telkom also operates data services.

(Reuters, 11.09.18)

### Price Cap on Energy Tariffs

The UK's energy regulator Ofgem proposed a price cap on default energy bills to save households about a billion pounds a year and aims to implement it in time for winter following a government promise to tackle 'rip-off' prices.

Consumer groups cautiously welcomed the cap, even though it fell slightly short of the US\$129.36 cut to bills Prime Minister Theresa May had targeted ahead of 2017's election.

The government tasked the regulator with calculating a marketwide ceiling for what energy providers could charge following accusations the market was broken, with customers being penalised for sticking with energy providers. The cap represents the biggest state intervention in the UK energy market since privatisation in the 1980s.

(Reuters, 06.09.18)

### New Package Travel Law

The EU Package Travel Directive entered into force in Germany. Germany implemented the directive by updating its travel legislation in the Civil Code.

As the directive pursues maximum harmonisation and leaves national legislature little room to deviate, the Civil Code adopted most of its provisions.

This new regime applies to traditional tour operators and air carriers, which may be regarded as package organisers if they offer travel services in addition to flights.

Air carriers commonly offer additional travel services (eg, rental cars) on their websites during online booking. Such carriers may be classified as package organisers.

(ILO, 08.08.18)

### Consultation on 5G Planning

The National Communications Commission (NCC) of Taiwan responded to comments from mobile network operators and equipment suppliers in a public consultation on 5G spectrum planning and auction preparation.

The NCC confirmed that, in addition to the 3.4GHz to 3.6GHz bands, the 28GHz, 1,700MHz to 1,900MHz and 700MHz to 800MHz bands are expected to be released for 5G use and will likely be made available through spectrum auctions.

The NCC confirmed that the 3.4GHz to 3.6GHz bands will be available for release by auction no later than the end of 2019.

(ILO, 05.09.18)

## 'Made in China' Policy

China is softening its rhetoric on an industrial policy that set it on collision course with the US and Europe, in a bid for foreign investment to keep its economy on track.

The shift on the Made in China 2025 policy — now being downplayed by the country's media and the subject of assurances to foreign governments — comes as China seeks to improve ties with European companies that have complained about forced technology transfer and subsidies for national champions.

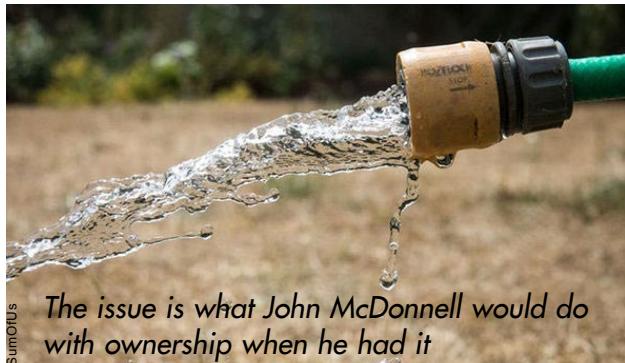


The policy, unveiled in 2015, set out 10 sectors — such as robotics, semiconductors and advanced medical technology — in which domestic companies are expected to dominate in the Chinese market and compete globally.

(FT, 16.07.18)

# Nationalising the Water Industry would make little difference

Jonathan Ford\*



*The issue is what John McDonnell would do with ownership when he had it*

John McDonnell, Labour's Shadow Chancellor, exhumed one of the foundational clauses of the opposition party's 1918 constitution. More than two decades after Tony Blair buried the commitment to nationalisation in his first conference speech as leader, McDonnell dug it up, dusted it down, and declared the principles of Clause IV were as relevant as they were back then. Fair, democratic, collective solutions to the challenges of the modern economy.

First on the list to be given the "Clause IV" treatment under a future Labour administration is the water industry. McDonnell intends to take the English companies back into public ownership after almost three decades in private hands.

His plans envisage creating a new system of state owned regional water authorities (roughly based on the existing private company water catchment areas). These would be made up of councillors, workers, consumers and environmental representatives. Professional managers would still be employed to run the businesses, if on far lower salaries.

Much of the debate about these ideas so far has revolved around whether Labour could afford to pay the tens of billions needed to acquire the companies. Wrongly though; that's largely a red herring. The debt the government would issue would be backed by income bearing assets. Short of a full-blown economic crisis, these revenues should cover the servicing cost.

The bigger issue is what McDonnell would do with ownership when he had it, and whether public proprietorship would make much difference. Many of the criticisms of private capital revolve around its conflicts of interest. Investors are accused of focusing excessively on financial engineering to extract value from the industry's stable and guaranteed cash flows.

Nationalisation would certainly get round these conflicts but only at the cost of imposing others. Principal among them is the political tension between keeping prices low and paying for investment, which should be financed out of operating cash flows. Nail prices down too hard and you fall into the 1970s trap of depending on the Treasury for capital, exposing water to the risk of being squeezed out by other public spending priorities.

Privatisation originally sprang from a desire to break this Gordian knot. For instance, British Telecom was sold off in the early 1980s partly to fund investment in new exchanges it did not have the cash for and the Treasury would not back.

Originally the plan was just to sell some bonds and not equity, but that failed to pass muster. The Thatcher government recognised that once you bring in private bond finance, the state loses much of the political rationale for ownership. Keeping the interest cost of that capital down requires fetters on state influence and the extension of public guarantees. Superimpose these on a state-owned company and you can create a bulletproof corporatist structure where managers' privileges are perpetuated and there is no stimulus on them to do a better job. Selling shares was supposed to be a way of evading that trap.

Ironically, some of the reforms the water regulator is now attempting as a way to evade renationalisation are leading down a similar corporatist path — albeit from a different direction. They include imposing checks on the private companies paying dividends, and diluting investors' control of companies in favour of other interest groups.

According to the economist Dieter Helm, the regulator's chairman Jonson Cox is "trying to drive a wedge between owners and managers, and get managers to pursue the public interest rather than that of their private owners".

While this may curb the abuses that have so annoyed the public, it also immunises bosses and strategy from external account.

The alternative is choosing between Mr Cox's ideas and Mr McDonnell's. The former is less disruptive, whereas nationalisation would be a leap in the dark. But these are only partial choices. The difference between state and private corporatism is just shades of grey.

\* City Editor, Financial Times. Abridged from an article that appeared in the Financial Times on September 30, 2018

## FINANCIAL SECTOR REGULATION

### Rules for Credit Fintech Cos.

The Brazilian National Monetary Council issued Resolution 4,656, regulating credit fintech companies. According to the resolution, two new types of entity are now recognised as financial institutions: direct credit companies (SCDs); and interpersonal loan companies (SEPs).

SCDs and SEPs will be entitled to conduct loan and financial operations through electronic platforms. The Central Bank also issued Circular 3,898 in May 2018, which set out the procedural rules for establishing such entities.

The Central Bank has introduced these rules in order to continue the modernisation of Brazil's financial sector – something which has been ongoing since 2013, with more intensive actions being taken since 2016.

(ILO, 27.07.18)

### Effective Banking Governance

The General Framework for Credit Institutions and Financial Companies establishes that the management and supervisory bodies of credit institutions in Portugal are responsible for defining, overseeing and implementing adequate governance to ensure the institutions' effective and prudent management, including the segregation of duties and the prevention of conflicts of interest.

Banks should plan and apply remuneration policies correctly and must record the respective procedures

and any other items required for the implementation of such policies.

Further, pursuant to the Bank of Portugal's Notice 10/2011, a remuneration committee must be established to ensure that financial institutions comply with the required rules and procedures in that regard.

(ILO, 17.08.18)

### Building a Regulatory Framework

Swiss authorities are building a regulatory framework which considers the most important recommendations from the Financial Action Task Force's (FATF's) mutual evaluation report on Switzerland in order to strengthen the integrity of the Swiss financial sector.

First, the Federal Council has initiated the consultation on amendments to the Anti-money Laundering Act which will apply to, among others, Swiss banks.

Second, the Financial Market Supervisory Authority (FINMA) has published its revised Anti-money Laundering Ordinance. Shortly thereafter, the Swiss Banking Association (SBA) published its revised agreement on Swiss banks' code of conduct regarding the exercise of due diligence (CDB 20). Both will enter into force on January 01, 2020.

(ILO, 14.09.18)

### 'Too-big-to-fail' is Not Over

The era of so called 'too-big-to-fail' banks has not ended, despite 10 years of government work in the wake of the

collapse of Lehman Brothers, said former US Fed Governor Daniel Tarullo.

Daniel Tarullo was in charge of the Fed's effort to revamp its oversight of the banking industry. He said there was no question that the banking system was a 'lot safer' than it was prior to the financial crisis.

Tarullo said that the largest institutions are substantially better capitalised. They have much more sustainable funding patterns, their risk measurement and management are both immeasurable better than they were in pre-crisis period.

(www.marketwatch.com, 26.09.18)

### Open Banking is Coming!

Mandated by the CMA, open banking forces the UK's biggest banks to share their data securely with approved third parties in areas including account information and payments, using a statutory set of application programming interfaces (APIs).

The hope is this will prise open the banking market, encourage new product development, attract new disruptive players, and give consumers more choice and better deals.

Mark Curran, Open Banking Director at Clydesdale Bank parent CYBG, says: "We never expected a revolution. In the medium to long term, open banking is going to have a major impact. It just needs time."

(www.raconteur.net, 25.09.18)

## The Clock is Ticking for Banks



Banks need to transform themselves or they will be left in the dust by new fintech companies, according to a new report.

With fintech companies raising US\$58bn globally in the first half of 2018, banks are feeling more pressure than ever to spend on their own technology. This is compounded by the fact that fintech companies do not suffer from legacy IT systems and can provide banking services 50 percent cheaper than big banks.

European banks are most at risk for being disrupted, as they have been burdened by negative interest rates for years and regional regulators are more open to fintech companies.

US banks are better positioned, as they have adopted IT innovations early, the report said. Large banks have for years seen the value in partnering with and investing in fintech companies. Only seven percent of banks are developing their own technology solutions in-house.

Big banks are dedicating their IT budgets to data management and digital/mobile banking, while blockchain technology is seeing less investment.

The report concluded that banks with 'best in class' technology can better defend themselves from fintechs. These banks include JPMorgan, Bank of America, BBVA and DBS Bank.

(BI, 18.09.18)

# A Look Back at the Lehman Brothers' Collapse

Montek Singh Ahluwalia\*

The 10<sup>th</sup> anniversary of the collapse of Lehman Brothers has unleashed a predictable flood of reflections on what caused the crisis, whether it was handled well, and what we have learned from it.

Most of what has been written treads familiar ground, except for one completely original thought from Christine Lagarde, Managing Director of the International Monetary Fund (IMF), which deserves special mention. She has said that there would have been less reckless risk-taking if there had been more women at the top of financial institutions. As she put it, things may have been different if Lehman Brothers had been Lehman Sisters!



## Did the international community really play much of a role?

When the crisis broke, UK Prime Minister Gordon Brown spoke about the need for a “new Bretton Woods”, implying that we needed a new international financial architecture with a restructured IMF. Reform of the international financial architecture was put on the agenda of the new G20 at the summit level.

It is logical to ask how much did the strengthening of the international institutions do to save the world? The short answer is that it did very little. The dominant factor in stabilising the US financial system was: (a) Ben Bernanke’s decision to flood the system with liquidity, keeping interest rates low; and (b) the decision of the US Treasury to pump in US\$800bn into the system by buying up troubled assets.

Europe was less willing to fix its banking sector problems. European stress tests were much weaker than in the US and that explains why the European banking system continued to face problems.

## Reform of the international institutions

Some reforms did take place. There was a quota increase of US\$500bn for IMF, and also changes in quota shares, in which the emerging market (EM) countries gained at the expense of Europe. European seats on the IMF board were reduced by two, to give greater representation to EMs. These were steps in the right direction. However, there was no change in one important dimension.

The conversion of the Financial Stability Forum into a more permanent Financial Stability Board, on which all the important EM countries including India, are represented, was an important change for the good. FSB is only a consultative body, in which central bank governors and senior finance officials meet to review developments in financial regulation and reach broad agreements, which are then pursued in the sectorally relevant fora.

## Financial regulation

A good deal has happened in this area. Banks are much better capitalised, thanks to Basle III, and there is better prudential oversight on leverage in the system. Some important areas have seen very little progress. The ‘too big to fail’ problem is still with us, and the system is as dominated as it was earlier by the big institutions. Cross-border resolution also remains an area with little progress. The incentive problems facing the credit rating agencies, which depend on the fees of those they rate, remains unresolved.

## Accountability

The problem of accountability in banking is very relevant in India, in the context of the build-up of non-performing assets (NPAs) in public sector banks. Some of these NPAs were undoubtedly due to fraud, with or without collaboration of the banks, and these should be pursued, to their logical legal end. It has been said that public sector banks were simply not equipped to undertake project financing. Most importantly, what are we planning to do to overcome this weakness? If public sector banks are going to remain in the public sector, we need to consider how these problems will be avoided in future.

## Can we be sure there won't be another crisis?

The history of the financial sector shows that crises occur with surprising regularity. We need to anticipate whether this build-up of debt could morph into a crisis, and how it might affect India. Even if it does not lead to a crisis, an orderly deleveraging will have a strong deflationary effect. We need to consider how that might affect India. These are issues the G20 should examine and we should do our own homework on them.

\* Deputy Chairman of erstwhile Planning Commission. Abridged from an article that appeared in the Mint on September 18, 2018

# Make the Global Economy Work for All

Lawrence H Summers\*

Since the end of World War II, a broad consensus in support of global economic integration as a force for peace and prosperity has been a pillar of the international order. Since the fall of the Berlin Wall a generation ago, the power of markets in promoting economic progress has been universally recognised.

From global trade agreements to the European Union project; from the Bretton Woods institutions to the removal of pervasive capital controls; from expanded foreign direct investment to increased flows of peoples across borders, the direction has been clear. Driven by domestic economic progress, by integrative technologies such as container shipping and the internet, and by legislative changes within and between nations, the world has grown smaller and more closely connected.

This has proved more successful than could reasonably have been hoped. We have not seen a war between leading powers. Global living standards have risen faster than at any point in history. And material progress has coincided with even more rapid progress in combating hunger, empowering women, promoting literacy and extending life.

Every single day since 1990 there were an average of 108,000 fewer people in extreme poverty. Since the beginning of the 21<sup>st</sup> century, global life expectancy has increased by more than four months a year. A world that will have more smartphones than adults within a few years is a world in which more is possible for more people than ever before.

Yet a backlash against the current paradigm of global integration is reshaping politics and economic policy in a way that may plague us for years. The momentum toward global economic integration was stopped when the US repudiated the Trans-Pacific Partnership.

*A backlash against the current paradigm of global integration is reshaping economic policy in a way that may plague us for years*



The International Monetary Fund estimates that rising trade tensions between the US and the rest of the world could cost the global economy 0.5 percent of gross domestic product (GDP), or US\$430bn by 2020.

The shift away from openness extends to immigration and capital flows as well. The EU, notable for its commitment to the free movement of people, is shifting toward much tougher immigration policies. New immigration policies in the US have turned police officers into immigration-enforcement agents and hurt business growth. Restrictions on foreign investment have been increasingly common as the US has taken to blocking Chinese investments, China has set unfair terms for US companies wishing to invest there, and Europe has increasingly favoured domestic companies over foreign competitors.

The backlash against global integration has many sources. Some of it reflects broader economic frustrations associated with slower growth and rising inequality. Some reflect the difficulties of maintaining harmony within multi-ethnic societies. Surely the speed and scale of China's ascent has contributed.

But what is most important is the growing suspicion on the part of electorates that globalisation is an elite project that primarily benefits elites.

Somehow branches for financial institutions in foreign countries seem

to be a higher priority than protections for displaced workers. And protection of the intellectual property of global corporations is a more focal concern than preventing unfair competition from foreign companies that escape regulation.

This must change if global integration is to maintain its political foundation in the world's rich countries. Political leaders must connect global integration with tangible benefits for middle-class citizens, must show that international cooperation helps to prevent exploitation of ordinary citizens by elites, and must assure that adequate social protections are in place so that those who must adjust to economic change are protected.

Will the US and the global community turn away from the paradigm of global integration that has worked so well and go back to the narrow nationalism that Keynes so powerfully and rightfully decried? Or will they find ways of promoting global integration that benefit all citizens everywhere? These might include major cooperative efforts to prevent global corporations from avoiding taxes, crackdowns on regulatory arbitrage, and stronger domestic programmes to cushion the impact of structural changes on individual workers.

These are the questions that may determine the history of the 21<sup>st</sup> century.

\* Harvard Professor and former US Treasury Secretary. Abridged from an article that appeared in the Mint on August 08, 2018

# Time to get tough with the US\$2tn corruption 'industry'

Peter Michaelis\*

Corruption is said to take US\$1.5tn to US\$2tn out of the global economy each year, equivalent to two percent of world gross domestic product.

Money siphoned off in bribes and the consequent lost tax revenue has corrosive results, including stunted growth and employment, and sustained poverty. It also skews performance so that companies achieve success by being good at bribery rather than good operators.

Despite substantial improvements to corporate behaviour, corruption is still a major challenge to sustainable development. The need to tackle it is increasingly urgent, especially as several high-profile cases have fuelled moral outrage.

Corruption is significant on a global scale as it can seriously undermine inclusive economic growth. The effect of corruption should never be dismissed as 'greasing the bureaucratic wheels.' Nigeria, for example, has been a major oil producer for 50 years and yet its GDP per capita is less than US\$2,000, ranking it at 137<sup>th</sup> in the world, according to 2017 IMF figures.



*Fund groups must screen for sectors and countries that are vulnerable to illicit activities*

Corruption occurs where there is a combination of concentrated resource wealth and weak governance. It requires a means to transfer ownership from the state and then launder the proceeds: anonymous companies, tax havens and weak regulation facilitate both aspects.

Such activity is rife in areas such as oil and gas, mining, forestry, shipping and banking but there are plenty of issues outside these sectors. Telia, the Swedish-listed telecommunications company, for example, was said to have paid a US\$300m bribe to the associates of the daughter of the president of Uzbekistan, for a licence to do business in the country. It eventually paid close to US\$1bn to settle the matter.

Transparency International has published the annual corruption perceptions index since 1995, ranking countries by their perceived levels of corruption. Some of Britain's largest companies operate in these areas and the fact that investors have continued to commit capital to these businesses suggests the stock market has, to some extent, been willing to turn a blind eye to the involvement of the oil

majors, miners and multinational banks in markets afflicted by such corruption.

Certain developments also reveal a changing corporate landscape in the highest-risk sectors, with global oil giants Eni and Shell standing trial in Italy over allegations of corruption in Nigeria. The case involves the purchase of an offshore oil block in Nigeria for US\$1.3bn in 2011. The companies deny wrongdoing and claim they acquired the rights in accordance with Nigerian law.

We have also seen greater transparency and communication, with whistleblowers and leaks such as the Panama Papers uncovering large-scale bribery. On a smaller scale, initiatives such as ipaidabribe.com help to expose dishonesty in everyday transactions.

Finally, there is much greater focus on the sustainability of supply chains, with companies such as Apple working hard to show ethical sourcing. Apple's latest conflict minerals report noted the removal of ten smelters and refiners that failed to participate with audits in a timely manner.

Corruption is an important engagement area, albeit one that by its nature is often hard to define and quantify.

In terms of our wish list, we aim to ensure companies are not involved in bribery and corruption - making the case that better business does not engage in illicit activity - and to highlight the risks of ignoring corruption.

To achieve this, portfolios are screened by sector and country for their sensitivity to corruption. Ultimately, greater transparency means the profits of companies engaged in illicit activities are at risk.

\* Head, Sustainable Investment at Liontrust Asset Management. Abridged from an article that appeared in Financial Times on July 25, 2018

# The Mystery of the Missing Competition

Is market power in the US becoming increasingly concentrated among a handful of superstar firms? The great and the good of the global central banking community sounded a warning note about this at the annual Jackson Hole symposium. If such fears are well-founded, it has implications for a wide range of economic ills, from inequality to low productivity growth.

A substantial amount of evidence suggests that there is something to them. A widely cited 2017 paper by Gustavo Grullon, Yelena Larkin and Roni Michaely, *Are US Industries Becoming More Concentrated?*, found that over the past two decades, over 75 percent of US industries have become more concentrated, with dominant companies capturing greater market share.

In another 2017 study, Jan De Loecker and Jan Eeckhout examined US firm-level data going back to 1950, and noted that markups have risen from an average level of 18 percent above marginal cost in 1980 to 67 percent now. That hints at a break in the circuit somewhere: Rising markups should attract competition, bringing them down again.

Such concentration is not confined to the US. Research by *The Economist* and the Resolution Foundation has found that if the British economy is split into about 250 sectors, “in nearly 60 percent of them, the four biggest firms claim a larger share of revenues than they did a decade ago”.

This is a headache for everyone from central bankers to competition regulators and politicians. For instance, does the entrenchment of corporate power at the top of the ladder explain why the Phillips curve is out of whack in the US? Recent research by the Roosevelt Institute,

*Market concentration in the US and elsewhere, and the rise of superstar companies, could have global consequences*



which looks at market concentration from the perspective of workers rather than firms, suggests it could be. The institute found a relatively high degree of monopsony in the US labour market that sheds light on the broken link between employment and inflation in the US.

Such a divergence between labour wages and corporate profits and power fuels the resentment of the political and economic elite that is currently widespread in the US. Given the global impact of the Federal Reserve’s monetary policy and US trade policies pushed by a political establishment trying to tamp down the resentment, this is the world’s problem. There are long-term structural risks, too.

Surely if US trustbusters got busy, it would nudge the market in a healthier direction? But this is where things get tricky. First, there is a respectable minority when it comes to the consensus about market concentration and its effects. Competition economist Carl Shapiro has argued that the current research on competition looks at overly broad categories, and mixes up national and local data, blurring the picture. Other economists have pointed out that if overhead costs, such as marketing, are added, markups become much less attention-worthy. Their doubts should be taken on board. Government interference in markets on the basis of a faulty diagnosis can have a chain of unintended negative consequences.

Second, in sectors such as tech, where the rise and rise of superstar firms such as Google and Facebook makes arguments against concentration moot, the question of consumer benefit arises. The scale and market power of big-tech has enabled it to pump money into innovation and provide services that are cheap or free. Trustbusters must now consider if this cost-benefit ratio is, in fact, a barrier to entry for competition. Balancing such hypotheticals and counterfactuals is far from an exact science.

Third, recent research points to the growing role of ‘intangible capital’, such as software, intellectual property and creative business processes, in aiding market concentration. The nature of such capital means that it is in itself a formidable barrier to entry; smaller firms often lack the resources to compete on these fronts.

These factors make for a complicated, multifaceted problem. Any efforts to tackle it will have to be on various fronts, from overhauling competition regulation to tightening corporate governance norms. And these will be long-term projects that will include a fair amount of trial and error. Global markets should be ready for the fallout.

*The news item appeared in Mint on August 29, 2018*

## Economiquity

The July-September 2018 issue of the quarterly newsletter carries a cover story entitled 'The Global Trade System Could Break Down' which states that over the past 70 years, multilateralism has served the world well. It led the way in establishing three major economic institutions – the International Monetary Fund, the World Bank and the World Trade Organization – that form the basis of the international economic order that is still in place today.

A special article by Barry Eichengreen opines that if the US turns its back on the global order, China will be well positioned to take the lead on reforming the rules of international trade and investment.

Another article by Srishti Choudhary states that as per studies, the sea level along India's long coastline of nearly 7,516km is rising at an average 1.6-1.7 mm a year.

Besides, it covers news on Trade Winds, Economic Issues, Environment & Economics and Development Dimensions etc.



[www.economiquity.org](http://www.economiquity.org)

## Global Investment Trends Monitor

- Global foreign direct investment (FDI) fell by 41 percent in the first half of 2018, to an estimated US\$470bn, from US\$794bn in the same period in 2017.
- The decline in FDI flows is in contrast with trends in cross-border merger and acquisitions (M&As) and announced greenfield investments. M&A sales remained flat in the first half of 2018 at US\$371. Announced greenfield projects – an indicator of future trends – recovered to US\$454bn, an increase of 42 percent, from relatively low levels in the same period in 2017.
- The decline was largely concentrated in developed countries where FDI inflows fell sharply, by 69 percent to an estimated US\$135bn. The greenfield investment recovery largely passed over the developed countries, where the increase was less than 5 percent.
- FDI also declined across all developing regions, but only slightly, to an estimated US\$310bn in the first half of the year, 4 percent lower than in the first half of 2017. The share of developing economies in global FDI reached 66 percent, a record.

The FDI trends for the first half of 2018 risk bringing global investment down to its lowest level for more than a decade, driven more by policy factors than by the economic cycle. How to build and maintain a global policy climate that is conducive to investment in sustainable development was discussed by policymakers from around the world at [World Investment Forum](#) in Geneva, during October 22-26, 2018.

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- Usefulness as an information base
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### Sources

BBC: British Broadcasting Corporation; BS: Business Standard; BI: Business Insider; CPI: Competition Policy International; ET: Economic Times; FT: The Financial Times; ILO: International Law Office; IT: Irish Times; KH: Korean Herald; NPR: National Public Radio; NYP: New York Post; TC: Tech Crunch; TG: The Guardian; TT: The Telegraph; WSJ: Wall Street Journal

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