REGULETTER

A Quarterly Newsletter

CUTS International

Volume 18, October-December 2017

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Special Articles

Nigeria is Finally Adopting Competition Law. Is Ghana Next?

Competition is a fundamental tenet of well-functioning markets, especially for deregulated economies. Markets driven by competition encourage companies to provide consumers with superior products and services at a better price. It also results in wider choice for consumers, stimulation for innovation and most importantly, efficiency in resource allocation. A well enforced competition regime can reduce the uncertainty of the market by curbing anti-competitive practices. This is an important element of promoting private sector development and encouraging inflow of FDI.

Nigeria, the biggest economy in Africa and the regional leader of West Africa has recently passed the harmonised version of the Federal Competition and Consumer Protection Bill. It is now slated for the President's assent, when it will become a law repealing the erstwhile Consumer Protection Act. Subsequently, Federal Competition and Consumer Protection Commission (FCCPC) and the Competition and Consumer Protection Commission Tribunal will be established taking over the existing structures of the Consumer Protection Council. On the other hand, Ghana, the second biggest economy of West Africa after Nigeria, is in a long drawn process of having a functional competition policy and law.

Competition law was long overdue in the region. In 2008, when CUTS International started a two year project (http://www.cuts-ccier.org/7up4/) aimed at developing the awareness of national stakeholders and building local capacities on the need for effective competition regimes in seven countries of West Africa including Nigeria and Ghana, the level of awareness concerning the importance of competition law was low. As part of the project CUTS also built the capacity of national stakeholders to the needs and benefits of a functional competition law and has been building up pressure on policymakers to adopt a competition law in the country at the earliest. To do all this, CUTS has also established its own centre in Accra and entered into an MoU with the Ministry of Trade & Industry (MoTI) to work on trade, investment and competition issues.

In Ghana, CUTS developed a Competition Law two years ago and have been organising several stakeholder consultation meetings. Comments and input from the private sector helped to enrich the policy document. The bill and the policy document are currently ready for submission to the cabinet. During an event to celebrate the World Competition Day organised by CUTS in Accra, the MoTI informed that the bill will pass into law in 2018. While the prospect of Ghanaian businesses operating under a competition law and policy from 2018 is encouraging, we need to ensure that the bills in both Nigeria and Ghana does not get entangled into bureaucratic wrangles and vested interests.

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

Control Procedure for Mergers

Chile's National Economic Prosecutor (FNE) will undertake a control procedure for merger operations before they begin. The latest reform of the competition statute introduces a control procedure for merger operations that have effects in Chile.

According to the standards established by law, the FNE must examine any merger in which sales in Chile by the economic agents planning to merge are equal to or greater than US$70mn; and at least two of the economic agents planning to merge have generated sales equal to or greater than US$11mn.

The FNE has produced competition, Threshold application and remedies or solutions guides respectively. *(ILO, 09.11.17)*

Making Market Regulation Efficient

The Competition Council of **Bosnia** and **Herzegovina** recently set out its objectives and priorities for 2018 in its 2018 Work Programme.

One of the Council's medium-term objectives is to make market regulation more efficient with the aim of strengthening competition protection in Bosnia and Herzegovina. The Council will, therefore, initiate a change in the existing Law on the Protection of Competition in order to align it with EU regulations. The Council has also stressed its dedication to improving its expertise and administrative capacity.

Further, in recent months the Council has intensified cooperation with other competition authorities in the region. *(ILO, 14.12.17)*

Blocking Notified Mergers

After years of intense debate, the **Sweden** Parliament has passed a government bill, giving the Competition Authority greater decision-making powers in relation to notified mergers in Sweden.

The Swedish Competition Authority is one of the few competition authorities in the EU that lacks its own decision-making powers and adheres to a judicial model. Following the legislative amendments, the authority will be able to block notified mergers and its decision-making powers will therefore be similar to those of the EC.

The legislative amendments to the Competition Act will enter into force on January 01 2018. *(ILO, 02.11.17)*

Harmonising New Act with EU Rules

The **Serbian** Competition Authority, together with the Ministry for Trade, Tourism and Telecommunications, has lodged an initiative for the new Competition Act, which will replace the Competition Act 2009 (amended in 2013).

The goal is to harmonise the new act with EU rules while observing the specific demands of the Serbian market. Once the draft is ready, it will be presented for public debate.

Further, the authority issued three draft block regulations for public review and comment: regulations on technology transfer agreements; agreements in the rail, road and inland waterways transport sector; and vertical agreements and concerted practice in the motor vehicles sector. *(ILO, 19.10.17)*

Reforming Competition Law

Marcos Peña, Chief of Staff for President Mauricio Macri of **Argentina**, has announced a new initiative to reform the country's Competition Laws. The initiative promoted by the Executive Branch will seek to merge two existing projects in order to create a National Competition Authority (ANC), establish new guidelines for fines, update the amounts from which acquisitions and mergers must be notified and incorporate a clemency programme, among other major changes.

The project now before Argentina's Congress would see the creation of the ANC as a decentralised and autonomous body within the executive branch. Under its purview would fall a Competition Defence Tribunal, a Conduct Instruction secretariat and a Merger review secretariat. *(CPI, 16.10.17)*

Overhauling Restrictive Practices

The **Israel** Antitrust Authority published a draft amendment to the Restrictive Trade Practices Law for public comment. The amendment proposes a broad reform of the law as regards restrictive arrangements, monopolies and mergers.

The amendment also entails significant changes to the authority's enforcement powers, including the ability to impose much higher financial penalties. According to the authority, the amendment aims to decrease the existing regulatory burden that applies to legitimate and efficient practices and strengthen anti-competitive enforcement. *(ILO, 23.11.17)*

Boosting Economic Growth

The Australian Competition and Consumer Commission (ACCC) welcomes two important legislative amendments to **Australian** competition law that have passed Parliament, following recommendations from the 2015 Harper Competition Policy Review.

The reforms also bring changes to the options available to merger parties to have their transactions cleared on either competition or net public benefit grounds. The merger authorisation and formal clearance processes will now be combined and streamlined, with the ACCC as the first-instance decision maker.

These new laws have far reaching implications for the Australian economy and should significantly boost growth. The Harper Review recommended these changes to enhance the benefits that should flow to consumers and businesses when markets operate efficiently. *(ACCC, 18.10.17)*

How 2017 Shaped Competition Law in India

Nisha Kaur Uberoi*

Merger Control

Merger control continues to remain the CCI's strongest scorecard. The CCI has laid to rest industry's concerns of significant delays to the M&A regime. The CCI's average review time for notifiable transactions has reduced from 34 working days in 2016 to 24 working days (approximately) in 2017, despite it having a skeletal headcount in the merger control division as compared to its international counterparts.

The annual review of the combination regulations where the CCI continually addresses industry concerns has yielded great results. The merger control regime is 'near perfect' and one key change which remains on industry's wishlist is the right of hearing, before the CCI can invalidate a merger notification – which it currently can, and does, without affording parties a right to be heard.

The MCA and the CCI should be lauded for removing the 30-day filing deadline for a notifiable transaction and bringing India's merger control regime in-line with international best practices, and recognising the fact that merging parties are incentivised to file as soon as possible. This move also does away with unnecessary penalties for delayed filings.

To further streamline the merger regime, the new *de minimis* exemption by the MCA clarified that asset acquisitions would entail application of *de minimis* and jurisdictional thresholds only to the assets and turnover of the relevant business being acquired and not to the aggregate value of the seller's entire financials, as previously considered. While this is a welcome relief for the industry, the modalities of auditor certification for such asset acquisitions and business transfers need to be addressed by the CCI, given that a majority of businesses do not maintain separate financials for assets/business divisions.

The year 2017 has been a year of significant changes for India's competition law regime, with several positive changes made both by the Competition Commission of India (CCI) and the Ministry of Corporate Affairs (MCA)

Leniency Regime

The CCI has been promoting its leniency programme. In 2017, the CCI issued its first order under the leniency regime in a case involving bid-rigging for tenders relating to supply of fans to Indian Railways. The CCI gave a 75 percent reduction of penalty to both the enterprise and the individual who availed of the leniency regime.

Shortly after this order, the CCI made amendments to its leniency regulations to strengthen and streamline the leniency regime. The amended regulations, *inter alia*, remove the cap on the number of applicants who may claim leniency (consistent with the US system), allow access to file by non-leniency applicants and third parties (consistent with the EU system), and allow individuals to also apply for leniency.

Contentious Cases

The CCI recently imposed a penalty on Monsanto for not providing information regarding the role of individuals allegedly involved in the conduct of business at the time of the alleged contravention.

The CCI also delivered its first substantive order in relation to resale price maintenance and held that Hyundai Motor's discount control mechanism through which it monitored maximum discounts offered by dealers and imposed sanctions for non-compliance with the stipulated discounts, was a violation of the Competition Act, 2002.

Conclusion

Given that the CCI has the ability to levy India's highest economic penalties, the application of turnover remained highly contested until 2017 when the Supreme Court of India settled the issue in relation to turnover being interpreted to only mean relevant turnover thereby adopting the principle of proportionality. The clear position now is that an enterprise can only be penalised with respect to turnover pertaining to those of its businesses which violated the Competition Act, and not in relation to its entire turnover.

The CCI has since followed this precedent, and enumerated aggravating and mitigating factors in relation to the penalties being levied. However, the need of the hour is for the CCI to formulate penalty guidelines which will serve as a barometer to guide industry.

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ABUSE OF DOMINANCE

Monsanto Slow in Replying

India's anti-trust regulator has fined Monsanto Co US$233,000 for being too slow in replying to questions in a competition probe into the US seeds company. The Competition Commission of India (CCI) in 2016 ordered an investigation into whether Monsanto had abused its dominant position as a supplier of genetically modified cotton seeds.

The CCI, which is yet to complete its investigation, fined Monsanto for delays in filing replies. Monsanto responded to CCI's queries in August 2017, but only after eight reminders issued between April 2016 and May 2017.

A Monsanto India spokesman said: "Monsanto continues to extensively cooperate with the CCI in the investigation and has been providing information in response to requests received." *(Reuters, 04.12.17)*

Unilever Facing Ice Cream Rebates

Italy's antitrust agency fined Unilever's Italian unit more than €60mn (US$71mn) for abusing its dominant position in the country's ice cream market. It said Unilever had abused its position in single-wrapped so-called impulse ice creams, intended for immediate consumption, which it sells through its 'Algida' brand.

The local unit of the world's biggest ice cream maker rejected the agency's conclusion and would appeal. Italian authorities started the probe in 2013 when a small producer of organic fruit lollies called La Bomba accused Unilever of forcing local retailers not to sell its popsicles.

Italians ate €5.15bn worth of ice cream in 2015, according to the antitrust agency, and sales of individually-wrapped treats were worth €780mn. *(Reuters, 06.12.17)*

AB InBev Blocked Beer Trade

AB InBev has been accused by the **European Commission** of hindering cheaper imports of its Jupiler and Leffe brands into Belgium from neighbouring countries.

The Commission has sent a statement of objections to the world's largest brewer by volume. Margrethe Vestager, European Competition Commissioner said: "Belgian consumers may have had to pay more for their favourite beers. Our preliminary finding is that AB InBev may have deliberately prevented cheaper beer imports out of France and the Netherlands from reaching consumers in Belgium."

If found guilty, ABInBev may face a fine of up to 30 percent of its sales, with the maximum fine being 10 percent of its annual global turnover. *(FT, 01.12.17)*

'Statement of Objections' Issued

The **Bulgarian** Competition Commission recently sent statements of objection for abuse of dominant position by the electricity distribution and supply companies EVN, CEZ and Energo Pro.

The Commission established that the companies in each of the economic groups had applied common strategies and practices which discriminated against independent traders outside of the groups and limited fair trade prices.

According to the Commission, allegations were made that EVN, CEZ and Energo Pro had traded information regarding customers switching from the regulated market to the liberal market in order to purposely stall the necessary paperwork for customers to make the initial transition to another power supplier. *(ILO, 22.11.17)*

Vodacom Sued after Govt. Tender

The **South African** Competition Commission had initiated an investigation into Vodacom Group for abuse of dominance, after the company secured an exclusive contract to be the sole provider of mobile telecommunication services to the South African government.

Vodacom, the largest mobile service provider in South Africa, was the preferred supplier after other bidders were eliminated at different phases of the bidding process.

The Commission said it had information that there were 20 government departments which would be tied into the new Vodacom contract. Other departments, including state-owned entities and municipalities, will be incentivised to adopt the new contract.

The Commission said it has reasonable grounds to suspect that the exclusive contract may constitute an exclusionary abuse of dominance by Vodacom in contravention of the Competition Act. *(www.destinyman.com, 05.10.17)*

Facebook Acting in an 'Abusive Fashion'

Germany's cartel office said that Facebook is acting in an abusive fashion by collecting data on the way people use third-party websites.

The Federal Cartel Office said its investigation of Facebook reached the preliminary conclusion that the company has a dominant position in the market for social networking sites in Germany. Further, it said that Facebook is 'acting abusively' by only allowing people to use its social network if they consent to the collection of all types of user data from third party sites and subsidiaries, such as WhatsApp or Instagram.

Creating custom profiles of users and selling them to advertising clients is a central pillar of Facebook's business model. Facebook rejected the cartel office's preliminary report. *(AP, 19.12.17)*

PRICE FIXING

J&J Fined over Painkiller Patch

The French competition authority fined US healthcare group Johnson & Johnson €25mn (US$29.6mn) after it ruled the company had deliberately slowed market access to generic copies of its painkiller Durogesic.

Durogesic is sold as a skin patch to control ongoing moderate to severe pain and often prescribed in cancer cases. It contains fentanyl, an opioid which, if misused, can lead to death by overdose.

The French Autorite de la Concurrence said J&J's Janssen had 'repeatedly intervened' to block the approval processes in France of Durogesic's generic copies and disparaged them when in contact with doctors and other healthcare professionals. *(Reuters, 21.12.17)*

German Carmakers Raided

The European Commission (EC) has widened its anti-trust probe into German car makers, raiding the headquarters of Daimler, Volkswagen and Audi.

The investigation follows allegations that several manufacturers had colluded to fix the price of certain technologies for decades.

The Commission said it had carried out the inspections on the back of its concerns that 'several German car manufacturers may have violated EU antitrust rules that prohibit cartels and restrictive business practices'.

(ET, 24.10.17)

Bread Price-Fixing Probe

The Canadian Competition Bureau's investigation into allegations of bread price-fixing includes at least seven companies from bakery wholesalers and discount chains to Canada's three major grocers, according to court documents.

George Weston and Loblaw Companies admitted to participating in an industry-wide bread price-fixing arrangement for over a decade and tipping off the country's competition watchdog.

The Competition Bureau executed search warrants at the offices of a number of grocers earlier this fall, but has said there has been no conclusion of wrongdoing and no charges have been laid. *(CPI, 20.12.17)*

Gazprom to Sweeten Concessions

The EC wants Russian gas giant Gazprom to make more concessions in order to end a six-year long antitrust investigation.

The Russian state-controlled company is fighting allegations of overcharging customers and blocking East European rivals in contravention of EU rules. It denies the allegations.

The EU antitrust authority has said Gazprom's gas price formula, which is linked to the oil price, has led to consumers in Poland, Lithuania, Bulgaria, Estonia and Latvia paying excessive prices compared with Germany.

(Reuters, 13.10.17)

Danone Denies Wrongdoing

Indonesia's anti-monopoly agency has imposed a US$1mn fine on bottled water producer PT Tirta Investama, which is affiliated to French firm Danone, for resorting to unfair business competition practices.

The Indonesian Business Competition Supervisory Commission found thatPT Tirta Investama and PT Balina Agung Perkasa, a distributor of mineral water Danone-Aqua, punished two sub-distributors in 2016 for selling a rival product.

Aqua is the biggest bottled water brand in Indonesia. It competes with products owned by PT Indofood Sukses Makmur and PT Mayora Indah, among others. Tirta Investama was disappointed with the decision and was studying its options regarding the ruling. *(CPI, 20.12.17)*

Laundry Cos. Felt the Heat

The UK Competition and Markets Authority fined two suppliers of cleanroom laundry services for breaking competition law by agreeing not to compete for each other's customers.

Both businesses had been trading under the 'Micronclean' brand since the 1980s in a longstanding joint venture agreement. In May 2012 the companies entered into new, reciprocal trademark licence arrangements under which they agreed not to compete against each other.

Under the agreement, Micronclean Ltd served customers in an area north of a line drawn broadly between London and Anglesey and Berendsen Cleanroom Services Ltd served customers located south of that line. The companies also agreed not to compete for certain other customers, irrespective of their location.

Market-sharing arrangements like these are generally illegal under competition law.

(www.cleanroomtechnology.com, 19.12.17)

Cosmetics Firms in Cartel Practices

Five major cosmetics companies as well as one of Greece's largest department store chains have been fined a total of US$22.15mn for operating as a cartel.

Ironically, Notos, the company which notified the Greek Competition Commission to complain about the practices by cosmetics firms, was found to have been one of the most egregious offenders and penalised US$4.81mn), the second biggest fine.

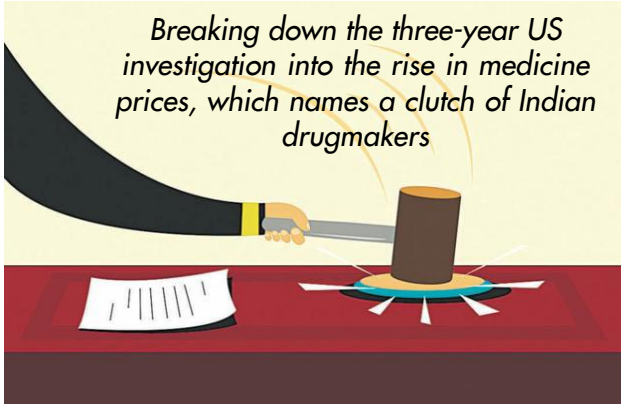
The firms involved had, according to the verdict, engaged in horizontal price-fixing by determining the retail prices of their products so buyers wouldn't be able to get lower prices and forced to pay rigged prices.

Estee Lauder Hellas was fined US$6.34mn; Gerolymatos Comestics US$3.53mn; L'Oreal Produits De Luxe Hellas US$3.08mn; Sarantis US$2.28mn); and US$2.11mn for Parfums Christian Dior Hellas.

(NH, 11.10.17)

Paying a Price: Industry Collusion or Individual Misbehaviour?

Mark Pohl*



The stakes got much higher in a long-running generic drug investigation in the US.

Under President Obama, the US Food and Drug Administration aggressively pursued manufacturing violations. For example, between 2013 and 2014, the FDA barred exports to the US from four Ranbaxy plants. By 2015, 46 Indian drugmakers were on FDA's 'import alert' list. FDA's enforcement actions curtailed drug supply. Not surprisingly, drug prices jumped: between July 2013 and July 2014, the prices of more than 1,200 generic medications jumped an average of 448 percent.

Local government health-insurance plans could track price increases, but were neither involved with nor aware of FDA's enforcement actions. These governments thus inferred that the price rises were caused by an industry-wide agreement to fix prices. Attorneys from the state governments thus launched an investigation into drug price-fixing.

In 2016, the governments formally accused six manufacturers of price-fixing. The allegations do evidence some collusion. After such an expensive and wide-ranging investigation, however, the misbehavior appears quite limited, involving perhaps ten people.

The governments tried to strengthen their case by significantly expanding their accusations. The governments now accuse 12 other manufacturers of participating in an industry-wide secret boycott.

Much of the governments' 'accusations', however, describe behaviour that is legal. For example, the governments accuse the manufacturers of being 'headquartered in close proximity to one another in New Jersey or eastern Pennsylvania, giving them additional opportunities to foster connections and meet and collude.' Industry clusters, however, do not show collusion. The US drug industry has historically been clustered in New Jersey; that does not in any way establish that those companies agreed on a secret, industry-wide boycott.

Similarly, the government notes that in 2013, the FDA had approved only one generic, nimodipine. The manufacturer understandably raised its price. The governments calls this price 'artificially inflated'. Yet, a manufacturer with the good fortune to enjoy a transient monopoly is generally allowed to charge as much as the market bears.

Similarly, the government lawyers note that the first generic manufacturer to enter a particular drug market retains 'more than its proportional share of the market.' This is, however, legal. Marketing textbooks urge businesses of all kinds to be the first to market for just this reason. The government lawyers here seem ignorant of basic economics.

Similarly, the governments accuse the manufacturers of monitoring and tracking competitors' market-share. Keeping an eye on the competition, however, is legal. Indeed, public companies are legally required to do so, to fairly disclose competitive risks to investors.

Even the governments' more pointed accusations are questionable. For example, the governments allege that Mylan's President told Emcure's US CEO that Mylan would, for a particular drug, not bid on two large customer accounts, ostensibly allowing Emcure to win them. Assuming the governments' allegations are true, however, they may not show anyone violated antitrust law. US antitrust law prevents industry-wide boycotts involving every possible supplier. In contrast, a unilateral decision by one manufacturer acting alone is legal.

The governments' wide-ranging investigation uncovered individual misbehaviour. The newly-filed accusations, however, show little evidence of industry-wide collusion. Thus, some of the accused companies have asked the judge to dismiss the case. A ruling on those requests can be expected by early 2018.

For Indian companies operating in the US, this case is an expensive distraction, not an existential threat. The upshot, however, is that Indian drugmakers may need to invest more heavily in US-based legal staff, to assure themselves that the individual misbehaviour uncovered here does not occur among the US-based staff.

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* *Attorney with Pharmaceutical Patent Attorneys, LLC of New Jersey, a law firm which represents drug manufacturers. The article appeared in* The Hindu Business Line *on November 11, 2017*

The Demise of Smaller Carriers Kills Competition in the Skies

Philipp Goedeking*

The demise of Monarch Airlines is the third time a European carrier has had to file for bankruptcy in the past six months. Before the UK operator came Germany's Air Berlin and Italy's Alitalia. Europe's carriers are in crisis, you might think. Think again.

Over the same period, the market capitalisation of other European airlines – notably, Lufthansa, Air France-KLM, British Airways' parent International Airlines Group, Ryanair and EasyJet – has risen, in some cases in the order of 50 percent. This illuminates a global trend. Smaller carriers find it increasingly difficult to compete against big carriers, and the latter are getting bigger. Bankruptcies are bad news for passengers and possibly disastrous for governments.

As different as their business models are, hub-carriers such as BA and low-cost carriers like Ryanair live off cost advantages brought by scale-driven standardisation. The more planes, engines and procedures of the same kind, the cheaper it is to keep planes aloft. These rules of industrial competition suggest that there is nothing wrong with big airlines getting bigger, and smaller, less efficient ones disappearing from an over-supplied market.

Recent banksuptcics is among law-cost europeon carriers highlight a global problem

The problem is that Air Berlin and Alitalia showed that "market exits" are anything but: aircraft and crew of failed airlines are mopped up by big rivals, increasing dominant positions, or even (near) monopolies, on key routes.

Just as Lufthansa looks set to get the lion's share of Air Berlin, and Ryanair – at least until its staffing crisis – wanted to buy Alitalia, so EasyJet and IAG are reportedly eyeing Monarch. This is proof that market exits by one brand do not reduce over-capacity. Instead, they increase market dominance and the monopolisation of routes – in this case, exclusively by Europe's big five.

These European examples are case studies in the structural counter-competitiveness of the global airline industry. The creation of more "super carriers" is replacing competitive strategy with monopolies: Air Berlin and Alitalia finally bowed to market forces only after their common anchor investor, state-owned airline Etihad from the United Arab Emirates, pulled the plug on the investments.

Landing and take-off slots are precious – and what the big airlines are after when they absorb failed rivals

In this era of super carriers, air travellers will have fewer, costlier options, and governments could end up with distressed airlines that they have to declare "too big to fail", at vast expense to taxpayers. In these conditions, governments and citizens, as travellers and taxpayers, should be natural allies.

Sadly, any alignment of interest between government and consumers is trounced by the mutual dependency of a region or country with the carrier serving it. No economic centre can exist without airline services, and hardly any airline can stay in business without backing from "home" nations or regions. The best example of this is the increasing readiness of governments to grant carriers monopolies in certain markets. These antitrust immunisations allow carriers – one from each country, say – to agree fares and schedules on specific routes. These airlines no longer compete on the route, making it all but impossible for rivals to nose in.

Key to countering the erosion of competition is the humble slot, an airline's right to land and take off from a specific airport at a specific time. Slots are precious – and what the big airlines are after when they absorb failed rivals. But what if slots reverted to the public upon insolvency? This would allow independent slot co-ordinators – who are woefully underused today – to award them to new entrants or smaller players.

For the emerging super carriers, monopoly is the easy way to create scale and avoid the strains and stresses of open competition. For the travellers of the world, monopoly is a sure path to higher fares and poorer service. It is time for them to wise up.

* *Managing Partner of Avinomics, a Frankfurt-based airline consultancy. The article appeared in* The Financial Times, *on October 06, 2017*

Disney-Fox: A Mega Merger

Walt Disney Co. agreed to a US$52.4bn deal to acquire much of the global empire that media baron Rupert Murdoch assembled over three decades, from a fabled Hollywood studio to Europe's largest satellite-TV provider to one of India's most-watched channels.

www.ibnlive.com

Holders of Murdoch's 21st Century Fox Inc. will get 0.2745 Disney share for each Fox share, for assets including the movie and TV production house, a 39 percent stake in Sky Plc, Star India, and a lineup of pay-TV channels that include FX and National Geographic.

Disney will also assume about US$13.7bn of net debt from Fox. The deal will give Disney US$2bn of cost savings and start adding to earnings two years after the takeover is complete. *(Mint, 14.12.17)*

Indian M&As Soar in 2017

Boosted by Rosneft's US$13bn takeover of Essar Oil, India mergers and acquisitions (M&A) are expected to touch US$46.5bn with 944 deals in 2017. This is a 165 percent rise in value and a 70 percent jump in volume from 2016, according to a forecast by Baker McKenzie.

India recorded 553 deals worth US$17.5bn in 2016. M&A activity is expected to continue to gather pace on the back of the Prime Minister Narendra Modi government's continued efforts in removing regulatory hurdles and simplifying laws to further attract foreign investment, until it reaches its cyclical peak of US$52.8bn in 2019.

In view of the 2019 national elections, there is potential for more ambitious economic reforms. The forecast for 2020 is, therefore, not set in stone and deal trends could move in either direction, it added. *(BL, 15.11.17)*

BP's Bid for Fuel Stations Blocked

Australia's competition regulator has blocked BP's US$1.3bn acquisition of more than 500 fuel stations from Woolworths in a setback for the UK group's international retail expansion.

The deal, which would be BP's largest downstream acquisition for more than a decade, was part of a drive to increase profitability and growth from its filling stations around the world by partnering with convenience store chains.

The Australian Competition & Consumer Commission said the deal would lead to higher petrol prices for consumers. BP pioneered its retail partnership model in the UK, where about 300 of its petrol stations include Marks and Spencer food shops, and has sought similar tie-ups in other markets. *(FT, 15.12.17)*

Combining Drugstore Giant

CVS Health had agreed to buy Aetna for about US$69bn in a deal that would combine the drugstore giant with one of the biggest health insurers in the US and has the potential to reshape the nation's health care industry.

The transaction, one of the largest of the year, reflects the increasingly blurred lines between the traditionally separate spheres of a rapidly changing industry.

It represents an effort to make both companies more appealing to consumers as healthcare that was once delivered in a doctor's office more often reaches consumers over the phone, at a retail clinic or via an app.

Together, the companies touch most of the basic health services that people regularly use, providing an opportunity to benefit consumers. *(FT, 04.12.17)*

Conditional Nod to Airline Merger

Brussels has approved Lufthansa's acquisition of parts of German carrier Air Berlin with conditions, after the market-leading airline scaled back the deal.

The competition watchdog gave the green light for Lufthansa to buy Air Berlin's regional carrier Luftfahrtgesellschaft Walter after the company agreed to buy fewer landing slots at Düsseldorf airport than originally planned.

Margrethe Vestager, EU competition commissioner approved the takeover and said the company had offered 'improved remedies' that addressed her competition concerns, particularly at Düsseldorf airport where 'Lufthansa's slot portfolio would (now) only increase by one percent – half of all the slots would be held by Lufthansa's competitors'. *(FT, 21.12.17)*

Vodafone-Idea Inches Forward

The merger of Vodafone India with telecom peer Idea Cellular is inching towards a closure, with the companies only awaiting approvals from National Company Law Tribunal (NCLT) and Department of Telecommunications (DoT).

Earlier in 2017, Vodafone India and Idea Cellular had agreed to merge their operations to create the country's largest telecom operator worth more than US$23bn with a 35 percent market share.

The combined entity of Vodafone India and Idea Cellular, which are currently India's number 2 and 3, respectively, would dislodge Bharti Airtel to counter the fierce price war in the world's second-largest telecom market with total number of customers at 400 million. The deal gives Vodafone India an implied enterprise value of ₹82,800 crore (US$12.8bn) and Idea ₹72,200 crore (US$11.2bn). *(CPI, 31.10.17)*

Third Largest Chipmaker

Broadcom Ltd. offered about US$105bn for Qualcomm Inc., kicking off an ambitious attempt at the largest technology takeover ever in a deal that would rock the electronics industry.

Buying Qualcomm would make Broadcom the third-largest chipmaker, behind Intel Corp. and Samsung Electronics Co. The combined business would instantly become the default provider of a set of components needed to build each of the more than a billion smartphones sold every year. The deal would dwarf Dell Inc.'s US$67bn acquisition of EMC in 2015 – then the biggest in the technology industry.

The combination of two companies would generate strong synergies and create a dominant wireless business and overall powerful global semiconductor leader. *(Mint, 06.11.17)*

Nestlé to Buy Atrium Innovations

Switzerland's Nestlé is spending US$2.3bn to buy Atrium Innovations, a Canadian nutritional products company, from private equity group Permira, as it seeks to pep up its consumer healthcare activities.

The cash acquisition is the boldest move into consumer healthcare yet by Mark Schneider, who became Nestlé chief executive at the start of the year. Atrium is expected to report sales of almost US$700m in 2017.

The deal would extend the Swiss group's product range with value-added solutions such as probiotics, plant-based protein nutrition, meal replacements and an extensive multivitamin line, enabling consumers to address their health and wellness goals. *(FT, 06.12.17)*

Creating Shopping Mall Group

Westfield, the developer behind popular shopping centres in London and New York, has agreed to be acquired by France's Unibail-Rodamco in a US$24.7bn deal that will create the world's second-biggest mall owner by market value.

Sir Frank Lowy, the Australian billionaire who founded the business in a Sydney suburb in 1960 and turned it into a global shopping centre power, called time on his stewardship of the business at a time when retail groups are facing intense competition from online rivals such as Amazon.

The deal allows Unibail-Rodamco, Europe's largest property company, to extend its footprint into the US and UK where Westfield has developed assets in prime locations, such as New York's World Trade Centre, London's Shepherd's Bush, and Century City in Los Angeles. *(FT, 13.12.17)*

Global Leader in Engineering

French Engineering, Research and Development (ER&D) company Altran Technologies SA has acquired US design and engineering services firm Aricent Inc. at an enterprise value of US$2bn in an all-cash transaction.

The new entity will have close to €3bn in revenue, 44,000 employees in 30 countries, including 15,000 near and offshore engineers across five global delivery centres, said the company statement. The global ER&D services market is expected to be worth €220bn by 2020.

Through this acquisition, Altran will be uniquely positioned to offer an unmatched value proposition to its clients and outpace competition. *(Mint, 01.12.17)*

Vonovia Aacquires Austrian Rival

Germany's Vonovia has agreed to buy Buwog in a cash deal valuing the Austrian real estate company at €5.2bn, the two companies said.

The deal will further grow Vonovia's portfolio of residential properties to almost 400,000 flats from about 350,000 now, cementing its position as Germany's leading property group and adding further properties in Austria.

Vonovia said it expected joint management of the two companies' flats following the deal would lead to cost savings of about €30 million a year, a substantial part of which is to be realised by the end of 2019. *(FT, 19.12.17)*

Infratel-Indus to Merge

Tower infrastructure company Bharti Infratel said its board of directors has decided to explore acquisition of stake in Indus Towers.

Industry experts opine that if the acquisition is successful, this will make the combined entity the largest tower company by a huge margin. Indus is already the biggest tower company with 1,23,073 towers with 2,98,929 co-locations in 15 circles.

The combined entity is also well positioned to take on the next phase of growth as 4G and 5G rollout in the country.

With Vodafone, Idea and Reliance Communications out of the tower business, Bharti Infratel is set to compete with only American Tower, if the deal gets through. *(BL, 30.10.17)*

Airtel-Millicom Merge Ghana Operations

Telecom operator Bharti Airtel and Millicom International Cellular announced completion of a deal to combine their operations in Ghana.

Mint

The deal, executed through their respective subsidiaries, will create Ghana's second largest mobile operator with nearly 10 million subscribers and US$300mn in revenue.

The combined networks of the two companies will cover more than 80 per cent of Ghana's population, in particular in villages and far flung areas and serve customers with affordable world-class voice/data services, affordable global roaming and mobile banking services.

Airtel and Millicom will have equal ownership (that is 50:50 each) and enjoy governance rights in the combined entity. *(BL, 16.10.17)*

Are Deals the New Prescription for Growth in Pharma?

Ravi Ananthanarayanan*

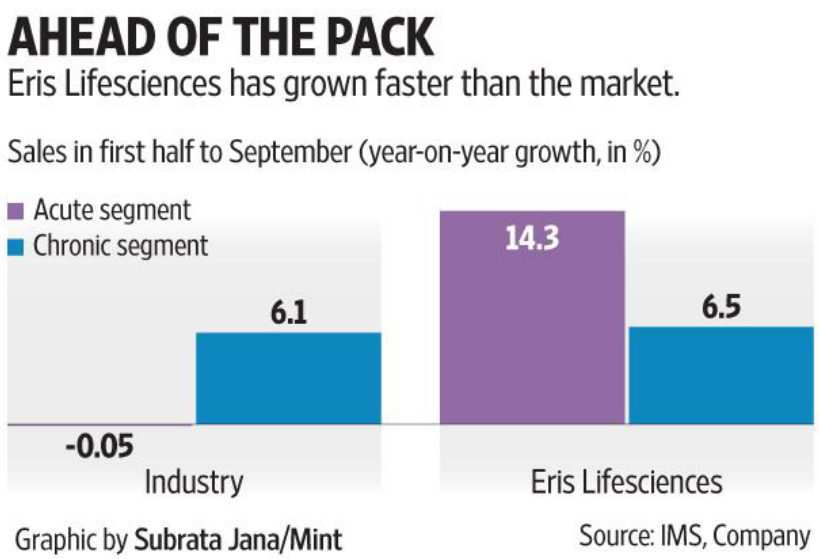
In the Indian pharmaceutical sector, growing through acquisitions is one way of moving up the ranking tables. Recent times have seen two deals. One is Torrent Pharmaceutical Ltd's acquisition of Unichem Laboratories Ltd's domestic pharmaceutical business. Torrent will pay ₹3,600 crore to buy Unichem's brands and a plant, which had a revenue of ₹840 crore.

The second, and the latest, by Eris Lifesciences Ltd is the acquisition of domestic brands of Strides Shasun Ltd. This deal may be relatively smaller in comparison to Torrent's, but is significant for Eris Lifesciences, which is paying ₹500 crore to acquire a portfolio with sales of ₹181 crore in FY17. Notionally speaking, this acquisition would have added around 25 percent to Eris's revenue in FY17.

Deal-making is a developing trend to watch in the domestic market, although the market will still have a large number of firms with a small share and, therefore, remain competitive

Eris also reported its results over the weekend, and its balance sheet shows it had cash and investments of around ₹260 crore as of 30 September. That implies it will have to borrow to part fund this acquisition. But it has near zero debt and if it borrows, say ₹300 crore, its debt to equity will increase to 0.4 time. That's a comfortable level and servicing it should be no problem either.

What does Eris get in return? It will break into the top 25 companies with a market share of more than 1 percent, says the firm. The Strides Shasun portfolio will contribute a quarter of that share, according to All India Organisation of Chemists and Druggists (AIOCD) data.



While market share is one thing, this acquisition will see Eris gaining a strong Central Nervous System (CNS) category in its chronic segment, and also add to its gastro-intestinal portfolio. In the first half of FY18, its chronic segment saw sales rise 6.5 percent, while its acute segment grew 14.3 percent. This acquisition will see it among the top 10 in the CNS segment, according to the release.

Eris shares are trading around three percent below the issue price of its initial public offer done in June. In the September quarter, its Earnings before Interest, Taxes, Depreciation and Amortisation (Ebitda) rose 32.6 percent over a year ago and by 36.8 percent sequentially. The deal will add to revenue and Ebitda, but will also see interest costs spike. While Eris has said it expects to realise cost and revenue synergies, the next few quarters will give a better idea on the direction that is taking.

If deal-making of this sort continues to happen, some consolidation at the middle and lower segments can happen. It may be helped by the fact that there are sellers, for example, who want to focus on their global operations and exit the domestic generic market. Deal-making is a developing trend to watch in the domestic market, although the market will still have a large number of firms with a small share and, therefore, remain competitive. Any policy change that unintentionally spurs companies to consolidate could accelerate this trend.

* *Mark to Market Column Writer. The article appeared in* the Mint, *on November 20, 2017*

Investors Pass the Buck on Governance

Rana Foroohar*

Does corporate governance matter? Or, to be more precise, do investors really care about it? This is a question that I have been pondering for two reasons. First, huge amounts of passive investment have made questions about corporate decision making irrelevant for many investors. When you are just tracking the index, you are not looking at what a company is really doing on the ground and whether its leaders are making the right calls. You are simply passing the buck to the market.

But there is another, less explored, way in which investors may be passing the buck. Institutional investors have come to own roughly two-thirds of all the outstanding shares in US corporations. That gives them tremendous power over executives and their decisions. Yet a large chunk of that power is outsourced to proxy advisers like Institutional Shareholder Services and Glass Lewis, which give investors advice on how to vote on everything from management to corporate pay packages. While it is understandable that large asset managers like BlackRock or Fidelity and myriad smaller institutions would want to offload this task, the result is that individual corporate decisions sometimes get short shrift.

Companies, trade and lobbying groups, as well as some academics and corporate governance experts, have begun complaining that proxy advisers are incentivising the wrong behaviour — focusing not on the nuances of corporate governance, but rather creating rigid checklists that must be followed lest the proxy adviser vote no on issues like pay or board membership.

Since total shareholder return is the key metric of corporate performance for proxy advisers, companies that are doing anything that fails to raise the share price year on year may find themselves opposed by investors

Proxy advisers incentivise the wrong company behaviour by creating rigid checklists

The Financial Times

The issue is not new: more than a decade ago, ISS opposed the re-election of Warren Buffett to the board of Coke, as some of his holdings triggered a conflict of interest provision. It is tough to argue that Buffett was not a worthy director; he said the decision was "absolutely silly checklists are no substitute for thinking". But shifts towards "say on pay" have attracted investor scrutiny, as has a long-run bull market in which it is tougher to achieve the returns investors crave.

These factors have conspired to create new proxy pressure for companies. Since total shareholder return is the key metric of corporate performance for proxy advisers, companies that are doing anything that fails to raise the share price year on year may find themselves opposed by investors.

Consider the recent saga of Credit Suisse. Over the past couple of years, the company has been trying to orchestrate a turnround, settling a big fine over dicey (pre-financial crisis) mortgage-backed-security deals with the Department of Justice, offloading bad assets and restructuring the business. None of this is good for share price in the short term, but it was necessary. No surprise, then, that the Credit Suisse management team was disappointed when proxy advisers opposed its corporate pay plan, citing 2016 losses, despite the fact that the top brass took a 40 percent cut in its own compensation as part of the turnround effort.

As an increasing body of research shows, share price does not always correlate with good long-term decision making; a Stanford study showed that firms lauded by proxy advisers did not actually have better returns, fewer lawsuits, or higher valuations over time.

In the US, there is now a push to realign incentives. Other proposals include giving companies more time to respond to proxy reports and make their case about individual management decisions. Yet the criticism of proxy advisers is "really part of a larger philosophical debate about who companies are being run for", says Douglas Chia, Head of corporate governance at the Conference Board. Boards and management? Shareholders? Or some larger group of stakeholders? Whatever the answer, it is worth thinking about the kind of corporate governance our system is incentivising.

* *Associate Editor, Financial Times. Abridged from an article that appeared in* The Financial Times, *on October 30, 2017*

15 Years of Reforms to Improve Business Climate Worldwide

Starting a business in Thailand had not been easy until 2017. Over the years, the time needed to start a business has been reduced to just 4.5 days, compared to 27.5 days in previous years. With eight reforms in the past year, Thailand has become among the top 10 improvers in the World Bank Group's ease of doing business ranking report, based on reforms undertaken.

What is Doing Business?

Doing Business is a project that provides objective measures of business regulations and their enforcement across 190 economies. By gathering and analysing comprehensive quantitative data to compare business regulation environments across economies and over time, Doing Business encourages economies to compete towards more efficient regulation.

In addition, it offers detailed subnational reports, which exhaustively cover business regulation and reform in different cities and regions within a nation. These reports provide data on the ease of doing business, rank each location, and recommend reforms to improve performance in each of the indicator areas.

"Job creation is one of the transformational gains that countries and communities can achieve when the private sector is allowed to flourish. Fair, efficient and transparent rules, which Doing Business promotes, improve governance and tackle corruption", said Kristalina Georgieva, Chief Executive Officer, World Bank

How it all Started?

Doing Business started from two developments in economic growth which happened simultaneously in the late 1980s and early 1990s, said Simeon Djankov, the creator of the Doing Business series and former Deputy Prime Minister and Minister of Finance of Bulgaria. One was exemplified by Peruvian economist, Hernando de Soto, in his book 'The Other Pat' where he states that due to prohibitively high cost of establishing a business in Peru, economic opportunities to the poor were denied. The government benefits because gets taxes through which health and education budgets can be replenished.

Second, in the post 1989 scenario, many countries in Eastern and Central Europe and the former Soviet Union were running the economy as a state-owned economy. As a result, they did not think about establishing laws and regulations for development of small domestic private businesses.

Djankov said, "we then asked the question in the one case, how can you simplify regulation, and in the other case how can you create new regulations so that businesses can be formal and that new businesses can be established in the formal economy and they can be a large generator of jobs." Amidst these discussions, World Bank's Doing Business was being considered in the late 1990s. Following this, the Doing Business report was established with five sets of indicators for 133 economies.

Top Improvers in 2017

Governments in 119 economies carried out 264 business reforms in the past year, says the World Bank Group's latest Doing Business 2018: Reforming to Create Jobs report. Since the inception of the project in 2003, the global business regulatory environment has changed dramatically. Governments around the world have embraced and nurtured advances in information technology to reduce bureaucratic hurdles and increase transparency.

In its annual ease of doing business rankings, New Zealand, Singapore and Denmark retained their first, second and third spots, respectively, followed by Republic of Korea; Hong Kong SAR, China; US; UK; Norway; Georgia; and Sweden.

This year's top 10 improvers, based on reforms undertaken, are Brunei Darussalam (for a second consecutive year); Thailand; Malawi; Kosovo; India; Uzbekistan; Zambia; Nigeria; Djibouti; and El Salvador. For the first time, the group of top 10 improvers includes economies of all income levels and sizes, with half being top improvers for the first time – El Salvador, India, Malawi, Nigeria, and Thailand.

Business Regulation Impact on Employment and Poverty

Across economies there is a significant positive association between employment growth and the distance to frontier score. It is reassuring to see that economies with better business regulation, as measured by Doing Business, also tend to be the economies that are creating more job opportunities. When it comes to unemployment, the expected opposite result is evident. Economies with less streamlined business regulation are those with higher levels of unemployment on average.

— *The news item appeared in* The World Bank, *on October 31, 2017*

Uber declared a 'Taxi Service'

Europe's top court has ruled that Uber should be regulated as a transportation company — and not a tech firm. The decision by the European Court of Justice is a major setback for Uber, which has long insisted that it should be treated as technology service that connects drivers and riders.

The court rejected that argument in its landmark decision, ruling that Uber is at its heart a transportation company and should be regulated as such.

Uber could now be subjected to the stricter licencing requirements that apply to traditional taxi operators. The startup could also eventually be asked to collect new taxes from customers.

Uber said in a statement that the ruling would 'not change things in most EU countries where we already operate under transportation law.'

(DNA, 21.12.17)

New Airport Regulations Challenged

Mexican antitrust regulator COFECE presented a decree against the Amendments to the Regulation of the Law of Airports and the General Bases for the assignment of landing and takeoff schedules in airports in conditions of saturation.

These regulations were issued by the Chief Executive Officer and the General Director of Civil Aeronautics of the Ministry of Communications and Transportation.

In this constitutional dispute, COFECE calls Mexico's Supreme Court of Justice to analyse the scope of its powers to regulate an essential facility, as established in article 28 of the Constitution, and determine whether the Federal Executive has rendered nugatory this constitutional power.

(CPI, 23.11.17)

Telecom Surveillance Revised

The **Swiss** Federal Council announced that the revised Postal and Telecommunications Surveillance Act and its implementing ordinances will enter into force in March 2018. It also published the final text of the implementing ordinances. This announcement is the final step in the revision process of this body of laws, which started in 2006.

The Act, both in its present and revised form, applies to providers of postal or telecoms services. Through a dedicated postal and telecoms surveillance service, criminal prosecution authorities can obtain communications data collected by service providers.

The dedicated service will play a greater role in the future, as it will be tasked with centralising all collected surveillance data. The revised Act clarifies, strengthens and broadens the powers of the criminal prosecution authorities when it comes to communications surveillance.

(ILO, 29.11.17)

'Greenest Year' for Electricity

The **UK** has achieved its greenest year ever in terms of how the nation's electricity is generated. The rise of renewable energy helped break 13 clean energy records in 2017.

In June, for the first time, wind, nuclear and solar power generated more UK power than gas and coal combined.

The UK has halved carbon emissions in the electricity sector since 2012 to provide the fourth cleanest power system in Europe and seventh worldwide. The government is committed to phasing out unabated coal by 2025 as part of efforts to cut the UK's greenhouse gas emissions in line with legal obligations.

Separate findings from power research group MyGridGB show that renewable energy sources provided more power than coal for 90 percent of 2017.

(BBC, 28.12.17)

Agreement on Merchant Shipping

A new reciprocal agreement on merchant shipping between **Cyprus** and **India** was signed in New Delhi and entered into force on November 29 2017, replacing an earlier agreement dated February 11, 1997.

As per the new agreement, each country must treat the other country's vessels in the same way as it treats its own vessels engaged in international voyages in respect of free access to ports, the use of ports for loading and unloading cargo and embarking and disembarking passengers and the payment of dues and taxes based on tonnage or otherwise, in accordance with national laws and regulations, exercising normal commercial operations and engaging in services relating to navigation.

(www.hellenicshippingnews.com, 21.12.17)

FCC Repeals Net Neutrality Rules

The **US** Federal Communications Commission (FCC) voted to dismantle landmark rules regulating the businesses that connect consumers to the internet, granting broadband companies power to potentially reshape Americans' online experiences.

The agency scrapped so-called net neutrality regulations that prohibited broadband providers from blocking websites or charging for higher-quality service or certain content. The federal government will also no longer regulate high-speed internet delivery as if it were a utility, like telephone services.

The action reversed the agency's 2015 decision, during the Obama administration, to better protect Americans as they have migrated to the internet for most communications.

(CPI, 14.12.17)

EU is Pulling Punches against Tech Giants

Leonid Bershidsky*


www.thetimes.co.uk

The EU's tax cases against Amazon, Apple and Google rest on a teetering foundation

Margrethe Vestager, the European commissioner for competition, is ordering Amazon to pay €250mn plus interest to Luxembourg, deemed to have rendered illegal state aid to the US company. But the European Commission (EC) should be aiming higher if they want to send a serious message to US tech giants about doing business there.

The scheme Vestager attacked in Amazon's case turned on the tax ruling Luxembourg granted the retailer in 2003 and maintained until 2014. The ruling, according to the EC, allowed the company to transfer 90 percent of its European operating profit as royalties for the use of intellectual property held by a Luxembourg partnership that was exempt from corporate tax. The US owners of the partnership then simply deferred their tax liability. The EC said the amount Amazon paid to the partnership was 50 percent higher than necessary under the partnership's cost-sharing arrangement with the US parent company, under which Amazon financed its research and development.

Vestager told Luxembourg that it should only have allowed lower payments and that Amazon owes it back taxes. It is on this basis that Amazon will probably appeal the ruling, as Starbucks and Fiat did after similar EC decisions in late 2015 and as Apple did after Vestager hit it with a €13bn unpaid tax bill in favour of Ireland in 2016.

The EC's explanation of the ruling stressed, however, that 'the Commission investigation did not question that the holding company owned the intellectual property rights that it licensed to the operating company, nor the regular payments the holding company made to Amazon in the US to develop this intellectual property.' That is exactly what it should have done.

Now, Vestager is seen as having taken principled action against Amazon and other US companies. Though €250mn looks like a mosquito bite for a company the size of Amazon, especially in comparison with Apple's €13bn liability, it is actually quite a serious clawback. To put it in perspective, €250mn over 11 years is, on average, €22.7mn, or US$26.7mn at today's exchange rate.

There is no basis for the 'intellectual property' arrangement as a whole, not just for the way specific tax rulings have made it more lucrative. It's a tax scam, and it should not exist, if only because Apple, Google, Amazon and other US companies use it to pay less tax than European rivals with less reliance on technology. That is a key competitive advantage that has nothing to do with progress, and it is within Vestager's direct remit to fight that unfair advantage.

She cannot do that, however, for a number of reasons. One is political. Vestager works for European Commissioner Jean-Claude Juncker, who was Prime Minister of Luxembourg while Amazon had its special tax arrangement there. In that role, he resisted new EU rules against tax avoidance by multinationals. He calls on critics not to judge him by that past but the past cannot be erased. Under Juncker, the EC has pushed for closing tax loopholes for US tech—but pushed so gently that nothing has happened.

Another reason the competition commissioner cannot afford to be bolder is the likelihood that more aggressive action against the intellectual property loophole would not stand up in court. Two years after their rulings, Starbucks and Fiat, as well as the Netherlands and Luxembourg, are still appealing them. Based on the current legal framework, these are complicated cases, and if a huge one falls through, the whole edifice Vestager has been constructing with her application of state aid rules could collapse.

Vestager is going as far as she can go with the multinationals. It would take concerted effort by the EU and its member states to take a step further and close the intellectual property loophole. Until that materializes, the limitations of Vestager's approach can only embolden the US companies; perhaps that's why they show no humility in their responses to her action despite the damage it inflicts on their public image in Europe. Bloomberg View

* *Bloomberg View Columnist. Abridged from an article appeared in* Mint *on October 08, 2017*

Access to Banking Services

China's top banking regulator said that the country will further open up its banking system to foreign investors, who have failed to make inroads into the highly regulated sector and seen their market share decline.

"We will give foreign banks more space in the form of their establishment, shareholder qualifications, the percentage of their shareholding and their scope of business," said Guo Shuqing, Chairman of the China Banking Regulatory Commission (CBRC).

The market share of foreign banks in China has decreased to 1.2 percent now from 2.4 percent 10 years ago which is not beneficial for promoting competition and structure optimisation.

(CPI, 19.10.17)

Limits Set to Client Communication

The Supreme Court of **Austria** recently rendered its first judgment on the admissibility of the use of electronic mailboxes, which are exclusively incorporated and only accessible via the e-banking system of a credit institution for serving client account notices and statements to consumers.

This ruling will significantly affect Austrian banking practice. Email client communication procedures, which are inadmissible by the Supreme Court, materially correspond with the approach used by a large variety of credit institutions and other payment service providers. *(ILO, 15.12.17)*

Foreign Banks Closing Down

Foreign banks are slowly reducing their presence in the country, data from the Reserve Bank of **India** (RBI) showed.

The presence of foreign banks in India declined in terms of number of branches and employees during 2016-17; the number of overseas branches of Indian banks, on the other hand, increased but there was marginal reduction in their employee strength.

Foreign banks had 317 branches in 2015-16; it has reduced to 286. In the same period, employee strength came down from 26,642 to 24,766. In the period under consideration, foreign banks shrank their credit book to ₹3.42 lakh crore, from ₹3.77 lakh crore a year ago.

However, they mobilised little higher deposits to ₹4.64 lakh crore, from ₹4.57 lakh crore. Income in the period for foreign banks fell 3.8 per cent to ₹67,170 crore. *(BS, 02.11.17)*

Reasons to Bank Internationally

The restrictions imposed on foreign banks operating in developing countries since the 2007-09 global financial crisis are hampering better growth prospects by limiting the flow of much-needed financing to firms and households, a World Bank report has warned.

In its annual 'Global Financial Development Report 2017-2018: Bankers without Borders', the World Bank said that international banking can have important benefits for development, but is no panacea and carries risks.

Developing economy policymakers would do well to consider how to maximise the benefits of cross-border banking while minimising its costs, it said. *(ET, 08.11.17)*

No Licence for New Banks

The Bank of **Ghana** (BoG) has given an indication that it may not license new banks in 2018. According to the Central Bank, the move is to help facilitate strict measures to implement the new capital requirement of 400 million cedis in 2018.

The Governor of the Bank of Ghana, Dr Ernest Addison explained that the decision is to prevent entry of new banks with a low capital requirement. Adding that, the decision will afford the Central Bank time to carefully monitor financial institutions as most of them are expected to meet their new capital requirement in 2018.

He said that to rationalise the banking system to ensure efficiency, we are considering not licencing new banks, savings and loans, or microfinance institutions during 2018, as we implement the recapitalisation plans of existing banks.

He explained that "We should not allow the potentially insolvent banks to enter the industry, adding that we need to manage entry to ensure that, down the line, we do not then have to manage exit as we did in 2017".

(www.ghanaweb.com, 25.12.17)

Draft Financial Technology Bill

The **Mexican** Ministry of Finance and Public Credit (SHCP) distributed the first draft of the Financial Technology Bill to several members of the banking and financial industry. The Ministry circulated a substantially amended draft of the bill, which has been renamed the Financial Technology Institutions (FTIs) Law.

The law is based on the principles of developing financial inclusion and innovation; fostering economic competition; ensuring consumer protection; preserving financial stability; and preventing unlawful transactions.

The law aims to regulate the financial services provided by FTIs – including those which are bound to specific regulations and offered or rendered through innovative means – as well as the organisation of such institutions and their operations. *(ILO, 08.12.17)*

'Too-big-to-fail' Banks Keep Getting Bigger

Matt Egan*

Many too-big-to-fail banks have grown even larger during the decade since the financial crisis

The 2008 meltdown showed how big banks that get into trouble can hold the entire global economy hostage. Hoping to avoid another round of unpopular bailouts, financial watchdogs have forced too-big-to-fail banks to make themselves less dangerous by adding lots of capital that safeguards against losses.

But regulators continue to monitor these financial institutions, creating a list of 30 'systemically important' banks that deserve extra scrutiny.

JPMorgan Chase (JPM) sits atop that list of banks that could threaten global stability, according to new rankings published on Tuesday by international regulators.

While JPMorgan has been required to take significant steps to make itself less risky, America's leading bank has nonetheless gotten much bigger over the past decade.

JPMorgan has amassed an incredible US$2.56tn in assets. That's nearly twice as much as at the end of 2006 when the subprime mortgage bubble was beginning to burst. A chunk of JPMorgan's growth is due to its government-backed rescues of failing Bear Stearns and Washington Mutual.

Bank of America (BAC) and Deutsche Bank are ranked one level below JPMorgan on the "systemically important" list published by the Financial Stability Board. BofA's asset footprint has soared by 56 percent since the end of 2006 to US$2.28tn. Deutsche Bank's (DB) asset size has increased by 21 percent over that span, according to FactSet.

Wells Fargo (WFC), which acquired failing Wachovia during the financial crisis, is sitting on US$1.93tn. That's up nearly 300 percent since the end of 2006.

Big banks in China are also growing at a rapid pace. China's four systemically important banks have more than tripled their asset sizes over the last 10 years, according to S&P Global Market Intelligence. Industrial and Commercial Bank of China (IDCBF) is the world's largest bank, with US$3.76tn in assets. That's up from US$1.11tn at the end of 2006.

Despite their growing size, big banks are considered much healthier than a decade ago. They've raised more than US$1.5tn in capital since the crisis, giving them vast resources to cushion losses in a future crisis. US banks are considered particularly sturdy given the 2010 Dodd-Frank Wall Street reform law that required banks to raise capital, undergo stress tests and come up with a roadmap for how to safely unwind them.

"I am gratified that the financial system is much stronger than a decade ago, better able to withstand future bouts of instability," Federal Reserve chair Janet Yellen wrote in a letter resigning from the US central bank.

Yellen has argued that the reforms mandated by Dodd-Frank made the US economy and banking system more resilient.

> As a candidate, President Trump slammed Wall Street firms like Goldman Sach (GS)s for 'getting away with murder'. He also promised to bring back Glass-Steagall, a Great Depression-era law that would force mega banks to break themselves apart.
>
> But now Trump has embraced deregulation. He's pledged to 'do a big number' on Dodd-Frank, slamming the law as a 'disaster' that has hurt the economy by limiting access to loans.

In June, the Treasury Department published a series of recommended changes to regulation aimed at speeding up the economy and preventing 'taxpayer-funded bailouts'.

The Treasury paper blames the existence of mega banks on regulation, saying excessive rules encourage banks to get bigger so they can spread their costs to a large number of customers. It called for 'eliminating regulation that fosters the creation...of too-big-to-fail institutions'.

* *Senior Writer on CNNMoney's Markets and Investing Team. The article appeared in* www.money.cnn.com, *on* November 21, 2017

The Pendulum Swings against Privatisation

Tim Harford*

Political fashions can change quickly, as a glance at almost any western democracy will tell you. The pendulum of the politically possible swings back and forth. Nowhere is this more obvious than in the debates over privatisation and nationalisation.

In the late 1940s, experts advocated nationalisation on a scale hard to imagine today. Arthur Lewis thought the government should run the phone system, insurance and the car industry. James Meade wanted to socialise iron, steel and chemicals; both men later won Nobel memorial prizes in economics.

They were in tune with the times: the British government ended up owning not only utilities and heavy industry but airlines, travel agents and even the removal company, Pickfords. The pendulum swung back in the 1980s and early 1990s, as Margaret Thatcher and John Major began an ever more ambitious series of privatisations, concluding with water, electricity and the railways. The world watched, and often followed suit.

Was it all worth it? The question arises because the pendulum is swinging back again: Jeremy Corbyn, the bookies' favourite to be the next UK prime minister, wants to renationalise the railways, electricity, water and gas. Furthermore, he cites these ambitions as a reason to withdraw from the European single market.

That is odd, since there is nothing in single market rules to prevent state ownership of railways and utilities — the excuse seems to be yet another Eurosceptic myth, the leftwing reflection of rightwing tabloids moaning about banana regulation. Since the entire British political class has lost its mind over Brexit, it would be unfair to single out Corbyn on those grounds.

Still, he has reopened a debate that long seemed settled, and piqued my interest.

Did privatisation work? Proponents sometimes mention the galvanising effect of the profit motive, or the entrepreneurial spirit of private enterprise. Opponents talk of fat cats and selling off the family silver. Realists might prefer to look at the evidence, and the ambitious UK programme has delivered plenty of that over the years. Competition does sometimes emerge in unlikely seeming circumstances. British Telecom seemed to have an iron grip on telephone services in the UK — as did AT&T in the US. The grip melted away in the face of regulation and, more importantly, technological change.

Railways seem like a natural monopoly, yet there are two separate railway lines from my home town of Oxford into London, and two separate railway companies will sell me tickets for the journey. They compete with two bus companies; competition can sometimes seem irrepressible.

But the truth is that competition has often failed to bloom, even when one might have expected it. If I run a bus service at 20 and 50 minutes past the hour, then a competitor can grab my business without competing on price by running a service at 19 and 49 minutes past the hour. Customers will not be well served by that.

Meanwhile electricity and phone companies offer bewildering tariffs, and it is hard to see how water companies will ever truly compete with each other; the logic of geography suggests otherwise.

Evidence suggests that ending state ownership works in some markets but not others

All this matters because the broad lesson of the great privatisation experiment is that it has worked well when competition has been unleashed, but less well when a government-run business has been replaced by a government-regulated monopoly.

My overall reading of the evidence is that privatisation tended to improve profitability, productivity and pricing — but the gains were neither vast nor guaranteed. Electricity privatisation was a success; water privatisation was a disappointment. Privatised railways now serve vastly more passengers than British Rail did. That is a success story but it looks like a failure every time your nose is crushed up against someone's armpit on the 18:09 from London Victoria.

The evidence suggests this conclusion: the picture is mixed, the details matter, and you can get results if you get the execution right. Our politicians offer a different conclusion: the picture is stark, the details are irrelevant, and we metaphorically execute not our policies but our opponents.

The pendulum swings — but shows no sign of pausing in the centre.

* *Economist, Journalist and Broadcaster. Abridged from an article that appeared in* The Financial Times *on September 29, 2017*

Trade and Industrial Policy Must Converge

Pradeep S. Mehta*

Economic development is essential for economic growth...that is a motherhood statement. But economic development cannot take place without a sound industrial base and trade strategy. Both complement each other. This is one of the reasons why globally trade and industry are with one minister though the two departments can be separate. In India, they enjoy working in silos (sometimes even within the department itself). Thus Suresh Prabhu, the minister, has an onerous role to run both of them as the two wheels of a motorcycle without which there would be no forward motion.

In the last two-and-a-half decades, India has primarily used export promotion policy (in the garb of trade policy) to reap benefits of globalisation. While this approach has benefited countless people, it has also left many dissatisfied. The divide between rich and poor has only increased, and so has the productivity gap between frontier firms and the rest. The country is now staring at premature deindustrialisation and significant unemployment.

To find a fix, introduction of an industrial policy for a concerted push towards industrialisation and job-creation is being considered. The use of industrial policy by advanced economies like Japan and South Korea in their initial growth phase, before globalisation reached its zenith, is well documented. However, its impact on growth is not entirely clear.

While several experts have attributed economic growth to government support of specific industries in these countries, renowned economists Howard Pack and Kamal Saggi have argued that Japan and Korea did not achieve success because of industrial policy, but in spite of it.

The government should prioritise the design of industrial policies that benefit the country from integrating with global value chains

They show that 80 percent of industry subsidies in Japan were given to agriculture and mining. The idea that Japan provided significant subsidy support to the industries that became strong global competitors in sectors like auto, steel, and machine tools, is a myth. Korea allowed relatively free imports of capital goods for many years and relied quite heavily on foreign aid.

Despite different approaches to industrial policy, productivity, research, technology and infrastructure investment have been the critical keys to growth. As globalization was in its infancy, both countries had restrictions on their financial sectors and broad limitations on imports and foreign direct investment. This channelled high rates of national savings into industrial development and made sure domestic companies had a sound base of domestic demand for their products without facing foreign competition.

India cannot afford to replicate these success stories for two primary reasons: the declining rate of domestic savings, and an extremely interconnected world wherein unreasonable restrictions on movement of goods and capital conflict with commitments under international trade agreements. Given the prevailing limitations, how can India design an industrial policy which promotes economic growth with the trade dimensions upfront?

Economist Dani Rodrik points out that the answer lies in the process of industrial policy design. Industrial growth can be constrained due to diverse factors, which may differ with sector and time. Consequently, an industrial policy aimed at uncovering the most significant obstacles to restructuring and growth and identifying interventions most likely to remove them, is essential.

This can be achieved through a setting in which all stakeholders come together to solve problems in the productive sphere, each one learning about the opportunities and constraints faced by the other. Thus, focus needs to shift from industrial policy outcomes to its processes.

Once necessary processes are put in place, the government can prioritise the design of industrial policies to identify and address constraints that keep the country from benefiting from global value chains. By enabling the development of appropriate skills, productivity enhancements, technological upgradation and catering to specific infrastructure needs; integration in global value chains and markets for manufacturing linked services will be possible. An industrial policy will thus seamlessly complement trade policy for rapid economic growth and the job creation agenda.

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* *Secretary General, CUTS International. Abridged from an article appeared in the* Mint*, on November 27, 2017*

The Curious Career Paths of China's Public-Sector Bosses

Tom Mitchell*

The official heroes of China's state-sector reform programme range from dedicated anti-graft investigators, who have purged dozens of allegedly corrupt executives over recent years, to strategically minded administrators determined to create a stable of disciplined, world-beating multinationals.

Their efforts, according to Xiao Yaqing, the man who supervises China's 100 largest state-owned enterprises (SoEs), are 'basically complete' as President Xi Jinping prepares for the start of his second five-year term in office. Xiao's confident assessment, given at a briefing last week, contrasts starkly with critics who say state-sector reform has been one of the biggest policy disappointments of Xi's first term.

Much is riding on the success or failure of state-sector reform in China. If Xiao's optimistic take is correct then Xi, already regarded as China's most powerful leader in decades thanks to his rapid consolidation of political power, will soon be able to claim he is also a worthy heir to Deng Xiaoping, the architect of China's historic economic reforms. If it is not, then Xi is more likely to be regarded as someone who was extremely adept at accumulating political power but either unable or unwilling to use it to drive through difficult reforms.

The toppling of allegedly corrupt senior SoE executives by the ruling Communist party's anti-graft watchdog can sometimes read like a novel. The Central Commission for Discipline Inspection's (CCDI) website recently described the fall of Chang Xiaobing, the former chairman of China's second-largest telecommunications company, this way: in December 2014, the atmosphere in Chang's office at China Unicom 'suddenly froze' when he was confronted by a team of anti-corruption officers led by Ning Yanling.

As long as party prerogatives reign, state-sector reforms unlikely to succeed

Financial Times

A quick search of Chang's main office turned up gold and silver jewellery and dozens of expensive mobile phones, which Chang said had been accumulated through formal gift exchanges with China Unicom's corporate partners.

Then, the two men's eyes locked on the door to a room just off Chang's main office. Inside, the CCDI team found a stockpile of expensive cigarettes, alcohol and calligraphy. When Ning's men had finished filming it, Chang broke down and confessed to 'violating party discipline'.

On the consolidation front, since 2013 Xiao has reduced the number of centrally administered SoEs from 117 to 98 through strategic mergers. One of them brought together China's two largest makers of railway rolling stock, which used to undercut each other when competing for overseas tenders. As a combined entity they have become a real threat to their foreign competitors, and were one of the major reasons behind Siemens and Alstom's recent deal to merge their rail businesses.

Xiao has also claimed success in raising SoEs' revenues and profits while reducing the state sector's debt-to-asset ratios and industrial overcapacity — all of which are backed by official statistics. However, other government data show a prolonged slump in SoEs' return on assets. It has declined from a peak of five percent in 2007 to just three percent. Private-sector companies' return on assets, by contrast, has stabilised at about nine percent over the past decade.

In a move that would be considered bizarre anywhere except the opaque world of China's SoEs, Chang was not fired or even suspended. Instead he was appointed chairman of China Telecom, the country's third-largest telecommunications company, where he worked until his formal arrest a year later.

Such transfers are common in China, so executives targeted by the CCDI cannot interfere in ongoing investigations. They are also a reminder that the party's prerogatives ultimately trump minority shareholders' demands for transparency and a professional recruitment process for senior executives, without which Xi's state sector reform project is unlikely to succeed.

* *Financial Times Beijing Bureau Chief. Abridged from an article appeared in the* Financial Times *on October 03, 2017*

Publication

Policy Watch

The October-December, 2017 issue of the newsletter carries a cover story entitled, 'A New industrial Policy for Bharat' which states that a new forward-looking industrial policy for India must have Bharat as its soul and priortise the creation of livelihoods in rural and semi-urban areas.

A feature by Chris Versace mentions that the Indian government understands that in the coming decade, India will likely surpass China in terms of economic importance and companies like Apple targeting growth are keen to enter into this market, but they should wary over competitive playing. A special article by Arun Maira states that India's leaders despite their own beliefs must respect many points of view to shape better policies and strengthen the country's democracy. Besides, the newsletter encompasses news on Infrastructure, Financial Sector, Trade and Economics, Competition, Governance and Reforms, Education, Health, etc.

This newsletter can be accessed at: http://www.cuts-ccier.org/pw-index.htm


PolicyWatch

A New Industrial Policy for *Bharat*

UNCTAD's Reform Package for the International Investment Regime

- The Reform Package combines the policy options from UNCTAD's Road Map for IIA Reform (2015) and UNCTAD's 10 Options for Phase 2 of IIA Reform (2017) into one single document.
- The Reform Package factors in latest developments in investment treaty practice and recent debates on the reform of the IIA regime. It presents a coherent, sequenced and user-friendly tool for investment policymakers.
- The Reform Package is the result of a collective effort, led by UNCTAD, pooling global expertise in the investment and sustainable development field from international organizations and numerous international experts, academics, business, practitioners and other stakeholders.
- Different parts of the Reform Package have been field-tested in countries and were peer-reviewed at numerous high-level, multi-stakeholder meetings, including the UNCTAD Ministerial Conferences and the World Investment Forums 2012, 2014 and 2016, as well as UNCTAD's High-Level IIA Conferences (most recently in October 2017).
- In line with UNCTAD's Road Map for IIA Reform, great progress has been made in the five priority areas for reform Close to 150 countries have used UNCTAD's investment policy tools to formulate a new generation of investment policies.
- Countries and regional groupings have been consolidating Phase 1 of the reform and are now moving to Phase 2. The UNCTAD Secretariat has started preparations for Phase 3 of reform, which will focus on issues of policy coherence and consolidation.
- In so doing, UNCTAD responds to its mandates received from the United Nations Financing for Development Conference, enshrined in the Addis Ababa Action Agenda (July 2015), and to its institutional mandates, in particular from UNCTAD's Ministerial Conferences.

For more, please visit: *goo.gl/QJJPnq*

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

ACCC: Australia Competition and Consumer Protection; AP: Associated Press; BBC: British Broadcasting Corporation; BL: The Hindu Business Line; BS: Business Standard; CPI: Competition Policy International; DNA: Daily News & Analysis; ET: Economic Times; FT: The Financial Times; ILO: International Law Office; NH: National Herald

Published by **CUTS Centre for Competition, Investment & Economic Regulation (CUTS CCIER)**
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