REGULETTER

A Quarterly Newsletter

CUTS International

Volume 15, July-September 2014

Inside this Issue

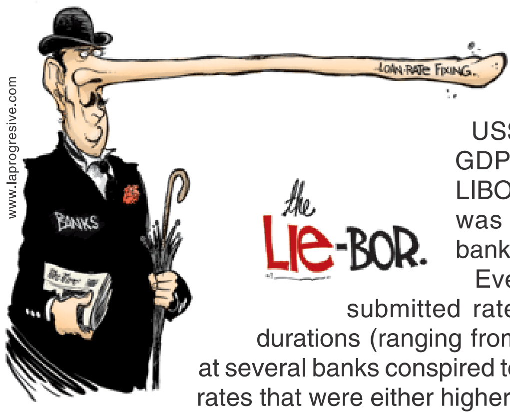
Special Articles

Regulatory Failure and LIBOR Fraud

'*With great power, comes great responsibility*', the quote from Voltaire has been repeated quite often, mostly in movies. It needs to be invoked in financial regulation as well.

In early October 2014, a senior UK banker admitted conspiring to defraud, by manipulating the LIBOR lending rate. Two persons have already pleaded guilty in US to fraud offences linked to the rigging of LIBOR. Several banks and brokerages have settled regulatory allegations of interest rate and benchmark rigging in the UK and US after global investigations, having paid hefty fines.

For the uninitiated, LIBOR, or the London inter-bank offered rate, was a global benchmark interest rate used to set a range of financial deals. It was estimated that financial transactions worth US$300tn (around 4 times to global GDP) were being set on the basis of LIBOR. In 2012, it emerged that LIBOR was being widely abused by leading banks to manipulate rates in their favour.



Every day a group of leading banks submitted rates for 10 currencies and 15 loan durations (ranging from overnight to 12 months). Traders at several banks conspired to influence the LIBOR by submitting rates that were either higher or lower than their actual estimate.

The scandal triggered a review of financial benchmark regulation worldwide. The legislation introduced in UK following the 2012 '*Wheatley Review of LIBOR*' regulates administers and submitters of benchmark. Such entities face a range of sanctions, like penalties, suspensions and censures, in case of breach of prescribed rules and principles. The International Organisation of Securities Commission and European Commission also proposed legislation for financial benchmarks in 2013. The Financial Stability Board published its recommendations in this regard in mid-2014. UK is currently undergoing another review of benchmark regulation, to strengthen market infrastructure. It proposes to create a new criminal offence for attempted manipulation of LIBOR.

The LIBOR scandal revealed serious regulatory fractures in financial regulation world-wide. The hitherto regulation of LIBOR was in breach of basic principles of regulation. Literature, and experience on regulation has taught us that regulation must minimise conflict of interest, discretion and independence must be balanced with review and accountability, and efficacy and effectiveness of regulation must be reviewed on a regular basis. This is essential to ensure that objectives are achieved, rather than waiting for a scam to happen.

In the present case, bankers were given unfettered discretion to submit the estimated rate, without any checks and balances. There were no principles to determine the estimate. Neither there was an incentive to provide a correct estimate or a disincentive in case of submission of incorrect figure. On the contrary, huge profits were on the taking on submission of incorrect rates.

Regulators were in deep slumber under the assumption that regulations were working perfectly fine. To utter shock, no ex-post impact assessment or review of regulations was carried out. Consequently, bankers are not to be blamed alone for the LIBOR scandal. It is the sub-optimal regulatory regime which is equally at fault.

CUTS Centre for Competition, Investment & Economic Regulation
CUTS C-CIER

'Root and Branch' Review

Creating a new authority to carry out market studies and competition policy work is just one of several major changes recommended for Australia's antitrust regime by the country's government.

The panel in charge of the root-and-branch review of Australia's competition law recommended changes in three areas: antitrust policy; competition institutions; and the law.

Regarding institutions, the panel proposed replacing the National Competition Council (NCC), which deals primarily with regulating access to essential infrastructure, with a new Australian Council for Competition Policy (ACCC).

(GCR, 22.09.14)

In line with the EU Regime

Hungary has enacted sweeping changes to its competition law, which includes the introduction of a settlements procedure, a reduction in the length of merger reviews and fines for gun jumping.

The new changes will bring Hungarian competition law more in line with the EU regime. A new settlement procedure is included in the recent round of amendments. If companies agree to settle their cases with Hungary's competition authority, they will receive a 10 percent reduction in any penalty levied against them. Settlement decisions will become final and binding.

The new provisions also introduce broad changes in how the authority conducts its merger reviews.

(GCR, 01.07.14)

Watchdog with Real Teeth !

The National Consumer Agency and the Competition Authority of Ireland are to merge to create "a powerful consumer watchdog with real teeth", according to Minister for Jobs, Enterprise and Innovation Richard Bruton TD.

He would be signing two orders which will set 31 October, 2014 as the day the new Competition and Consumer Protection Commission is formed as well as the commencement date for all parts of the Competition and Consumer Protection Act 2014 for which he has responsibility.

The merger will place the full range of consumer, competition and criminal powers of the two agencies, along with the strong additional powers put in place by the legislation, at the disposal of this new watchdog.

(www.businessandleadership.com, 31.07.14)

Fast-tracking Competition Bill

Legislators in Manila are fast-tracking a national competition bill that seeks to dismantle monopolies and minimise unfair competition in preparation for Southeast Asia's economic integration by the end of 2015.

The Philippine Competition Act, which is a consolidation of 12 bills promoting a national competition policy, will seek to prohibit any activities or practices that would prevent, distort, or restrict competition among businesses in the country, such as price rigging.

It also seeks to establish the Philippine Competition Commission, which will look into the actions of companies controlling a dominant position in the market.

(www.bworldonline.com, 27.08.14)

Enforcing Fair Business Practice

Uganda's cabinet is to approve the Competition Bill, paving the way for the Parliament to debate and pass a law that local and regional trade lobbies want expedited to curb uncompetitive business practices in the country.

If the Bill is passed into law, Uganda will join its East African Community peers Kenya and Tanzania, which already have competition laws, critical tool to enforcing fair business practices in an economy.

The Competition Bill proposes to create an independent body – the Uganda Competition Commission – with powers to investigate uncompetitive practices and behaviour and impose penalties where appropriate.

(TEA, 19.07.14)

Competition Law Peer Review

Namibia has passed the competition law peer review test of 193 countries. This took place at the experts meeting on competition policy and law of the United Nations Conference on Trade and Economic Development (UNCTAD) held in Geneva, Switzerland.

UNCTAD approached Namibia for a voluntary peer review as it is considered one of the fastest growing competition authorities in the world. Namibia formally consented to the proposal and the review exercise was carried out by UNCTAD in November 2013.

Mihe Gaomab II, Chief Executive Officer, Namibian Competition Commission said that undertaking a peer review is great for any young and fledgling competition authority as it needs to show that it has fulfilled the required standards of institutional development, proper administration and implementation of the competition law.

(www.allafrica.com, 21.07.14)

Antitrust Reforms Rejected

Controversial amendments to Switzerland's competition law have fallen by the wayside after the country's Parliament threw out a proposed law that has been six years in the pipeline.

The sweeping law would have introduced changes to the country's merger and behavioural regimes, as well as the institutional makeup of the Competition Commission (Comco).

It would have introduced the Significant Impediment to Effective Competition (SIEC) test in merger control, which has become the European standard for assessing deals, as well as ushering in new measures to facilitate follow-on litigation and reduce the members of Comco.

(GCR, 13.09.14)

Botswana Competition Agencies to Split up

Portia Nkani*

Established in terms of Section 9, the Commission is the governing body of the Authority responsible for the strategic direction and affairs of the Authority. Over and above these administrative functions, the Commission also has quasi-judicial functions.

It is understood that Cabinet has given the Ministry of Trade and Industry permission to table the motion for Amendment of the Competition Act before the July 2014 parliamentary session.

The Chairman of the Competition Commission, Dr Zein Kebonang is in support of the impeding split and has produced a position paper on the matter. Kebonang in his paper calls for the creation of two separate bodies- an adjudication body that meets for purposes of adjudication and a Board that meets for governance related activities of the Authority for an effective and efficient structure.

Kebonang argues that regular contact between Commission and Competition Authority officials could give raise to reasonable appreciation of bias. "The independence and impartiality of Commissioners cannot be guaranteed when it doubles up as a board and as a tribunal. Besides relational bias, the likelihood of informational bias is also far too great. Sitting as a Board, the Commission acquires prior knowledge of disputes that are to be adjudicated before it as a tribunal. Undoubtedly, prior knowledge of a dispute may operate in the minds of the Commissioners and thus deprive the parties that appear before them a proper hearing," he writes.

Unlike the Botswana Competition Act, the South African Competition Act clearly states that the Commission is independent and subjected only to the Constitution and the law. It further enjoins the Commission to be impartial and to perform its functions without fear, favour or prejudice.

The Botswana Competition Commission will in the near future be separated from the Competition Authority to address concerns over the dual roles of the Competition Commission.

The Australian Competition and Consumer Commission (ACCC) is responsible for investigating competition law breaches and initiating enforcement proceedings before the Federal Courts of Australia. Appeals relating to mergers and other regulatory disputes are heard by the Australian Competition Tribunal. The investigative and enforcement functions are however structurally separate from the adjudicative functions in relation to enforcement proceedings but combined in respect of merger control and other regulatory functions.

The Commission Chairman further cautions that though the Botswana completion regulatory frameworks is only two years old and is yet to have its decisions challenged either before the Competition Commission or the High Court, a perceived lack of institutional independence will bring into question whether the Commission will be impartial in dealing with matters emanating from the Authority.

Kebonang further indicated that, "procedural fairness demands that investigative and adjudicative functions must be kept separate. This is desirable because competition law and policy must be implemented in an objective, impartial and transparent manner. Unless the Competition Commission and the Competition Authority are afforded independence from each other, they are unlikely to objectively decide matters presented before them and the risk of bias will forever be present,'" he said, adding that public confidence and trust can only be enhanced if the adjudicative and administrative function were separated.

Botswana Institute for Development of Policy Analysis (BIDPA) Research Fellow, Professor Roman Grynberg, said separation while desirable will likely come at some expense, "In South Africa, they are independent but in other jurisdictions they are not. Separating them will probably require the employment of a few more lawyers and that is probably the down-side – it will almost certainly cost more as you will need more staff," he says.

There is currently a case before the High Court that is already calling into question the constitutionality of the competition framework. In November 2013, lawyers representing four panel beating companies accused of anticompetitive practices stopped short of calling for the dissolution of the Competition Commission saying it is too close to the Competition Authority.

* *Senior Business Reporter, Botswana Gazette newspaper. The article appeared in the* Botswana Gazette*, on July 10, 2014*

ABUSE OF DOMINANCE

Dairy Co-op Condemned for Abuse

Iceland's competition authority has ordered a dairy milk cooperative to pay a fine of more than €2mn, saying that exemptions granted to the country's dairy industry do not cover abuse of dominance cases.

The authority fined dairy cooperative Mjólkursamsalan for abusing its dominant position by using price discrimination to weaken competitors between 2008 and 2013. The company is believed to have sold unprocessed milk to companies at a price that was 17 percent higher than when selling to companies that were part of the cooperative.

The authority says the price discrimination aimed to weaken smaller milk companies while giving companies that were part of the cooperative.

(GCR, 23.09.14)

Sanctions on Coffee Franchise

Korea's Fair Trade Commission (KFTC) has fined the country's largest coffee shop franchise €1.4mn for abusing its power over its shop owners through its franchising agreements.

The KFTC found that the terms of the venture meant that Caffe Bene and KT took 50 percent of the promotional cost each. But Caffe Bene abused its franchise agreements by passing on the entire cost to the shop owners, despite 40 percent of them opposing the promotion.

The KFTC fined Caffe Bene under Korea's Franchise Business Act, which prohibits franchises from abusing their dominant power and imposing unfair trading conditions on franchisees. It is the largest fine the Commission has issued to date to a franchise.

(GCR, 07.08.14)

Colgate-Palmolive Accused

The Greek Competition Commission (GCC) has issued a statement of objections against the Colgate-Palmolive group, claiming the company simultaneously infringed articles 101 and 102 TFEU.

The GCC said that Colgate-Palmolive conspired with five supermarkets to restrict the import of its products into Greece by drawing up contracts designed to impede the parallel trade of certain detergents and cosmetics.

It is bringing a case against the company both for collusive agreements and for unilateral conduct. The implicated supermarkets are ÁÂ Vasilopoulos, Sklavenitis, Makro, Kipseli and Pente. *(GCR, 25.07.14)*

Antitrust Inquiry into Amazon

British publishers have called for a competition inquiry into Amazon's dominance, saying that the UK's retail book market 'suffers from a chronic and debilitating imbalance for authors, publishers and booksellers'.

The move is the latest broadside against Amazon – which is already facing a protracted battle against French publisher Hachette and a competition complaint from German booksellers.

Any inquiry would have to decide how to define the books market. The Publishers Association argues that the ebook market should be treated as separate to the books market, a view that would increase the likelihood of Amazon being viewed as dominant.

(FT, 19.08.14)

Parcel Delivery Firms Probed

French Competition Authority (FCA) are investigating delivery companies – Royal Mail, TNT Express and FedEx Corporation over allegations they breached antitrust laws in the parcel market, which could lead to material fines.

Royal Mail said the allegations related to its GLS France subsidiary was too early to "determine the amount or range of potential loss, however, it is possible that it could be material."

TNT said "it cannot be excluded that TNT Express will be fined for a material amount as a result of this procedure," adding that it had been cooperating with the FCA since it began its investigation in 2010.

FedEx said it was too early to calculate the potential loss, but said "it is reasonably possible that it could be material." *(WSJ, 16.07.14)*

Action against Natural Gas Supplier

The Bulgarian Competition Protection Commission fined Bulgargaz EAD – the sole public supplier of natural gas – approximately €11,952,777 for abuse of dominant position.

According to the Commission, Bulgargaz conducted different exploitative practices between 2010 and 2012. The public supplier forced clients to extend the term of their contracts without the option to negotiate the contract provisions.

Further, Bulgargaz obliged clients to pre-order the volume of natural gas. This pre-order had to be calculated based on formulae which Bulgargaz unilaterally imposed on clients. The formulae resulted in an unjustified increase in the pre-ordered amounts of gas for the next year. *(ILO, 04.09.14)*

Airtel Complaint Against M-Pesa

Leading Kenyan operator Safaricom will not have to cut fees on making M-Pesa transactions across networks after the Competition Authority of Kenya (CAK) declined to order a reduction as petitioned by rival Airtel.

The CAK was reviewing a case brought by Airtel, with the country's second operator asking the authority to investigate Safaricom for alleged abuse of its market-leading mobile money position, but the case has now been rejected.


The Economist

Airtel said Safaricom's charges to its customers when sending money to Airtel Money accounts were double the amount of that required for Safaricom-to-Safaricom transactions.

(www.humanipo.com, 25.07.14)

CARTELS

Record Fines By China

China's three anti-monopoly regulators: National Development and Reforms Commission (NDRC); State Administration for Industry and Commerce (SAIC); and the Ministry of Commerce (MOFCOM) launched a vigorous defence of their recent investigations into foreign companies, which have prompted mounting international criticism, and said they are not targeting multinational firms. At least 30 foreign firms, including US companies such as Qualcomm and Microsoft have come under scrutiny as China seeks to enforce a 2008 anti-monopoly law that some critics say is being used to unfairly target overseas businesses, raising protectionism concerns.

- China's antitrust enforcers have gone after an array of industries, including foreign automakers and tech firms. In August 2014, the NDRC fined Japanese auto parts makers a record US$201mn for manipulating prices. The Qualcomm case could yield record fines of more than US$1bn.
- Regulators also announced their first-ever punishments of foreign carmakers for price-fixing, fining a Chinese venture of Volkswagen AG and the China sales unit of Fiat's Chrysler a combined US$46mn.
- China's NDRC concluded that Mercedes-Benz violated provisions of the country's anti-monopoly law by controlling the prices of spare parts. China has been increasingly using its six-year-old antimonopoly law to put foreign businesses under greater pressure, a development that experts say will intensify as Beijing seeks new sway over the prices paid by Chinese companies and consumers.
- Separately, the SAIC defended its investigation of Microsoft, the world's biggest software company. SAIC gave Microsoft 20 days to reply to queries on the compatibility of its Windows operating system and Office software suite.
- British pharmaceuticals giant GlaxoSmithKline was fined US$488.8mn for paying out bribes in what is a record penalty for China. GSK said that it remained committed to China and promised to become a 'model for reform in China's healthcare industry'.
- The regulators said they were focused on domestic firms as well as foreign companies with the aim of protecting consumers, though critics argue that fines on Chinese companies are typically lower.
- China took action against white liquor makers Kweichow Moutai Group and Wuliangye Group, imposing more than US$70mn in fines collectively.
- Three domestic cement makers were fined US$18.6mn for price fixing. Zhejiang Insurance Industry Association and 23 provincial level insurance companies were fined more than US$17.89mn for fixing new car insurance discount and other anti-competitive practices. *(Please see related article on Page 7)*

(ToI, 12.09.14; Reuters, 09.09.14; & CD, 02.09.14)

Utility Firms Under Scrutiny

Slovenia's Competition Protection Agency (CPA) has called an end to an investigation of 16 gas companies after finding that allegations of anticompetitive behaviour were unfounded.

The authority was investigating allegations that the 16 gas suppliers and utility companies as well as an economic interest group had coordinated their conduct for determining prices for gas contracts with households.

The authority says it was concerned that the companies had exchanged sensitive commercial information as the companies' household gas prices were fluctuating in lockstep.

(GCR, 17.09.14)

'Big Six' Challenges Watchdog

Britain's largest electricity suppliers have challenged the Competition and Markets Authority (CMA) over its approach to the investigation into the industry. "Big Six" have expressed concern about the CMA exploring the break-up of their businesses, pricing strategies and arguments that they face little competition.

They claim that the CMA is failing to give sufficient weight to the effects of government intervention into the industry and are surprised that the investigation does not cover the impact of the volatile wholesale gas market.

The Big Six energy suppliers are made up of British Gas, E.ON, npower, SSE, EDF and Scottish Power. In its review, the CMA is covering contentious pricing, competition and collusion issues under a series of "harm" headings. However, some suppliers feel the CMA should take a broader view of the industry. *(TT, 24.08.14)*

Cartel Firms Get Amnesty

The competition regulator in Kenya has drafted a law that will see whistleblower companies and their directors get off with lighter punishment for volunteering information that helps to break up cartels.

The CAK says introduction of this law, which is already in the Finance Bill 2014, will attract informers that can help to bust unlawful business agreements between cartels and other secretive pacts that facilitate anticompetitive behaviour.

Whistleblowers whose evidence leads to the successful termination of such agreements and punishment (fines and jail sentences) of the participants will either get reduced fines or full pardon.

The competition regulator is hoping that introduction of the clause in Kenya's competition laws will help to speed-up adjudication of ongoing and future cases.

(BD, 25.08.14)

FINES & PENALTIES

CADE Picks on Price Lists

The Superintendent-General at Brazil's Administrative Council for Economic Defence (CADE) has recommended fines for a driving school association and a union of camera sellers along with their respective presidents.

CADE has targeted three associations, including one for photographers and camera sellers. Both associations are accused of producing and distributing price lists.

CADE says decisions from the tribunal have concluded that merely suggesting prices to follow can serve as a mechanism to standardise pricing and dilute competition.

Following a five-month investigation, CADE says the driving school association drew up a price table for services provided by driving schools and ensured yearly price increases were adopted. Between 2013 and 2014, the union suggested a 62 percent increase in prices.

(GCR, 14.08.14)

Harsher Fines on the Way!

Vietnam's Competition Authority has announced it is hiking its fines for unfair competition and introducing tougher penalties for antitrust breaches, in accordance with a new draft competition law set to enter into force later in 2014.

The authority has sought a complete overhaul of its competition law since October 2012. A final draft proposal regarding fining measures, called Decree 71, was circulated and is due to come into force.

Among many significant changes proposed, the enforcer has asked that fines are now calculated based on a percentage of an offender's turnover in the relevant market, rather than its entire turnover, for the preceding financial year. This is applicable to hardcore competition breaches including cartels, abuse of dominance and other restraints of trade.

The maximum fine will be 10 percent of turnover. The authority will calculate this percentage based on several factors, including the amount of loss caused by the violation, the period of time for which the infringement occurred and the profit gained from it.

(GCR, 04.08.14)

Endesa Fined for Overcharging

Serial competition offender Endesa has received a 10 percent fine increase for recidivism after Spain's Competition & Markets Authority (CNMC) found it once again charged too much to connect new properties to the national grid.

The CNMC imposed a €1.2mn penalty on the electricity monopolist for overcharging customers for a service that should either be free or whose price is regulated – the same behaviour for which it was sanctioned in 2012.

The anticompetitive conduct took place between 2009 and 2012 and the CNMC – which is both competition enforcer and energy regulator – opened its investigation following multiple complaints.

The conduct was particularly prevalent in the Balearic Islands and Andalusia, but also affected the whole country. *(GCR, 21.07.14)*

Telefónica Under Fire

Two Telefónica divisions have come under fire from Chile's National Economic Prosecutor (FNE) over accusations of discriminatory practices in the television and mobile markets.

In separate complaints, the FNE accuses Movistar of discriminating between on and off-network calls in its mobile service packages sold to customers and accuses television company Telefónica Chile of illegally bundling its pay-TV services with its broadband internet service.

The FNE has requested a US$50,000 fine for the television company and a US$3.5mn fine for the mobile operator.

According to the authority, Telefónica Chile marketed its television and broadband services as a joint package from September 2011 and September 2013. By choosing to purchase single services, customers faced a €200 installation fee that the authority says was aimed at discouraging customers from doing so.

(LL, 28.07.14)

Fining Guidelines Overhauled

In a bid to bring its sanctions in line with the European standard, Belgium's Competition Authority has adopted new guidelines for the calculation of fines.

The guidelines were adopted by the Authority's Executive Committee, consisting of the President, the General Prosecutor, the Chief Economist and the Chief Legal on August 26, 2014.

The new guidelines provide that infringements of a longer duration will be sanctioned more severely. Now the basic fine will be determined in the same way as DG Comp's fines, by multiplying the number of years the company participated in the infringement with a percentage of the sales related to the infringement.

(GCR, 02.09.14)

Pharma Cos. Slammed

www.media.worldbulletin.net.

Three generic drug makers will appeal a fine imposed by the European Union's (EU's) market competition watchdog which found them guilty of an alleged settlement agreement with French drug maker Les Laboratorie Servier to delay the launch of a copy of hypertension drug Perindopril.

The EU's Competition Commission imposed a total fine of €94mn on five generic companies — Lupin, Niche Generics Ltd, a European subsidiary of Unichem, and foreign generic drug makers Mylan Inc., Teva Pharmaceutical Industries Ltd and Krka Group d.d.

The EU decision was based on a patent settlement between Servier and the generic companies in 2005. Unichem and Mylan were involved in the matter after they acquired their respective subsidiaries Niche and Matrix Laboratories Ltd, which were party to the settlement, after 2005. *(BS, 10.07.14)*

Aggrieved Companies 'Should go to Court'

Andrew Moody*

Wang Xiaoye, one of China's leading experts on competition law, says foreign companies that feel wrongly accused of antitrust behavior need to take their cases to Chinese courts.

Chinese investigators have descended on Microsoft, Mercedes, Audi, BMW and Japanese auto part makers in a wave of high-profile cases over recent weeks. Most so far have been prepared to accept fines from the authorities, rather than to appeal their cases in the courts, and some have expressed fears privately that they will not get a fair hearing.

"If they feel confident that everything they have done is right and they have not violated the law then I do hope they bring their cases to the courts," she says. "I think it is very important that for the law to operate properly these cases are tested in the courts. The law is new here and we need test cases."

The 65-year-old Professor of Law at the Institute of Law at the Chinese Academy of Social Sciences in Beijing, is perhaps China's foremost expert on competition law. She was involved in the drafting process of China's antitrust laws, which came into force in 2008 and which companies are now falling foul of.

Since investigators descended on the headquarters of Mercedes in Shanghai, heralding a series of other probes, she has been at the center of a media frenzy. She has been in demand from business TV channels, the Wall Street Journal and others seeking her perspective.

Wang Xiaoye says the competition law was vital for the transformation of the Chinese economy.

She says she has been frustrated in the past by foreign companies backing away from confrontation, particularly when the Ministry of Commerce blocked Coca-Cola' Co's planned US$2.4bn takeover of juice maker China Huiyuan Juice Group Co Ltd in 2009.

Foreign business organisations in China have expressed concern about recent moves. The European Chamber of Commerce in China said in a statement that "tactics are being used to impel companies to accept punishments and remedies without full hearings".

Wang, who is clearly passionate about her subject, is keen to get across that there is nothing alien or unique about Chinese competition law, which came into force six years ago.

She says it is largely modeled on EU law and is less draconian than in other jurisdictions, particularly the US, where offenders can go to jail and often do, since it is a violation of criminal law. Like in the EU, China's anti-monopoly law is just civil.

"People have this idea the Chinese authorities are operating in a vacuum. Yet the Chinese anti-monopoly agencies are often going to Europe and the US and attending seminars and conferences. Chinese officials are always at the US Bar Association Antitrust Law spring conference."

Wang Xiaoye

She also says the recent "dawn raids" on company premises are also the same practices followed in other jurisdictions. "Competition law was vital for the transformation of the Chinese economy. When it was a planned economy, everyone and everything belonged to the government so these issues weren't relevant.

"Without laws, companies would just collude. It is far easier for a television manufacturer to agree the price of a television with a rival manufacturer than to compete with it but it would be against the interest of the consumer. It was therefore essential for China to have monopoly legislation in place."

Wang says the rise of China will be a game changer for how monopolies are policed globally. In the EU, companies are often fined up to 10 percent of their global turnover for infringements.

In China the fines imposed tend to be only on domestic turnover or on the sales of a particular product line. The National Development and Reform Commission, one of China's main anti-monopoly regulators, fined 10 Japanese car part manufacturers, including Sumitomo Electric, 6 percent of their China revenue on August 20, 2014.

She thinks the emergence of a large market like China will change how monopolies are controlled and other jurisdictions will begin to impose fines on revenue within their own areas.

* *Senior Correspondent, China Daily. Abridged from an article that appeared in the* China Daily *on September 29, 2014*

Facebook-WhatsApp Deal in Question?

EU antitrust regulators are asking Facebook's rivals and telecoms operators whether the world No. 1 online social network's proposed US$19bn bid for mobile messaging startup WhatsApp will lead to price hikes and curb innovation.

The move came after Facebook sought EU approval for the deal, the largest in its 10-year history, which will give it a strong foothold in the fast-growing mobile messaging market and pit it against telecoms companies.

The European Commission (EC) will decide by October 03, 2014 whether to clear the deal unconditionally, demand concessions or extend the preliminary review into a wider probe.

In a questionnaire sent to third parties, the EU regulator asked if the deal would have a negative, neutral or positive impact on users and customers in mobile messaging and social networks. *(ToI, 02.09.14)*

CCS Waves through Scoot/Tiger

The Competition Commission of Singapore (CCS) has approved the alliance between low-cost airlines Scoot and Tiger, saying any competition concerns are outweighed by the economic benefits of the deal.

The enforcer found that both airlines' flight networks were complementary and overlapped on certain routes, which could lead to competition issues. However, the authority identified that there would be net economic benefits from the deal, such as better scheduling on some flights and expansion of both airlines' networks.

The alliance is the second to be cleared following the CCS's market study of the aviation sector, in which it found that airline alliances have improved competition in Singapore.

(GCR, 11.08.14)

Cement Firms Outline Disposal Plans

Holcim and Lafarge have spelt out the divestments they plan to make as they attempt to win over antitrust regulators with the power to block the cement makers' proposed €40bn merger.

The pair outlined where these disposals could occur. Most are planned for Europe, where the cement market has long been plagued by overcapacity and where there is most overlap between the businesses of Holcim and Lafarge. There were no planned disposals in India, China or the US, although analysts opined that there could be competitive concerns in those markets.

Holcim and Lafarge said that Europe would account for about 20 percent of the merged group's revenues, down from 29 percent before the proposed divestments.

(FT, 07.07.14)

Roche to Pay for US Biotech Firm

Roche Holding AG has agreed to buy US biotech company InterMune Inc for US$8.3bn in cash, marking the latest multibillion-dollar deal in a consolidating pharmaceutical sector.

The acquisition, which has been recommended by the boards of both companies, is the largest by Roche since 2009, when it bought out the remaining stake it did not already own in US group Genentech for around US$47bn.

The deal is a further step by Roche to diversify away from its reliance on cancer drugs, where it is the world leader, by expanding into other disease areas, such as respiratory medicine.

(FE, 02.07.14)

AbbVie to Acquire Shire

US drug maker AbbVie clinched a US$54bn deal to buy Shire and establish its tax headquarters in the UK, days after the US Treasury condemned US companies that seek tax advantages by moving abroad.

AbbVie, which plans to keep its operational base in North Chicago, Ill, will lower its tax rate to 13 percent by 2016, from 22 percent at present, by making the move.

If the deal goes through, Shire shareholders would end up owning around 25 percent of the new combined company – above the 20 percent threshold needed to pursue an "inversion," where a company changes its tax residence through an acquisition.

(WSJ, 18.07.14)

Telefonica Wins E-Plus Approval

Telefonica won European Union approval to merge its German unit with Royal KPN's E-Plus after it pledged to bolster smaller rivals and divest spectrum.

The deal creates Germany's largest wireless carrier by customers, with 45 million connections, ahead of Deutsche Telekom AG and Vodafone Group Plc. It also removes E-Plus as a competitive force that led on price cuts and innovations over the last decade.

The acquisition is Telefonica's biggest since its US$31bn takeover of O2 Plc in 2005. The merged company will extend existing wholesale agreements until 2025. *(FT, 03.07.14)*

Steel Merger Gets Green Light

The EC has approved Swedish steel company SSAB's acquisition of Finnish rival Rautaruukki, subject to several divestitures. The two companies manufacture and globally distribute carbon steel products, which are used widely in construction and engineering.

The EC found that SSAB and Ruukki are "the clear market leaders" in their home jurisdictions and also control a significant portion of the Norwegian market between them. Consequently, SSAB must spin off five businesses in Norway, Sweden and Finland.

These include two steel service centres in Finland and Sweden, together with their stock and sales contracts, and SSAB must sell its 50 percent stake in two Norway-based joint ventures. The company has also been ordered to divest distribution subsidiary Tibnor and construction business Plannja in Finland. *(GCR, 15.07.14)*

German-US Car Parts Deal

ZF Friedrichshafen has agreed to acquire US rival TRW Automotive in a US$11.7bn deal, as the German car parts supplier looks to build global scale and secure access to technology for self-driving vehicles.

Both companies' boards have approved the transaction, which would create the world's second largest car component maker by revenue, with about US$41bn in annual sales and 138,000 employees. TRW shareholders and regulators must first approve the deal.

The deal will more than double ZF's sales in China and the US, complementing its already large presence in Europe. *(FT, 16.09.14)*

Cognizant to Snap Up TriZetto

Cognizant Technology Solutions Corp. agreed to buy TriZetto from Apax Partners for US$2.7bn in an all-cash deal to expand in healthcare industry software.

The deal will bring in additional revenue of about US$1.5bn in the next five years. Minority shareholders BlueCross BlueShield of Tennessee and Cambia Health Solutions will also sell their stakes in closely held TriZetto.

Cognizant, one of the largest providers of outsourcing services, is tackling its biggest-ever acquisition to bulk up in information technology that helps providers streamline processes, improve the cost and quality of care and cope with an industry overhaul.

(FT, 16.09.14)

Germany Approves Waste Merger

Waste company Remondis will now take over four waste facilities from a rival rather than seven, thereby satisfying Germany's Federal Cartel Office (FCO), which intended to block the original deal.

Remondis is the market leader for waste management in Germany and the deal, as initially conceived, raised unacceptable competition concerns in districts near Stuttgart and the French border.

The FCO explained that apart from Remondis' high market shares in this area, the decisive factor in the critical assessment of Remondis' original plans was that with the acquisition the company would further expand its already superior network of locations in the south-west region of the market.

(GCR, 08.09.14)

Sun Pharma/Ranbaxy in Crosshairs

The Competition Commission of India has officially announced its Phase II merger investigation, regarding the deal between Sun Pharmaceutical Industries and Ranbaxy Laboratories.

The US$4bn deal will create the world's fifth-largest specialty generic pharmaceutical company, the largest in India and the leading Indian pharmaceutical business trading in the US. It is also by some distance the largest deal the CCI has reviewed to date.

The CCI's final decision may largely depend on the objections it receives from third parties, but it is unlikely that divestments will be ordered. The deal has been approved by both the Bombay Stock Exchange and the National Stock Exchange.

(GCR, 29.08.14)

Cargill Buy ADM Chocolate Assets

Cargill, the agricultural commodities trader, has strengthened its presence in the cocoa and chocolate sector by buying the manufacturing operations from rival Archer Daniels Midland.

The US$440m deal comes a year after Cargill entered talks to purchase the whole cocoa business from ADM. However, negotiations were terminated earlier in 2014 after the companies faced numerous antitrust hurdles as well as a disagreement over price.

ADM is known in the industry for its chocolate that is sold in the wholesale market, and a potential deal, valued at about US$2bn by industry executives, would have created the biggest company in the cocoa processing industry with a market share of about 35 percent. *(FT, 03.09.14)*

Samsung Engineers Ship Merger

Samsung Group is to merge its shipbuilding and engineering units in its latest restructuring as the South Korean conglomerate prepares to transfer power to the next generation of its founding family.

Samsung Engineering will merge into Samsung Heavy Industries in an attempt to enhance their offshore business, the two companies said.

Samsung Heavy, while primarily a shipbuilding company, also produces bridge structures, constructs plants and operates wind power facilities. Samsung Engineering's business portfolio ranges from refineries and power systems to industrial facilities and clean fuel plants.

The proposed merger, via a stock swap, will take effect in December 2014. Samsung Heavy will issue about 94m new shares to Samsung Engineering shareholders at Won26,972 per share, valuing the deal at US$2.5bn.

(FT, 02.09.14)

Alitalia-Etihad to Win Clearance

Italian airline Alitalia and Etihad Airways are expected to win EU regulatory clearance for their tie-up by the end of 2014 with minor concessions. Etihad has daily flights from Abu Dhabi to Rome and Milan, while Alitalia operates five flights a week from Rome to Abu Dhabi.

In previous airline deals, EU regulators have forced carriers to surrender rights over slots, grant traffic rights and open up their frequent flyer programmes to rivals.

The Etihad deal will also need to comply with EU rules ensuring that European companies own more than 50 percent of EU airlines and have operational control. *(Reuters, 02.09.14)*

An Irresistible Urge to Merge

In 1911 the US Supreme Court ruled that the American Tobacco Company was "an attempt to monopolise" trade and ordered its break-up. Now, two of the four companies that came out of the dismantled monopoly are recombining.

On July 15, 2014 Reynolds American, the country's second-largest cigarette-maker, said it would pay US$27.4bn in cash and shares to take over Lorillard, the third-biggest. The merger shakes up the world's third-largest market by volume (behind China and Russia) and will have reverberations overseas.

A big American deal has global implications

The biggest question is whether today's trustbusters will let it happen. One might expect them to be indifferent. Why should they worry if oligopolistic tobacco giants raise prices, discouraging smokers from indulging in a habit that might kill them? In fact the Federal Trade Commission (FTC) regards nicotine addicts as an especially vulnerable group of consumers. That will make it more difficult to get the merger through, says David Balto, an antitrust lawyer who worked at the FTC.

That explains the presence of a third party to the merger. Imperial Tobacco of Britain will buy a clutch of brands from the merging couple, including Winston, a struggling "premium" cigarette that competes with Marlboro, the market leader, and Blu, the best-selling American e-cigarette.

The deal will turn Imperial, now a marginal presence in America, into a credible number three, with a market share of about 10 percent. With Lorillard, Reynolds will be a stronger challenger to Altria, Marlboro's maker. The merger is "pro-competitive", insists Murray Kessler, Lorillard's boss.

Perhaps, but Lorillard was a feisty competitor, forcing its bigger rivals to restrain price increases. Balto wonders whether Imperial will fill that role. That does not seem to be the ambition of its chief executive, Alison Cooper. Part of America's appeal is that cigarettes are relatively cheap there, she says. That leaves "plenty of opportunity for price-led profit growth".

For Reynolds and Lorillard, the merger is a way to continue delivering rising profits to shareholders in a market where consumption is dropping by three percent a year. The main prize for Reynolds is Newport, a menthol-flavoured cigarette popular with black and Hispanic smokers, and one of the few whose sales volume is growing. Reynolds's sales force will now pack America's second-biggest brand alongside Camel and Pall Mall in their sample cases. That will make it more efficient to distribute to America's innumerable tobacconists and will boost sales in the West, where Newport is relatively weak. Ambitiously, the merged company also hopes to save US$800m a year by combining some operations and selling others to Imperial.

It may be a first step towards ending America's relative isolation from the global tobacco market. Foreign companies kept their distance (and Altria spun off Philip Morris International in 2008) in part because no one knew how much American courts would make tobacco firms pay to people who got sick from using their products. Those costs now look more predictable, making it safer for firms like Imperial – which is acquiring only brands, not liability-bearing legal entities – to come back into the market.

British American Tobacco, Reynolds's biggest shareholder, will pay US$4.7bn to maintain its 42 percent share. There is speculation that it will eventually buy the whole company. In the meantime the duo will collaborate on what some see as the future of smoking: less-dangerous e-cigarettes and cigarettes that heat tobacco rather than burn it. They might also market conventional brands like Newport overseas, suggests Shane MacGuill of Euromonitor International, a market-research firm.

The main holdout against tobacco globalisation is now China, which accounts for about 40 percent of the cigarettes smoked, almost all of them sold by state-owned China Tobacco. Erik Bloomquist, an analyst at Berenberg, a bank, thinks the Chinese giant could someday acquire one of the big international firms. A deal like that would probably be the last gasp in the round of tobacco consolidation.

– *The news item appeared in* The Economist*, on July 19, 2014*

Nigeria to Get Unilever Investment

The Chief Executive Officer of Unilever Plc, Paul Polman, said that Unilever will invest US$200m in Nigeria and inaugurate one of its new facilities in the country in October 2014.

Polman said that Unilever invested 50 percent of its turnover in Nigeria in the last three years and that the company was able to do that because of its global scale and commitment to Nigeria.

He said that the company felt it was the right time to increase its presence in Nigeria since its growth potential was accelerating and that a lot of potential were actually being unlocked right now.

According to Polman, Nigeria's investment climate has continued to be very attractive and that there are not so many countries in the world that have 6.54 percent growth, not even in Africa either.

Unilever Plc is an Anglo-Dutch multinational consumer goods company. Its products include food, beverages, cleaning agents and personal care products.

(StarAfrica, 13.09.14)

Investment Climate to Improve

It is highly unlikely that Russia will be able to improve investment climate in the next 1.5-2 years, former Finance Minister Alexey Kudrin said. According to Kudrin, who chairs the Supervisory Board of the Moscow Stock Exchange, the task of improving the investment climate cannot be accomplished without reshuffles in the ruling elite of the country.

Kudrin has called for making the system of state management in Russia more harmonious and transparent, stressing that this effort could result in the economic growth in the country of up to two percent.

The former Finance Minister earlier estimated the outflow of capital investment from the Russian economy by the end of 2014 at US$110bn. Earlier, his forecast for this year looked far worse, standing at US$150-US$160bn.

(http://en.itar-tass.com, 19.09.14)

Chinese FDI Declines

China's foreign direct investment (FDI) fell in August to its lowest level in more than four years, in the latest sign of slowing growth in China and an increasingly cautious outlook from foreign business.

While foreign-investment figures tend to fluctuate, the data released by China's Ministry of Commerce is the third consecutive monthly decline and dovetails with growing weakness in industrial production, fixed-asset investment, manufacturing and the country's real estate sector.

China attracted US$7.2bn of FDI in August, down 14 percent from a year earlier and its lowest level since July 2010. That compares with US$7.81bn in July, which was down nearly 17 percent from a year earlier.

(WSJ, 16.09.14)

Kazakhstan Brings in FDI Reforms

Kazakhstan's government has introduced major tax breaks and subsidies in a push to shore up investments and further diversify the country's economy away from the extractive sector.

The initiative comes in the form of a wide reform to Kazakhstan's existing investment framework and the whole package will come into effect from January 01, 2015.

The reform exempts investors developing priority projects worth at least US$20m from the payment of corporate income tax and land tax for 10 years, and property tax for eight years. It also introduces a state subsidy that covers up to 30% of the development costs.

(www.fdiintelligence.com, 15.07.14)

Uganda Top FDI Recipient

FDI into Uganda grew by 14 percent to US$1.154bn in 2013-14 from the previous financial year, according to data from the country's central bank. The growth was supported mainly by rising investor interest in the mining and manufacturing sectors.

"The government's investment promotion efforts are beginning to pay off, resulting in new large investments," said Frank Sebbowa, the Executive Director of the Uganda Investment Authority.

Sebbowa said the mining sector has attracted new Chinese and Turkish players who are interested in the commercial production of minerals. Targeted minerals include gold, iron ore, marble, gemstones and copper.

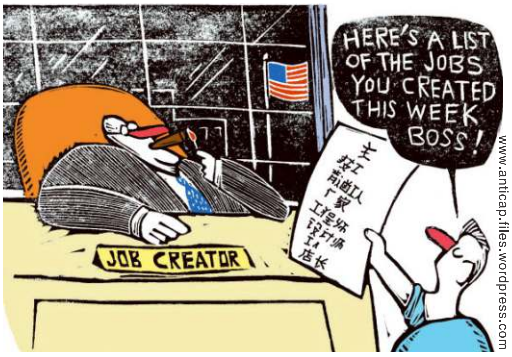
The Sukuru Phosphate Project in Tororo district in eastern Uganda stands out as the most ambitious investment in the non-oil and gas segment. The project is valued at US$620mn, and is funded by the Guangzhou Dongsong Energy Group of China.

(TEA, 23.08.14)

FDI Boosts Job Creation in US

Nearly 100,000 jobs were created through FDI by automotive original equipment manufacturer, business services, renewables and consumer products firms in the Americas in the first six months of 2014.

Petersen Dean, a North California-headquartered solar roofing solution provider, has created the most jobs in the region in 2014. In March, the company announced a plan to launch five new facilities in Texas, Colorado, North Carolina, Georgia and Washington, creating an estimated 4000 jobs by 2017.



Korean car manufacturer Kia Motors also accounted for a significant number of new jobs. In May, the company announced its plan to invest US$500m into an assembly plant in the Mexican city of Monterrey. The new operation is expected to create 3000 direct jobs.

(www.fdiintelligence.com, 08.09.14)

Africa: An Investment Opportunity

Elizabeth Littlefield*

While many African nations still face many challenges, they also offer promise to foreign investors

When President Barack Obama convenes nearly 50 African leaders in Washington next week for the US-Africa Leaders' Summit, the grand scale of the event could fill television screens for days. The real action, however, will be the behind-the-scenes, headlong rush by both Africans and Americans to capitalise on a new economic reality: Africa is on the move. And America's businesses and investors have just as many reasons to bring their business cards to the summit as Africans do.

www.ventures-africa.com

Casual political observers often focus on Africa's natural resources, mineral wealth and conflicts as a strategic concern, but Africa is a massive and rapidly growing consumer market that is more fully appreciated by strategic investors with each passing day.

Africa's collective GDP surpassed that of Brazil and Russia six years ago, and it is estimated to be US$2.6tn by 2020. That means US$1.4tn in consumer spending.

Investors see an investment climate that is more welcoming than ever before. While there were was a slight downtick in foreign direct investment projects last year, foreign investors remain bullish on Africa and with good reason: 10 of the top 12 fastest-growing nations in the world are in Africa.

As recently as 2011, Africa was ranked as eighth on the list of top 10 destinations for foreign investment; now it ranks second.

The demand for major investments requiring imports of goods and technology is immense. To support its forecast economic growth and keep pace with demand, sub-Saharan Africa will need to install 7 gigawatts of new power generation per year.

Roughly 60 percent of the world's total amount of uncultivated, arable land is in Africa. At a time when the global middle class is increasing its consumption of commodities at an unprecedented pace, agricultural production must keep pace. Here again, American producers have a technological edge.

Because Africa is installing new infrastructure, it has enormous leap-ahead potential. Over the past two decades, development experts have been astounded by the rapid growth and uptake of cellular telecommunications across Africa, which has provided millions of Africans with access that would have been unthinkable through land-lines.

Even more remarkable has been the way in which some African countries have rapidly adapted cellphones for mobile banking, health care and other uses.

Some 600 million Africans still lack access to electricity, which means they have inadequate nutrition, health care and education as well as fewer job opportunities in the formal sector. That is why President Obama has chosen to rally a whole-of-government effort in order to catalyse private sector investment into the energy sector there.

The lack of economic inclusion is also an issue that may take generations to solve. Women and girls, in many countries, face discrimination and barriers, such as being barred from educational opportunities, forced into marriages or denied legal rights necessary to own businesses. Those are among the reasons American development and aid agencies have focused so much investment in microfinance to lift people out of the informal economy.

The compound annual growth rate of foreign direct investment into sub-Saharan Africa over the past seven years has been 19.5 percent. With even modest synergies between private infrastructure, investment climate reforms and improvements in health and welfare, that pace is only likely to climb.

A generation ago, American leaders worried appropriately that Africa was in a demographic free-fall, that so many were dying from AIDS and other communicable diseases that an entire generation of progress might be lost. Unless more people could overcome the hardships and vagaries of life in Africa, a window would close.

Today, American leaders are concerned about another type of window closing. They are concerned about American companies missing the opportunity to participate in the enormous promise of every African generation to come.

---

* *President and CEO of the Overseas Private Investment Corporation (OPIC), the US Government's Development Finance Institution. Abridged from an article that appeared in http://articles.baltimoresun.com on July 31, 2014*

Community Engagement is not About Being Nice
It's Fourth Pillar of CSR

Jan Levy*

Sustainability or CSR, is made up of a range of critical business considerations. The traditional model includes the broad pillars of workplace, marketplace and environment.

Workplace speaks of topics such as equality, diversity, skills and employee engagement. Marketplace includes – but is not limited to – supply chain issues and the impact in society (positive and negative) of products and services. Environment refers to global concerns around natural assets such as carbon and water. All of these issues are to be taken seriously by business.

But there's something else. Community engagement is the fourth pillar of CSR, the poor cousin, a nice to do alongside those critical business issues that make up the first three pillars. After all, volunteering charity fundraising and working in schools are "nice" things to do.

But it's time to challenge this model in which the first three pillars are critical and the fourth is discretionary. Despite the fact that many companies have poured more resource into volunteering community engagement is still not associated enough with core business concerns. But to view it as the additional bit is wrong, and here is why.

In order to do well in the "core" sustainability areas of workplace, marketplace and environment, companies must adopt an external outlook and understand the social and environmental issues of most relevance to their business.

If it is vital that companies engage in and understand critical external (or material) issues, how best can they go about it?

If sustainability is about benefitting people in the long-term, community engagement must play a central role

The Guardian

Carry out market research? Engage an academic? Bring in expert consultants?

Put these traditional approaches aside and consider this: community engagement is a way to understand, engage in and act upon critical workplace, marketplace and environmental issues. It is not additional; it is central. It is not about being nice; it is about addressing business objectives. And it is definitely not about 'giving back'; it is about companies being part of, not apart from, society.

If sustainability is about benefiting all stakeholders in the long-term, then community engagement can play a central role, helping companies and their people to understand and embrace issues, ensuring a positive impact on all stakeholders.

Community engagement is not so much the poor cousin of CSR, but the esteemed grandfather. Treat it like this, and nobody will ever be accused of doing 'nice things'.

– *Managing Director of Three Hands. Abridged from an article that appeared in* The Guardian *on September 08, 2014*

Regulator's Settlement with PwC

New York State's financial regulator announced a settlement deal with PricewaterhouseCoopers, capping an investigation into the firm's cosy ties with one of the world's biggest banks.

The settlement stems from the consulting firm's work for Bank of Tokyo-Mitsubishi UFJ, the giant Japanese bank.

In 2007, the bank hired PricewaterhouseCoopers to conduct a review of transactions with Iran and other sanctioned countries, including some transfers routed through its New York branch.

The firm claimed its work was objective and impartial. But in the settlement, Lawsky accused the firm of "improperly altering". *(BS, 19.08.14)*

Barclays Gets Record UK Fine

Britain's financial watchdog fined Barclays bank almost £38mn for putting client assets at risk, dealing a further blow to the troubled lender.

The Financial Conduct Authority said it had fined Barclays £37.745mn – the highest ever penalty imposed by British regulators for client asset breaches, which in Barclays' case occurred between late 2007 and the start of 2012.

Barclays is said to have failed "to properly protect clients' custody assets worth £16.5bn", the FCA said in a statement.

(IO, 23.09.14)

BNP Paribas Pleads Guilty

US authorities will announce that French banking giant BNP Paribas has agreed to pay an US$8.9bn fine for allegedly violating sanctions rules.

BNP plans to slash its dividends and issue billions of euros of bonds to pay the fine. The bank is accused of breaking sanctions against Iran, Sudan and Cuba. This is alleged to have taken place between 2002 and 2009.

The reported size of the fine could almost wipe out BNP's entire 2013 pre-tax income of about US$11.2bn.

In April, BNP Paribas set aside US$1.1bn to cover the cost of US penalties, but warned that the "amount of the fines could be far in excess of the amount of the provision". *(WSJ, 30.06.14)*

Scrap Roaming Charges by 2015

Ministers from five European nations are about to ink an agreement that would lead to a roaming free zone in the region.

Under the deal, Montenegro, Serbia, Albania, Macedonia and Turkey would remove roaming charges by January 2015. Included in the zone are Kosovo and Bosnia and Herzegovina. Except for Turkey, all the six zones were once part of the Union of Soviet Socialist Republic.

The regional regulatory agencies of the five nations will meet in Macedonia to tackle how to create the Balkan cost-free roaming zone.

The zone would be a big help to nationals of the seven areas as well as other visitors since the cost of mobile roaming in the Balkans is up to six times higher than other parts of Europe. The plan would complement the strong pressure from the Europe Union Commission on telcos to normalise their rates. *(www.au.ibtimes.com, 05.09.14)*

Governing Insurance Agency

The National Council on Private Insurance (CNSP) issued Resolution 297, which regulates insurance agency in Brazil on October 25, 2013.

Before the resolution, insurance agency was not well understood by consumers, which often generated litigation and discussions with consumer protection entities.

It was common for entities acting as sponsors in group insurance policies and insurance brokers to act as agents for insurers under operational agreements, sometimes with aggressive sales targets – particularly in the retail industry.

With the rise of consumer litigation involving insurance purchased in retail stores, the Superintendence of Private Insurance initiated discussions to create a legal framework that would govern insurance agency and the retail industry's sale of insurance.

(ILO, 23.09.14)

Promoting Competition in Telecom

The new Federal Telecommunications and Broadcasting Law entered into force in Mexico. In accordance with the first transitional article of the new law, it entered into force 30 days after publication in the *Federal Official Gazette* (on July 14, 2014). The new law introduces significant changes in relation to economic competition.

The new law embodies the 2013 reform to the Mexican Constitution in relation to telecommunications and broadcasting. The objectives of the reform were to guarantee the right to information by establishing the telecommunications and broadcasting sectors as public services; and establish a legal framework to promote competition in such sectors.

(ILO, 11.09.14)

More 4G Spectrum in 2016

The Taiwanese Ministry of Transportation and Communications and the National Communications Commission (NCC) both confirmed that the NCC will release the 2600 megahertz (MHz) band, currently in use by wireless broadband access (WBA) operators, by auction for more fourth generation (4G) services.

The NCC is looking to First International Telecom, a WBA operator in the 2600 MHz band and a personal handy-phone system operator in the 1900 MHz band, which is now restructuring under court supervision in order to survive.

According to the draft plan prepared by the ministry, the spectrum auction on the 1900 MHz and 2100 MHz bands should follow in 2016 and no later than by the end of 2017.

The Ministry is in the process of a spectrum re-farming plan for the next five years, which could indicate the possible release of 2.3 gigahertz (GHz) and 3.4 GHZ bands for 5G development.

(ILO, 03.09.14)

Boosting Oil and Gas Sector

Although the sixth largest oil producing countries in Africa, Nigeria has remained poor due to under-utilisation of revenues from the sale of crude oil and has continued to rather boost the economies of other countries through exportation of petroleum products.

To revert this negative trend, the Federal Government under President Goodluck Jonathan recently inaugurated the industrial revolution plan to help drive the industrialisation sector of the country especially in the oil and gas sector to create wealth and boost the country's foreign exchange earnings.

In furtherance of these efforts to promote industrialisation in the country, Jonathan performed the ground-breaking ceremony for the construction of a US$1.5bn methanol plant in Ibeno, Akwa Ibom State, by Quantum Petrochemical Company Limited, a company established by the founder of Zenith Bank Plc, Jim Ovia.

(www.allafrica.com, 19.08.14)

New Labour Act in Action!

The Croatian Parliament passed the new Labour Act, with 80 MPs from the ruling coalition voting in favour and 34 opposition legislators against.

The new law will create a series of problems. Workers' rights have been reduced and no one cares. The government refused most of the amendments put forward by the opposition, in which they demanded more favourable conditions for workers, especially those hired through recruitment agencies, and for women on the labour market.

Some of the activists who gathered outside the Parliament building warned that the new legislation would make it easier for employers to fire pregnant women. *(www. dalje.com, 15.07.14)*

Banking Restrictions Relaxed

The Minister of Finance of Cyprus published Decree 30 under Articles 4 and 5 of the Enforcement of Restrictive Measures on Transactions in Case of Emergency Law 2013, on June 02, 2014.

The new decree further relaxes the restrictive measures imposed on banks and their customers, and is in force until September 01, 2014. The restrictions have been greatly relaxed since they were first introduced.

In particular, the restrictions have been abolished on the maximum amount of cash withdrawal per person (natural and legal); prohibition on cashing cheques; payment and/or transfer of deposits or funds between credit institutions within Cyprus; and on the opening of new bank accounts in Cyprus. *(ILO, 11.07.14)*

Banks' Rule Over Finance Unhealthy

The banking sector in Kenya has seen a significant boost in its overall existence over the last few decades. This has seen it contribute to a large extent to the economic development of the country.

However, there are a number of issues that the bankers, the regulator and the other industry stakeholders would need to address. Banking services still dominate Kenya's financial services industry.

A big percentage of financial system assets in Kenya are managed by commercial banks, leaving only a small portion to non-bank institutions such as the capital markets, pension funds, and insurance. This creates high dependency of corporate and household financing on bank lending.

The dominance of the banking services industry shows the financial services industry in the country has not developed much.

(www.standardmedia.co.ke, 25.09.14)

Monetary Policy Threatened

Huge liquidity in the Nigerian banking sector, which is still inaccessible to the real sector of the economy and its potential effects on inflation and exchange rate, is now threatening monetary policy management as the Central Bank of Nigeria (CBN) yet again retains key rates and rules out possible easing, anytime soon.

The CBN is concerned that banks were holding large excess reserves averaging over N300bn even when there were ample opportunities for productive and profitable lending to the real sector of the economy.

The concern is further heightened by the reality of injecting an additional N866bn into the system through the redemption of maturing AMCON bonds in October 2014. *(BD, 19.09.14)*

Bank Promises Stability in Sector

The Central Bank of Rwanda (BNR) has given assurances of its commitment to maintain financial stability in an area that is mainly dominated by the banking sector.

"BNR will make sure that the financial sector remains stable by monitoring the soundness of financial institutions under its supervision," BNR Governor, John Rwangombwa said while presenting the Monetary Policy and Financial Stability Statement.

The number of ATMs, debit cards, and credit cards has increased by 6, 21 and 32 percent respectively which show a strong banking system in the financial sector of the country.

(EABW, 25.09.14)

Alibaba to Set up Private Bank

China's e-commerce giant Alibaba, which completed the world's largest initial public offering, has won approval from authorities here to establish a private bank as it diversify into financial services.

Alibaba, through its subsidiary Zhejiang Ant Small and Micro Financial Services Group Co, will hold 30 percent of share capital of the new bank, the China Banking Regulatory Commission said.

Having its own commercial bank will afford Alibaba greater control over many of its key services, including online payment and wealth management products.

Alibaba is the latest company outside the financial sphere to win approval to start a bank in China. Beijing hopes private banks will help in its drive to open up the economy to more competition and get private capital to more parts of the economy.

(ET, 29.09.14)

Banks 'Too Big to Fail' Remain a Problem

Six years after the global financial crisis, regulators are still grappling with the problem of banks that are too big to be allowed to fail. Key reforms put in place post-crisis mean that it is less likely banks will fail in the first place, said Dr Andreas Dombret, Member, Executive Board, Deutsche Bundesbank.

An important part of this involves banks coming up with bankruptcy plans – or "living wills" – to prepare for an orderly failure. The creation of "living wills" requires banks to plan for a bankruptcy process that would not call for the billions of dollars in taxpayers' money doled out during the crisis to rescue systemically important financial institutions.

"Living wills" also help banks work through potential structural weaknesses "step by step". If the bank is too big to fail, and things go well, the bank is profiting. But if things go wrong, the taxpayer pays. That is not a recommended equation.

Beyond banks, some economic watchers have also criticised a different institution – the euro – as "too big to fail". *(TST, 29.09.14)*

No Need for Banks in an Era of Intellectual Capital

Felix Salmon*

www.pandodialy.files.wordpress.com

It is merger season in Silicon Valley. More than US$100bn in technology deals were done in the first half of this year alone, according to Mergermarket. The numbers for the second half will probably be even bigger. The year-end tally will include Facebook's US$19bn acquisition of WhatsApp, Oracle's US$5.3bn purchase of Micros Systems and a significant entry from normally deal-shy Apple, which has agreed to buy headphone maker Beats for US$3bn.

Amid all of this, one element is missing: bankers. Investment banks are used to earning big fees when corporate clients absorb other companies. But many big deals are being completed without the buyer using any investment bank at all.

This is heartening news for all of us who think that financial services companies in general, and investment banks in particular, are too big and too important. No longer is being an investment banker seen as the best way for a young, talented graduate to make lots of money and achieve great worldly success.

Smart kids are moving to San Francisco rather than New York or London. They fund their start-ups with west coast money, build their companies with west coast talent and see multibillion-dollar deals being done between members of their west coast peer group. It makes little sense to turn to an east coast investment banker for "expert" advice on career-defining strategic decisions when there is no reason to believe that expert has a deeper understanding of your industry than you do.

It is no coincidence that the rise of the self-advised mega-merger has coincided with the rise of the California-based venture capital industry as the most important single funding source for technology companies. There are still initial public offerings, of course, and gigantic public companies: Google and Apple have a combined market capitalisation of US$1tn. But Silicon Valley, as a rule, does not fund itself in the stock market any more. The flotation of Apple in 1980 and of Microsoft in 1986 came at a time when those companies were investing heavily in developing the Macintosh and Windows systems.

Today's big Silicon Valley deals are not based on corporate synergies, or the amount that earnings per share will increase after the deal closes. They are not, therefore, based on the sort of thing that bankers can model.

Instead, they are based on attributes that are much harder to quantify. Will this company's product change the way that billions of people interact? Is it run by the kind of visionary who could prove to be a lethal competitor if she is not brought into the fold today?

In situations such as these, it matters little if the acquiring company overpays. After all, big tech companies have never had more cash than they have today, and they are finding it just as hard to put their money to work as everybody else is. The logic behind Facebook's acquisition of WhatsApp, a smartphone messaging platform that is more or less free to use, is simple: capturing a slice of the time people spend on their mobiles matters more than money. It wants to become the dominant technology company of the mobile age. That is not an area where bankers can help. Indeed, they would be harmful, adding an extra layer of meetings and spreadsheets that only serve to dispirit a potential target. Founders do not want to negotiate with bankers: they want to negotiate with fellow founders, such as Larry Page or Zuckerberg.

Silicon Valley deals are not based on factors that bankers can model

A banker with gold cufflinks and an expensive suit might be useful if you are interested in buying a public company run by a board of grandees and a hired chief executive. But such deals are now few and far between. In a Silicon Valley devoted to transforming the way we live, bankers have been disrupted: they have gone from being a necessary evil to an unnecessary one. And no one is shedding any tears.

* *Senior Editor, Fusion. Abridged from an article that appeared in the* Financial Times*, on August 22, 2014*

Monopoly is a Bureaucrat's Friend but a Democrat's Foe

Tim Harford*

"It takes a heap of Harberger triangles to fill an Okun gap," wrote James Tobin in 1977, four years before winning the Nobel Prize in economics. He meant that the big issue in economics was not battling against monopolists but preventing recessions and promoting recovery.

After the misery of recent years, nobody can doubt that preventing recessions and promoting recovery would have been a very good idea. But economists should be able to think about more than one thing at once. What if monopoly matters, too?

The Harberger triangle is the loss to society as monopolists raise their prices, and it is named after Arnold Harberger, who 60 years ago discovered that the costs of monopoly were about 0.1 per cent of US gross domestic product – a few billion dollars these days, much less than expected and much less than a recession.

Professor Harberger's discovery helped build a consensus that competition authorities could relax about the power of big business. But have we relaxed too much?

Large companies are all around us. We buy our mid-morning coffee from global brands such as Starbucks, use petrol from Exxon or Shell, listen to music purchased from a conglomerate such as Sony (via Apple's iTunes), boot up a computer that runs Microsoft on an Intel processor. Crucial utilities – water, power, heating, internet and telephone – are supplied by a few dominant groups, with baffling contracts damping any competition.

Of course, not all large businesses have monopoly power. Tesco, the monarch of British food retailing, has found discount competitors chopping up its throne to use as kindling. Apple and Google are supplanting Microsoft. And even where market power is real, Prof Harberger's point was that it may matter less than we think. But his influential analysis focused on monopoly pricing. We now know there are many other ways in which dominant businesses can harm us.

Monopolists can sometimes use their scale and cash flow to produce real innovations – the glory years of Bell Labs come to mind. But the ferocious cut and thrust of smaller competitors seems a more reliable way to produce many of the everyday innovations that matter.

That cut and thrust is no longer so cutting or thrusting as once it was. "The business sector of the US economy is ageing," says a Brookings research paper. It is a trend found across regions and industries, as incumbent players enjoy entrenched advantages. "The rate of business start-ups and the pace of employment dynamism in the US economy has fallen over recent decades.?This downward trend accelerated after 2000," adds a survey in the Journal of Economic Perspectives.

The challenges from smaller competitors spur the innovations that matter

That means higher prices and less innovation, but perhaps the game is broader still. The continuing debate in the US over "net neutrality" is really an argument about the least damaging way to regulate the conduct of cable companies that hold local monopolies. If customers had real choice over their internet service provider, net neutrality rules would be needed only as a backstop.

As the debate reminds us, large companies enjoy power as lobbyists. When they are monopolists, the incentive to lobby increases because the gains from convenient new rules and laws accrue solely to them. Monopolies are no friend of a healthy democracy.

No policy can guarantee innovation, financial stability, sharper focus on social problems, healthier democracies, higher quality and lower prices. But assertive competition policy would improve our odds, whether through helping consumers to make empowered choices, splitting up large corporations or blocking megamergers. Such structural approaches are more effective than looking over the shoulders of giant corporations and nagging them; they should be a trusted tool of government rather than a last resort.

As human freedoms go, the freedom to take your custom elsewhere is not a grand or noble one – but neither is it one that we should abandon without a fight.

* *English Economist and Journalist. Abridged from an article that appeared in the* Financial Times *on August 13, 2014*

Regulators Adopt Draconian Approach to Financial Crime

Madison Marriage*

Fund management staff who break the rules face tougher deterrents

The Financial Times

Raj Rajaratnam was convicted of insider trading in 2011

Long prison sentences, hefty fines and social pariah status are the likely outcomes for fund management staff tempted to break the rules for personal gain as regulators around the world take a tougher stance on financial crime.

US prosecutors fired a warning shot across the asset management industry earlier this month when former SAC Capital trader Mathew Martoma was handed one of the longest sentences in US history for insider trading.

Martoma's nine-year sentence is just shy of the 12-year term handed to Matthew Kluger, a former lawyer, in 2011, and the 11 years given to Raj Rajaratnam, founder of the Galleon hedge fund company.

Many in the industry believe the SAC ruling is a sign of more harsh terms to come, and the hope is that this will dissuade would-be white-collar criminals from the temptation of financial crime.

Ashley Kovas, head of funds at regulatory consultancy Bovill, is unconvinced that lengthy jail sentences will have much impact.

"In my career I have dealt with a number of fraudsters in investigations. One of the most remarkable things you discover is that the person who has committed the fraud can rationalise what they have done as OK. The things that make people fraudulent are unlikely to be remedied through the law – the only thing is to catch them."

The evidence suggests, however, that US prosecutors are becoming better at catching the criminal minds in asset management, particularly with the help of wiretapping evidence. Roughly 50 criminal convictions have been secured in the US asset management industry over the past two years as a result, according to Shrimpton.

Tackling financial crime in the UK's asset management industry is more challenging, given that wiretapping evidence is not allowed. But the UK's adoption of plea-bargaining rules two years ago, which allow individuals to testify against others in return for a reduced sentence, has helped lead to more convictions.

The UK watchdog has secured 24 convictions regarding insider trading violations since 2009. This year it has charged two finance professionals: Damian Clarke, a former equities traders at Schroders, the UK fund house; and Julian Rifat, a former execution trader at Moore Capital, the hedge fund. Kovas says that the FCA is increasingly keen to make an example of wrongdoers.

There are signs that the US at least plans to clamp down even harder on the industry. Last week the US Department of Justice asked Congress to increase rewards to encourage the co-operation of insiders.

But Amin Rajan, Chief Executive of Create Research, the asset management consultancy, believes lawmakers could be tougher still. He says: "We need personal sanctions that act as a brake on the numerous wilful misdeeds that go unreported. Most are brushed off as technical offences or victimless crimes.

"There should be sanctions such as bonus clawbacks, sackings and disqualifications. Beyond that, there should be more intelligent application of the existing laws. Unless some high profile cases end up in jail, finance will never regain the public trust. You can have as tough sentences as you like, but nothing beats a proper culture with real alignment of interests to ensure better behaviour," says Johnson.

Kovas adds that better incentive structures around pay and bonuses are crucial. "The only thing that causes [fund staff to break the rules] is personal gain. Removing the scope for personal gain is important," he says.

He adds that fund companies should "be prepared to challenge the star trader culture and the idea that if someone is making masses of money for the firm, that they should be left alone. If they are making masses of money, [management] should make sure it is ethical and lawful."

* *Reporter, FTfm. Abridged from an article that appeared in the* Financial Times, *on September 22, 2014*

Competition Law in Canada Since the 2009 Amendments

Paul Collins, Head, Competition and Foreign Investment Group, Canada was interviewed. He practices corporate and commercial law and specialises in the area of competition law, providing both transactional and general compliance advice as well as advice in the area of marketing and advertising law.

Are Canada and US on a path to harmonisation in Competition Law?

I do think that Canada and the US are not only on the path towards harmonisation but that they've already gone a long way along that path – well beyond just points of administrative similarity. Things really changed in 2009 when the law was amended here in Canada particularly to align with the US in two key areas. The first related to mergers. The second big change was treatment of conspiracy. We had a qualified test before 2009. We have now attempted to codify in our statute what has evolved in the US after many years of jurisprudence.

Has the two-step pre-merger notification in Canada in 2009 functioned effectively? Is it fair to compare this procedure with Hart-Scott-Rodino requirements in the US?

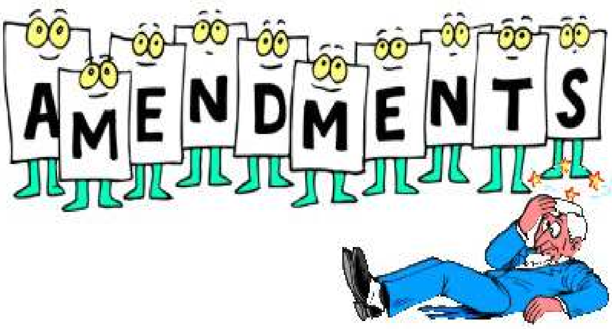
I think the procedure has worked quite well. When it was introduced in 2009 there were learning and growing pains both among merging parties (and their counsel) and at the Competition Bureau. We had the advantage in Canada of learning from the US experience of Second Requests under Hart-Scott-Rodino and being mindful of the criticisms of that process and trying to introduce the regime in Canada in a slightly different fashion.

How have the major elements of the 2009 legislative amendments to the Canadian Competition Act changed business and legal practice in Canada?

I would say it is a bit surprising to me how little has changed in terms of the conduct of business in light of the 2009 amendments – but it's evolving, and I think it just takes time to work its way through decision making in various organisations. I think part of the reason for that is that people for the most part were conducting themselves in those areas on quite a conservative basis.

Is there anything on the legal side, from your perspective as a practicing lawyer?

The big thing that has occurred over the last few years is that we have been educating clients about the 2009 changes. We are not only educating clients to be conscious, but also educating clients to take advantage of more liberal treatment and what they can do proactively.



www.stgapgov.pbworks.com

Has 2013-14 been an active year for the Federal Competition Bureau under its new commissioner?

It has been a year of transition to a new commissioner, although the commissioner has been in that role on an interim or "permanent" basis for close to two years now. He's been very vocal and active in getting in front of various constituencies. He has revitalised certain parts of the statute from an enforcement perspective.

What has been the role and posture of the Competition Tribunal?

The Competition Tribunal obviously is reactive in the sense that it is not like the commissioner who initiates matters. People go to the Tribunal. The Tribunal is very rigid and technical in their interpretation of the statute and the application of its provisions. We saw that in the credit cards case in particular, where the Bureau brought a case under the price maintenance provision, and the Tribunal was not receptive to that theory of the case.

Finally, would you describe for our US readers the hierarchy of courts in Canada in which Competition Law violations can be brought?

This is a continued area of significant distinction between Canada and the U.S. in that there's still quite limited scope for a party to bring a private action in the context of a Competition Law matter in Canada. It remains the case that the commissioner is, if not the sole gatekeeper (which is still the case for a number of provisions), at minimum the key gatekeeper for bringing a case forward. There are some provisions that can be pursued on a private basis but only with leave of the Tribunal or a court.

– *Excerpts from an Interview with Paul Collins that appeared in the* Metropolitan Corporate Counsel *on August 21, 2014*

Economiquity

The July-September 2014 issue of Economiquity carries an article entitled, 'Confusion Galore on India and WTO' in its cover story which states while food security is a matter of national sovereignty, let us not confuse it with trade negotiations, as many are indulging in. Secondly, the WTO issue is on production subsidies and not consumption subsidies, so it does not affect India's poor consumers.

A special article by Mikhail Gorbachev says that political, business, and civil-society leaders should cooperate to implement the UN Watercourses Convention.

Another special article by Paul Polman and Marc Van Ameringen states that the world cannot afford to talk about hunger without addressing climate change, food production without sustainability or growth without good nutrition.

Broadly, it covers Economic Issues; Trade Winds; Development Dimensions and Environment & Economics.

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


ECONOMIQUITY

Confusion Galore on India and WTO

Why do Countries Adopt a New Competition Law? (Second Laws-Volume II)

CUTS initiated the second phase of the research study covering few countries (not the same from the first volume) of different sizes and levels of economic development across the world to assess motivations behind developing new competition laws by scrapping existing ones. The country essays contribution is voluntarily by various CUTS friends/partners/fellows. Volume I resulted the book 'Evolution of Competition Laws and their Enforcement: A Political Economy Perspective' published by Routledge in December 2011. The plan is to come out with publication in late 2014, similar to Volume–I.

Competition Regimes in the World – A Civil Society Report (Phase II)

A self-supported project to prepare a report entitled 'Competition Regimes in the World – A Civil Society Report (CIRCOMP) – Volume-II. Volume-I cover about 120 countries around the globe published in November 2005, and now the revised report will carry the competition policy and law/regulatory/consumer protection scenario of 148 countries around the globe. The plan is to complete the country chapters in batch wise and will come out with an e-book by end of 2014 or early 2015.

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

BD: Business Daily; BS: Business Standard; CD: China Daily; EABW: East African Business Weekly; ET: Economic Times; FE: Financial Express; FT: Financial Times; GCR: Global Competition Review; IO: Independent Online; ILO: International Law Office; LL: Latin Lawyer; TEA: The East African; ToI: Times of India; TT: The Telegraph; TST: The Straits Times; WSJ: Wall Street Journal

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

The news/stories in this Newsletter are compressed from several newspapers. The sources given are to be used as a reference for further information, and do not indicate the literal transcript of a particular news/story.