REGULETTER

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World Competition Day

Promoting Fair Competition in Public Procurement

Although competition policy and law issues date back to the 1890s when Canada and the US adopted competition laws, interest and awareness on competition laws on an international level remains far from satisfactory today, after more than a century. This can be achieved through the adoption of a World Competition Day (WCD). Therefore, CUTS is leading a campaign on celebrating 5th of December as the WCD. The 5th of December 1980, saw the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (UN Set), which had been approved by the UN Conference on Restrictive Business Practices.


www.buyingsupport.co.uk

With the aim of raising global awareness regarding the promotion of fair competition in the market, an international campaign on WCD has come to its fifth year (2014) of marking success with large number of countries joining hands together to urge the adoption of 5th December as WCD. This year (2014), the theme for WCD was **'Competition Issues in Public Procurement'** as supporters of the WCD believed that an agenda for proper functioning of public procurement would enhance the economy of any country by generating demand and consumption. Efficient procurement means to procure best possible goods and services at the lowest prices. Thus, vigorous competition amongst suppliers helps this objective. Conversely, when competition is curtailed, more than fair price is paid for lower quality and government money is wasted.

It is, therefore, important that the procurement process is not distorted by practices such as collusion, bid rigging, lack of competitive neutrality, abuse of dominance, etc. Such anticompetitive activities cause adverse economic implications such as loss of efficiency and diversion of money away from development programmes. Lack of transparency, discrimination in tenders and lack of effective monitoring mechanism make it difficult to implement procurement policies. It is important for agencies to create awareness through education and outreach programmes among the public, government, etc. about such anti-competitive activities.

Numerous competition authorities have supported and observed the WCD in their countries and submitted 'Support Letters' to UNCTAD for the formal adoption of WCD. Many of them have celebrated 5th December by organising seminars, conferences for raising awareness about the need for WCD. Press releases were issued in National and International newspapers with the aim to create awareness about how competition distortions can hamper fair public procurement procedures while negatively affecting economic growth.

Thus, CUTS is delighted to have received support from several competition agencies and civil society organisations globally in making a combined call for procuring public entities and suppliers, relevant regulatory bodies as well as the general public to ensure that 'public procurement' activities yield cost effective services and reflect commensurate value for money.

Strategic Analysis of M&As

The Competition Authority of Turkey published a status report on mergers and acquisitions (M&As). The report aims to provide an insight into transactions filed before the authority in the first half of 2014.

When compared to the report published in 2013, it is clear that there has been a remarkable decrease in the transactional value of the merger filings notified to the authority.

The report analyses M&As in two categories. In the first category, the analysis is made regardless of the jurisdiction in which the target or joint venture is incorporated, while the second category considers Turkey-specific transactions – i.e. transactions where the target is established under Turkish law. *(ILO, 06.11.14)*

EU Adopts Damages Directive

A new EU Directive governing the procedure for recovering damages for infringements of competition law has been adopted. The Directive aims to help victims of antitrust infringements claim compensation by creating a common framework to overcome legal uncertainty and obstacles that have discouraged private actions.

The Directive also aims to clarify the relationship between private damages actions and public enforcement by competition authorities. A number of safeguards have been put in place to preserve the role of competition authorities in investigating and sanctioning infringements.

The Directive will enter into force on December 25, 2014, and must be implemented into national law within two years. *(www.lexology.com, 10.12.14)*

Guidelines to Ease Confusion

The COMESA Competition Commission (CCC) has published guidelines intended to ease confusion over its merger control regime, introducing criteria that may circumvent the authority's controversial zero threshold for mergers.

Since its launch in January 2013, Africa's first supra-national competition authority has faced criticism over the content of its merger law and the uncertain scope of its jurisdictional power.

The new guidelines now confirm that a party will only be considered to operate in a member state if its gross assets or annual turnover in that state exceed US$5mn. In addition, no filing is necessary if the target does not operate in the COMESA region.

(GCR, 03.11.14)

Economic Policy Move in HK!

The Hong Kong Competition Commission has just concluded its public consultation on the draft guidelines of a competition law. It is arguably one of the most important economic policy moves in Hong Kong, covering both for-profit businesses and non-profit organisations.

In the two-month consultation period, the Commission received only 21 submissions. The law will in fact promote more competition in the market. Anticompetitive businesses in Hong Kong without exception are always protected by government policy.

Unfortunately, the law has a lot of provisions for the government to exempt monopolies protected by the government.

(www.thestandard.com.hk, 12.12.14)

Making Local Firms Competitive

Philippine exporters hailed the passage in the Senate of the Fair Competition Act of 2014, as this would be critical in making local firms more competitive amid an integrated regional economy.

One of the key features of the bill is the creation of the Fair Competition Commission, which will ensure that industrial concentration will not limit economic power to a few firms or groups.

Such a commission should serve as the 'competition policy overseer of the various sectoral regulatory agencies that are supposed to handle standard setting and technical details relevant to the particular products or services that they cover'. *(PDI, 22.12.14)*

Focus on Simplification Agenda

The consumer watchdog is concerned that proposed changes to competition laws could water down legislation governing cartels. The Australian Competition and Consumer Commission (ACCC) is also worried that the federal government's competition policy review is too focussed on a simplification agenda.

At the same time, the ACCC in its submission to the so-called Harper Review's draft report says it does not support a recommendation that would separate infrastructure regulation from competition and consumer enforcement.

While the ACCC does support simplification, any amendments should not fundamentally alter the existing scope of the country's cartel laws.

(YN, 26.11.14)

Strengthening of Antitrust Laws

The Chinese competition regulator has vowed to strengthen its anti-monopoly efforts next year to ensure fairer market conditions.

Zhang Mao, Head of the State Administration for Industry & Commerce, stated that its priority for 2015 remains cracking down on monopoly and illegal competition in key sectors, and any actions that infringe upon commercial intelligence rules.

The administration is expected to roll out relevant competition rules, promote unified competition, and improve a fairer competitive environment.

He said that it is important to introduce competition to the market and to coordinate industrial and competition policies. *(CD, 26.12.14)*

Tanzania Competition Law Faces Challenges

Timothy Kitundu*

One of the challenges that is an impediment towards the implementation of Fair Competition Act Number 8 of 2003 among others is that Section 14 of the law is silent in regard to employment, conditions of employment, standards of employment that are laid down by Tanzania Bureau of Standards (TBS) and other institutions.

Shadrack Nkelebe, an official from Fair Competition Commission (FCC) said that fair competition in the industry has come a long way; citing an example that the founders of this legislation were Canada in 1879, the US in 1889 and that all member states of the Southern Africa Development Community (SADC) either have FCC law or the law to protect consumers.

According to Nkelebe, in spite of all the challenges that face this piece of law its main objectives have been positive in improving the life style of Tanzanians, to promote and strengthen fair competition at the same time prevent inequity and bad practices amongst the traders.

"The FCC Act among others increases competitiveness in the production and distribution of goods and services, improves innovation, increases the utilisation of natural resources, and protects the consumers against unjust markets," he said.

Nkelebe said, the law prohibits out fundamental issues in fair competition namely anti-competitive agreements, syndicates in price fixing, joint collusion for certain commodities, joint boycotts and joint tender syndicates," he added.

He said, along the same lines, the law prohibits abuse of dominance, predatory and margin squeeze, instituting court cases that are not relevant, refusal to deal, and tying and bundling.

He said that the law also does not allow mergers and acquisitions that create monopoly, weakening competition, but it encourages the improvement of competitiveness that is based on the encouragement of competition in research, and technology.

In his comments FCC Senior Officer, Consumer Advocacy and Protection Joshua Msoma underscored that warranty and guarantee as stipulated in Sections 37 to 47 of the FCC law are seldom adhered to despite that consumers frequently raise complaints to manufacturers in regard to either substandard products or products that do cause harm to the.

www.businesstoday.com

The Government of Tanzania has admitted that a good number of traders in the country are aware of laws and regulations regarding fair competition and the protection of consumers, but there are a number of challenges that need be addressed

"It is the responsibility of the manufacturer to be held accountable and to effect substitution of a product if it is proved that such a product has negative effects to consumers within a specified period of time and again in cases whereby manufacturers violate the regulations governed by warranty and guarantee that means the latter has breached a legally recognised contract," he said.

According to Msoma, manufacturers have to abide to warranty and guarantee to all their products that enter the market and this is mandated; be it an express warranty given verbally, in writing by or promise, and an implied warranty that do not necessarily require the manufacturer to inscribe on the label but taken for granted in terms of the effectiveness and efficacy of the product.

Msoma said that the concept of voluntary or self-regulatory consumer protection that particularly targets manufacturers is built up on two factors namely adherence to the laws and regulations protecting consumers and the implementation of all guidelines and regulations for the benefit of the consumers, the government of Tanzania and the society at large.

He said this was the easiest way of averting inconveniences and the resistance without involving the third person, a concept which is built on in codes of practice, voluntary standards, accreditation and industrial codes practice.

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* *Senior Journalist, Media Express Limited, Tanzania. The article appeared in the* Business Week, *on December 21, 2014*

ABUSE OF DOMINANCE

Aspen Penalised Over Cancer Drugs

Italy's Antitrust Authority has opened an investigation of the Italian subsidiary of pharmaceutical company Aspen over suspected abuse of dominance regarding four cancer drugs.

The company allegedly hiked the prices for the drugs Alkeran, Leukeran, Purinethol and Thioguanine. All four are "Band A" drugs in Italy, which means they are available on the country's National Health Service free of charge to patients.

During 2014, the Authority said that the price of all four drugs increased between 250 and 1,500 percent. Furthermore, Aspen allegedly threatened to withdraw supply of the drugs to the AIFA unless it accepted the new prices. *(GCR, 28.11.14)*

Qualcomm Case to be Settled Soon!

A contentious trade issue between China and the US appears to be on the verge of being determined, as the Chinese government will soon settle antitrust charges against Qualcomm.

The US mobile chipmaker is suspected by China's National Development and Reform Commission of operating in a monopolistic fashion, abusing its market position in wireless communications standards by overcharging Chinese customers.

A Chinese decision in the case is 'imminent,' and could lead to fines exceeding US$1bn while also requiring concessions in Qualcomm's business of charging licencing fees on phone chipsets that use its patents, a highly profitable business segment.

(VW, 28.12.14)

Royalty Collecting Society Slammed

Spain's National Commission for Markets & Competition (CNMC) has fined the country's main royalty collecting society €3.1mn for abuse of dominance in the live music rights market.

The General Society of Authors and Publishers (SGAE) collects royalties for a host of performing arts in Spain. The Commission says the society abused its dominant position by charging excessive prices for royalties for live music performances.

The authority says the Spanish tariffs for live music royalties were significantly higher than those in other EU countries and its investigation shows this was the result of the SGAE's prices, which it says 'were not fixed in a competitive way'.

In calculating the fines, the CNMC considered the scope and duration of the infringement, together with the SGAE's market share and the size of the affected market. *(GCR, 18.11.14)*

Gas Industry under Strike!

The Indian Competition Appellate Tribunal (COMPAT) has stayed a Competition Commission order against Adani Gas, which imposed a penalty of ₹250mn and provided direction for the modification of the agreement in question.

The penalty was imposed because Adani Gas had abused its dominant position by imposing unfair terms and conditions when supplying and distributing natural gas in Faridabad to the members of the Faridabad Industries Association.

COMPAT directed the Commission to take no coercive action against Adani Gas until it received further orders. *(www.lexology.com, 28.11.14)*

Complaint against PTCL Dismissed

The Competition Commission of Pakistan (CCP), an independent watchdog, has dismissed a complaint related to abuse of dominance against Pakistan Telecommunication Company Limited (PTCL).

Wise Communication Systems Private Limited, a long distance and international carrier services provider, in a complaint, alleged PTCL holds a dominant position in the fixed local loop market and has discontinued the services to Wisecomm, which is a customer and competitor of PTCL in FLL market.

The LDI operator further maintained such an anticompetitive conduct excludes Wisecomm from the provision of fixed local loop services in violation of the Section 3 (3)(g) of the Competition Act, 2010.

(TN, 10.10.14)

Bar Association Scrutinised

The Commission for Protection of Competition of Serbia decided to open an *ex officio* investigation against the Bar Association due to allegations that it had violated competition law rules on the legal services market in Serbia.

The Commission found that according to the law, the Bar Association has the power to oversee the legal services market in Serbia. It is clear that, besides being a professional organisation, the Bar Association also has a significant commercial role.

In this sense, acts of the Bar Association fall under the jurisdiction of the Competition Act and are subject to the scrutiny of the commission.

(ILO, 06.11.14)

AstraZeneca Probe Dropped

The Netherlands Authority for Consumers and Markets accused AstraZeneca of offering the heartburn drug Nexium to Dutch hospitals at a deep, below-cost discount to reduce competition from generics and other brands, but charging much more at outside pharmacies once patients had become accustomed to using the drug during their hospital stay.


The Economic Times

Similar to predatory pricing, AstraZeneca theoretically could recoup its losses from the below-cost sales to hospitals from the higher prices captured consumers would be forced to pay at retail pharmacies.

However, the agency failed to establish that AstraZeneca held a dominant position with regard to Nexium in any relevant market during the time period considered, and therefore the drugmaker cannot be penalised for abuse of dominance. *(GCR, 03.12.14)*

CARTELS

Consumer Goods' Firm Fined

Some of the world's biggest consumer products companies, including Unilever, Reckitt Benckiser, Procter & Gamble and Gillette, have been fined a combined €951m by the French competition watchdog for price fixing in supermarkets.

The regulator said the 13 companies, which also include Colgate-Palmolive, Henkel, L'Oréal, Beiersdorf and Johnson & Johnson's Laboratoires Vendôme, had colluded on price increases between 2003 and 2006.

The regulator added that the price-fixing had kept prices 'artificially high' affecting consumers and 'caused harm to the economy'. *France's Autorité de la concurrence* imposed sanctions totalling €345.2m related to cleaning products and a further €605.9m related to personal hygiene products.

(TG, 19.12.14)

Sanctions on Freight Forwarders

The latest penalties for freight-forwarding companies were announced as part of the Competition Commission of Singapore's (CCS) second international cartel case, which confirmed DHL Global Forwarding as once again escaping fines as the whistleblower.

The CCS found 11 freight forwarders to have violated Singapore's Competition Act by fixing certain fees and surcharges and exchanging price and customer information in Japan-to-Singapore air shipments. Investigations began in December 2011 after DHL applied for immunity.

Ten companies were fined a total of €4.4mn. Hankyu Hanshin, Kintetsu World Express, NNR and Vantec all received 50 percent off as leniency applicants. *(GCR, 12.12.14)*

Radio Makers Raided

Japan's Fair Trade Commission (JFTC) carried out dawn raids at five electronics companies on suspicion of antitrust violations regarding the sale of digital firefighting emergency radios.

NEC, Oki Electric, Japan Radio Company, Fujitsu General and Hitachi Kokusai Electric all issued statements on their websites confirming the JFTC's inspections.

According to local press reports, the investigation is focused on alleged bid-rigging regarding tenders for the radio systems, which are sold to fire departments across Japan for communication regarding emergencies.

NEC says the raids were to investigate concerns of 'violating antitrust law with respect to transactions' for the radio systems.

(GCR, 18.11.14)

EU Stamps Out Envelope Cartel

The European Commission has fined five envelope makers more than €19mn for price coordination and market division, Competition Commissioner Margrethe Vestager announced.

By agreeing to settle, the envelope makers Bong, GPV, Hamelin, Mayer-Kuvert and Tompla reduced their fines by 10 percent each, and all also benefited from the 10 percent of total turnover cap on penalties.

Furthermore, Tompla received a reduction of 50 percent, Hamelin of 25 percent, Mayer-Kuvert and GPV of 10 percent for cooperating in the investigation.

Two companies claimed inability to pay, for which they received additional reductions. Vestager defended the 'relatively low' fines as probably reflecting 'the original causes of the cartel, that is a very challenged business' in envelope production.

(Law360, 11.12.14)

CADE Settles with Salt Cartelist

In another example of the growing popularity of its cartel settlement regime, Brazil's Council for Economic Defence (CADE) reached an agreement with a company in the country's enormous sea salt conspiracy.

The company has admitted its participation in a cartel, first investigated in 2008, and pledged to cease the anticompetitive conduct and cooperate with the ongoing investigation.

The conspiracy covers 80 percent of Brazil's salt market and involves three industry associations, 21 companies and 43 individuals. CADE carried out dawn raids and says the parties fixed prices and controlled production quotas for up to 20 years, i.e. 1992- 2012. *(LL, 28.11.14)*

Eni Wax Fine Reduced

Appeals against the European Commission's penalties for paraffin wax price fixers continued to have a mixed record at the EU General Court, as one company obtained a significant cut but four others did not.

Eni sought a total overturning of the commission's 2008 decision, and was granted a partial annulment. The company won a nearly 40 percent reduction of the original fine, reducing its penalty from €29.12mn to €18.2mn.

Citing Eni's alleged recidivism, the Commission increased the company's fine by 60 percent from the base level.

(www.europeanvoice.com, 12.12.14)

Apple Faces Canadian Investigation

Apple has been ordered to hand over documents in an investigation into whether the company used unfair tactics to boost iPhone sales in Canada. The Canadian Competition Bureau said agreements that Apple struck with mobile networks may have encouraged the operators not to reduce the prices of rival phones or to increase them.

Huge consumer demand for the iPhone has given Apple considerable bargaining power when negotiating contracts with mobile operators and some believe the company has abused its position.

The US company has 90 days to hand over the documents, including deals it had reached with Canadian mobile networks. *(TG, 18.12.14)*

FINES & PENALTIES

Criteria Set Out for Fines

The South African Competition Commission (SACC) has issued draft guidelines on how it will determine administrative penalties for the contravention of the Competition Act.

The main aim of the guidelines is to offer greater openness, transparency and certainty on how the commission goes about determining the fines it imposes on firms that are found to have broken the law.

The SACC has imposed fines worth billions of rand on firms that have engaged in collusive tendering, price-fixing, market allocation and abuse of power.

The Competition Tribunal confirmed a collective penalty imposed in 2013 on 15 construction firms in one of the biggest anti-competitive bid-rigging cases that the country has ever witnessed. *(BD, 29.12.14)*

Royal Mail Settle French Fine

Royal Mail has reached a settlement with the French competition authority over alleged breaches of antitrust laws by its subsidiary GLS France, setting aside a total of £18m for any fines and legal bills.

The *Autorité de la Concurrence's* antitrust probe, which opened in 2010, covers a broad range of delivery companies including units of TNT and FedEx. All three groups warned investors in July that they faced potential losses as a result of the investigations. Other companies involved in the probe include La Poste of France, Deutsche Post DHL and SNCF.

Royal Mail's agreement to settle and provide compliance commitments now means that any fine imposed will be reduced.

The probe is not yet over, with Royal Mail saying that the regulator was continuing its investigation into the alleged breaches. The amount of fine is not expected to be determined until the second half of the 2015-16 financial year. *(FT, 09.10.14)*

Public Institutions under Fire!

The Competition Council of Bosnia and Herzegovina has recently been investigating competition law violations, in particular restrictive agreements. In March and April 2014 the council rendered two decisions and imposed fines on public institutions for breach of competition law provisions.

The Council fined the Brèko Health Insurance Fund for the prevention, restriction and distortion of competition in the medicine supply market for insured individuals.

The fund was fined for adopting a decision on determining the criteria in pharmaceutical services contracts; and refusing to conclude an agreement on the provision of pharmaceutical services with the Onion Pharm pharmacy. *(ILO, 09.10.14)*

Food Cos. Alleged in Bid-rigging

Two Botswanan food companies have been told to file their defences against claims that they divided the country's territory in half and rigged bids to supply beans to primary schools.

Hoping to secure its first bid-rigging fines, Botswana's Competition Authority says Bread and Butter Foods and Rabbit Group rigged €9.95mn worth of tenders to supply lima beans – known as sugar beans in Africa – to primary schools across the country.

According to the Authority, the companies divided Botswana's eight school districts between them, giving them roughly half of the profit each.

The agency was informed of the alleged conspiracy by a government complainant, who noticed the companies had submitted almost identical bids in at least three tenders. *(ILO, 05.12.14)*

TripAdvisor Showing False Reviews

Italy's Antitrust Authority has slapped a €500,000 fine on TripAdvisor for failing to do enough to prevent false reviews.

The move follows complaints from hoteliers of negative and, in some cases, defamatory reviews regarding their businesses. Italy is the world's fifth largest destination for international tourism, with about 46 million visitors in 2013.

The regulator said TripAdvisor, whose website allows readers to leave reviews of restaurants and hotels around the world, should stop 'publishing misleading information about the sources of its reviews', adding that the practice started in 2011. It gave the company 90 days to respond. *(FT, 24.12.14)*

Mofcom Outs Non-Compliant Mergers

Following procedural changes announced, China's Ministry of Commerce has fined and publicly named two companies, foreign and domestic, for separate merger-related infringements.

China Daily

The authority fined optical disk drive manufacturer Western Digital €65,000 for failing to comply with conditions placed on the company's acquisition of Viviti, which Mofcom cleared in March 2012.

Western Digital was required to ensure that post-merger Viviti remained an independent competitor for two years. However, Mofcom found that shortly after the approval Western Digital acquired full ownership of Viviti US subsidiary HGST, in violation of the condition.

Mofcom also fined domestic technology company Tsinghua Unigroup €39,000 for failing to notify its tie-up with rival RDA Microelectronics. The deal was completed in April but Mofcom found the companies' annual turnover met the threshold for notification. Following a review of the consummated deal, the authority found it would not restrict competition. *(GCR, 15.12.14)*

Regulators Fine Global Banks in Currency Investigation

Kirstin Ridley*, Joshua Franklin** and Aruna Viswanatha***

HSBC Holdings Plc, Royal Bank of Scotland Group Plc, JPMorgan Chase & Co, Citigroup Inc, UBS AG and Bank of America Corp all faced penalties resulting from the inquiry, which has put the largely unregulated US$5tn-a-day market on a tighter leash, accelerated the push to automate trading and ensnared the Bank of England.

Regulators fined six major banks a total of US$4.3bn for failing to stop traders from trying to manipulate the foreign exchange market, following a yearlong global investigation

Authorities accused dealers of sharing confidential information about client orders and coordinating trades to boost their own profits. The foreign exchange benchmark they allegedly manipulated is used by asset managers and corporate treasurers to value their holdings.

Dealers used code names to identify clients without naming them and swapped information in online chatrooms with pseudonyms such as 'the players', 'the 3 musketeers' and '1 team, 1 dream.' Those who were not involved were belittled, and traders used obscene language to congratulate themselves on quick profits made from their scams, authorities said.

FCA Chief Executive Officer Martin Wheatley said bank managers needed to keep a closer eye on their traders rather than leaving it to compliance departments, which make sure employees follow the rules. The investigation already has triggered major changes to the market. Banks have suspended or fired more than 30 traders, clamped down on chatrooms and boosted their use of automated trading.

In the US, which has typically been more aggressive on enforcement than other jurisdictions, the Department of Justice, Federal Reserve and New York's financial regulator are still probing banks over foreign exchange trading.

Exasperation

Regulators said the misconduct at the banks ran from 2008 until October 2013, more than a year after US and British authorities started punishing banks for rigging the London interbank offered rate (Libor), an interest rate benchmark.

The foreign exchange probe has wrapped up faster than that investigation did, and fines reflected cooperation from the banks. Britain's FCA said the five banks in its action received a 30 percent discount on the fines for settling early.

The US Commodity Futures Trading Commission (CFTC) ordered the same five banks to pay an extra US$1.48bn. Swiss regulator FINMA also ordered UBS, the country's biggest bank, to pay US$139mn and cap dealers' bonuses over misconduct in foreign exchange and precious metals trading.

The US Office of the Comptroller of the Currency fined the US lenders a total of US$950mn. It was the only authority to penalise Bank of America. More penalties are likely to follow. Barclays Plc, which was not included in settlement, said it had pulled out of talks with the FCA and the CFTC to try to seek 'a more general co-ordinated settlement' with other regulators that are investigating its activities.

The FCA said its enforcement activities were focused on those five plus Barclays, signaling it would not fine Deutsche Bank AG. The CFTC declined to comment on whether it was looking at other banks. Britain's Serious Fraud Office is conducting a criminal investigation, and disgruntled customers can still pursue civil litigation.

Bank of England

The currency inquiry struck at the heart of the British establishment and the City of London, the global hub for foreign exchange dealing. The Bank of England said that its chief foreign exchange dealer, Martin Mallet, had not alerted his bosses that traders were sharing information.

The British Central Bank, whose governor, Mark Carney, is leading global regulatory efforts to reform financial benchmarks, has dismissed Mallet but said he had not done anything illegal or improper.

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– *Abridged from an article that appeared in the* Financial Times, *on November 12, 2014*

Sun-Ranbaxy Cleared with Riders


The Economist

The Competition Commission of India (CCI) approved Sun Pharmaceutical's US$3.2bn acquisition of rival drug firm Ranbaxy Laboratories, provided the companies divest some overlapping brands within six months. The completion of the merger would make Sun Pharma, the largest drug maker in the domestic market and the fifth largest global generic pharma company.

The CCI ordered Sun and Ranbaxy to sell seven brands, in which the merged company would have 'appreciable adverse effect' on competition in India as a result of their market share.

Sun Pharma said the seven products, which are to be divested, constitute less than one percent of the combined entity's revenues in India. *(ToI, 09.12.14)*

Creating a New Distribution Giant

Italy's Antitrust Authority allowed a deal between two leading publishing houses to create a new distribution giant, but obligated them to maintain existing contracts with small publishers and offer similar terms to other companies that lack their own distribution arms.

The Feltrinelli/Messaggerie joint venture would hold a dominant position in the market for distributing non-educational books on behalf of such companies, the authority found, and would eliminate the price constraints each distributor had exerted on the other.

To reduce potential anti-competitive effects on small to medium-sized publishers, the Authority decided to condition its approval of the deal on the two distributors' continuity of agreements with these until the end of 2016. *(GCR, 08.12.14)*

Carrefour Sells Brazil's Stake

Carrefour has sold 10 percent of its Brazilian retail business to a local entrepreneur, raising US$672mn and paving the way towards a listing in São Paulo. The Paris-based hypermarket group, the world's second-largest retailer by sales, said the sale to investment fund Peninsula, controlled by billionaire Abilio Diniz, valued the Brazilian operations at R$20.4bn.

The deal is part of a plan by Carrefour to bring outside investors into its Brazilian business to build local ties and fund expansion. Carrefour also confirmed the possibility of a separate listing on the Brazilian stock exchange.

Brazil is Carrefour's second-biggest market with sales last year of R$34bn – more than 12 per cent of the group global total – and 72,000 employees. *(FT, 18.12.14)*

Safaricom Gets Regulatory Nod

Kenyan operator Safaricom has revealed that it has received all regulatory approvals required to complete its US$80mn acquisition of various assets of Essar Telecom Kenya, which operates under the Yu brand.

According to the company, the acquisition received the approvals of the Communications Authority of Kenya, the Competition Authority of Kenya and the Capital Markets Authority of Kenya.

According to Telecompaper, the transaction involves the acquisition by Safaricom of Yu's passive network infrastructure and frequency spectrum, as well as 150 of Yu's employees. Safaricom will now embark on the process of incorporating Yu's assets into its network as well as start to use the spectrum. *(www.itnewsafrica.com, 05.11.14)*

Top Nuclear Cos. to Merge

China may merge its two biggest nuclear power companies as it bids to compete for contracts in overseas markets. Plans have already been submitted to the State-Owned Assets Supervision and Administration Commission to merge China National Nuclear Corp (CNNC) with China General Nuclear (CNG) Power Corp.

The two companies were deliberately set up as rivals to compete for projects in China and abroad. But under government prompting, they have cooperated on a single reactor brand, Hualong I, with the intention of eventually marketing it abroad.

In 2013, CNNC and CGN made a joint bid to take a stake of up to 40 percent in a reactor project at Britain's Hinkley Point. *(CD, 05.12.14)*

Otsuka to buy US Drugmaker Avanir

Otsuka Pharmaceutical Co. agreed to buy Avanir Pharmaceuticals Inc. of the US for US$3.5bn, the latest large deal by a Japanese drug maker looking to expand overseas.

The deal gives Otsuka, maker of the schizophrenia and depression drug Abilify, access to more treatments for central-nervous-system diseases. California-based Avanir sells Nuedexta, a treatment for a condition known as pseudobulbar affect that causes sudden and involuntary outbursts in patients with neurological diseases such as amyotrophic lateral sclerosis.

Otsuka Pharmaceutical, part of Otsuka Holdings Co. would pay US$17 a share in cash for Nasdaq-traded Avanir. The deal is the largest purchase by Otsuka Holdings, which listed its shares in an initial public offering in Tokyo in 2010, giving it more resources for acquisitions. *(AP, 02.12.14)*

Building Property Giant

Deutsche Annington has agreed to buy rival landlord Gagfah for €3.9bn in a deal that would create a new German residential property giant in Europe's largest rental market.

The combined company would have a market capitalisation of €9bn, making it the second-largest listed real estate company in Europe after Unibail-Rodamco in Paris. It will also be a strong candidate to join the Dax list of 30 blue-chip German companies.

The transaction marks the most significant deal in a long-awaited consolidation of the German residential sector, which remains highly fragmented in spite of the popularity of renting. *(FT, 02.12.14)*

Leader in Healthcare Diagnostics

LabCorp, one of the biggest providers of clinical testing services for doctors, has agreed to buy a drug development group for about US$6.1bn in cash and shares to create a leader in healthcare diagnostics.

LabCorp, which processes up to 500,000 patient tests a day for everything from high cholesterol to rare genetic conditions, is seeking to diversify by acquiring Covance, which provides testing services to pharmaceutical groups to ensure their drugs are safe and effective. Both companies are headquartered in the US.

The healthcare system of the future will be fact and data driven. This deal creates a company that provides services to physicians, pharmaceutical companies and patients. *(FT, 04.11.14)*

Buffet Takes Charge of Duracell

Berkshire Hathaway Inc has agreed to acquire Procter & Gamble Co's Duracell battery unit in a complex transaction that lets Berkshire Chairman Warren Buffett buy a business he has supported for two decades and shave his company's tax bill.

Rather than pay cash, Berkshire will give P&G US$4.7bn of the shares it now owns in the world's largest consumer products company. P&G will infuse US$1.8bn in cash into Duracell before the expected closing in the second half of 2015.

The transaction helps P&G Chief Executive A.G. Lafley streamline his Cincinnati-based company by shedding slow-growing brands and focus on about 80 brands that generate most of its profit and revenue.

(Reuters, 14.11.14)

Samsung Axes Shipbuilding Merger

Samsung has bowed to shareholder pressure and axed a proposed US$2.25bn merger of its shipbuilding and engineering units, in a decision that could complicate moves by the company's founding family to transfer power to the next generation.

The merger was part of group-wide restructuring at the family-run company, which is readying itself for a leadership change following the incapacitation of Lee Kun-hee, Chairman of Samsung Electronics and the group's *de facto* leader.

The group announced that Samsung Engineering would merge into Samsung Heavy Industries to bolster its offshore businesses, but shareholders questioned the merger's synergies and asked that the two companies buy back their shares.

(FT, 20.11.14)

Steinhoff Seals Pepkor Deal

Steinhoff International, South Africa's biggest furniture company, has agreed to buy Pepkor, Africa's largest retailer, in a US$5.7bn cash-and-share deal that would be among the largest ever African acquisitions.

Steinhoff would pay R63bn for a 92.3 percent stake in Pepkor, a private Cape Town-based company which is one of continent's leading retailers. It is best known for its low-end clothing, with a presence across 16 countries and more than 3,700 stores, mostly in Africa but including businesses in Australia and Poland.

The deal would see Steinhoff rapidly increase its exposure to Africa's fast-growing markets and burgeoning consumer class. It would also bolster its presence in eastern Europe.

(FT, 26.11.14)

Onex Swallows Carton Maker

Canadian buyout group Onex has clinched its largest European acquisition after agreeing to pay as much as €3.75bn for SIG Combibloc, the world's second-largest maker of drink cartons.

The Toronto-listed group, founded by Canadian entrepreneur Gerry Schwartz will first pay €3.58bn to SIG's owner Reynolds Group of New Zealand, adding as much as €175m if the Swiss packaging company meets certain performance goals in 2015 and 2016.

SIG, the biggest drink carton maker after Sweden's Tetra Pak, makes aseptic carton sleeves and closures for the beverage and food industries, as well as the filling machines that producers and packagers use with these sleeves.

(FT, 25.11.14)

BT Sets Sights on O2 Acquisition

BT has announced it is in 'preliminary' talks with Telefonica regarding the acquisition of the O2 mobile network, but it has been quick to temper suggestions of a quick purchase by saying that there's 'no certainty' it will go ahead.

If BT were to do a deal with O2or EE, the telecoms giant would be able offer both services – as well as broadband and TV, making it a 'quad play service provider.'

Should an agreement with O2 be made, it would see BT effectively buying back a business that it previously owned. In 2005 it was acquired by Spain's Telefonica for £17.7bn.

(FT, 25.11.14)

Facebook's WhatsApp Deal

Facebook has now completed its US$22bn acquisition of mobile messaging app WhatsApp following EU's approval of the deal. The initial price tag of the acquisition was just at US$19bn, but due to the increase in value of Facebook stocks in recent months, it ballooned to US$22bn.

The deal will also give WhatsApp CEO and founder Jan Koum an estimated US$2bn in stock over a four-year period. He was also appointed to the Facebook board.

Facebook first reached an agreement to acquire WhatsApp in February with the goal of accelerating connectivity to the world and dominate the mobile messaging space. Today, WhatsApp app has more than 600 million active monthly users.

(www.ecumenicalnews.com, 11.10.14)

Deals of the Year 2014

Top 10 Mergers and IPOs that Moved Markets

Nick Rockel*

Mergers and IPOs boomed in 2014, with help from several landmark transactions

The past year settled any doubts that deal making is on the upswing. The M&A recovery gathered pace in 2014, equity capital markets forged ahead, and debt issuance chugged along. At US$3.3tn, global M&A volume rose 26 percent year-over-year as of November 30, according to Dealogic. That surge was driven by a booming US market, where activity jumped 41 percent, to US$1.5tn. But Europe and Asia thrived too. In Europe announced M&A deal volume climbed 20 percent, to US$876bn, as big-ticket strategic deals picked up again.

"The deals we saw in 2014 were based on a strong industrial logic, and that is a sign of a healthy market," says James Esposito, London-based global co-head of financing at Goldman Sachs Group. "In our view, we're not near the peak of an M&A cycle."

While US bankers kept the upper hand in M&A, their European counterparts shone in equity and debt capital markets. Euro-denominated DCM issuance rose 1.5 percent through November 30, to US$2.1tn, boosting global volume by 1 percent; U.S. issuance fell to US$1.8tn, a 7.6 percent drop. Asia's DCM contribution climbed 23 percent to hit a record US$1.1tn.

In Europe supply from investment-grade and high-yield corporates reached a new peak as bankers cheered the resilience of the acquisition financing markets at a time when high-yield issuance had fallen in the US. "In recent years bond market volumes have been driven by refinancing, but in 2014 bond supply was bolstered by big-ticket M&A deals," Goldman's Esposito says.

At US$239bn, initial public offerings reached their highest-ever volume in 2014, rising 58 percent. Europe's ECM bankers struck gold thanks to a 122 percent surge that pushed regional IPO volume to US$68.3bn, vs US$58.4bn for the US which gained just 7.8 percent. Global ECM activity climbed 13 percent, to US$857bn. With US$260bn of that sum, Europe saw a 27 percent boost, partly the result of its banks raising capital before the European Central Bank's stress tests in November; Asia gained 37 percent to reach US$234bn.

When it came to investment banking fees, the US stayed on top, generating US$33bn of the US$72.9bn total. But its share fell to 45 percent from 49 percent even as fees rose 3 percent globally. By contrast, Europe's haul jumped 14 percent, to US$18.4bn, and the region's portion edged up to 27 from 24 percent.

The Cost of Doing Business

From megamergers to a blockbuster IPO, our top ten deals of 2014 yielded generous fees for the banks involved

Name	Deal	Estimated Fees (US$mn)
1	Texas energy conglomerate **Kinder Morgan** buys out master limited partnerships **El Paso Pipeline Partners, Kinder Morgan Energy Partners** and **Kinder Morgan Management** for US$76.2bn	US$30.5[3]
2	**Comcast Corp.** agrees to acquire **Time Warner Cable** for US$69.8bn in a bid to grow its footprint as the No. 1 US cable TV and broadband Internet provider	140[3]
3	Drugmaker **Actavis** gets a Botox injection by agreeing to buy **Allergan** for US$65.7bn	192
4	Minneapolis-based medical device maker **Medtronic** agrees to purchase Ireland's **Covidien** in a US$46.8bn tax inversion	96[3]
5	European cement producers **Holcim** and **Lafarge** strike a US$40.6bn merger of equals	116
6	Chinese e-commerce giant **Alibaba Group Holding** raises a record US$25bn on the New York Stock Exchange	300[3]
7	Social network **Facebook** pays US$21.9bn for mobile messaging provider **WhatsApp**	104
8	French cable operator **Altice** assembles a high-yield bond offering worth €12bn[1] US$16.5bn) to help subsidiary **Numericable** Group win a battle for mobile telecom **SFR**	237
9	**Eurobank Ergasias** arranges a €2.9bn rights issue to become the first Greek bank to return to private hands since the euro zone crisis broke	117
10	The **UK**'s 3 billion-yuan[2] (US$488mn) bond offering makes it the first Western government to issue sovereign debt denominated in renminbi	0.9

Deal values provided by Dealogic unless otherwise noted.
Fee estimates provided by Freeman Consulting Services and Thomson Reuters.
[1] Deal value provided by Altice
[2] Deal value provided by Her Majesty's Treasury
[3] Publicly disclosed

* *Vancouver-based Financial Writer and Editor*

– *The article appeared in the* Institutional Investor *on December 10, 2014*

Overview of Foreign Direct Investment in Africa

David Parkes*, Barri Mendelsohn** and Ofei Kwafo-Akoto***

Foreign direct investment (FDI) in Africa has reached the highest level in a decade and is set to reach an estimated US$80bn in 2014. With ten of the world's 15 fastest growing economies, it is no wonder that Africa continues to attract considerable FDI inflows and this positive trend is expected to continue.

FDI Hotspots

Foreign investments in Africa have traditionally been focussed on a small number of target jurisdictions, with South Africa and Nigeria being the top destinations. South Africa received nearly a fifth of FDI into the continent in 2013, with investments of US$10.3bn. However, new FDI 'hotspots' are emerging and Mozambique, another major investment destination, attracted approximately US$7.1bn as a result of the growth in its coal and gas markets. Other countries which have received significant foreign investment include Ghana, Uganda and Zambia.

Key Sectors

Although investors have typically favoured natural resource assets, there has been a substantial shift away from the extractive industries and the continent is seeing growing investment in other sectors. The top three sectors are technology, media and telecoms, accounting for over 50 percent of FDI projects in 2013.

2013 also saw retail and consumer products overtake financial services to become the second most attractive sector in Africa. FDI projects in real estate, hospitality and construction have increased whilst the mining and metal industries fell outside the top ten sectors when measured by FDI project numbers.

In terms of future trends, investors have highlighted the agricultural sector as having the greatest potential for growth in the next two years. Infrastructure is also viewed as another growth sector in addition to the consumer-facing services, consumer products and telecommunications sectors.

European FDI in Africa

Investors from Europe (in particular the UK) have long shown a strong interest in African assets and in terms of capital investment, Western Europe represented the major source region for African FDI, outstripping Asia Pacific and the Middle East in 2013. In fact, the UK is the lead investor into Africa in terms of FDI projects 2013. The key sectors being invested into from the UK are business services, financial services and telecommunications.

FDI projects by Spanish companies saw a major rise in 2013, with an increase of 52 percent whilst German FDI rose by a more modest 9.7 percent. Due to its cultural and historic ties with Africa, France has been a key investor in the continent and the country was the third most active investor by projects between 2004 and 2013, with 584 projects.

Chinese FDI in Africa

Africa has long benefited from significant inflows of foreign direct investment from China. Currently, more than US$16bn of China's portfolio of global FDI is based in Africa, with an increase in FDI from US$392mn in 2005 to US$2.5bn in 2012.

China has signed agreements with several African governments in order to facilitate investment co-operation and fast-track the inflow of FDI into the continent. Such agreements have already led to major FDI projects in Africa.

For example, Chinese FDI into Tanzania is expected to increase by 50 percent in 2014 to US$3bn, focussing primarily on the energy and mining sectors. Chinese FDI in the country has also been focussed on infrastructure and mining.

US FDI in Africa

There was a 20 percent decline in US FDI projects in Africa in 2013last year, although the country remained the second largest investor behind the UK in 2013. In August 2014, two of the largest private equity firms in the US, The Blackstone Group and The Carlyle Group, separately formed strategic partnerships with Dangote Industries, the African industrial conglomerate, to invest in sub-Saharan Africa.

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** *Managing Associate, King & Wood Mallesons, SJ Berwin, UK*
*** *Associate at International Lawyers for Africa*
– *Abridged from an article that appeared in* www.sjberwin.com on *October 14, 2014*

Why Corruption is a Messy Business?

David Pilling*

Managers have to figure out how to avoid paying bribes – or how to pay without being caught

On some maps of the world, most of the countries of Asia, along with many of those in Africa and Latin America, are coloured red. A few, including China, are a dark shade of orange; and two others, Afghanistan and North Korea, the fieriest of ochres. These are maps produced by Transparency International, an organisation that monitors global corruption. The dark hues reflect these countries' mostly poor reputations when it comes to graft. In all of Asia, only Singapore, Hong Kong and Japan make the cleanest 20 in Transparency International's corruption index.

This is a big worry for multinational companies, many of which have large and expanding operations in Asia, home to the world's fastest-growing economies. Managers are obliged to spend time and energy figuring out how to avoid paying bribes or, at least, how to pay without being caught. Some multinationals hire middlemen to deal with the messy realities. That gives senior executives a degree of distance.

China scores 40 in Transparency International's Corruption Perceptions Index, where 0 is highly corrupt and 100 is perfectly clean. (Cambodia scores 20, the lowest in Asia, and Singapore 86, the highest.) China is the most dramatic example of a changing landscape.

But elsewhere in Asia, the rules may also be shifting. India (with a CPI score of 36) is one case. Even before Narendra Modi became prime minister, promising to shake up the country's bribe-prone bureaucracy, the atmosphere had altered. In the last years of Manmohan Singh's administration, revelations of collusion in the award of telecoms spectrum and coal licences scandalised the nation. Subsequent fear among bureaucrats that they could be accused of corruption led to a virtual standstill in decision-making. Modi's task is to end that paralysis. His reputation rests on the perception that he can cut through red tape while ensuring probity.

The worry is that foreign companies may be treated more harshly than domestic ones, turning anti-corruption enforcement into a form of industrial policy

Leaders in other countries, too, have pledged to tackle corruption. Benigno "Noynoy" Aquino, president of the Philippines, has pursued anti-bribery cases against senior politicians, including his predecessor, Gloria Macapagal Arroyo. Transparency International acknowledges improvement, but corruption still costs the Philippines an estimated 1.8 per cent of economic output a year. In Indonesia, the rise of Joko Widodo from obscurity to the presidency was partly predicated on his reputation as a clean politician. Indonesian authorities are seen to have made some progress – for example, recently convicting the chief justice of the constitutional court on corruption charges. Still, Indonesia's CPI score remains low, at 32.

In a report on anti-corruption efforts in Asia, Herbert Smith Freehills, an international law firm, says western and Asian enforcement agencies are beginning to undertake parallel, even joint, investigations. Britain's Serious Fraud Office and Indonesia's Corruption Eradication Commission, for example, are working together on a probe into allegations that Rolls-Royce paid bribes. The law firm notes that several countries in Asia have stepped up anti-corruption legislation. India has passed laws to appoint an anti-graft ombudsman and strengthened protection of whistleblowers.

Such measures are welcome. Yet they raise questions. One is whether courts can be trusted to administer justice impartially. If not, there will always be an air of arbitrariness about prosecutions. Cynics might suspect that those who find themselves in court have paid too few bribes rather than too many. Second, and related, is a suspicion that foreign companies may be treated more harshly than domestic ones, turning anti-corruption enforcement into a form of industrial policy. There have been mutterings about that by multinationals in both China and India.

The third point is the most unpalatable. In some poorer Asian countries, bribes often serve to top up inadequate state pay and grease the machinery of government. As India has found since the mood turned against graft, the alternative to business as usual may be no business at all.

* *FT Asia Editor. Abridged from an article that appeared in the* Financial Times, *on September 25, 2014*

Electricity Market Reforms in Hong Kong

Hong Kong should reform the city's electricity market and break up the monopoly held by CLP Power and Hong Kong Electric.

"The current structure and regulation in the electricity market under the Scheme of Control (SoC) system is not fair to consumers in that the two power companies are allowed to earn a high risk-free permitted profit and to pass on business risks to consumers to an undue degree," the report said.

Currently, two power generators maintain a plant margin or reserve margin of around 45 percent, which is the capacity kept in operation over and above the maximum demand in order to cover for plant breakdowns and unexpected surges in demand.

However, the council noted that "it is highly unlikely that reducing this to about 25 percent would have any measurable impact on security of supply even if idle capacity would be reduced with market competition".

Therefore, the scheme is "unfair" to consumers in that the two power companies are allowed to earn a high risk-free permitted rate of return (RoR) on their assets and to transfer to consumers the business risks associated with fuel price fluctuations, operational cost and forecasting error in relation to electricity demand, the report said.

The council also urged the government to overhaul the regulatory system of the city's electricity market "in a gradual and incremental way". *(www.ejinsight.com, 04.12.14)*

Regulations for Hazardous Waste

Mexico's transport and communications ministry has published new regulations for the transport of hazardous waste. The regulations aim to safeguard the handling of dangerous waste in vehicles, while establishing new requirements for cleaning the vehicles once the waste has been delivered.

Under the new regulations published in the official gazette, all vehicles carrying hazardous waste must be cleaned at certified cleaning centres.

The regulations apply to all trucking companies, cleaning centres and verification centres involved in the transport of dangerous substances, materials and waste. The regulations will go into effect within 60 days.

(www.bnamericas.com, 14.10.14)

Passenger Bill of Rights in Effect

For years, air travel passengers in Nigeria have had to tolerate poor service from both local and international airlines. Passengers have endured delayed flights, overbooked flights, cancelled flights and cases of missing and delayed luggage, without any protection or recourse from the law.

To improve this situation and provide adequate protection for air travellers, the Nigerian Civil Aviation Authority (NCAA) introduced the Passenger Bill of Rights. This regulation came into effect in August 2013 and the NCAA has since then commenced its implementation.

Through the bill, the federal government has introduced a framework for compensating passengers whose rights are unnecessarily disregarded by airlines, especially domestic operators.

(ILO, 15.10.14)

More Spectrum for 4G Rollout

The National Communications Commission (NCC) of Taiwan decided to offer the 57-64 megahertz (MHz) band to mobile broadband operators for the deployment of trunk networks through the construction of small cell and femtocell.

This band will be licence exempt, with no bidding, licence fee or spectrum-usage fee required. The frequency will be assigned on a first come, first served basis, subject to the NCC's review of the application and network deployment plan.

After the NCC had reached its conclusion, it explained in a press conference that such use is popular in Europe and the US, and it is ready to follow suit in order to promote the penetration of fourth generation (4G) services in Taiwan. *(ILO, 08.10.14)*

Brazil to Limit Charters

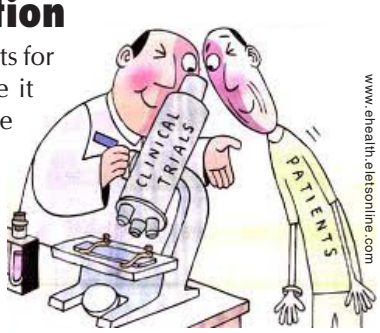
The Brazilian National Waterway Transportation Agency (ANTAQ) published Resolution 3.638 in the Official Gazette, which approves the draft of a new normative Act to regulate the chartering of foreign vessels.

The normative Act is still under public consultation and all interested parties have until November 05, 2015 to provide comments and proposed amendments.

The new Act consolidates the procedures for chartering vessels, which are currently divided into four resolutions – one for each type of maritime navigation (i.e. blue water, coastwise/cabotage, port support and offshore support).

(www.tradewindsnews.com,10.11.14)

EU Clinical Trials Regulation



The Clinical Trials on Medicinal Products for Human Use entered into force. Once it becomes applicable, the regulation will be the comprehensive legal framework for the authorisation of clinical trials in the European Economic Area (EEA) and will replace the EU Clinical Trials Directive.

It will streamline the authorisation process and harmonise the requirements for clinical trials across Europe. A single authorisation procedure for clinical trials will be introduced that will be performed electronically via a new EU portal.

However, actual approval will remain in the hands of member states. The regulation is not expected to apply before mid-2016, as the EU portal for the electronic procedure has to be established first. *(ILO, 29.10.14)*

Monopoly and Competition Circle the Skies Over London

John Kay*

Everyone who has suffered delay in taking off or landing at London Heathrow Airport will have been interested in report from the independent Airport Commission. The commission was appointed by the UK coalition government to delay a decision on expansion of London's airport capacity until after the 2015 general election. And there will be plenty time to contemplate the issues as your plane circles the capital. Whatever solution is agreed, it will not be operative for at least 10 years.

The commission has rejected grand visionary schemes, such as "Boris Island" – a new airport in the Thames Estuary favoured by Boris Johnson, London's populist mayor. Given the history, they were right. It is almost 50 years since a plan for a new airport northwest of London, with room to accommodate future traffic growth, was put forward.

With hindsight, Cublington should have been built. But that plan was superseded by an even more grandiose scheme – with the predictable result that nothing at all materialised.

New capacity has instead been created in piecemeal fashion and the question now is what further piecemeal expansion should take place. The commission has shortlisted three proposals. Two involve extensions to Heathrow, the other an expansion of Gatwick, London's second airport.

Heathrow is the business airport where sharp-suited professionals stride briskly towards the gate. Gatwick is for leisure: beshorted travellers while away the hours before their departure for Málaga. And, although only a 30 minute train ride from the City or West End, Gatwick is almost inaccessible by limousine from central London.

The future of civil aviation in the UK's capital city hangs in the balance

But these images are changing. BAA, which runs Heathrow, was obliged to sell Gatwick, which is now owned by a group of institutional investors. Its management is attempting to compete with Heathrow both for traffic and to be the site of expanded airport capacity.

The key issue is whether the future of civil aviation is "hub and spoke" or "point to point". In the hub and spoke model, feeder services serve central airports. Memphis and Louisville are among the world's busiest freight airports for reasons that have everything to do with their location and nothing to do with the business environment of Tennessee and Kentucky.

Long-distance travellers are less tolerant of indirect routes than FedEx and UPS parcels, but the world's busiest airports – Atlanta, London Heathrow and Chicago – are similarly used by many travellers not going to these cities. Hubs are natural monopolies, with large incumbent advantages – the more flights already using it, the more attractive the hub.

Today, Heathrow is losing its number two position in global airport rankings to Beijing and Dubai. London was the prime European hub when planes struggled to cross the Atlantic. But you can now fly nonstop from Los Angeles to Dubai. There you will find a hub for Asia, and a location where you can build a new runway in less than 10 years because there are few locals to object (and it would matter little if they did). The principal drivers of growth in air traffic today are Asian markets and point-to-point services.

Some of these new point-to-point services are operated by low-cost carriers – Ryanair from Edinburgh to Beziers (population 72,000 and famous, though not very famous, for the Feria de Beziers). Others are direct flights to regional centres made possible by smaller but fuel-efficient long-haul planes. A British Airways Boeing 787 flies directly and daily from London to Chengdu (population 15m and a manufacturing hub of southwest China)

The commission must choose between the scale advantages of monopoly and the innovative benefits of competition. Airline history favours the former, experience of other industries supports the latter.

* *Britain's Leading Economists. The article appeared in the* Financial Times, *on November 19, 2014*

Shelving Bank Structural Reforms

The EU's new Financial Services Chief Lord Hill may withdraw a proposal in 2015 to overhaul the structure of big European banks if it remains mired in a political stalemate.

Hill said he would be keeping a "close eye" on the contentious file, which is facing staunch resistance from France, Germany, the UK and many European banks. His note also recommends dropping a long-stalled proposal on investor compensation schemes and revisiting planned reforms to occupational pension schemes if member states fail to agree a position in 2014.

Most contentious of all is the commission's year-old structural reform plan, which attempts to handle banks that are too big to fail. It includes curbs on lenders betting with their own funds and measures to empower regulators to hive off risky trading activities.

(FT, 05.12.14)

Supervising Credit Intuitions

The Single Supervisory Mechanism (SSM) of EU became fully operative. The SSM was established by the EU SSM Regulation, which conferred specific tasks on the European Central Bank (ECB) concerning policies relating to the prudential supervision of credit institutions.

It was complemented by the EU SSM Framework Regulation, which established the framework for SSM cooperation between the ECB and national competent authorities and national designated authorities.

Pursuant to the SSM, the ECB becomes the central prudential supervisor of financial institutions in the eurozone (including approximately 6,000 banks), with the possibility to extend the scope of its activity to cover EU member states outside the eurozone which choose to join the SSM.

It represents one of the two pillars of the wider European banking union project, the other being the Single Resolution Mechanism (SRM).

(ILO, 12.12.14)

Banks Chastised for Loan Bundling

The UK Competition and Markets Authority (CMA) said the Northern Ireland-based bank and HSBC breached industry rules. The watchdog has issued detailed directions to the two banks to ensure they comply with rules that limit the bundling of loans and accounts.

Banks were told to carry out an audit of compliance and staff awareness of the undertakings, after the Office of Fair Trading became aware of concerns they were being breached.

All eight of the UK's major banks will be required to carry out another audit and report back to the CMA by July 2015, after staff at two other firms was found to have relatively low awareness about the undertakings.

(BBC, 22.10.14)

Cap on Interbank Fees

The European Parliament and Council have announced an agreement to cap interbank fees after accepting a regulatory proposal put forward by the European Commission's competition watchdog.

The regulation on interchange fees for card-based payment transactions will set maximum fees for credit and debit card transactions in the EU and increase transparency over the interchange fee procedure.

The move comes after the European Court of Justice's September ruling against MasterCard, in which it found that interchange fees – charged to merchants to execute transactions between different banks – are anticompetitive in their current form.

(GCR, 19.12.14)

Easing Rules on Banks

China has loosened market access restrictions on foreign banks, in a largely symbolic move to make good on promises to open the country's domestic financial sector to competition.

The cabinet decreased the waiting period for foreign banks to apply to conduct renminbi business from three years after establishing operations in China to one year, and dropped the requirement that a bank be profitable for two consecutive years before applying for a renminbi licence. Foreign banks without a renminbi licence are limited to conducting foreign currency business.

Foreign lenders have long complained about regulations fettering their growth in China, where they controlled only 1.7 per cent of total banking assets at the end of 2013.

(FT, 22.12.14)

New Rules to End 'too big to fail'

Banks may have to scrap dividends and rein in bonuses if they breach new rules designed to ensure that creditors rather than taxpayers pick up the bill when big lenders collapse.

Mark Carney, chairman of the Financial Stability Board and Bank of England governor, said the rules marked a watershed in putting an end to taxpayer bailouts of banks considered too big to fail.

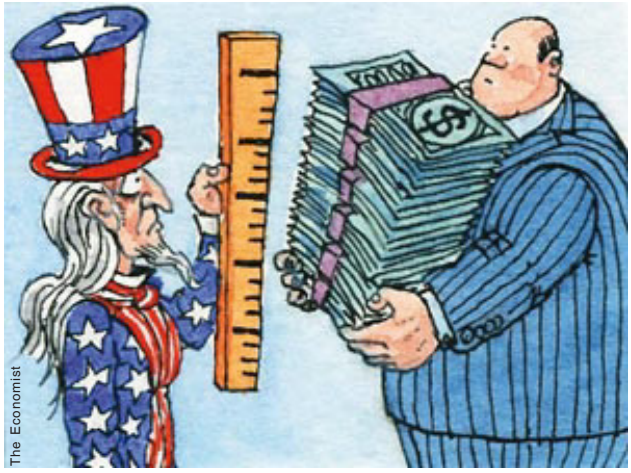
Once implemented, these agreements will play important roles in enabling globally systemic banks to be resolved (wound down) without recourse to public subsidy and without disruption to the wider financial system.

The new rule will apply to 30 banks the regulators have deemed to be globally "systemically important," though initially three from China on that list of 30 would be exempt.

(Reuters, 10.11.14)

Regulating Bankers' Salaries

Avinash Persaud*


The Economist

Should bankers' pay be subject to government regulation? I am not referring to the pay of bankers in public sector banks but those in the private sector. Most people who read these pages will instinctively think not, their attitudes coloured no doubt by rigid, prehistoric pay scales in the public sector that do their best to exorcise talent and motivation. However, policies to do just that have been enacted by the European Union (EU) and as you can expect on matters of pay for highly paid people, it is the subject of hot debate in the US and Europe.

Incentives matter. Arguably, everything that happened in the global financial crisis was the result of flawed incentives. There are no more powerful incentives than pay, and unregulated pay seemed to incentivise banks to chase short-term growth of their loan book over long-term sustainability.

The EU bonus cap restricts banker bonuses to 100 percent of salaries or 200 percent if they get shareholder approval. There is no limit on salaries and so it is a cap on the proportion not the level that can be paid in bonus, though it will likely have the effect of lowering total compensation.

The Bank of England has recently objected to this intrusion in the pay settlements of private companies, adding to the already simmering tensions between the EU and the UK on financial services. But the Bank of England's preferred route is not *laissez faire*. They want a long-term clawback provision on bonuses, in which banks will determine staffs bonus levels and proportion, but bonuses will be returned up to seven years after they were awarded in the event of activities the employee was involved in going bad.

Having spent a couple of decades as a senior executive at investment banks, I have experienced many different bonus structures, both as a recipient and as someone setting bonuses. My conclusion is that while I am deeply uncomfortable about governments getting involved in the detail of private pay, maybe banking is a special case and the EU's cap is a better policy than bonus clawbacks and worthy of being considered by Indian regulators.

A bonus clawback is a policy that works in theory but not in practice. Turnover in the financial sector is rapid. A typical employee is poached after three years and is offered a new set of deferred bonuses to replace the ones they will lose by leaving

Further, let's say a banker makes a loan and the loan goes bad five years later and long after the banker has left the department. With each year that passes, circumstances change and events arise that diminish his or her contribution to the success or failure of that loan. Assessing the banker's role and appropriate level of clawback will be fraught with measurement, legal, equity, intra and inter-departmental rivalries and other challenges.

Regulating the pay of private executives by government is a bad idea except, perhaps, in the case of banks

Moreover, loan failures are like public buses in that they either don't come or come in bunches. This is because they are connected to the macrofinancial climate, which is determined by collective lending and borrowing behaviour. Adding all together means that long-term clawbacks do not connect an individual's pay with individual responsibility.

The financial sector is the only place I have worked where every employee has a well-developed dream of departing quickly.

A culture of get rich quick is risky for everyone—employee, bank, and the wider economy and society. If a smaller proportion of compensation were paid in discretionary bonuses, it would tilt banks and employees away from searching for life-changing gambles towards building long-term customer franchises, taking less risk, and investing more in preserving reputation.

I am surprised that I have reached this position, but experience teaches me that from a macro and micro-prudential perspective, the EU's bonus cap is a good policy and one worth spreading to other places.

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Competition in Public Procurement in Pakistan

Asfandyar Khattak* and Mahila Quddus**

Pakistan spends an equivalent of 25 to 30 percent of its gross domestic product (GDP) on public procurement. Given this volume, restricting anticompetitive practices such as collusive bidding is extremely important. The Public Procurement Regulatory Authority (PPRA) estimates that almost US$4bn can be saved by curbing collusive and corrupt practices in this sector. Since public procurement is done with public funds, the additional cost is borne by the tax payers. It is, therefore, imperative that this practice is curbed.

A significant hurdle faced by the Commission in addressing competition issues in public procurement is the dearth of reliable, consistent, and regular information about the latter.

As part of its mandate to identify and address competition issues in the public procurement, CCP has taken up various cases of competition law violations by public procurement agencies. The following instances of CCP's enforcement actions will highlight some of the competition issues in public procurement in Pakistan since the promulgation of the country's competition law in 2007.

- **Cartelisation by Pakistan Jute Mills Association (PJMA) in Production and Supply of Jute Bags, February 2011:** CCP imposed a penalty on PJMA and 10 Jute Mills for engaging in collusive activities *vis-a-vis* production and supply of jute bags. CCP took a lenient view of the situation due to the disclosure and admittance of PJMA and the Jute Mills for their willingness to file commitments for future compliance.
- **Collusion by Pakistan Electrical Power Equipment Manufacturers Association (PEMA), April 2012:** CCP initiated an inquiry on possible collusive bidding by members of PEMA on the basis of information it had received and issued Show-Cause Notices to 25 undertakings. During the course of legal proceedings, Siemens, one of the members of PEMA, invoked the leniency clause of CCP's regulations and submitted over 200 documents that collusion between manufacturers to win tenders in two products – switchgears and transformers.
- **Tenders by Sukkur Electric Power Company (SEPCO), September 2013:** CCP received complaints from engineering and contracting firms against SEPCO for introducing a condition in the invitation for tender that all the participants must have a prototype approval before entering the bidding phase. SEPCO agreed with the advice of CCP and removed the condition from its tender.
- **Tender for Procurement of Grid Station Equipment by National Transmission and Dispatch Company (NTDC), December 2013:** CCP received complaints against NTDC for introducing a condition in its tender for the procurement of grid station equipment. In response to CCP's concerns, NTDC amending the bidding document.
- **Tender for Power Transformers by Lahore Electric Supply Company (LESCO), February 2014:** CCP received complaints against LESCO for introducing a condition in its tender for the procurement of Power Transformers whereby only those bids were to be accepted for the subject procurement that were accompanied with type test reports in accordance with NTDC/WAPDA specifications for the equipment offered. In response to CCP's concerns, LESCO cancelled its tender and only opened it for re-bidding after addressing the competition concerns.
- **Procurement of Bulldozers by the Government of Balochistan, June 2014:** CCP took notice of complaints regarding a tender of Balochistan government for procurement of bulldozers whereby only those bids were to be entertained where the bidders provided details of supply during last five years. CCP's concerns were taken into account and the bidding documents were amended accordingly.

The Competition Commission of Pakistan (CCP) feels that it is imperative to conduct a thorough review of the existing framework to identify the gaps and suggest policy changes that will help achieve competition and curb anticompetitive practices in the public procurement

To increase its efficacy of detecting and prosecuting collusive bidding, CCP is committed to building its internal capacity by training its officers to develop the requisite skill-set needed to address competition concerns in public procurement. CCP also plans to issue guidelines for bidders and public procurement agencies so that the tendering process in the public sector becomes more transparent.

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– *This article was contributed by authors at the special request made by CUTS.*

Auto Industry Changing Gears

Qin Dexing*

2014 has been an eventful year for China's auto sector, with the industry seeing a significant slowdown compared to previous years. The government is also tightening regulations, issuing several antitrust tickets to the sector. This article will take a look back at the major events that have taken place in China's auto industry in 2014 and also give the experts' views on the sector's future.

wwwbp.blogspot.com

New Normal

China's auto industry reported much slower growth in 2014. The country saw 21.08 million units of cars sold during the January-November period, up 6.1 percent year-on-year, according to data from the China Association of Automobile Manufacturers (CAAM). The growth is 7.4 percentage points lower than the same period in 2013.

For the year 2015, CAAM predicted that the growth rate may be around 7 percent, the same level as economists' predictions on China's gross domestic product (GDP) growth in 2015. But in 2013, the sector saw 13.9 percent growth year-on-year.

Slower sales go hand-in-hand with a higher inventory. The inventory among auto dealers in November has increased by 33 percent year-on-year, and only some 30 percent of dealers are able to make profits at present, according to data from the China Automobile Dealers Association.

Antitrust Probes

Antitrust probes into the auto sector have been conducted for more than three years, but in 2014, the investigations finally yielded some results.

Automakers have been accused of engaging in monopolistic behaviour when handling their dealers, as carmakers have absolute dominance in vehicle distribution. For instance, dealers can only sell auto parts from the automakers and are not allowed to make purchases from other suppliers.

But the investigation is not confined to automakers, as dealers and auto parts makers may also have abused their market power by engaging in monopolistic practices such as price manipulation.

Antitrust authorities in 2014 have issued several punishments, but the investigation is far from over, experts said, as the government intensifies its efforts in the enforcement of antitrust laws.

In response to the government's antitrust probe, major automakers, such as Jaguar Land Rover, Audi, Chrysler and Mercedes-Benz in July and August announced to lower auto parts and car prices before the antitrust authorities unveiled any results.

In August 2014, four BMW dealers in Central China's Hubei Province were fined a total of US$260,964 by the local pricing authority for monopolistic pricing. China's Antitrust Authority issued a record fine on 12 Japanese auto parts and bearings producers, including Denso Corp and Mitsubishi Electric Corp, for price manipulation.

In September 2014, FAW-Volkswagen, one of the German automaker's joint ventures in China, was fined by the pricing authority in Hubei, for monopolising prices in the sales of itspremium Audi brand. Eight Audi dealers in the province were also fined.

Electric Push

Despite the slowdown in the overall auto industry in 2014, the country has seen robust growth in the sales of new-energy vehicles. In the first 11 months, a total of 56,700 new-energy vehicles were sold, nearly five times the number in the same period in 2013.

The State Council announced that consumers would be exempt from the 10 percent purchasing tax if they decided to buy new-energy cars, which has been a great boost to the sector. The government has also reiterated its determination to develop new-energy cars in China. During a visit to SAIC Motor in Shanghai in May, President Xi Jinping said that developing new-energy vehicles is the only way for China to grow into a strong power in the auto sector.

The entry of US premium electric car brand Tesla into China, which has gained widespread attention from the public, has also made people more open to the idea of buying an electric car. BMW's i3 electric car and i8 hybrid landed on the Chinese market.

Rapid growth in the sector also prompted more companies to jump into the sector. Internet firm LeTV is planning to develop electric cars in cooperation with BAIC Motor.

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* *Web Editor, Global Times. Abridged from an article appeared in* www.ecns.cn, *on December 26, 2014*

Economics Nobel Winner's Insights

A number of economists have been asked to summarise the Tirole approach to regulation, and they basically agree the best answer is, "It's complicated."
There is no easy line in summarising my contribution and the contribution of my colleagues. It is industry-specific. The way you regulate payment cards has nothing to do with the way that you regulate intellectual property or railroads.

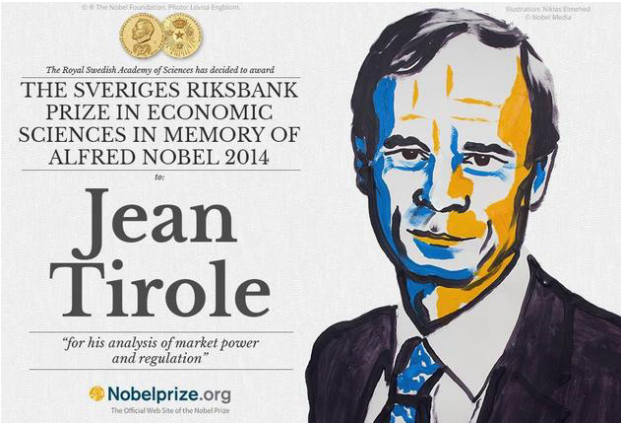
There are lots of idiosyncratic factors which makes it all so interesting. It requires some understanding of how an industry works. And then the reasoning is very much based on game theory. Usually we don't have a perfectly competitive market, so we use game theory, which describes situations with a small number of actors.

What drew you to this field? When you started in the late 1970s, industrial organisation and regulation was not attracting a lot of top researchers.
It was basically a meeting between topical issues about rethinking antitrust policy and regulatory economics and also a meeting with some key people. Nobody knew how to deregulate telecom or power companies.

Do you measure your success as an academic in terms of your ability to rewrite government policy? How much do you focus on shaping public policy?
You develop new ideas and they percolate or they do not. But my choice has been to stay in the ivory tower. I try to be applied. I think the work has influenced antitrust authorities. But I think my competitive advantage is really to try to think about new paradigms.

What are your thoughts on the 'net neutrality' debate. Should governments prevent bandwidth providers from charging premiums?
I have not worked on net neutrality. It means several things. One of them is paying for bandwidth and congestion, and that is natural economics because we want firms to pay for the social costs of their choices. But people and regulators are afraid that the bottlenecks will actually use their market power to expropriate from content providers, and that is why we need to remain careful. I follow it from afar..

Another issue in the headlines is Amazon's battle with the publishing company Hachette. Is this an example of a two-sided market? Should governments be concerned about Amazon's ability to extract concessions from suppliers?
In a two-sided market, sometimes one side is going to pay all. When you have a small newspaper that's free and just



Jean Tirole, French Professor of Economics won the Nobel in economics. He was interviewed by Binyamin Appelbaum, Reporter, The New York Times

charges for advertising, it's not preying on anyone. In terms of antitrust, those industries move very fast. You have a monopoly at some point in time and you must have the right conditions for entry, and the regulators have to look and be ready to intervene if it's suppressing innovation.

What are you working on now?
One example which is very important is intellectual property. You may have followed the recent debates about patents that are not that important before they are incorporated into a standard and then become important just because they are chosen over alternatives for inclusion into the standard — they become 'standard-essential.'

With Josh Lerner at Harvard, we have proposed new rules to protect standards. It's fine to reward innovation. But we want to reward important innovations. We don't want to reward patents which can command a lot of money just because they can be selected into the standard.

Do you think regulation is moving in the right direction? Are these increasingly complex regimes improving our society, or getting in the way of innovation and growth?
What we have been trying to do is to get regulation which is light enough in order to let innovation happen and to promote investment by the incumbents. Bad regulation can actually reduce growth quite a lot, can create a lot of problems. But we have to design rules to promote better regulation. That is our work as economists: to promote better and efficient regulation.

– *Excerpts from an Interview that appeared in the* New York Times *on October 16, 2014*

Publications

Economiquity


ECONOMIQUITY

WTO Must Prevail Over Splinter Groups

The October-December 2014 issue of Economiquity carries an article entitled, 'WTO Must Prevail Over Splinter Groups' in its cover story which states that trade between members of a group affects the rest of the world. It is critical to focus efforts on the multilateral system and not to succumb to the ease and appeal of plurilateral agreements. Rather, countries must strengthen the inclusivity and empowerment of the WTO system, particularly for the world's poorest and marginalised.

A special article by Jeffrey D. Sachs states that the problem with free-market and Keynesian economics is that they misunderstand modern investment.

Another special article by Tulsi Jayakumar states that the WTO's objections over our grain stockpile do not make sense. Hence, the July stand-off and the recent resolution.

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

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

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 early 2015, 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 in 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

AP: Associated Press; BBC: British Broadcasting Corporation; BD: Business Daily; CD: China Daily; FT: Financial Times; GCR: Global Competition Review; ILO: International Law Office; LL: Latin Lawyer; PDI: Philippine Daily Inquirer ; TG: The Guardian; TN: The Nation; ToI: Times of India; VW: Value Walk; YN: Yahoo News

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