REGULETTER

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Special Articles

Questioning the Role of Government in Job Creation

Job creation has always been high on government's agenda. Significant resources have been invested to encash the demographic dividend and prevent it from becoming a burden. The results have been far from desirable. The unemployment rate has touched 5 percent, a five year high, and around 35 percent working population is under-employed. Fewer jobs are being added to the economy each passing year.

The government is pursuing a manufacturing led job creation strategy. Studies reveal that automation is taking away the advantage of traditional low cost manufacturing hubs. These are being relocated near to their markets. The World Bank predicts that the proportion of jobs threatened by automation in India, China and Ethiopia, is 69 percent, 77 percent and 85 percent, respectively.

The Economic Times

While automation is more of a recent phenomenon, deeper analysis points to the yawning gap in skills of those entering the job market. The Global Competitiveness Report highlights miserable Indian performance on technological readiness, higher education, training and skill development.

Given that the government has shown its incompetence in job creation, what corrective strategy must it pursue?

Role of government

It is becoming increasingly difficult to predict the nature of jobs which will be required in future, and the role of manufacturing in job creation. History tells us that while industrial revolution abolished a nature of jobs, it created another. Such is the hope with automation as well. However, even the industry will be able to only list its current requirements, but might not be in a position to predict what the future beholds. Remember, no one could have predicted that e-commerce sector and aggregator industries will be able to generate significant jobs.

The government must free itself from the burden of developing a strait jacket strategy for job creation. It must divest from being chief provider of skills, higher education and training, and encourage private sector participation in these areas. The government should not view such innovation and private sector involvement in politically sensitive areas with suspicion. On the contrary, it must promote such industries and engage in smart regulation of such multi-sided markets. It will also be useful to begin thinking on concepts like targeted basic income to help individuals tide over phases of unemployment and gain new skills.

With the rise of gig economy, government can no more treat informal sector as undesirable. It will need to revisit policies aimed at transitioning informal to formal sector. Also, the focus on sustainable development should prompt government to think about ways to incentivise environment protection and perhaps treat it as non-farm entrepreneurship.

CUTS Centre for Competition, Investment & Economic Regulation
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Sweeping Competition Reforms

Argentina's antitrust enforcer is seeking feedback on a package of sweeping competition reforms, which would create a new independent antitrust authority, leniency programme and merger control regime.

www.globalriskinsights.com

The National Commission for the Defence of Competition launched a public consultation, asking for comments on the suite of proposed reforms. Of the proposed changes, the most significant is the creation of a new decentralised, independent antitrust agency – the National Competition Authority.

A new National Antitrust Court of Appeals would also be created, which would hear appeals against the new antitrust agency's decisions. The consultation also proposes the creation of a new leniency programme and a pre-merger control regime, as well as a new fast-track filing process for certain transactions. *(LL, 06.09.16)*

Ensuring a 'Fair Deal' for Farmers

The **Australian** Competition and Consumer Commission's new Agriculture Commissioner, Mick Keogh, issued a warning to small businesses and farmers to review any contracts before new competition law come into effect in November 2016.

"Many small businesses entering into contracts with larger businesses have no option but to accept all of the terms of the standard form contract that they are given," Keogh said. However, this new law will allow the courts to strike out any contract terms that unfairly benefit one party."

Keogh acknowledged that 'imbalances in bargaining power are particularly common in agriculture' and the new law would 'ensure a fair deal' for farmers. *(TWT, 20.07.16)*

Encouraging Economic Analysis

Ukraine's Anti-Monopoly Committee has adopted a new merger control regime will dramatically simplify overly burdensome filing requirements and encourage better economic analysis.

The new regime will reduce the amount of information required in merger filings, bringing the country's notification procedure more closely into line with European law. Under the new regulation, notifications will no longer require extensive information on the merging companies' activities in non-relevant markets.

From now on, merging companies will only need to provide a summary of their activities in such markets, which will help streamline the overall merger review process and reduce the amount of potentially irrelevant information filed.

(GCR, 25.08.16)

Merger Notifications Mandatory

The upper house of **Chile**'s Parliament approved legislation that for the first time will criminalise cartels, boost maximum fines for anticompetitive conduct and make merger notifications compulsory.

Chile's Senate passed the new bill, which amends existing competition legislation. The bill remains subject to review by Chile's government and constitutional court, but observers expect this to be a formality; the bill was proposed by the government.

Perhaps most significantly, the legislation removes a US$22.5mn cap on the maximum fine that the country's Competition Tribunal could impose on individual companies for cartel activity.

(GCR, 13.07.16)

Introducing Settlement Procedure

The **Hellenic** Competition Commission has unveiled eligibility criteria for a new cartel settlement procedure that the country's government added to its competition legislation.

The new procedure is similar to that used by the European Commission, but features a more significant reduction in fines. The European procedure offers an automatic 10 percent fine reduction; the Greek competition authority will lead to 15 percent discounts.

The law grants the authority full discretion to decide if a case is suitable for settlement and whether to accept companies' applications.

(GCR, 27.07.16)

Sensitising on Impact of Cartels

The **Namibian** Competition Commission organised its Competition and Consumer Week to sensitise stakeholders on the impact of cartels on the economy and the consequences that businesses who engage in cartel activities might face.

The fifth Annual Competition and Consumer Week also served as an opportunity to shared best practices and experiences in dealing with cartels in various jurisdictions. This year's theme is 'Cartels and their impact on the economy'.

The objective of most competition laws is to protect competition, which in the process enhances efficiency in economic activity and promotes consumer welfare. It is no doubt that cartels prevent competition and cause participating firms to act collectively as a monopoly, or near monopoly.

(www.allafrica.com, 09.08.16)

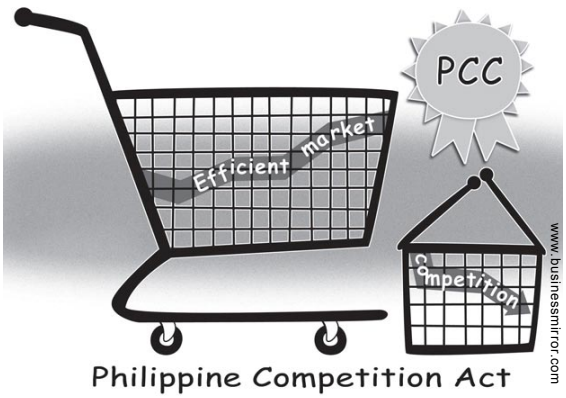
What is the Philippine Competition Act?

Flor G. Tarriela*

The Philippine Competition Act, enacted by the Philippine Congress in July 2015 and became effective in August 2015, is the key component of the overall strategy to make economic growth more enduring and inclusive

Arsenio Balisacan, Chairman of the Philippine Competition Commission, said that the Philippine economy is on a higher growth trajectory, but the need to deepen reforms to sustain growth and make it more inclusive remains a challenge. There is still a need to improve performance in poverty reduction, reduce underemployment and improve the quality of jobs and control rising inequality – a serious threat to sustainability.

The Philippine economy over the last four decades showed unequal distribution of opportunities, a condition of widespread poverty co-existing with affluence and prosperity; extreme difficulty for SMEs to thrive and prosper, hindering growth of employment opportunities; not becoming a significant player in the economically prospering Asian region. The Philippine Competition Act can be a game-changing legislation.



What are prohibited in the Philippine Competition Act? The prohibited acts are:

- Antitrust: enforce legal prohibitions against anti-competitive business agreements, including cartels and the abuse of dominant market position.
- Merger control: regulate those likely to substantially prevent, restrict or lessen competition.
- Market studies and investigations: examine markets that are not working well and, if necessary, impose remedies to further enhance competition.
- Competition advocacy: enhance practices and challenge barriers to competition.

Anti-competitive agreements – competitors involved in the same stage of production or distribution should not compete with each other, for example, price fixing, bid rigging, dividing the market, limiting production, restricting terms of trade.

Abuse of dominant position – for one or more entities engaging in conduct that would substantially prevent, restrict or lessen competition like exclusionary conduct, predatory pricing, bundling or tying, margin squeezing, setting prices that discriminate unreasonably and limiting production, markets, technical development to the prejudice of customers.

Anti-competitive M&As – that is likely to substantially prevent, restrict, or lessen competition in the relevant market. There is an obligation to notify mergers or acquisitions with a transaction value exceeding US$21.5mn.

The Philippine Competition Commission (PCC) – What can it do? Balisacan said the PCC is an independent quasi-judicial body with primary and original jurisdiction in all competition-related issues. What are its powers to address competition-inefficiency issues?

M&As that raise market concentration are also not prohibited specifically in cases where it brings about gains in efficiencies that are greater than the effects of any limitation on competition; or is faced with actual or imminent financial failure and the agreement represents the least anticompetitive arrangement among the known alternative uses for the failing entity's assets.

Is PCC anti-big business? To allay any fears of the bankers, he further assured that PCC is definitely not. PCC is in talks with the Bangko Sentral ng Pilipinas (BSP) with regards to the Memorandum of Understanding to define mechanisms and areas of cooperation to reap the benefits of competition policy and prudential policy. PCC is also aware of the policy encouraging banks to consolidate to benefit from economies of scale (M&As) and network externalities.

The Commission is in partnership with sector regulators, such as the Securities and Exchange Commission (SEC), Bangko Sentralng Pilipinas, Energy Regulatory Commission etc. Based on the 2009 OECD Report, it is agreed that benefits of full and effective competition in the financial sector will result in enhanced efficiency, better products to final customers, greater innovation, improved international competitiveness and greater competition enables efficient banks to enter markets and expand.

As competition is really beneficial to consumers, it will not be an additional burden but rather game changing for the Philippines inclusive growth.

* *Chairman of PNB and a FINEX Trustee. Abridged from an article that appeared in the* Manila Bulletin *on August 15, 2016*

ABUSE OF DOMINANCE

Reviewing the Petroleum Sector

Norway's Ministry of Trade has called on the country's competition authority to investigate the petroleum industry, after a member of parliament alleged that Norway's state-controlled energy company may be misusing its market power.

The Ministry of Trade, Industries and Fisheries asked Norway's Competition Authority to conduct a review of the competitive conditions in Norway's petroleum sector and examine if oil and gas company Statoil is misusing its market power.

The petroleum industry is one of Norway's most important industries, and it is important that there is good cooperation between stakeholders in the petroleum industry and the people who deliver the knowledge, technology and services. *(GCR, 25.07.16)*

Telecom Egypt Settle Disputes

Egypt's Competition Authority has fined Telecom Egypt for abuse of dominance, after the monopoly cut off access to its cable internet infrastructure to rivals of its subsidiary in the broadband market.

Telecom Egypt holds a monopoly over the country's entire internet infrastructure. Its subsidiary TE Data is the country's dominant broadband provider, competing with other operators in the market.

Telecom Egypt blocked several rival broadband suppliers from accessing its network. After it replaced its copper cable infrastructure with fibre optics, Telecom Egypt failed to reconnect the broadband companies in an attempt to foreclose the market. *(GCR, 04.08.16)*

Cracking down on Credit Market

Argentina's antitrust enforcer has opened abuse of dominance and cartel probes of the only company authorised to issue Visa cards in the country, after a market investigation found that the local credit card and electronic payment markets lack competition and transparency.

Prisma dominates the market by being the only company able to issue Visa cards, the authority concluded. The company is also vertically linked to private and public banks, and dominates ATM networks and the online payments sector, leading to barriers to entry for new rivals.

The authority has sought permission from Argentina's trade minister to open an abuse of dominance investigation into Prisma, and a cartel investigation into the 14 banks that are Prisma's shareholders to establish whether cartel activity has taken place. *(GCR, 31.08.16)*

Postal Services Accused

Portugal's competition authority has accused national postal operator Correios de Portugal (CTT) of abuse of dominance.

The authority said CTT barred competitors from accessing its national distribution network for standard postage. The behaviour dates back to 2012, when the government passed a law to liberalise the postal industry.

As a former monopoly operator, CTT operates Portugal's only nationwide delivery network. CTT, the enforcer said, should allow rivals to use its network – including branches and postmen – to ensure competition can exist in a market worth €400mn a year. *(GCR, 23.08.16)*

Recycling Firm Blocked Competition

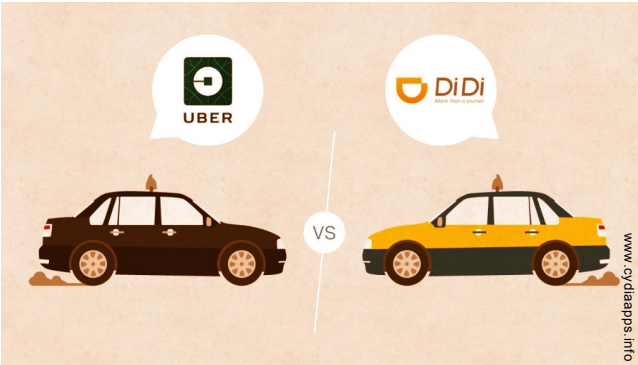
The EC has fined an Austrian waste-management company €6million for foreclosing competition in the domestic market for recycling and waste collection services, but for the first time discounted an abuse of dominance penalty based on cooperation.

The Commission said that Altstoff Recycling Austria (ARA) had abused its dominant position by blocking rivals from providing competing waste collection services between 2008 and 2012, after refusing access to its infrastructure, which it had built up as the dominant operator.

Certain retail goods manufacturers in Austria are duty bound to collect waste packaging used in their products, but many companies assign this responsibility to non-profit third parties, such as ARA, which is owned in part by several stakeholders in the drinks manufacturing industry.

The Commission said that ARA's national collection system could not be duplicated, so it was an abuse of its dominant position not to grant access to rival service providers, who were dependant on this infrastructure. *(www.out-law.com, 21.09.16)*

Uber's-Didi Deal Draws Probe



Chinese regulators have begun an investigation into the landmark merger of Didi Chuxing and Uber Technologies Inc.'s domestic business, initiating scrutiny of a deal that would create a US$35 billion entity with overwhelming control of the ride-sharing arena.

The Chinese Ministry of Commerce (MOFCOM) has met twice with Didi executives after the deal was announced in August, requesting documents and other supporting material. The government is also seeking a deeper understanding of the ride-sharing sector.

Didi's decision to buy out Uber's Chinese operation would give it control of almost 90 percent of the ride-hailing market. Yet the odds are slim that the Ministry will nix such a high-profile deal involving a well-connected national corporate champion. *(Bloomberg, 02.09.16)*

PRICE FIXING

Motor Insurers to be Quizzed

The **Irish** Competition and Consumer Protection Commission has issued summonses to motor insurance providers compelling them to give evidence on suspected breaches of competition law.

As part of an investigation the Commission is looking at whether insurers have openly signalled upcoming premiums rises to each other.

The Consumer Body's Chairwoman, Isolde Goggin, said statements signalling price rises could result in 'a degree of unspoken co-ordination' between rivals. Statements by senior industry players have raised serious suspicion as to whether there is a link between these messages and subsequent price increases.

(IT, 14.09.16)

Cement Companies under Fire

The National Markets and Competition Commission (CNMC) — **Spain**'s competition watchdog — has demanded over €29mn in fines from Cemex, Lafarge Holcim's predecessor companies and 20 other cement makers for exchanging sensitive information, fixing prices and sharing markets.

The enforcer launched the investigation with a series of dawn raids in September 2014, and formally opened its investigation that December. In April 2015, it added Lafarge and Holcim – which merged in July 2015 – to its growing list of suspects, and later that year carried out another round of dawn raids in the sector.

In April 2016, the CNMC broadened the scope of its investigation into the markets for the manufacturing, distribution and marketing of concrete and related products.

(www.globalcement.com, 13.09.16)

'Cartel for the Internet Age' Fined

The **UK's** competition authority has fined an online poster seller for participating in a two-member cartel that used automated repricing software to set artificially high prices, which one lawyer described as perhaps 'a sign of the future'.

The Competition and Markets Authority said that online sales company Trod, now in administration, had colluded with GB Eye to fix the price of posters and other entertainment merchandise that both companies sold on Amazon's UK online marketplace, between 2011 and 2015.

The UK-based companies promised not to undercut each other, relying on software and specific pricing algorithms that they configured to automatically enforce the cartel agreement. *(GCR, 22.07.16)*

First ever Cartel Penalty

The **Namibian** Competition Commission has imposed its first-ever cartel fine, after punishing two insurance companies that agreed to divide the market.

The competition watchdog fined Sanlam Namibia and the Professional Provident Society Insurance Company a total of €990,000, after accusing the insurance companies of colluding to divide the market and fix prices through a formal marketing agreement.

Both insurance companies admitted liability and agreed to settle the investigation by paying the fine, but maintain that the marketing agreement that led to the fine reflected a genuine joint venture that benefited the interests of Namibian consumers, and was not intended to restrict competition. *(GCR, 17.08.16)*

Steel-Price Fixing Probe Launched

Germany's antitrust watchdog has launched a steel-price fixing investigation into six car makers, including Daimler AG, BMW AG and Volkswagen AG, and auto suppliers Robert Bosch GmbH and ZF Friedrichshafen AG.

The watchdog suspects that Germany's leading car makers and two of the world's biggest car parts suppliers agreed on prices they would pay for steel products used in car manufacturing, and comes on the heels of Volkswagen's emissions-cheating scandal, and questions about possible manipulation of diesel-engine emissions by other auto makers.

Daimler, BMW, Volkswagen, Bosch and ZF confirmed that their offices had been searched and said they were cooperating with the investigators.

(www.marketwatch.com, 05.07.16)

Mastercard Faces Lawsuit on High Fees

Some 46 million people in **Britain** could potentially benefit from a legal case brought against Mastercard demanding US$19bn in damages for allegedly charging excessive fees.

The case brought by a former chief financial services ombudsman alleges the payments company charged unlawfully high fees to stores when shoppers swiped their debit or credit cards and these were passed on to consumers in higher prices.

Mastercard is alleged to have done this for 16 years between 1992 and 2008, in more than 600 pages of documents filed at the Competition Appeal Tribunal. Mastercard has behaved disgracefully in this and not had the reasonableness to accept that what this was doing was damaging UK consumers.

(Reuters, 09.09.16)

Recent Cases in Hong Kong Competition Law

*The **Hong Kong** Competition Ordinance went into full implementation on December 14, 2015. Since then, the Hong Kong Competition Commission has initiated initial assessment of 111 cases. Among them, only 10 cases have moved into in-depth investigation. This article highlights the first case publicised by the Commission regarding a price-cartel in May and a second case early in 2016 concerning the abuse of dominance in the telecommunications sector. Although the second case falls under the jurisdiction of the sector-specific Broadcasting Ordinance, the underlying issue is, nevertheless, competition law. The decision made by the Court of First Instance set an important precedent in the early history of Hong Kong competition law.*

Case 1: Hong Kong Newspaper Hawker Association

On May 31, 2016, the Commission made an announcement welcoming the withdrawal by the Hong Kong Newspaper Hawker Association (NHA) of a letter sent to its members recommending newspaper hawkers to increase the retail price of certain branded cigarette products as well as a related notice on the NHA's social media platform.

The Commission considered that if an association fixes or recommends prices at which its competing members should sell products, the association and its members are likely to be engaging in serious anticompetitive conduct and contravening the Competition Ordinance. The Commission then met with a representative of the NHA, following which the NHA sent a letter to its members stating that the earlier letter and notice were withdrawn, and reminded its members that they should individually determine the price they charge for the products they sell. Since the NHA responded swiftly to rectify its anticompetitive conduct, the Commission proposed not to take any further action in this case.

Under the Competition Ordinance, the First Conduct Rule applies to both individual companies as well as trade associations. Letters and notices sent within an association or to members of a group could be in violation of the Competition Ordinance, if the object or effect of such letters or notices could be to prevent, restrict, or distort competition in Hong Kong.

Case 2: Abuse of Dominance in *Communication Authority vs. Television Broadcasts Limited*

On January 29, 2016, the Court of First Instance handed down a decision quashing the 2013 decision of the Communications Authority that Television Broadcasts Limited (TVB) had violated certain anticompetitive provisions under the Broadcasting Ordinance (BO) on procedural grounds, while upholding the Authority's analysis of the anti-competitive effect of the conducts of TVB.

The case concerned certain contractual provisions and policies which TVB imposed upon its artistes and singers, which included clauses providing for exclusive appearances on TVB and prohibiting artistes and singers from appearing on other Hong Kong television broadcasters, the "no original voice" policy under which artistes and singers could not use their original voice when appearing for other broadcasters, and the "no Cantonese" policy which forbids artistes and singers from speaking in Cantonese when appearing for other broadcasters. The Authority found these practices to have the effect of harming competition in the television programme service market, violating the competition provisions under the BO.

However, while the Court agreed with the Authority's analysis that the provisions imposed by TVB upon its artistes and singers were anticompetitive, it quashed the Authority's decision. In its judgment, the Court gave detailed guidelines regarding the determination of market power of a firm, and decided that it suffices for the Authority to demonstrate that the practices in question have a *potential*, likely anticompetitive effect, as opposed to an actual effect, for the purpose of proving that they have the effect of harming competition in the relevant market.

With the full commencement of the Competition Ordinance, the competition provisions under the BO were replaced by the Competition Ordinance. Businesses with a substantial degree of market power are prohibited from abusing that power to harm competition. This is defined as the 'Second Conduct Rule' under the Competition Ordinance.

– Abridged from a news item that appeared in www.winston.com, *on August 31, 2016*

How Europe is Going After Apple, Google and Other US Tech Giants

Kelly Couturier*

European antitrust regulators have ordered Ireland to collect billions of euros in back taxes from Apple as part of a broader crackdown on tax avoidance. The move is the latest attempt by officials on the Continent to aggressively stamp out sweetheart tax deals that countries strike with multinational companies, including American tech giants. Along with Apple, the campaign has also ensnared Amazon and its operations in Luxembourg.

www.images.bidnessetc.com

Apple

Antitrust: European competition officials had sent questionnaires to music labels and music streaming companies in an attempt to gather evidence and decide whether to open an antitrust investigation into Apple's new music service.

Taxation: European antitrust officials opened an investigation whether Ireland gave preferential tax treatment to Apple. In August 2016, Margrethe Vestager, the European Union commissioner for competition, ordered Ireland to collect as much as €13bn from Apple because of what she said were illegal tax breaks.

Google

Antitrust: European antitrust authorities announced a new round of charges against the company claiming that some of the company's advertising products had restricted consumer choice. Google could face fines of about US$7bn of its global annual revenue if it is found to have broken Europe's tough competition rules.

Taxation: Vestager might look into US$175mn settlement reached between Google and the British government over back taxes. Spanish authorities opened a new investigation into possible tax evasion by Google, and French tax authorities raided Google's offices as part of an investigation for aggravated financial fraud.

Amazon

Antitrust: The EC opened an investigation in June 2015 into whether the company used its dominant position in the region's e-books market to make it harder for rivals to offer lower prices. The Commission was evaluating the legality of clauses that Amazon had used with European publishers, which required them to inform the e-commerce giant of more favourable terms for books that were offered to other digital retailers.

Taxation: The EU's antitrust office released a preliminary finding in January 2015 that a tax deal between Amazon and Luxembourg appeared to amount to unfair state aid that might have enabled the company to underpay its taxes. In May 2015, Amazon revealed that it was changing its tax structure. Previously, it had recorded nearly all of its sales in Luxembourg, but the company said it would start paying taxes in several European countries.

Microsoft

Right to be Forgotten: Microsoft, which operates the Bing search service, planned to follow the lead of Google, which responded to the high court ruling that May by creating an online form to let individuals request removal of links to material they say violates their online privacy.

Antitrust: In a long-running antitrust case involving Microsoft's software and interoperability, the company paid almost €2bn in European fines over a decade, including a penalty in 2013 for failing to adhere to an earlier settlement.

Facebook

Data Privacy: French and Spanish privacy officials opened investigations into the social network's privacy policies. The regulators asked whether Facebook received sufficient approval from users when the company gained access to their online data.

Antitrust: The German competition authority opened an investigation whether Facebook misused its dominant position to collect people's digital information.

Taxation: After Britain made changes in its tax laws that were aimed at forcing companies to pay more tax on revenue generated there, Facebook announced that it would soon alter how it paid tax in Britain. The changes will potentially lead to the company's paying millions of dollars more on its operations in the country.

Qualcomm

Antitrust: The EC filed antitrust charges against Qualcomm in December 2015, saying that it had abused its dominant market position in Europe by offering financial incentives to smartphone and tablet manufacturers that agreed to buy equipment solely from Qualcomm.

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* *Senior Staff Editor, The New York Times. Abridged from an article that appeared in* The New York Times *on August 30, 2016*

Greenlight to Vodafone-Liberty

The European Commission's (EC) Directorate-General for Competition cleared a €3.5bn joint venture between telecommunications companies Vodafone and Liberty Global in Phase I, after the former promised to sell its Dutch fixed-line business.

The EC expressed concern that the deal would reverse improved competition in the Dutch telecoms market, following Vodafone's growth in the country. If the merger did not take place, Vodafone could have become a strong competitor to other providers of fixed-line and fixed-mobile multiple play services to consumers.

The 50-50 joint venture will combine Liberty Global's Ziggo cable business and Vodafone's mobile operations. *(WSJ, 03.08.16)*

Sanofi-Boehringer Agree on Swap

The New Zealand Commerce Commission has given clearance to Boehringer Ingelheim International GmbH to acquire 100 percent of the shares and assets in Merial, the animal health business of Sanofi S.A.

Boehringer Ingelheim and Sanofi are global manufacturers of pharmaceutical and vitamin products for animals. In New Zealand, the product range of each of the parties includes animal antibiotics, anaesthetics, anti-inflammatories and mineral supplements.

The Commission is satisfied that the acquisition will not have, or would not be likely to have, the effect of substantially lessening of competition in a market in New Zealand.

(www.scoop.co.nz, 14.09.16)

Nirma to Control Lafarge India

Nirma Ltd has agreed to buy Lafarge India's cement assets from LafargeHolcim at an enterprise value of US$1.4bn (around ₹9,400 crore), in what could be the largest deal financed by bonds in India.

The company, best known for its success in the detergent business in the 1970s and 1980s — it was a formidable competitor to Hindustan Unilever Ltd — plans to raise about ₹4,000 crore from the domestic corporate bond market to part-finance its purchase, said three bankers familiar with the matter.

Another ₹4,000 crore would be raised through loans. None of the bankers wanted to be identified.

(Mint, 15.07.16)

Nexstar-Media General to Merge

Nexstar Broadcast Group has won US antitrust approval to buy Media General Corp on condition that it sell seven television stations. The US$4.6bn deal had been announced in January 2016 and is also being reviewed by the US Federal Communications Commission.

The US Justice Department said that the sale of seven stations in six different markets was needed to prevent a rise in the prices of television advertising and an increase in fees charged to online distributors to broadcast TV shows.

The stations to be sold are: two in Lafayette, La.; and one each in Green Bay, Wis.; Roanoke-Lynchburg, Va.; Terre Haute and Fort Wayne, Ind.; and Quad Cities at the border of Iowa and Illinois. *(Reuters, 02.09.16)*

Marriott-Starwood Gets Nod

China's antitrust regulator approved Marriott International Inc's deal to buy Starwood Hotels & Resorts Worldwide Inc, paving the way for the combined company to become the world's largest hotel group.

The two hoteliers announced their merger transaction has received approval from the Chinese MOFCOM. It was the only review pending after the companies secured pre-merger approvals from more than 40 countries including the US and Canada as well as the EU.

The combined company will have a value of US$36bn and 1.1 million hotel rooms. Marriott, a leading lodging company based in Bethesda, Maryland, has more than 4,500 properties in 88 countries and regions.

(CD, 22.09.16)

Forming Energy Infrastructure

Enbridge of Canada and Spectra Energy of the US have agreed a deal to create the largest oil and gas pipeline group in North America, with an enterprise value of US$127bn, in the latest of a wave of deals sweeping through the industry.

The deal comes as the slowdown in the North American oil and gas industry caused by the slump in prices has raised concerns about the growth prospects of pipeline operators.

Enbridge operates about 33,000 miles of oil and gas pipelines and 79 liquids terminals in Canada and the US. Spectra specialises in gas, with about 88,000 miles of pipelines and storage capacity of 300bn cubic feet.

(FT, 06.09.16)

RCom-Aircel Creates 3rd Biggest Operator

In a move that could intensify competition in the telecom sector, Reliance Communications (RCom) will merge its wireless business with Aircel to create the country's third-largest mobile operator by subscriber base.

The creation of the new entity will first involve RCom demerging its existing cellular business, which has around 100 million subscribers. Other businesses, including tower assets and fixed-line enterprise units will continue to remain with RCom. The wireless unit will then be merged with Aircel.

The merged entity will, however, carry a debt of nearly ₹28,000 crore — RCom and Aircel will each contribute half that amount into the debt pool. *(BL, 14.09.16)*

Bayer-Monsanto Union Takes off

Monsanto Co. agreed to sell itself to Bayer AG after months of haggling, in a US$57bn deal that would create an agricultural powerhouse and end the independence of one of the most successful and controversial companies in the US.

If regulators approve the deal, the German pharmaceutical and chemical conglomerate would inherit Monsanto's market-leading position in seeds and crop genes. That would tilt Bayer heavily toward agriculture in a long-range bet on high-tech crops to sustain a growing global population.

The Bayer-Monsanto union is the latest in a wave of tie-ups that have reordered the US$100bn global market in crop seeds and pesticides in the past 10 months. *(WSJ, 14.09.16)*

Komatsu Signals Mining Optimism

Komatsu Ltd., the second-biggest mining and construction equipment maker, agreed to buy Joy Global Inc. for US$2.89bn, signaling the Japanese company is optimistic that demand for shovels and drills will rebound after years of declining commodity prices.

Joy is the largest independent maker of underground-mining equipment and has long been viewed as a potential target for Komatsu, which manufactures dump trucks and large excavators for companies such as Rio Tinto Group.

Komatsu looked at Joy as recently as 2012 but rejected a deal after concluding there were few cost savings. *(Bloomberg, 21.07.16)*

ChemChina to Swallow Syngenta

China National Chemical Corp. has secured commitments from lenders on a U$12.7bn loan for its purchase of Swiss pesticides producer Syngenta AG

The Beijing-based company, known as ChemChina, attracted 17 banks for the financing. The facility comprises a US$12.5bn term loan and a US$200mn revolving credit.

ChemChina agreed to buy Syngenta for US$43bn earlier in 2016 in a deal that would transform it into the world's largest supplier of pesticides and agrochemicals. The fundraising would put the state-owned firm a step closer to completing the country's biggest-ever acquisition outside its borders.

(Bloomberg, 06.09.16)

Megabrew' Deal Clears Hurdle

China's MOFCOM announced its decision to approve Anheuser-Busch InBev's acquisition of SABMiller, subject to selling SABMiller's stake in a local beer maker to the company that currently owns the majority of shares.

AB InBev welcomed the clearance in China, which it said was the final pre-condition to the merger. The company said it still aims to close the deal in 2016.

"To achieve the Ministry of Commerce's conditional approval and consistent with AB InBev's approach to proactively addressing potential regulatory concerns, AB InBev agreed to sell SABMiller's 49 percent stake in China Resources Snow Breweries to China Resources Beer, which currently owns 51 percent of CR Snow," AB InBev stated. *(Reuters, 29.07.16)*

Pfizer to Acquire Cancer Drug

Pfizer Inc. had agreed to buy biotech Medivation Inc. for about US$14bn, in a move that adds one of the crown jewels of the multibillion-dollar market for cancer drugs to Pfizer's portfolio.

Pfizer said the deal would add 5 cents to earnings in the first full year after closing and is not expected to affect its 2016 financial guidance. Pfizer said it plans to finance the transaction with its cash holdings.

If the acquisition is not completed, Medivation could pay Pfizer a US$510mn termination fee, according to a regulatory filing. *(WSJ, 22.08.16)*

Italy Mobile to Combine

The EC has cleared the €20bn merger of Three and Wind in Italy ending a run of failed mergers in the European telecoms sector.

3 Italia, owned by CK Hutchison, and Wind Telecomunicazioni, which is controlled by VimpelCom, agreed to merge in August 2015 to create Italy's largest mobile phone company with a combined 31 million users, writes Nic Fildes.

The regulatory environment soured no longer after the two companies struck the deal, however, when the EC blocked the £10.5bn takeover of O2 by Three in the UK.

The deal is the second of three tie-ups between companies that sell seeds and chemicals to farmers across the world. *(Bloomberg, 26.09.16)*

Praxair-Linde End Merger Talks

Praxair of the US and Germany's Linde have abandoned talks about a US$60bn merger after dissent among the leaders of the latter company put an end to efforts to create the world's largest supplier of industrial gases.

Praxair and Linde which both sell gas products to a variety of industries ranging from healthcare to water treatment, were seeking €1bn of cost savings and other synergies through a merger.

The transaction would have been structured as a merger of equals, with the combined company's operational HQ in the US and its tax domicile in Europe. *(FT, 12.09.16)*

Renminbi's Reverse could Reshape Global M&A

Tom Mitchell*

www.d2lyltutevw8th.cloudfront.net

When John Henry bought Liverpool Football Club in 2010, China's currency was trading at Rmb6.7 to the dollar and heading higher. It would eventually peak in early 2014 at Rmb6 to the greenback.

It is doubtful that Henry, who made his fortune as a commodities trader and is best known for purchasing the Boston Red Sox baseball team in 2002, gave much thought to how many redbacks it took to buy a greenback. But if he does end up selling Liverpool FC for a pretty penny to a consortium led by a Chinese investment group, it will be in part because of what has happened to the renminbi over the past two years.

On Monday, China's central bank set the renminbi's dollar "reference rate", around which it is allowed to move plus or minus two percent in daily trading, at 6.6652 - almost 11 percent below its 2014 peak and back where it was when Mr Henry diversified from baseball into English football.

Expectations of renminbi appreciation have been replaced by depreciation, especially after the People's Bank of China surprised global markets with a "one-off" devaluation last summer and the US Federal Reserve resumed raising interest rates after a decade-long hiatus.

While Liverpool's prospective new owner, China Everbright Group, and other Chinese investors could once reap profits by borrowing US dollars to purchase renminbi assets, the "carry trade" now works better the other way, giving further impetus to the torrent of money pouring out of the world's second-largest economy.

Chinese investors spent a record US$100bn ($A131.6bn) on overseas acquisitions in 2015 - and then exceeded that in the first quarter of this year alone, helped along by ChemChina's US$44bn purchase of Syngenta.

According to PwC, China Inc's outbound mergers and acquisitions reached US$134bn over the first six months of 2016, compared with just US$30bn in the same period last year. And there is a lot more money where that US$134bn came from.

David Brown, a PwC partner who advises Chinese buyers on overseas purchases, recalls a recent meeting with executives from one of the country's top 10 insurers. They said that regulatory changes would allow them to allocate more money to private equity investments.

"How much more?" Brown asked.

"About Rmb90bn more," he was told. The insurance company had assembled a small team of young executives to spend the largesse but were struggling to do so.

"It's really a great wall of money looking for somewhere to go," says Brown, who describes the surge as a "quantum jump" that will fundamentally alter the global mergers & acquisitions industry.

The tens of billions of M&A dollars flowing out of China every month has raised regulatory concerns at home and overseas.

Michael Buckley, an M&A banker at Citic Securities in Beijing, says that transaction approvals from China's foreign exchange regulator used to be routine. Now it can take one or two months for the necessary paperwork to clear - an eternity in the investment banking world.

As a result, sellers like to have Chinese buyers in the mix to force other bidders higher, but can be reluctant to close deals with them. "Many Chinese companies are used as stalking horses in bid processes," Buckley says. "I have been a victim of this and it's quite painful."

Overseas, the Committee on Foreign Investment in the US (Cfius) and the new UK government have on occasion vetoed or delayed Chinese investments, although the vast majority of Chinese deals encounter no such opposition. Cfius approved the ChemChina-Syngenta transaction.

Investment bankers joke that if Cfius could stomach the sale of a leading US pork producer to a Chinese buyer — referring to Shuanghui's US$7.1bn purchase of Virginia's Smithfield Foods in 2013 — it will approve just about anything. Americans do prize their bacon and pork chops.

If China Inc really wants to put American tolerance for its investment dollars to the test, there is the possibility of an intriguing follow-on deal. Should Henry agree to sell Liverpool, China Everbright could then make a double-play offer for the Boston Red Sox.

* *Financial Times Beijing Bureau Chief. The article appeared in the* Financial Times *on August 24, 2016*

Is FDI Really a Gift Horse?

Biswajit Dhar* and S. Chalapati Rao**

In less than a year, the Government of India has announced yet another set of '*radical changes*' in foreign direct investment (FDI) policies. The earlier announcement in November 2015 introduced changes in 15 major sectors, and the latest announcement covers nine sectors.

However, the thrust of the two sets of policy changes remains the same, namely to ease entry of foreign investors in India. In 2015's announcement stated that the policy changes were intended to 'ease, rationalise and simplify the process of foreign investments in the country and to put more and more FDI proposals on automatic route instead of government route where time and energy of the investors is wasted', while the recent amendments 'seek to further simplify the regulations governing FDI in the country and make India an attractive destination for foreign investors'.

A more cogent explanation is, however, provided in the consolidated FDI policy that was unveiled just a fortnight earlier and which states: "It is the intent and objective of the Government of India to attract and promote FDI in order to supplement domestic capital, technology and skills, for accelerated economic growth.

Data for India do not allow us to make the distinction between long-term and portfolio investments

FDI in theory and practice

Now that India has become "the most open economy in the world for FDI", can the country expect to benefit from this form of investment?

Economists have always treated FDI as that component of foreign investment in an enterprise that confers "control" to the foreign investor over the enterprise. As regards the threshold for identifying whether an enterprise was foreign-controlled or otherwise, most countries adopted their own definitions. For instance, in the past, the Reserve Bank of India (RBI) followed the practice of identifying 'foreign-controlled rupee companies', which were companies having foreign shareholding of 25 percent or more of total equity or where 40 percent share is held by investors from a single country.

In recent decades, the Organisation for Economic Cooperation and Development (OECD) and International Monetary Fund (IMF) have pushed for a globally acceptable definition of FDI, according to which 10 percent or more of foreign equity constitutes the 'controlling share' in an enterprise. But not all countries have adopted the OECD-IMF definition.

For instance, in India all investments other than those through the stock market are reported as FDI. India, therefore, does not make any distinction between the 'controlling share' and the others as far as FDI is concerned. This implies that data on FDI for India do not allow us to make the distinction between long-term investments and portfolio investments.

Inflows and outflows

According to official statistics, India has seen a steep increase in FDI inflows totalling over US$55bn in 2015-16. However, in the world of high finance, FDI is not a gift horse — there are at least two sets of costs that host countries have to bear. The first is the direct cost stemming from outflows on account of operation of foreign companies.

The RBI has reported that between 2009-10 and 2014-15, outflows due to repatriations, dividends and payments for technology have together constituted a major foreign exchange drain. The RBI also tells us that during the same period, subsidiaries of foreign companies operating in India ran negative trade balances in almost all manufacturing sub-sectors.

Apart from the direct costs, foreign investors are able to extract indirect benefits from their host economies by using bilateral investment promotion and protection agreements (BIPA). In recent years, India has faced a number of disputes with foreign investors, which arose because the latter was able to invoke the investor-state dispute settlement (ISDS) mechanism included in the BIPAs that allows disputes to be taken to private international arbitration panels.

The government has amended the model BIPA ostensibly to blunt the ISDS mechanism. The new model BIPA includes a strong stricture to foreign investors to make timely payment of their tax liabilities in accordance with India's laws. It will be well worth watching as to how this instrument gels with the investor-friendly regime that has now been put in place.

* *Professor, Jawaharlal Nehru University*
** *Professor, Institute for Studies in Industrial Development, New Delhi.* *Abridged from an article appeared in* The Hindu *on July 01, 2016*

A Clubby Oligopoly that is Overdue for Reform

Brooke Masters*

A Florida case highlights accountancy firms' working practices

15 years after the collapse of Enron, the big names in the corporate auditing sector are once again under the microscope. A Florida jury has been hearing testimony in a US$5.5bn lawsuit against PwC, the largest civil claim against a Big Four accounting firm to reach trial.

At issue is whether PwC should have to compensate Taylor, Bean & Whitaker, a failed US mortgage lender, for failing to detect and stop a multibillion-dollar conspiracy between its executives and those at Colonial Bank, which also collapsed in 2009.

The case, while far less well known than Enron, could have far-reaching effects on a clubby oligopoly that has long dominated auditing despite repeated waves of accounting scandals. Right now, the Big Four firms audit 98 per cent of FTSE 350 companies and 95 per cent of the Fortune 500.

The TBW bankruptcy trustee argues that PwC should be forced to pay up because it certified the existence of more than US$1bn of Colonial Bank assets that did not exist, had been sold or were worthless. Had the firm fulfilled its public duty with a proper audit, the conspiracy between the Colonial and TBW executives would have been uncovered, they say.

Needless to say, PwC sees it differently. Its lawyers point out that the firm worked for Colonial not TBW. They add that it is a stretch for the mortgage lender to claim it relied on PwC's audits when its top executives, including Lee Farkas, the former chairman and founder, were convicted and imprisoned for helping to fake the documents at issue. Both claims are reasonable.

PwC's third argument is much more disappointing. Beth Tanis, its lead lawyer, insisted to the jury that the firm 'did its job'. She pointed to accounting standards that say that all the auditor has to do is provide "reasonable assurance" that the company's financial statements are true and free of fraud.

Indeed, the Big Four do not have a glorious record when it comes to detecting and deterring bad behaviour. Just in 2015, PwC paid US$65m to investors in MF Global, the failed brokerage, who claimed that the firm had botched its audits before the collapse.

Its peers, if anything, have done even worse. Arthur Andersen disintegrated after it was convicted of obstruction of justice for shredding documents related to its audits of Enron. EY meanwhile has paid settlements over the collapsed bank Lehman Brothers and its audits of a fund that sent money to the Bernard Madoff Ponzi scheme. US regulators charged KPMG and its partners with civil fraud for failing to catch accounting shenanigans at Xerox; Deloitte had to settle claims related to the looting of telecoms group Adelphia.

Nor is this a purely American problem. PwC is being investigated by the UK accounting watchdog over its audits of failed retailer BHS and supermarket group Tesco, which overstated its profits by £263m. KPMG is being probed over its work for scandal-hit insurance claims processor Quindell. The list goes on.

Part of the problem stems from auditors getting too close to their customers. Many auditors work for years on the same accounts, often spending long periods of time on site at the client's offices. There are also financial pressures to make nice. In some cases, audit clients are also big purchasers of more lucrative services, such as consulting.

Critics say that the real problem is that the Big Four have grown fat and unaccountable. In the PwC case, the plaintiffs allege that the firm used an intern to vet billions of dollars of transactions and she was supervised by someone who said that such duties were 'above his pay grade'.

The industry's supporters counter that investors expect too much. Quarterly audits are not forensic investigations, they say. Those take longer and cost much more because they involve email searches, staff interviews and detective work.

Maybe. But it still seems as if it is high time for a new competitor to step up and offer more than 'reasonable assurance' that companies are not being ripped off.

* *Companies Editor, Financial Times. Abridged from an article that appeared in the* Financial Times*, on August 19, 2016*

Civil Aviation Authority Regulation

The **Argentinean** Civil Aviation Authority (ANAC) issued a regulation modifying and rendering invalid previous dispositions, particularly Dispositions 73/97 and 1/01, which had been issued by the previous undersecretary of aero-commercial transportation.

Resolution 445/06 states that non-compliance with ANAC-approved schedules for scheduled carriers will be subject to fines under the legal framework of Decree 326/82 only if the carrier delays a flight without providing the required ancillary services to passengers under Resolution 1532/98 (issued by the previous Ministry of Economy, Works and Public Services, modified by Resolution 203/13).

According to Article 12 of Resolution 1532/98, a flight delay caused by a scheduled carrier may be due to:

- operational, technical, weather or business conditions;
- carrier cancellations causing delays of more than four hours;
- baggage delivery delays of more than four hours;
- denial of passenger boarding because the carrier cannot provide a previously confirmed seat;
- failure to stop at the passenger's stopover or destination; and
- other reasons causing the passenger to miss a connecting flight for which he or she held a confirmed reservation.

(ILO, 27.07.16)

Airports to be Concessioned

The **Nigerian** Minister of State for Aviation, Hadi Sirika, said there was no going back on the Federal Government's plan to concession the four major airports in the country.

The Federal Government had indicated interest to concession the Lagos, Kano, Abuja and Port Harcourt international airports, to improve their safety and capacity.

Sirika noted that the protest by some aviation unions against the government's plan was due to the misconception that the airports were going to be privatised and sold to private individuals.

The 15 million annual passengers which is the country's current capacity can be improved upon if private investors are allowed to participate in the sector. *(PT, 07.09.16)*

New Legislation for Retail Funds

Investor rights groups and asset managers have failed in their bid to overhaul controversial **European** rules they have warned will be 'vastly misleading' for retail investors after lawmakers in Brussels signed off the legislation.

Politicians, fund managers and consumer groups spent lobbying for amendments to the rules, which were aimed at making documents for investors easier to understand and more reliable.

The rules, which form part of a wider piece of regulation known as Priips, include changes to how asset managers calculate and display fund charges and investment performance.

(FT, 03.07.16)

Regulating Passenger Transport

Following the introduction of Uber in **Portugal**, there has been a lively debate on the regulation of occasional passenger transport services (with driver) and the requirements to which this type of service should be subject.

Under the existing regulatory framework, it is unclear whether companies such as Uber are entitled to provide their services in Portugal. This issue is being discussed in court, further to an interlocutory injunction brought by Antral, the professional taxi association.

The government has also established a working group to propose new legislative measures for the sector. It is in this context that the Competition Authority has published a report on the regulation of passenger transport services in which it sets out regulatory rules; analyses the constraints of such rules on competition in the market; and issues recommendations.

(ILO, 18.08.16)

Telco Rebranding its Services

Olleh Rwanda Networks, a wholesome 4G network owned by the Rwandan government and Korea Telecom has rebranded as it seeks to extend its footprints from the country to the rest of Africa.

The company launched services in **Rwanda** in November 2014. With a mission to cover 95 percent of the total population by 2017, 4G LTE services reached 26 percent of the Rwanda population in the first year of deployment.

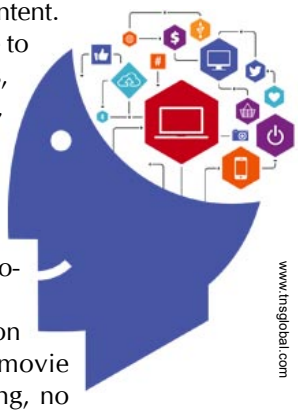
Currently, 4G LTE has been deployed in 17 districts in Rwanda. In 2016, the plan is to double the coverage with over 100 additional base stations deployed across different towns of Rwanda.

Korea Telecom Rwanda Networks (KTRN) has a 25-year wholesale monopoly, covering wireless and its fibre network, of which more than 3,000km has been built.

(www.samenacouncil.org, 27.07.16)

EU Rules to Unify Digital Markets

Google may have to pay publishers for their content. Facebook might, too. WhatsApp could have to follow tougher telecom standards. A new set of rules, expected to be unveiled by **European Union** officials, is likely to put new pressure on American tech companies.


www.trisglobal.com

In a decade of sluggish growth, local lawmakers assert that these proposed changes will bring together the region's national economies into a so-called single digital market.

The aim is to give the bloc's roughly 500 million consumers unfettered access to services like movie streaming, online shopping and cloud computing, no matter where they live. At the same time, the proposals would force some of the world's largest tech companies to comply with stringent competition, privacy and copyright rules. *(NYT, 13.09.16)*

Why Yahoo failed

Shira Ovide*

Yahoo pulled down the curtain on a six-month sale process with the finale we all expected, with Verizon emerging from the scrum clutching a broken toy it had badly wanted. To steal an adjective from the companies' deal announcement, this is a 'poetic' combination of Yahoo and Verizon's 2015 acquisition AOL. Both are web companies popular in the 1990s that have held up as well as Hootie & the Blowfish songs from that era.

The many missteps in the last four years under Yahoo CEO Marissa Mayer and during the prior decade of messes could fill a thousand business school case studies. So a postmortem on what the technology industry can learn from Yahoo.

It is crucial to manage down expectations

About a year after Meg Whitman took the helm at another disastrous tech company, Hewlett-Packard, she did something weird: The new CEO told investors that her company was a disaster and that she would need years to fix it. It was hardly a Patton-like inspirational message, and the company's shares face-planted to a 10-year low after Whitman's tough talk. But the move was genius. Whitman set herself a very low bar, reset the company's valuation and bought herself time to right the ship.

Mayer could not or would not do the same at Yahoo. Instead, she trumpeted the company's increase in web traffic, with the help of some fibs. I can understand why. Yahoo's board hired her to make Yahoo great again.

"I'm an optimist. I think all leaders are," Mayer said in 2013. She might have been better off taking advice from tech investor Marc Andreessen: "If it is me, I am setting expectations so low you cannot even see them," he said soon after Mayer was hired.

Beware the saviour CEO

Try to think of technology company that had a phoenix-like rebirth. Steve Jobs did it at Apple. IBM came back from near death and is trying another makeover. It's tough to come up with more examples because it's unimaginably hard to turn around any company, especially a tech company, once it starts to nose-dive. Mayer was hired for exactly this mission impossible of a tech renaissance, so is it any wonder the core parts of Yahoo are selling for 1/25th of the company's peak stock market value?

That does not mean a tech company should file for Chapter 11 once sales stop growing, but it does mean tech company boards might need decide more quickly when to sell a company or start milking it for cash rather than hoping to grow again.

You cannot have dessert if you do not eat your vegetables

When executives invest in projects with long-term payoff, they need to win permission from investors by reducing costs drastically. Mayer talked eloquently about trying to replace Yahoo's fading revenue from old-guard web advertising like banner ads with more en vogue ad techniques on smartphones and with automated ad buying.

She spent billions of dollars on acquisitions and struck pricey deals with partners like Mozilla to find new ways to make money.

But until recently, she didn't cut to compensate for the risky bets. In 2011, Yahoo had US$4.1bn in main operating expenses plus cost of revenue and US$4.38bn in sales excluding commissions paid to partners. Before the start of investor-forced cost-cutting, Yahoo's expenses in 2015 were 22 per cent higher at more than US$5bn even though revenue had shrunk to US$4.09bn.

Don't forget about the people paying the bills

Yahoo, Google parent company Alphabet, Facebook and Twitter are new-fangled tech companies that make nearly all their money the same way William Randolph Hearst did, by selling ads. And the successful ad-dependent tech companies know who pays the bills.

One of the many reasons Facebook has been so successful is it has two incredibly powerful executives, Sheryl Sandberg and Carolyn Everson, navigating the advertising side of the shop.

Twitter would have been an even a bigger mess if it did not have capable advertising leadership that kept the finances humming, until recently.

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* *Bloomberg Gadfly Columnist covering technology. The article appeared in the* Bloomberg *on July 26, 2016*

Approval for Credit Bureau

Brazil's antitrust authority, Cade, has preliminarily recommended approval of a credit research bureau sponsored by Brazil's largest banks that would gather information on the bill-paying history of consumers and companies, with the aim of bringing down default rates and the cost of credit.

The recommendation to approve the venture, called Gestora de Inteligência de Crédito (GIC), now needs to be confirmed by Cade's tribunal. To win Cade's approval, the banks involved in the creation of GIC guaranteed 'not to discriminate against competing credit bureaus in the access of credit information'.

Cade and the banks also agreed "to avoid the exchange of certain information through the joint venture" to comply with antitrust rules.

(Reuters, 05.09.16)

Deutsche Bank to Fight US Fine

The claim against the bank far exceeds its expectations that the **US** Department of Justice (DoJ) would be looking for a figure of only up to €3bn. The claim against the bank far exceeds its expectations that the DoJ would be looking for a figure of only up to €3bn

Deutsche Bank would fight a US$14bn demand from the US DoJ to settle claims it missold mortgage-backed securities. The shock bill will raises questions about the future of Germany's largest lender.

The claim against Deutsche far exceeds the bank's expectations that the DoJ would be looking for a figure of only up to €3bn. *(BL, 16.09.16)*

Law to Cap Interest Rates Welcome

Kenyan President Uhuru Kenyatta signed the Banking Act Amendment Bill into law, introducing caps on bank lending rates. This makes Kenya one of about 76 countries worldwide that have some form of a ceiling or caps on interest rates.

In doing so, the President noted that, twice before, efforts to regulate lending rates through law had failed after the banks promised to bring down rates, only for them to renege on the pledge.

It is amazing how the banks have continued to run an unsustainable model by disregarding public opinion and continuing predatory lending practices that prey on the very same population they depend upon.

(TS, 25.08.16)

Guidelines for 'On-Tap' Bank Licence

The Reserve Bank of **India** (RBI) released the much-awaited guidelines for 'on tap' universal banking licence, but excluded large industrial houses as eligible entities from the purview, though they can invest in banks up to 10 percent.

As per the "Guidelines for 'on tap' Licensing of Universal Banks in the Private Sector", the initial minimum paid-up voting equity capital for a bank should be ₹500 crore and thereafter, the bank should have a minimum net worth of ₹500 crore at all times.

Individuals/professionals who are 'residents' and have 10 years of experience in banking and finance at a senior level and existing non-banking financial companies (NBFCs) that are 'controlled by residents' and have a successful track record for at least 10 years can apply for the licence.

(ET, 01.08.16)

Financial Sector Review 2019

The **Canadian** Federal Department of Finance launched a review of the legislation governing banks, insurers and trust companies under federal jurisdiction by issuing an initial consultation paper.

The initial paper sets out some key facts relating to the sector and comments on trends that are affecting and expected to continue to affect the sector. The paper concludes by inviting comment on certain high-level policy questions.

As most financial institutions are, at least in part, governed by federal legislation, the 2019 review could have wide-ranging implications for the sector. Comments on the questions set out in the paper are due by November 15, 2016. *(ILO, 30.09.16)*

Plan for Overdraft Fees Cap

The **UK**'s antitrust regulator said banks must set a cap on fees for customers who spend more than they have in their checking account following an almost two-year investigation into the retail banking industry.

The UK Competition and Markets Authority (CMA) recommended banks set their own limits on overdraft charges and a grace period for customers to avoid them, rather than have the fees 'centrally regulated', the watchdog said. In 2014, banks received £1.2bn in revenue from the fees.

The CMA also wanted banks to implement "Open Banking" by early 2018 – a package of measures that enables customers to manager accounts with multiple banks through one mobile app. *(IT, 09.08.16)*

Too Big to Fail, But Small Enough to Jail

Anjana Menon*

The Economic Times

The world's toughest prosecutor has been slighted, rather coolly. Shortly after the US Department of Justice asked Deutsche Bank to pay US$14bn in fines for mis-selling mortgage-backed securities, the bank retorted that it "has no intent to settle these potential civil claims anywhere near the number cited. The negotiations are only just beginning." This is a signal to 'the 99 percent' that nothing has changed for 'the one percent'. For regulators to be taken seriously, this kind of deal-making has to stop.

Since investigations started in the wake of the meltdown, several top banks have fought for space in the rogues' gallery — all for wilful wrongdoing. On both sides of the Atlantic, banks grew by fooling customers, regulators and governments.

As early as 2005, big banks lent money to mortgage originators knowing borrowers would falter on payments. Then they bought back these mortgages, put some lipstick on the pig, dressed it in a silk waistcoat and sold it to unsuspecting investors.

When the debt turned sour, everyone ranging from pension funds to hedge funds lost trillions of dollars. Governments across the world then used taxpayer money to shore up banks, so they wouldn't belly up for cheating ordinary folk twice over. Banks could be forgiven if that was just a one-off leap of greed. It is not quite that.

Turns out, HSBC helped drug lords, terrorists and rogue regimes launder billions by circumventing rules to block such transactions. Buccaneers at Barclays, meanwhile, manipulated the London interbank rate. Admittedly, a few dollars' worth of sushi and coffee were used as baits to enlist support to falsify a market running into trillions.

Elsewhere, it seems Deutsche staff were rigging bank rates, manipulating the prices of gold and silver, illegally trading in Russian equities to launder money, and selling rags dressed as designer mortgages. Deutsche's string of manipulations has sent some 7,000 lawsuits its way. The bank has already doled out US$12bn in fines and penalties.

Then there is Wells Fargo. The racket is bizarre, even by Wall Street standards. Wells' story doesn't even involve cocaine-snorting, bar-hopping traders. Nearly 5,300 employees, who have since been sacked, went about creating fake accounts — some two million of them — to try and meet sales targets. So, clearly, profit and greed was at the heart of the drive.

All this points to systemic corruption at the world's top banks — one that isn't going away with negotiated settlements and lack of criminal indictments.

Alayne Fleischmann, the JPMorgan Chase whistle-blower, said her then employer would discourage traceable email and turn a blind eye to wrongdoings. She has expressed dismay at the lack of criminal prosecutions.

Phil Angelides, the chair of the Financial Crisis Inquiry Commission said in a recent interview in The Intercept, "…there's a gnawing feeling among the American people that this justice system may not have worked as it should have.… It's like someone who robs a 7-11. If you can steal US$1,000 and settle for US$20, would you do it again? Probably." The Department of Justice, it would seem, has failed in applying 'equal' and 'impartial' justice to all —the spirit of its existence.

Banks have used lawyers, lobbyists, spin doctors and the shareholder money to avoid criminal charges and heftier penalties. Through opaque negotiations, they have dictated what wrongdoings they will admit to and how much they will pay.

In a very public and global scam, where taxpayer wealth has been squandered at every step, the mediations have been kept private. So, Deutsche's response, that discussions will "lead to an outcome similar to those of peer banks which have settled at materially lower amounts", is par for the course. To be sure, banks ranging from Barclays to Bank of America have collectively paid more than US$200bn in fines and settlements. The money has been forked out by shareholders though. Bank bosses walked away with multimillion dollars in pay and bonuses.

That's poor comfort for millions of people around the world who lost their jobs, savings and homes in the aftermath of the crisis. Eventually, the only way for governments to set right this wrong is to go after the one percent. They should be small enough to jail, even if they are too big to fail.

* *CEO, Content Pixies. The article appeared in* Economic Times *on September 21, 2016*

A UK Industrial Strategy Should Build on Experience

Richard Lambert

Theresa May is drawing up plans to develop an industrial strategy for the UK and to change an 'anything goes' business culture. Good. There is a lot that needs fixing. The prime minister is not the first leader to make such promises. Here are the do's and don'ts her government should consider, based on experience over the past few decades in the UK and elsewhere.

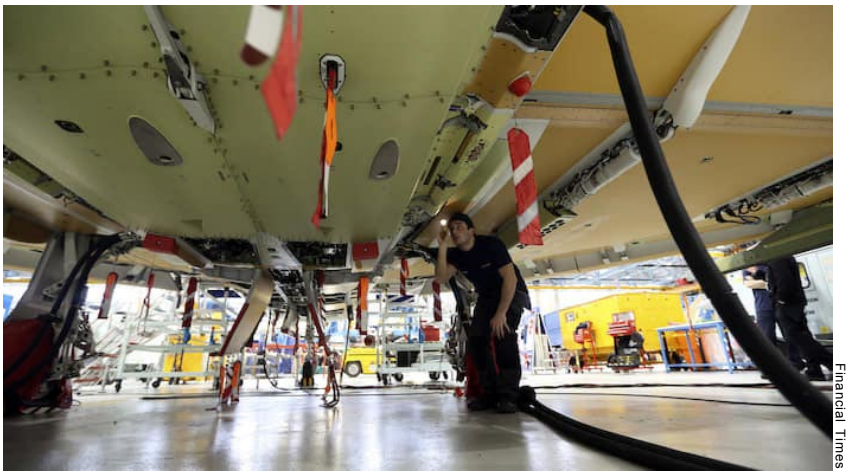
An industrial strategy is a good idea, provided that it is built around sectors where the UK has a comparative advantage and where the government is an important player, either as a provider of development finance or as a customer.

We do not need an industrial strategy for dying businesses such as steel, or for those like retail that flourish without direct government involvement. We do need one for sectors like aerospace, defence, life sciences and energy, where government is bound to play a part in success.

In the past 10 years UK governments have twice launched and abandoned industrial strategies. So Mrs May needs to persuade people that this time it is real — and not get into the business of deciding which takeovers are or are not in the public interest. Politics have trumped economics when this has happened before.

Her government should find ways of throwing grit into the machinery of takeovers, which play a much bigger role in British corporate life than in other developed economies, including the US. Companies making a substantial takeover bid should be required to set a five-year business plan with binding commitments. And Mrs May should also search for ways of sharpening competition policy, and not just when it comes to takeover bids. Look everywhere for barriers to market entry and tear them down.

There is no need to waste time developing, in the prime minister's words, "a better research and development policy that helps firms to make the right investment decisions". The UK's R&D tax credits are competitive. Mrs May should, however, set aside public money to compensate British science for the loss of European research funding, one of the downsides of Brexit, and she should rethink plans to scale down Innovate UK, the agency that has been a catalyst for business research.



Financial Times

When it comes to executive pay, Mrs May should not mess with new rules for bonuses, which always have unintended consequences, usually in the form of increases in basic pay. She should, though, give teeth to annual shareholder votes on compensation packages, ignoring the objection that making these votes binding would lead to difficulties in agreeing pay contracts. So much the better. At the same time, parliamentary select committees should be encouraged to invite chairs of compensation committees to explain themselves if they sign off ridiculous pay packages. That would help to concentrate minds.

Theresa May has a chance to build a lasting industrial blueprint for the UK

There should be no move to force boards to appoint non-executive directors they would not choose themselves. That would drive serious debates out of the boardroom and into the chief executive's office, as happens in France. Instead, toughen up existing company legislation that requires boards to pay attention to the needs of a wider group of stakeholders than those who own shares.

And it is time to find ways to exploit the considerable soft power of government. For example, bosses in the UK crave access to Downing Street for the bragging rights. Those who take absurd pay packages or who play games with the tax system should be given the political cold shoulder as ostentatiously as possible.

Capitalism thrives on animal spirits but occasionally creates monsters. The challenge for policymakers is to encourage the one while nailing the other.

– *Former Director-General of the CBI and a previous Financial Times Editor. The article appeared in the* Financial Times, *on August 09, 2016*

Uniting the Divided World Order

Feroze Varun Gandhi*


The Hindu

Reviving multilateralism will require structural changes to cope with regional powers, an empowered civil society, and multinational corporations

Multilateralism is fraying at the edges. While global problems, requiring effective global coordination, abound, multilateral cooperation has been gridlocked recently. The World Trade Organisation (WTO) was driven to irrelevance by the collapse of the Doha trade round in 2008. The last successful global trade talks were held in Uruguay, almost 23 years ago. While multilateral relevance in trade talks seems questionable, the world has forged ahead with a cluster of regional and bilateral trade agreements such as the Transatlantic Trade and Investment Partnership and the Trans-Pacific Partnership.

Even geopolitical competition is gradually eschewing multilateral institutions. China's rejection of the Permanent Court of Arbitration's decision in the South China Sea case, despite signing up to the United Nations Convention on the Law of the Sea, along with Russia's absorption of Crimea, shows changes in the global order. The march of liberal democracy and free trade, in tandem, in lockstep with global institutions, has seemingly stopped.

Towards regionalism

This shift towards greater regionalism is not new; globalisation has broken down before. The British Free Trade system, established by 1860 (post repealing Corn Laws in 1846), replaced the protectionist state of the late 18th-19th centuries with cheap imports of food and raw materials for industry. This saw Britain's agricultural and industrial sectors being subjected to intense competition while subsidies were done away with, stimulating a service economy and promoting British liberalism. With protectionism rising in Europe, free traders instead sought the imposition of "free trade" in the colonies and India.

The First World War combined with the rise of the US and Germany as manufacturing powers soon reversed this order. World trade was split into imperial trading blocs. This liberal retreat was soon characterised as the victory of fascism and communism amidst the ruins of social democracy.

Declining openness

Multilateralism's rise was the product of unique post-war factors such as American hegemony combined with a post-war consensus on the benefits of democracy. Its decline remains structural. Multilaterals have continued to remain self-servingly rigid, their memberships with associated power hierarchies inflexible. Such institutions have also increasingly become prone to conflict instead of consensus, with gaming of system through votes and agenda dilution. The rise of rival institutions have all hogged aid resources while standing as tombstones to an eschewed past. Meanwhile, developed societies have changed, embracing individualism over social democracy — the trend towards atomisation continues apace.

Something similar to pre-war liberal retreat is afoot now. The European welfare state, once a model of social constitutionalism, is fraying at the edges, unable to cope with an influx of immigrants, refugees, and rise in inequality. Transatlantic multilateral institutions have failed to manage global challenges such as global warming and financial instability.

Subsequently, faith in 'single undertakings' associated with multilateral institutions has dropped, with bilateral diversification being considered as offering better deals through regional economies, that offer broad access to deep market, while balancing free trade with social goals. Multilateralisation is increasingly perceived to be a straightjacket, in cahoots with great powers and industrial lobbies.

What history teaches

In the long view of history, multilateralism remains surprisingly rare. The Peace of Westphalia sought to end the 30 years' war in the Holy Roman Empire. The Westphalian treaties established the principle of ensuring peace through a democratic congress, while establishing a new political order in Europe based on national sovereignty.

The First World War destroyed this European Concert — its replacement was the farcical League of Nations. The post-World War II world saw the creation of a new world order, sustained by a cornucopia of multilateral and supranational institutions such as the United Nations, the International Monetary Fund and the World Bank.

The trade-off between deepening globalisation and a country's sovereignty and democracy will have to be rethought, all while managing the complex problems left over from yesteryear. Great power rivalry needs a new mechanism to manage conflict. The decline of multilateralism leaves uncertainty in its wake. The dividing world order will take decades to settle.

* *Member of Parliament. Abridged from an article that appeared in* The Hindu, *on August 18, 2016*

The Progressive Case for Championing Pro-Growth Policies

Lawrence Summers*

Issues of inequality, fairness, middle-class living standards and job creation have been central to the US presidential campaign.

Rightly so. For many years, the incomes of all groups tended to move together. Indeed, as a graduate student in the late 1970s, I was taught that it was a "stylised fact" that the shares of US total income going to profits and to wages, and to the rich and to the poor, was constant.

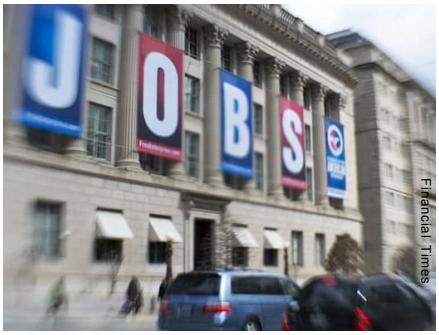
All of this has changed. It is totally appropriate that widening inequality and the associated stalling of middle-class living standards should become an urgent political issue.

What is unfortunate is that many people, in their eagerness to focus on fairness, neglect the single most important determinant of almost every aspect of economic performance: the rate of growth of total income, as reflected in the gross domestic product.

Because those who champion strategies that centre on business tax-cutting and deregulation and favour the wealthy have placed the most emphasis on growth over the past 35 years, the objective of increasing growth has been discredited in the minds of too many progressives.

The reality is that more growth means more employment. And with the college-graduate unemployment rate only 2.5 per cent, the newly employed are disproportionately less educated and disadvantaged.

It can hardly be an accident that the decades of maximum growth, the 1960s and 1990s, also saw the most rapid job growth and most rapid increase in middle-class living standards.



Tight labour markets are the best social programme, as they force employers to hire the inexperienced

Growth provides the wherewithal for increased federal revenue and so encourages the protection of vital social insurance programmes such as Social Security and Medicare. It creates headroom for new initiatives such as expansions of the Earned Income Tax Credit.

Tight labour markets are the best social programme, as they force employers to hire and mentor inexperienced people in order to be adequately staffed. Some years ago, I estimated that for each 1 per cent point increase in adult male employment, the employment of young black men rose 7 per cent. More recent research confirms economic growth has an outsized benefit for younger people and minorities.

Rising growth has other benefits, as well. It strengthens the power of the American example in the world. It obviates the need for desperation monetary policies that risk future financial stability. Greater growth also has historically operated to reduce crime, encourage environmental protection and contributes to public optimism about the country that our children will inherit.

The reality is that if American growth continues to have a 2 per cent ceiling, it is doubtful that we will achieve any of our major national objectives.

If, on the other hand, we can boost growth to 3 per cent, interest rates will normalise, middle-class wages will rise faster than inflation, debt burdens will tend to melt away and the power of the American example will be greatly enhanced.

How, then, can growth be accelerated? In an economy like that of the US, the vast majority of job creation and income growth comes from the private sector. If the next president is lucky enough to preside over the creation of 10m jobs from 2017-20, more than 8m of them will surely come from businesses hiring in response to profit opportunities.

The question is not whether business success is desirable. The question is how it can best be achieved. At a moment when capital costs are close to zero, the stock market is at a record high and businesses are earning record profit margins, we do not need to bribe businesses to make investments that now do not seem worthwhile to them.

There is no case for reducing already low corporate taxes or removing regulations unless it can be shown that these have costs in excess of benefits. What is needed is more demand for the product of business. This is the core of the case for policy approaches to raising public investment, increasing workers' purchasing power and promoting competitiveness.

That such policies also contribute to fairness is not a reason to lose sight of the central objective of promoting growth. Often in economics there are trade-offs. But not always. We can and must promote both fairness and growth.

* *Charles W Eliot University Professor at Harvard and a former US Treasury Secretary. Abridged from an article that appeared in the* Financial Times *on August 07, 2016*

Publication

Economiquity

The July-September 2016 issue of Economiquity carries an article entitled, 'The New Political Divide' states that as political theatre, America's party conventions have no parallel. Activists from right and left converge to choose their nominees and celebrate conservatism (Republicans) and progressivism (Democrats). The conventions highlighted a new political faultline: not between left and right, but between open and closed.

A special article by Pradeep S. Mehta and Smriti Bahety opines that globally, the international investment agreement (IIA) regime is undergoing a change and the developments in India are no exception.

Another special article by Lawrence Summers states that tight labour markets are the best social programme, as they force employers to hire the inexperienced.

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


ECONOMIQUITY

The New Political Divide

Global Investment Prospects Assessment 2016–2018

UNCTAD shares the Global Investment Prospects Assessment 2016–2018.

- Global foreign direct investment (FDI) flows are expected to decline by 10–15 per cent in 2016, reflecting the fragility of the global economy and the persistent weakness of aggregate demand, sluggish growth in some commodity exporting countries and a slump in multinational enterprises (MNE) profits in 2015. Over the medium term, global FDI flows are projected to resume growth in 2017 and to surpass US$1.8tn in 2018, but they will remain lower than the pre-crisis peak.
- FDI prospects remain muted in most regions, although there are some bright spots. FDI inflows to Africa are likely to return to a growth path as a result of liberalization measures and planned privatizations. Flows to developing Asia are expected to decline in 2016 by about 15 per cent, returning to 2014 levels. Latin America and the Caribbean may see their FDI slow down further in 2016 as challenging macroeconomic conditions persist. After the significant decline recorded in 2015, FDI flows to transition economies are expected to increase modestly in 2016. The recovery of FDI activity in developed economies recorded in 2015 is unlikely to be sustained in 2016.
- Diverging trends in FDI prospects of some megagroupings. UNCTAD forecasts that FDI flows to G20 members could decline by 5 to 10 per cent in 2016, falling to $830–880 billion. FDI flows to APEC members are expected to fall by 15 to 20 per cent to US$760–US$810bn, reverting to normal patterns after unusually high expansion in a number of economies in 2015. Flows to BRICS countries could return to growth, increasing by an average of 10 per cent to US$270-US$290bn.
- Overall, expectations about short term FDI flows are best described as mildly pessimistic with flows declining in both developing and developed economies.

An in-depth analysis of global, regional and country level FDI trends, is available in the World Investment Report 2016.

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

BS: Business Standard; ET: Economic Times; FE: Financial Express; FT: The Financial Times; GCR: Global Competition Review; ILO: International Law Office; KT: Korea Times; NYT: New York Times; PT: Premium Times; TA: The Australian; TH: The Hindu; WSJ: Wall Street Journal

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