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REGULETTER

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Special Articles

Did the SC Solve the Impasse between India's Competition & Telecom Regulators?

In Sir Arthur Conan Doyle's famous novel A Study in Scarlet, there comes a point when Sherlock Holmes's downright wilful ignorance about the solar system astounds Watson, his loyal friend and sidekick.

Business Standard

While Holmes staunchly maintains that this knowledge makes very little difference to him or to his work, Doyle's writings are replete with examples of how Watson's general perspective about the realities of the world help Holmes successfully crack seemingly impossible-to-solve crimes.

It's safe to say that without the unique collaboration between the general and the specific, Sir Conan Doyle's stimulating quests would have been incomplete – for the reader as well as for the two protagonists. This message of teamwork and collaboration holds immense significance for India's economic regulators, especially the ones who have overlapping and common objectives.

A typical case in point is the Competition Commission of India (CCI) and the Telecom Regulatory Authority of India (TRAI). Despite sharing a common goal of ensuring consumer welfare for Indians, there has been a seemingly endless jurisdictional turf war between the two. This friction is especially evident when it comes to issues of alleged anti-competitive practices and apparent breaches of regulation in India's telecom sector.

Just recently, the Supreme Court ruled on the most prominent matter in this regard, which involved complaints filed by Jio with TRAI and CCI. The Mukesh Ambani-led firm had alleged that Airtel, Vodafone and Idea Cellular Ltd were colluding to deny points of interconnection (POIs) and that they were supported by the Cellular Operators Association of India (COAI).

The CCI had initially determined there was a *prima facie* case and wanted to investigate. It was eventually held back by a Bombay high court ruling which deemed that it was TRAI and not CCI that had to decide whether POIs were being denied to Reliance through collusion on the part of the operators.

The competition regulator then moved the Supreme Court, in a case that now embodies the apparent tension between promoting sector-specific competition through economic regulation and checking the occurrence of anti-competitive practices. Addressing the chief bone of contention, the Supreme Court first took note of the salient features of the Competition Act as well as the TRAI Act.

In essence, it acknowledged TRAI's role as an expert regulatory body which specifically governs the telecom sector and the CCIs mandate as an overall market regulator established to curb anti-competitive practices in its various avatars. The court further indicated that the nature of the dispute at hand is technical and TRAI, being a specialised sectoral regulator armed with sufficient power to ensure fair, non-discriminatory and competitive market in the telecom sector, is better suited to decide on the matter first.

The Supreme Court's opportunity to lay down the law on dealing with overlapping conflicts would have put meaning into to our opening statement that it was an opportunity to leverage the collective strengths of Holmes and Dr. Watson. Sadly, it was missed.

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

Towards Controversial Rules

South Africa has amended its antitrust laws, first introduced to the country in 1998 via its Competition Act. The Parliament ratified the amendments over the serious objections of the opposition parties.

The new law will give significant interventionist powers to the Minister for Economic Development, Ebrahim Patel, as well as introduce lower burdens of proof for the South African Competition Commission (SACC) to make its case, after a long-running string of court losses and appellate defeats has seen the SACC's track record weakened.

A panel of Africa-focussed competition specialists warned the South African business community about the high probability of the Bill's passage, as well as addressing the adverse effects the Bill will have on doing business in South Africa as a medium to large size market player or simply as a foreign-owned corporate.

(https://africanantitrust.com, 24.10.18)

Competition Regime a Priority

CUTS Accra has urged the Government of **Ghana** and the Ministry of Trade and Industry (MoTI) to make a Competition Regime a legislative priority for 2018.

Appiah Kusi Adomako, Country Coordinator of CUTS Accra, who made the call at a Policy Dialogue to mark on World Competition Day in Accra on December 04, 2018 therefore, urged businesses and the private sector to work closely together to ensure the development of a Competition Policy and the passage of a Competition Law for Ghana.

He underscored the importance of a Competition Policy and Law in creating a level playing field in the marketplace, adding that a Competition Regime benefitted both producers and consumers. *(GNA, 09.12.18)*

Ensuring Free & Open Competition

The Council of the **European Union** (EU) adopted a directive which will bring the enforcement of competition rules in line with the digital age and tackle illegal competition practices in the EU. This adoption follows an agreement reached with the European Parliament at first reading.

The new rules will strengthen cooperation between national competition authorities and the European Commission, and will be an effective way of ensuring that free and open competition is not distorted in the internal market.

EU competition rules are enforced by the national competition authorities (NCAs) of the Member States in parallel to the Commission. The NCAs and the Commission form together a network of competition authorities, called the European Competition Network, which ensures that competition rules are applied.

(CPI, 07.12.18)

Overhauling Consumer Protection

South Korea's antitrust chief pledged to overhaul related rules on consumer protection in e-commerce as part of the regulator's effort to improve the rights of consumers.

The latest move comes as a growing number of South Koreans use smartphones to buy things ranging from clothes to electronic goods. The Korean Fair Trade Commission (KFTC) "will sternly deal with deceptive acts … and will create market conditions friendly to consumers," Kim Sang-jo, Head, Regulatory Watchdog, said in a speech celebrating Consumers' Day.

The KFTC chief also said the government will simplify procedures for consumer advocacy groups to file suits against companies. *(KH, 03.12.18)*

Regulating Restrictive Agreements

Vietnam's competition law is poised for big changes, as the new 2018 Law on Competition comes into force from July 01, 2019. Apart from consolidating the two existing regulatory entities into one consolidated regulator (the National Competition Commission), the revised law also introduces significant changes to when mergers have to be notified, and how they will be assessed.

The latest changes bring greater clarity to regulating restrictive agreements by expressly specifying that extra-territorial practices and vertical agreements are caught.

It will also lead to greater coverage of the types of restrictive agreements that are caught by dropping the 30 percent market share safe harbour threshold and expanding the list of *per se* prohibitions. *(Mondaq, 12.11.18)*

Streamlining the Merger Control Process

In an attempt to further streamline the merger control process, the Competition Commission of **India** (CCI) has for the sixth time since the introduction of the merger control regime in India, amended the CCI Regulations, 2011 (Combination Regulations).

The Economic Times

The amendments to the Combination Regulations reiterate the CCI's constant endeavour to bring greater clarity and transparency to the merger control process. More importantly, this set of amendments showcases the CCI's pro-business approach.

Such amendments, if implemented, would have subjected most non-controlling minority acquisitions to the mandatory and suspensory merger control regime. *(www.competition.cyrilamarchandblogs.com, 25.10.18)*

2018 Was a Big Year for Antitrust Crusaders

Iain Murray*

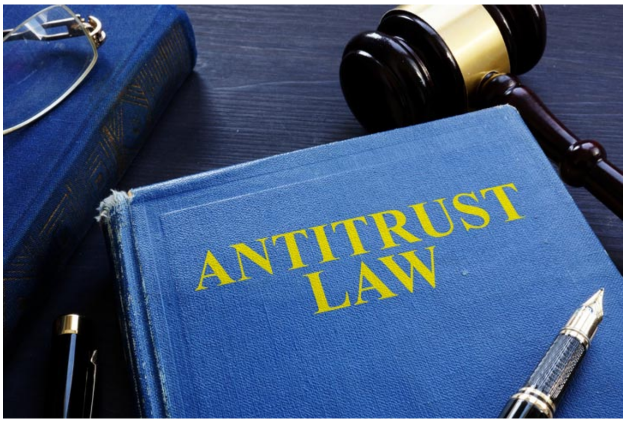
American antitrust policy has been settled for many years. In the 1970s and 80s, antitrust lawyers and regulators began to realise that antitrust for antitrust's sake was harming consumer welfare. The end result of competition could indeed look like 'monopoly', but antitrust officials would be wise to take no action unless certain very specific anticompetitive actions were involved. In 2018, that received wisdom came under renewed threat, from some very unlikely sources.

To be sure, the original impetus came from the usual suspects – the 'neo-Brandeisian' school that had always resented the sidelining of the 'curse of bigness' thinking of their hero, Justice Louis Brandeis. That thinking held that business size itself was an indicator of anticompetitive behavior. The neo-Brandeisian school uses size to seek out practices that it believes should be the subject of antitrust action (such as breaking up Amazon). It is a strangely inchoate philosophy, often approaching "I will know it when I see it" territory. Needless to say, if this school took over antitrust action in the US, we would see a chilling effect on business development from large firms that means that economies of scale and the like would be exploited less for the benefit of consumer welfare.

Yet this school has been joined by a large and vocal group of conservative activists, who in the past could be relied upon to support free markets. The impetus for their anger has been supposed anti-conservative bias by Big Tech firms. Some of this anger may be deserved – the temporary 'deplatforming' of vocal but arguably mainstream conservatives does seem to have gone too far in some cases, and there is a strong case that it is unwise for platforms to deplatform anyone. However, in a free market world, private companies are free to set their own terms and conditions for use of their platforms. Their doing so should not be cause for antitrust action.

Yet if 2018 was a bad year for antitrust skeptics, 2019 promises to be worse.

Much of the conservative anger is misplaced. There have been complaints about the effects of features that are there because conservatives (among others) demanded them, and there are even complaints that features are not in place that are (Netflix has a wide range of parental controls easily available).



But some of the conservative anger seems to be because Big Tech firms are predominantly staffed by people of left-liberal political inclinations, and they are perceived as using their companies' power to promote these views. The January firing of a Google engineer who ventured into culture war territory may have been the trigger that set off rising conservative animus against Big Tech firms.

This is a well-known problem in institutional economics. All companies face the danger of employees opportunistically acting against the companies' mission. It is known as the principal-agent problem. It is up to the companies' principals to act to limit the damage to them done by opportunistic employees. If they fail, the market will punish them. However, it would, be a very novel form of antitrust philosophy that regarded an out-of-control principal-agent problem as the basis for antitrust action.

Nevertheless, the combination of a resurgent 'hipster antitrust' school on one side and an 'angrycon antitrust' school on the other means that the consumer welfare school is under more pressure than it has been since at least the 1980s, and Big Tech is the focus of that pressure.

While it is unlikely to happen any time soon, the way to square this circle is for policy makers to recognise that antitrust itself is a breach of business owners' property rights. Moreover, the implied threat of antitrust action prevents business owners from entering into all sorts of potentially beneficial (to all) business arrangements.

Yet if 2018 was a bad year for antitrust skeptics, 2019 promises to be worse. We must hope that the Federal Trade Commission and Department of Justice hold the line against the pressure, and refrain from unleashing the antitrust kraken.

* *Vice President for Strategy and Senior Fellow at the Competitive Enterprise Institute. Abridged from an article that appeared in Competitive Enterprise Institute, on December 21, 2018.*

Five Antitrust Trends to Watch in 2019

Lesli Esposito and Brian Boyle*

News Day

2018 was a memorable year for antitrust law. The U.S. Supreme Court's analysis of two-sided markets, the drama over high-profile merger challenges, and heightened interest in no-poach agreements, among many other things, kept the antitrust bar on its toes. All signs point to 2019 being equally memorable.

Search Engine Keywords

The US Federal Trade Commission's (FTC) recent decision in the 1-800 Contacts Inc. case, which held that agreements not to bid on certain search keywords were anti-competitive, could have significant implications for online retailers, as well as manufacturers who make direct online sales.

1-800 Contacts, the nation's largest online retailer of contact lenses, entered into a series of trademark settlement agreements with competing retailers in which the companies agreed not to bid on certain search engine keywords, including the other's trademarks. They also agreed to employ certain negative keywords. In November of 2018, the FTC commissioners found that this practice was unlawful. It limited consumer choice in the market for contact lenses and suppressed competition in the market for search engine keywords, the commissioners concluded.

As companies prepare for 2019, they should review their online retail policies and practices, and carefully evaluate any agreements with competing resellers regarding search engine keywords.

New Risks for Pricing Algorithms

Pricing algorithms have been an area of focus in antitrust law recently because of the potential for coordination. In 2019, that focus will only increase and possibly expand into another area of antitrust law, price discrimination.

In the most well-known example of this, the Department of Justice (DoJ) prosecuted David Topkins, who used pricing algorithms to coordinate prices for wall posters sold online. Topkins and his co-conspirators did this in part by instructing the pricing algorithm they used to avoid price competition. In 2019 and beyond, sellers using algorithms, private plaintiffs and perhaps even the FTC are likely to begin grappling with this issue.

Data Scraping

Like pricing algorithms, big data has been a hot topic in antitrust circles in recent years. Enforcers in the EU, and to a lesser extent in the U.S., have begun to pay close attention to the competition implications of companies aggregating and using huge troves of data. However, one particular method of accumulating big data, data scraping, seems likely to be of particular interest in 2019.

Vertical Merger Challengers

One of the defining antitrust issues of 2018 was the DOJ's rekindled interest in challenging vertical mergers. In recent years, vertical merger challenges have been rare. Since 2000, the FTC and DoJ have challenged only about one per year. And litigation over vertical mergers has been nearly unheard of in recent decades. Commentators, however, have disagreed on the significance of recent DoJ actions, and what they portend for future vertical mergers. 2019 may offer important clues.

Demands for Aggressive Enforcement

The year 2018 witnessed a growing chorus, in government, academia and the press, calling for more aggressive application of the antitrust laws to dominant companies; particularly technology companies. Executives were summoned to testify, a market-leading company faced a record penalty, major news outlets urged 'trust busting', and scholars gathered at a top university to discuss concentration among top technology firms. All signs are that this trend will continue in 2019. Further, if the global economy falters, the calls for action will likely grow all the louder.

Two aspects of this trend are worth watching in 2019 in particular. First, it will be important to watch whether large technology firms face increased scrutiny of proposed transactions, particular acquisitions of relatively small potential competitors. Second, observers should closely watch the intersection of consumer protection and antitrust law.

These five trends, and others, are likely to make 2019 an important year for antitrust law. Now is the time to consider whether your antitrust compliance programme is ready for 2019 and beyond.

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* *Authors are associated with DLA Piper. Abridged from an article that appeared in* Law360 *on January 01, 2019.*

ABUSE OF DOMINANCE

Global Chipmaker Investigated

The Competition Commission of **India** (CCI) has ordered an investigation against global chip maker Intel for allegedly abusing its dominant position in the Indian market by restricting the production of servers.

The direction comes following a complaint by Bangalore-based Velankani Electronics, engaged in the business of design and manufacture of electronic products in India.

It was alleged that Intel refused to provide complete reference design files to Velankani Electronics and by doing this Intel successfully prevented and precluded the Bangalore-based company from designing/manufacturing its own server-boards.

(ET, 12.11.18)

Dominance Probe of Pharma Closed

The **Canadian** Competition Bureau has ended its two-year investigation that pitted the generic drug industry against three big pharmaceutical companies with no charges against Celgene, Pfizer Canada, or Sanofi-Aventis Canada, despite finding some evidence of anti-competitive tactics.

The complaint brought to the Competition Bureau in 2016 stems from delays which generic drug makers face while preparing to get cheaper versions of patented medicines to market.

These generic versions are on average 85 percent lower in price than the original patent-protected drugs. To prove to Health Canada that their discount version of the drug works the same as the patented one, generic makers need access to samples of those brand name drugs.

(www.competitionbureau.gc.ca, 20.12.18)

Korean Re Abusing Market Power

The **Korean** Fair Trade Commission (KFTC) announced that South Korean reinsurance company Korean Re was slapped with a US$6.72mn for abusing its unchallenged status in the general aviation reinsurance market for nearly two decades.

The KFTC found the reinsurer has been exploiting its market-controlling power to monopolise the market and bar potential rivals from entering the market since April 1999.

Following this, Korean Re signed an agreement with all non-life insurers in the nation's general aviation reinsurance market, forcing them to apply its rating system when those insurers underwrite insurance policies and cede all of their reinsurance contracts to Korean Re, the KFTC stated. *(KT, 17.12.18)*

Petrobras Influencing Fuel Prices

Brazilian Antitrust Watchdog, CADE will begin an investigation that may result in mandatory sales of refineries by state-controlled oil company Petroleo Brasileiro SA, CADE said in a statement.

According to the CADE statement, the watchdog will investigate the influence of Petrobras on fuel prices given that it controls 98 percent of Brazil's refining capacity.

Petrobras proposed selling a 60 percent stake in four refineries as part of a wider effort to reduce debt in 2018. The company would retain about 75 percent of its domestic refining capacity after the privatisation.

(Reuters, 05.12.18)

TenneT to Boost Power Trading

The **European Commission** (EC) had told German grid operator TenneT to increase cross-border electricity flows between Denmark and Germany after Nordic producers complained of limited access.

Producers in Denmark, Sweden and Norway have long complained of limited access to the power link between Western Denmark and Northern Germany.

EU antitrust authorities have been investigating whether limits placed by German grid operator TenneT on cross-border electricity capacity with Denmark breaches EU antitrust rules.

The Commission said that more cheap Nordic power from renewable resources should be allowed to flow to Germany, the EU's biggest power market. *(Reuters, 07.12.18)*

Amazon Hit by Competition Scrutiny

Germany's antitrust regulator is opening an investigation into Amazon, making it the latest authority in Europe to examine the tech behemoth's practices amid growing concern that the retailer might be unfairly leveraging its dominant position.

The Federal Cartel Office was examining business practices and terms on Amazon's German marketplace – a part of the Amazon website that is open to third-party sellers. The probe follows 'many complaints' from sellers on the online marketplace, the largest in Germany, according to the watchdog's president, Andreas Mundt.

"Amazon functions as a kind of 'gatekeeper' for customers. Its double role as the largest retailer and largest marketplace has the potential to hinder other sellers on its platform," Mundt said. *(Reuters, 29.11.18)*

PRICE FIXING

Mastercard Incurs US$650M Charge

Mastercard incurred a US$650mn fourth-quarter charge related to a large fine over a 2015 **EU** antitrust investigation.

The company was accused of setting rules that blocked banks in one EU country from offering lower interchange fees to a retailer in another EU country. Mastercard actually stopped the practice in December of 2015 after the EC adopted charge-capping rules.

Mastercard, along with Visa, has offered to put a cap on the fees applied to card payments by tourists in the EU, to put an end to the antitrust investigation.

The EC has long fought with the companies over fees. The Commission claimed that interchange fees raise prices for customers, as the fee is actually passed onto the merchant.

(CPI, 05.12.18)

Funeral Sector Soars Prices

The **UK**'s competition regulator is to hold a full market investigation into the funeral industry amid concerns over prices and a lack of transparency for vulnerable customers.

The UK Competition and Markets Authority (CMA) conducted an initial review of the market over the past six months and announced that it had found problems that have led to above-inflation price rises for 'well over' a decade for funeral directors and crematoria services.

The CMA concluded that there are reasonable grounds for suspecting that there are features which prevent, restrict or distort competition in the markets for services by funeral directors at the point of need and crematoria services in the UK.

(FT, 29.11.18)

StarKist Admits Fixing Prices

StarKist a subsidiary of **South Korea's** Dongwon Group has agreed to plead guilty to a charge of price-fixing.

The company faces a potential fine of US$100mn in connection with an agreement to fix canned tuna prices that ran from at least late 2011 to late 2013, the US Justice Department stated.

"The conspiracy to fix prices on these household staples had direct effects on the pocketbooks of American consumers," said Assistant Attorney General Makan Delrahim of the Justice Department's Antitrust Division. All Americans have the right to the benefits of free and open competition — the best goods and services at a price free from collusion.

(WSJ, 18.10.18)

Apple-Samsung Slowing Down Phones

Apple and Samsung are being fined €10m and €5m respectively in **Italy** for the 'planned obsolescence' of their smartphones.

An investigation by Italian Competition Authority found that certain smartphone software updates had a negative effect on the performance of the devices.

Believed to be the first ruling of its kind against smartphone manufacturers, the investigation followed accusations operating system updates for older phones slowed them down, thereby encouraging the purchase of new phones. *(TG, 24.10.18)*

Digital Cartel Detection on the Anvil

The Competition Commission of **India** (CCI) is working on a 'digital screen-based' system to detect possible cartelisation in public procurement tenders.

The CCI has been working on ways to curb anti-competitive practices across sectors in the marketplace, and public procurement is a key area as it accounts for around 20 percent of the country's gross domestic product (GDP).

Sudhir Mital, Chairperson, CCI said the tool would have capabilities to scrutinise tenders based on several parameters and check for any anti-competitive aspect. *(ET, 05.11.18)*

Six Home Appliance Makers Fined for Collusion

The **French** competition authority fined six home appliance makers a total of €189mn (US$214mn) for price-rigging in 2006 and 2009, the largest penalty it has handed out so far in 2018.

Whirlpool, Electrolux, Bosch's BSH unit, Indesit, Candy Hoover and Eberhardt Frères were fined for agreeing price increases on washing machines, fridges or ovens.

Since these firms account for 70 percent of the French household appliances market, the cartel had a major impact on prices paid by retailers and consumers, Isabelle de Silva, who heads the Autorite de la Concurrence, said.

The companies did not contest the fines and some even apologised to regulators for their behaviour, de Silva said.

(Reuters, 06.12.18)

We are all Losing Out as Corporate Concentration Grows

Jonathan Tepper*

The US Supreme Court heard claims that Apple has used its control over iPhones to inflate prices for apps. Apple and Google each take a 30 percent commission on sales of iOS and Android apps through their stores. That, unsurprisingly, helps make them two of the world's most profitable companies. Their stranglehold on app sales effectively gives them the power to tax.

This particular case may hinge on who the justices think should be allowed to sue the tech group over this issue, consumers or app developers. But at its heart, the dispute is about the ability of a dominant company to raise prices. The Trump administration has filed a brief in Apple's favour, while 31 states support the consumers.

American presidents once took pride in 'trust busting' and taking apart monopolies. But over the past 40 years, a legal theory has taken hold that has led authorities to wave through giant mergers and given far too free a hand to dominant companies. Known as the 'consumer welfare' standard, the idea was misguided from the start but it has failed even on its own terms.

If there is one man responsible for the change, it is the legal scholar Robert Bork, who was blocked from sitting on the Supreme Court. In his view, traditional antitrust enforcement protected small firms from competition at the expense of cost efficiencies. So he argued that the crucial barometer for deciding whether to take action against a company should be whether it was hurting 'consumer welfare' as measured by low prices.

President Ronald Reagan's administration started putting these views into practice in 1982. Since then, rejections of mergers by the Department of Justice and the Federal Trade Commission have dropped dramatically. Not surprisingly, epic merger waves have followed.

The 'consumer welfare' standard was misguided from the start, but it has failed even on its own terms

Americans now have the illusion of choice, but often a handful of companies control entire markets ranging from local cable monopolies and a national beer duopoly to airlines that dominate local hubs. Apple and Google have a virtual duopoly on smartphone operating systems and therefore apps.

A growing body of evidence suggests that rising concentration is leading to less competition, lower wages, fewer start-ups, rising inequality, and weaker towns and cities. That would be reason enough to question the consumer welfare standard. But most damningly, the rule has failed on its own narrow terms.

The evidence is abundant: concentrated industries cause higher prices. A 2016 study by Bruce Blonigen and Justin Pierce of the US Federal Reserve showed that mergers lead to price mark-ups with little evidence of greater efficiency.

When economist Matthew Weinberg studied two decades of mergers in 2007, he found that the majority of deals raised prices. More recently, John Kwoka, professor at Northeastern University, examined almost 50 studies covering more than 3,000 mergers. His damning conclusion: if a merger led to six or fewer significant competitors, prices rose in nearly 95 per cent of cases.

These days, the proportion of announced merger deals that are completed is close to 90 per cent. The main reason deals do not go through is because companies get cold feet, not because antitrust authorities object.

Private lawyers and economists, many of them former DoJ and FTC staff members, profit handily from this citation. Some charge more than US$1,000 an hour and their businesses have made more than US$100m. Bank mergers and acquisitions departments have received US$21bn in fees from mergers and acquisitions this year alone.

But antitrust enforcement can be reformed. Given the considerable evidence that a move below six players in an industry raises prices for consumers, one useful starting point would be to ban mergers in industries dominated by six players or fewer.

We also need to reverse previous mergers that have created monopolies, duopolies and oligopolies by breaking them up. It is time to drop the 'consumer welfare' standard and restore the spirit of antitrust enforcement.

* *Founder of Research Company Variant Perception and co-author of 'The Myth of Capitalism'. Abridged from an article that appeared in* The Financial Times, *on November 19, 2018.*

IBM to Acquire Red Hat

IBM Corp had agreed to acquire **US** software company Red Hat Inc for US$34bn, including debt, as it seeks to diversify its technology hardware and consulting business into higher-margin products and services.

The transaction is by far IBM's biggest acquisition. It underscores IBM Chief Executive Ginni Rometty's efforts to expand the company's subscription-based software offerings, as it faces slowing software sales and waning demand for mainframe servers.

Founded in 1993, Red Hat specialises in Linux operating systems, the most popular type of open-source software, which was developed as an alternative to proprietary software made by Microsoft Corp. *(Reuters, 28.10.18)*

Ferrero to Buy Campbells?

Nutella maker Ferrero is interested in buying Campbell Soup's international business, which includes biscuit brand Arnott's.

The **Italian** group based in the Piedmont region is working on a possible deal with Rothschild as advisers. Ferrero declined to comment on the deal which could be worth more than US$2bn.

Campbell started the process of selling its international and fresh refrigerated-foods units in August 2018 following a strategic review, joining the likes of other packaged food makers such as Kraft Heinz and Kellogg who have also been offloading some brands. *(Reuters, 10.12.18)*

PayPal-iZettle in CMA Crosshairs

The **UK**'s Competition and Markets Authority (CMA) announced that PayPal's US$2.2bn takeover of Swedish financial technology startup iZettle would be referred for an in-depth review.

The CMA stated PayPal had refused to offer proposals to address its concerns on how the deal could hurt competition and could lead to higher prices for customers, or worse quality of service.

The regulator had also flagged concerns surrounding competition in the emerging market for 'omni-channel' payment services as a result of the merger. PayPal's acquisition of iZettle would allow the US payments processor to expand into the retail payment terminals business in international markets. *(FT, 05.12.18)*

DEA to Acquire Sierra Oil & Gas

Germany's Deutsche Erdoel (DEA) plans to buy Mexican independent Sierra Oil & Gas in the largest such merger in Mexico since the historic 2014 energy reform that dismantled state-owned Pemex's monopoly.

The purchase will "provide us with a high-quality exploration and appraisal portfolio in one of the world's most sought-after offshore basins," said DEA CEO Maria Moraeus.

Sierra holds interests in six exploration and appraisal blocks in Mexico. These include the Zama discovery, one of the largest shallow water discoveries in the past 20 years globally. The exploration blocks cover around 9,400km^2 in the core part of Mexico's southeast basin, a proven hydrocarbon area. *(CPI, 05.12.18)*

Tribune Media-Nexstar in Tie-up

US media group Nexstar is set to become the country's largest operator of local TV stations after a deal to buy Tribune Media for about US$4.1bn. It comes three months after Tribune's sale to Sinclair Group, currently the largest US local TV operator, failed over regulatory hurdles.

Tribune's 42 TV stations reach approximately 50 million households. The Chicago-based company also owns national entertainment cable network WGN America, whose reach is more than 77 million households, and a number of websites. It also has a stake in the Food Network.

Nexstar, based in Irving, Texas, owns, operates and provides sales and other services to 174 television stations reaching nearly 39 percent of all US television households. *(FT, 02.12.18)*

Marlboro-Maker's Bet on Marijuana

Marlboro cigarette maker Altria is in early stage talks to acquire **Canadian** cannabis producer Cronos, as it seeks to diversify its business beyond traditional smokers.

A takeover of Cronos by Altria amid spreading decriminalisation would rank among the largest investments in the budding pot industry.

Cronos was 'engaged in discussions concerning a potential investment' by Altria. The statement added: "No agreement has been reached with respect to any such transaction and there can be no assurance such discussions will lead to an investment or other transaction involving the companies." *(FT, 03.12.18)*

Energizer Acquires Spectrum Assets

The **US** battery maker Energizer Holdings gained **EU** antitrust approval for its US$2bn bid for Spectrum Brands' battery and portable lighting business after agreeing to sell a Spectrum unit in Europe.

The European Commission said the sale of Spectrum's Europe-based Varta consumer battery business addressed its concerns. Energizer's brands include Energizer and Eveready batteries.

The deal has already secured unconditional approval in the US and Australia. *(Reuters, 12.12.18)*

CVS, Aetna Finalise Merger

The **US** largest retail pharmacy, CVS, had completed a US$69bn acquisition of health insurance giant Aetna, CNBC reported.

The deal will create new ways for the companies to engage patients' total healthcare needs, with added convenience and lower costs.The focus will be at the local and community level, taking advantage of our thousands of locations and touchpoints throughout the country to intervene with consumers to help predict and prevent potential health problems before they occur.

Aetna would continue to operate as a standalone company within CVS. As part of the deal, Aetna agreed to sell all of its Medicare prescription drug plans to WellCare Health Plans.

(CNBC, 28.11.18)

Disney Gets Nod on Fox Purchase

China has given unconditional approval to Walt Disney's US$71.3bn planned takeover of large parts of 21st Century Fox.

The deal still requires regulatory approval from a number of nations around the world, but the unconditional green light from China represents a huge win for Disney.

Disney initially agreed to buy the majority of Fox for US$52.4bn in stock. The deal at the time included Fox's movie studios, networks National Geographic and FX, Star TV, and stakes in Sky, Endemol Shine Group and Hulu, as well as regional sports networks.

Disney secured conditional approval from the US Justice Department for the deal in June after agreeing to sell Fox's 22 regional sports networks. *(CNBC, 19.11.18)*

Taking Mobility to 'Next Level'

The **European Commission** has approved the merger of BMW Group and Daimler AG's mobility services business units, subject to conditions.

The deal will see the two rival manufacturers bring together services in five areas (on-demand mobility, car sharing, ride-hailing, parking and charging) in a 50:50 joint venture, with the aim of becoming a 'leading provider' in the mobility market.

The new venture will give BMW and Daimler scale, enabling them to take on the likes of Uber and Lyft. It will include the merger of BMW's DriveNow, which recently expanded in London, and Daimler's car2go.

(CPI, 11.11.18)

FTC Clears Stryker-K2M deal

K2M announced that the **US** Federal Trade Commission (FTC) granted early termination to the Hart-Scott-Rodino Act waiting period for its pending US$1.4bn merger with Stryker.

The termination of the HSR Act clears yet another hurdle to the union between the two companies, which will position K2M as a wholly owned subsidiary of Kalamazoo, Michigan based Stryker.

K2M stated that it won shareholder approval for the merger during a special meeting of stockholders. *(CPI, 11.11.18)*

Icelandair-WOW Announce Merger

WOW Air, the **Icelandic** budget airline that shook up the US market with Europe fares as low as US$99 one way, will be acquired by rival Icelandair in a deal that could make the company a strong force in the trans-Atlantic market.

The acquisition must still be approved by Icelandair shareholders and by regulators.

Icelandair stated the brands will continue to operate independently, but the tie-up could bring restraint to competition that has flooded the US market with new capacity on the two Icelandic carriers.

WOW Air has opened more than a dozen new routes to North America since 2015, with Icelandair often matching its rival's plans. That's led to a sudden surge in some markets where nonstop flights to Iceland proliferated practically overnight.

(Bloomberg, 06.11.18)

Clearance to Linde-Praxair

Industrial gases groups Praxair and Linde won **US** antitrust approval for their US$86bn merger, clearing the last hurdle for the deal.

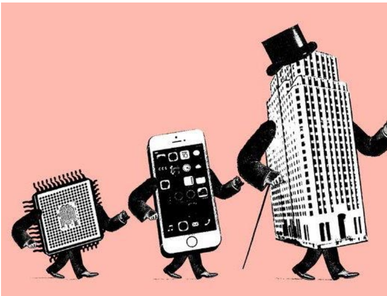
The all-share merger of equals will create an industry leader with revenues of about US$27bn based on 2017 figures, and 80,000 employees across more than 100 countries, which will be called Linde.

The merger will make it bigger than France's Air Liquide, which had also bulked up with the takeover of rival Airgas. *(Reuters, 22.10.18)*

United Technologies to Split into Three

United Technologies would separate into three companies consisting of its aerospace, elevators and building divisions, making it the latest industrial conglomerate to pursue such a break-up.

The move is in line with plans of other major industrial companies, such as DowDuPont, Honeywell International and General Electric Co to shed major divisions, as investors assign more value to the parts of these companies separately than to their sum.

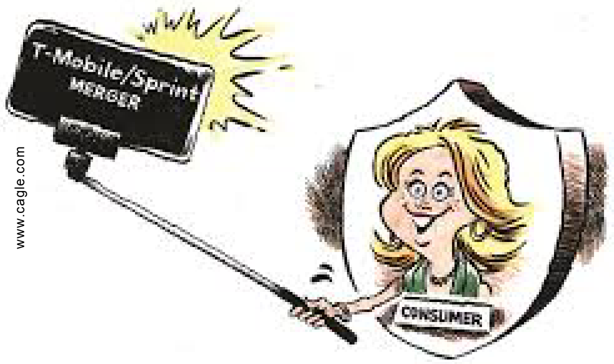

New York Times

United Technologies planned to keep the newly acquired Rockwell Collins business, along with its Pratt and Whitney engines unit and aerospace systems. This combine business generated total sales of US$39bn in 2017 on a pro forma basis.

United Technologies will spin off its Otis elevators and Carrier air-conditioning businesses tax-free to shareholders. *(Reuters, 27.11.18)*

Merger of Sprint and T-Mobile to take a Bite out of Wireless Workers' Paychecks

Christopher Ingraham*



The proposed merger between wireless giants Sprint and T-Mobile will depress wages in the retail sector of the industry by as much as US$3,200 per year for some workers, according to a new report released by the Economic Policy Institute and the Roosevelt Institute, two left-leaning think tanks.

The report deals with the question of monopsony power, which occurs when employers have sufficient leverage over workers to pay them less than they would get in a truly competitive labor market. By reducing the number of large firms active in the wireless market from four to three, the report argues, the merger would make it more difficult for retail employees in the remaining three firms to receive competing offers of employment that would boost their wages. A recent thread of economics research has identified monopsony power as a driver of the wage stagnation observed in many sectors of the economy.

Adil Abdela and Marshall Steinbaum called for antitrust authorities currently reviewing the merger at the Federal Communications Commission and elsewhere to take these concerns into account. To arrive at their estimates, Abdela and Steinbaum relied on previous research looking at the effects of employer concentration on earnings.

The models used in the previous research yielded a range of possible estimates for the effects of a merger of Sprint and T-Mobile. In the 50 labour markets most likely to be affected, the estimates of wage stagnation ranged from an average decrease of about US$10 a week, or US$500 per year, at the low end to a decrease of US$63 dollars a week, or US$3,200 a year, at the high end.

The US Federal Communications Commission declined to comment on the study, citing the ongoing review of the merger. A representative from T-Mobile referred a request for comment to Jeffrey A. Eisenach, an economist with NERA Economic Consulting who has been advising T-Mobile on issues related to the deal. Eisenach sharply criticised the way the Roosevelt researchers defined labor markets in the paper.

Eisenach added that an analysis of the merger he prepared at the request of T-Mobile showed it would create 24,000 jobs over three years. In response, Steinbaum pointed out that the prior research the study drew on "var[ies] the market definition substantially, both more widely and more narrowly" than he and Abdela did in the Roosevelt paper. Those studies show the estimated wage effects "tend not to vary very much as a function of market definition."

Jay Shambaugh, an economist and director of the Hamilton Project at the Brookings Institution, said the Roosevelt paper "is done in a clear and straightforward way, and the magnitudes [of the wage effects] seem plausible for the exercise being done." Shambaugh, who is not involved in the merger, added that the questions about labor market definition were valid, but said the authors "have reasonable grounds that they have defined the market appropriately."

He went on to echo one major contention of the paper: Antitrust regulators at the FCC and elsewhere typically don't pay enough attention to how big mergers affect workers. He said the Roosevelt paper is "the type of analysis regulators would need to do if they were going to take the labor market implications seriously," as a number of economists have urged.

"If mergers like this go through," Shambaugh said, "concentration of employers will rise and that will raise the stakes to deal with other ways firms exercise (or expand) their power in labor markets.

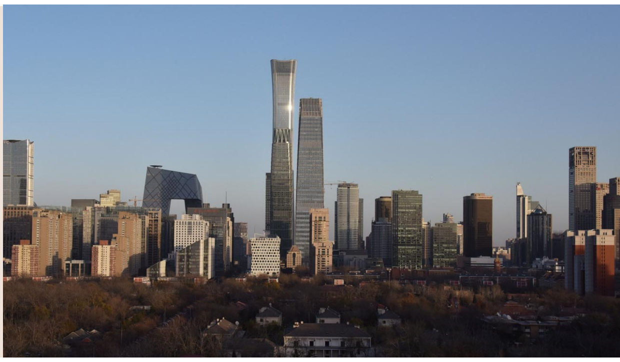
Even with increased attention to labor markets, Abdela and Steinbaum wrote, antitrust enforcement alone "will never be a solution to the crisis of worker power in this country. It must be considered alongside such policies as increasing the minimum wage, ensuring macroeconomic full employment, increasing progressive taxation, improving labor standards and their enforcement, and mitigating shareholder power over companies that comes at the expense of other stakeholders."

* *Data Reporter, Washington Post. Abridged from an article that appeared in* Washington Post *on December 19, 2018.*

China Releases Nationwide 'Negative List' in Show of Openness, but will it make any difference?

Daniel Ren*

The Chinese State Planning Agency says the New guideline means that China has set up a unified, fair and rule-based system for market access. Analysts opine that list is evidence of China's commitment to relaxing market access, but scope remains limited



www.scmp.com

China sought to demonstrate its willingness to open up its markets with the publication of its first unified "negative list" of the business sectors that are off limits to foreign, and in some cases domestic, investors.

China's Top Economic Planning Agency, the National Development and Reform Commission (NDRC), which compiled the document in cooperation with the Ministry of Commerce, said it applied across the mainland and overrode all related local government regulations.

China drafts law protecting foreign intellectual property and prohibiting forced technology transfer

The list comes as China is facing an uphill battle to maintain economic growth amid its trade war with the US and growing concerns among domestic private sector businesses that the Communist Party is leaving them to flounder in favour of propping up the state sector.

"The promulgation of the negative list nationwide means that China has set up a unified, fair and rule-based system for market access," said Xu Shanchang, Director of the NDRC's Economics System Reform Department. "From now on, other government agencies and local governments are barred from making rules about market entry."

Ding Haifeng, a consultant with Shanghai Integrity Financial Consulting, said the publication of the list was indicative of Beijing's commitment to relaxing market access, even if it was only limited in scope at this stage.

"The list is of only symbolic value as [China's] key sectors are still off limits to non-state-owned or foreign investors," he said. "But it's a crystal clear message that wider market access for both foreign and privately owned businesses is in the works and that they will be given opportunities in some areas, such as manufacturing."

China says 'new progress' has been made in US trade war talks

The document released differs from the negative list published in June in that it applies to all companies doing businesses in China, not just foreign enterprises.

Beijing released its first ever negative list in 2016 under a pilot scheme in just four province-level jurisdictions regions, namely Shanghai, Guangdong, Tianjin and Fujian.

The new list comprises 151 areas that are either off limits to non-state businesses or that require them to go through an application and approval process. Much of it is unchanged from earlier lists on sectors closed to private and foreign firms, such as the processing and distribution of edible salt.

In other sectors, such as vehicle manufacturing and finance, the involvement of foreign businesses remains subject to a lengthy and convoluted approval process, although Beijing did recently raise the cap on how much of a joint venture – with a local partner – a foreign investor can now own.

China should address US concerns on investment and tech transfer to defuse trade war, says World Bank

Chinese President Xi Jinping said in Shanghai that China continued to support globalisation and pledged to provide easier access to China's markets for foreign firms.

But business lobby groups, including the European Union Chamber of Commerce, said Chinese promises were not enough to convince foreign companies that China's markets were fair and transparent.

China sought to show its openness to global investors as early as 2013 when it allowed Shanghai to set up the country's first free-trade zone. But the move failed to attract foreign funds because of tight restrictions and a rigid approval processes.

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* *Financials & Real Estate Analyst at Yale Student Investment Group. The article appeared in South China Morning Post* on December 25, 2018.

The Dubious Record of Global Audit Firms

Mohan R Lavi*

Monopolistic auditing giants need to be brought to book. From IL&FS in India to Carrillion in the UK, they have failed in their duty

Whenever corporate accidents such as IL&FS occur, an inevitable discussion follows on the role of both statutory as well as internal auditors. Since they are privy to a lot of information during the course of their audits, there is a consensus of opinion that their audit reports should be able to tell things as they are.

Unfortunately, audit reports in India are structured with a lot of disclaimers and worded so cautiously that the shareholder will not be able to form an opinion whether the financial statements present the actual picture of the company. For instance, in the IL&FS audit report, the auditor has drawn attention to the fact that a subsidiary of IL&FS has incurred large losses which could impact the continuance of the subsidiary as a going concern.

The auditors may claim that the issue at IL&FS was a case of cash flow mismanagement which is not a part of their scope of audit. Critics of the auditors reject this by stating that the concept of true and fair and going concern would include basic concepts such as cash flow mismanagement. Such a discussion leads to the question whether the auditors are getting too cosy with the management, which leads to the issue of whether too few auditors are doing too many audits.

Regulators have always frowned upon monopolies whether as a single entity or a collection of entities. In the world of auditing, the 'Big Four' have always dominated the audit of listed entities.

Auditors and Carillion

A discussion on whether too few auditors are doing too many audits is already taking place in the UK. A need for this discussion arose after Carillion one of UK's leading construction companies filed for bankruptcy early in 2018. Carillion and IL&FS had at least two similarities they were in an industry which is prone to high risk and both had accumulated large amounts of debt.

When Enron happened, the US reacted with the Sarbanes Oxley Act. After Carillion happened, the House of Commons established a Committee to probe into what happened and to also suggest possible solutions. The Committee came out with a scathing report which stated that Carillion's accounts were systematically manipulated to make optimistic assessments of revenue, in defiance of internal controls. One audit firm was paid £29mn to act as Carillion's auditor for 19 years.

Another audit firm, paid over £10mn by the company to act as its internal auditor, failed in its risk management and financial controls role. A third one was paid £10.8mn for six months of failed turnaround advice.

The Committee concluded that there is a danger of a crisis of confidence in the audit profession as Carillion was not an isolated failure, but symptomatic of a market which works for these audit firms but fails the wider economy and there are conflicts of interest at every turn. The Committee recommended that the government refers the statutory audit market to the Competition and Markets Authority.

In the present day, auditors should don the role of a devil's advocate. If this is combined with a truly independent audit committee, corporate shocks such as IL&FS can be handled much more professionally.

Rating auditors

In most countries, the format of the audit report was amended recently asking the auditor to comment on key audit matters. This too has not helped because the response of the auditor to the key audit matter gives nothing away in terms of what could be wrong. One possible solution could be to ask auditors' specific questions such as possibility of fraud, ability to repay loans, tone at the top for ethics, robustness of internal controls and corporate governance processes. Their responses should be either Yes or No or rated on a scale of 1 to 10.

An audit should provide value-added information to the shareholder instead of telling him that everything is fine till someone other than the auditor discovers otherwise.

* *Independent Chartered Accountant. Abridged from an article that appeared in* The Hindu Business Line, *on October 09, 2018.*

Rules for Data-Sharing Tie-ups

Japan's antitrust regulator will craft rules for cross-sector partnerships in high-tech fields like automated driving and connected devices, seeking to prevent monopolies on big data and intellectual property.

The Japan Fair Trade Commission's (JFTC) Competition Policy Research Centre aims to clarify at what point inter-industry data sharing crosses the line into illegality. It aims to reach a conclusion as soon as the summer, with the JFTC expected to use the rules as the basis for new guidelines on antitrust law.

Having a clear set of rules is expected to prevent reorganisations by Japanese businesses from being hobbled, at a time when US information technology giants like Google and Amazon are enlarging themselves even further through cross-sector partnerships. *(CPI, 02.12.18)*

Ryanair's Handbag Policy Suspended

Italy's antitrust watchdog provisionally suspended a new hand luggage policy at Ryanair and Wizz Air which had been due to come into force on November 01, 2018.

The antitrust body stated the two low cost airlines were planning to only let very small bags be brought on board for free and start charging passengers for standard sized luggage.

The request for supplementary pay for an essential element of air transport, such as hand baggage, provides a false representation of the real ticket price … misleading the consumer.

(CPI, 31.10.18)

Regulating Online Marketplaces

The **European Union** lawmakers have proposed new regulations aimed at stopping an online marketplace, such as Amazon from using data from merchants' product sales to boost sales of their own branded products.

The EU laid out draft rules to stop what they claimed was an unfair marketplace where online merchants had access to the merchant data from products that sold on their platform, putting them at an advantage when they are hawking their own branded products. The rules target app stores, search engines, eCommerce sites, and hotel booking websites.

Lawmakers in the European Parliament are facing pressure to project a consumer-friendly face ahead of elections in May 2019, noted the report.

(Reuters, 15.10.18)

Replacing Industrial Policy

China plans to replace an industrial policy savaged by the Trump administration as protectionist with a new programme promising greater access for foreign companies, according to people briefed on the matter, in a move to resolve trade tensions with the US.

China's top planning agency and senior policy advisers are drafting the replacement for Made in China 2025 – President Xi Jinping's blueprint to make the country a leader in high-tech industries, from robotics to information to clean-energy cars.

The revised plan would play down China's bid to dominate manufacturing and be more open to participation by foreign companies, these people said.

(WSJ, 12.12.18)

Enforcing Passenger Rights

The **Nigerian** Aviation Industry plays a key role in the country's transport system and overall economy. Thus, it is exasperating that air passengers still encounter numerous challenges, such as the delay or cancellation of scheduled flights and lost, stolen or delayed baggage.

Although existing laws and regulations govern passenger rights, key issues relate particularly to the level of passenger awareness regarding such rights and the inadequate enforcement of the relevant laws and regulations.

Proper education of the general public regarding their rights under extant laws and regulations should be as important as enacting new laws and regulations. *(ILO, 03.10.18)*

5G Regulatory Sandbox Expanded

The **Taiwan** National Communications Commission (NCC) will expand the 5G regulatory sandbox by the end of December 2018 in order to inspire experimental 5G applications; and prepare Taiwan for the upcoming release of 5G spectrum for commercial use in 2020.

The NCC confirmed that the 3.4GHz to 3.6GHz and 28GHz bands are available for release via spectrum auctions, while further public comments are required regarding the 1,700MHz to 1,900MHz, 2,010MHz to 2,025MHz and 2,355MHz to 2,390MHz bands.

The NCC's previous regulatory sandbox had been framed as a proof of concept only – experiments were only permitted subject to a temporary licence issued by the NCC and under the strict rule that they involved no profit-seeking activities. *(ILO, 23.11.18)*

MoneyGram Mobile App Rolls Out

MoneyGram, global money transfer and payment service, has launched a new mobile app that is available in the **US** and 14 other countries.

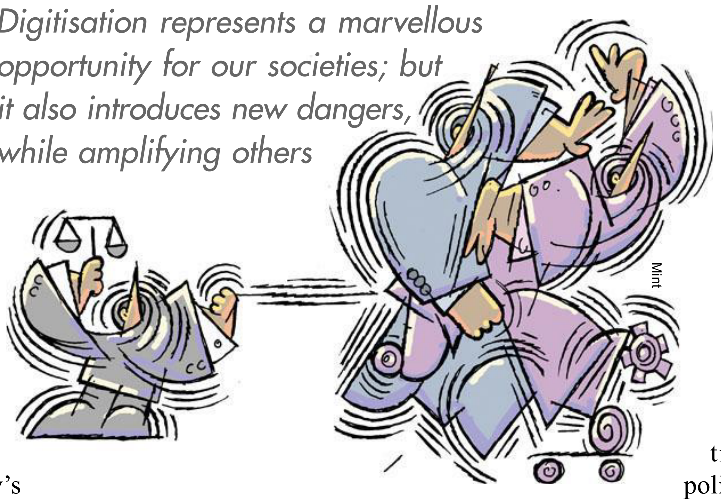
The app, available for iOS and Android platforms, has features that include biometric identification, location finder, transfer tracking, and exchange rates and fee estimates. The move is important for the continued growth of the company's digital and mobile strategies.

It is critical that the consumers who use their smartphones to transact with us have a product that provides an exceptional customer experience. The new MoneyGram app is the best app in the industry. *(CPI, 11.12.18)*

Regulating the Disrupters

Jean Tirole*

Digitisation represents a marvellous opportunity for our societies; but it also introduces new dangers, while amplifying others



The leading tech giants — such as Apple, Amazon, Facebook, and Google — explicitly set out to disrupt much of the world's industrial and social *status quo*. Given the scale and scope of these firms' impact on our societies, it is no surprise that they inspire both hope and fear in the public consciousness. But one thing is clear: A small cohort of technology firms now guards the door to the modern economy. That today's information-technology markets are highly concentrated is beyond dispute.

Network defects

There are two reasons why digital markets are so concentrated. The first is a network externality: We need to be on the same network as the person with whom we want to interact. If our friends are on Facebook, we need to be there, too, even if we would really prefer another social network.

A problem of scale

The second reason for the high level of concentration in digital markets is that the dominant firms benefit from economies of scale. Some services require large technological investments. What will not be the same is the value of the user data that is generated.

Adapting policy to new business models

Policymakers and regulators around the world must face the fact that the reasoning behind traditional competition measures is no longer valid. It is now common for a platform like Google or Facebook to set very low prices on one side of the market and very high prices on the other side. This naturally creates suspicion among competition authorities.

Rethinking regulation

More broadly, there are four clear areas for regulation in the digital economy: competition, labour law, privacy, and taxation. New entrants into online markets often begin with a niche product; if it proves successful, they expand to offer a much wider range of products and services. Google began with only its search engine before it became the company we know today; Amazon started by selling books.

The pursuit of the buyout

Complicating the competition picture further is the natural incentive new market entrants have to sell themselves to the dominant firm. This incentive is so strong that new entrants may be motivated more by the desire to extract monopoly rent from the incumbent than by an interest in delivering a new or superior service to the consumer.

Ad hoc antitrust

With rapidly changing technologies and globalisation, traditional regulatory tools have become less effective, causing competition policy to lag. We must develop more agile policies. Regulators and economists must be humble; they will learn by doing, and their policies should not be cast in stone.

Work-gig balance

The priority should be to ensure competitive neutrality: the dice must not be loaded in favour of either salaried employment or self-employment. The state must promote the health-care and social-security rights of gig workers like, say, Uber drivers. At the same time, it should avoid policies that would make the digital platforms unviable, even if they are unfamiliar and disruptive.

Rescuing privacy

Progress is also needed when it comes to stopping firms and governments from intruding in consumers' private lives. It is well known that these entities collect large amounts of information about us. Yet, even if we are aware of this, we often fail to recognise the true scale of these processes or their consequences. The European Union's General Data Protection Regulation amounts to only a small first step toward protecting us from such threats. Further steps should include the creation of a set of standardized policies that everyone understands.

Keeping the lights on

To achieve an economics for the common good in this new world, we will have to address a wide range of challenges, from public trust and social solidarity to the ownership of data and the effects of technological diffusion. Success will depend, in particular, on whether we can develop viable new approaches to antitrust, labour law, privacy, and taxation.

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* *2014 Nobel Laureate in Economics and Chairman of the Toulouse School of Economics and the Institute for Advanced Study in Toulouse. Abridged from an article that appeared in the* Mint *on December 31, 2018.*

Too Big to Fail, Too Big to Exist

Bernie Sanders, an American politician serving as the junior **US** Senator from Vermont since 2007, introduced a bill to break up US's largest financial institutions, exactly 10 years after President George W. Bush signed the government's big bank bailout programme into law.

"If a bank is too big to fail, it is too big to exist," he added. To that end, the Vermont senator introduced the "Too Big to Fail, Too Big to Exist Act" with California Democrat Rep. Brad Sherman.

The Bill states it would dismantle the nation's six largest banks JP Morgan Chase, Bank of America, Citigroup, Wells Fargo, Goldman Sachs and Morgan Stanley and other financial institutions with total assets greater than three percent of the US GDP, or about US$584bn.

"No financial institution should be so large that its failure would cause catastrophic risk to millions of Americans or to our nation's economic wellbeing," Sanders said in his statement.

Sanders correlated the bill's introduction with the 10-year anniversary of the Troubled Asset Relief Programme (TARP), which allowed the government to bail out major banks in the wake of the subprime mortgage crisis.

Major US banks are even bigger now than they were in 2008, Sanders said, adding that the four largest banks are now about 80 percent larger than they were before the government's billion-dollar bailout. Sanders and Sherman said large banks have not done enough to prevent another meltdown like the one seen in 2008.

(www.abcnews.go.com, 04.10.18)

Guidelines to Combat Cybercrime

Cybercrime is on the rise around the world and **Nigeria** has already had its fair share of incidents, especially targeting the financial sector. This has prompted authorities to take action.

The Central Bank of Nigeria (CBN) recently released a set of guidelines to help financial institutions fend off attacks. The guidelines are set to come into force on January 01, 2019.

The new framework mandates that each financial institution must take steps to ensure sound cybersecurity governance across its operations. This could include technical measures like installing a Web Application Firewall, a tool that protects against application layer attacks and prevents popular attack vectors like SQL injection and cross-site scripting.

(www.punchng.com, 17.12.18)

From Sandboxes to Regulation

The FinTech sector in **Indonesia** is regulated by two separate institutions: the Central Bank (Bank Indonesia) for FinTech relating to the payments system; and the Financial Services Authority (OJK) for FinTech relating to lending and all other aspects of FinTech.

Following in Bank Indonesia's footsteps in the payments arena, the OJK has gradually moved to exert control over its sphere of responsibility in the FinTech sector, with peer-to-peer lending being regulated through OJK Regulation.

However, until recently, the OJK had never issued an overarching regulation governing the development of the sector as a whole or replicating the sandbox regime and pre-audit mechanism established by Bank Indonesia for FinTech in the payments arena.

(ILO, 05.10.18)

PSD 2 in the Grand Duchy

Luxembourg has finally implemented the EU Payment Services Directive (PSD 2). As the PSD 2 is a full harmonisation directive, most of Luxembourg's PSD 2 provisions are identical to the legal framework implemented across the EU.

Nonetheless, EU member states were given scope to decide on certain topics and the Grand Duchy seized the opportunity to define its own rules. The regulator has also adapted its procedures in view of the new framework.

Meanwhile, the European Banking Authority has provided substantial guidance on the practical implementation of the PSD 2 and the European Commission's regulatory technical standards via several guidelines and the Single Rulebook Q&A.

(www.nautadutilh.com, 26.11.18)

New Fintech Authorisation Rules

Companies that operate beyond the core activities characteristic for banks will be able to accept public funds on a professional basis subject to simplified requirements from January 01, 2019.

The **Swiss** Federal Council set into force an amendment to the Banking Act to promote innovation in the FinTech area. Moreover, crowdlending should also be possible for private consumers within the licence-exempt area of the sandbox.

Financial Times

The Federal Council proposed three measures for consultation to promote innovation in the financial sector and remove barriers to market entry for fintech firms. Two of these have already been regulated at ordinance level and came into force and the third one will come into force on January 01, 2019.

(ILO, 21.12.18)

End the Scandal of 'Too Big to Sue' Banks

Jonathan Ford*

Here's a test. Take a contract between two parties; one a family company running caravan parks in the north of England that turns over about £2m annually, and the other a multinational bank with a market capitalisation of £31bn. Would you say that was a contract between two parties of equal weight? It is doubtful. But that is how the law sees it. And that is why, when it comes to small business lending, the law is an ass.

The caravan operator in this case is actually a real business; a longstanding family company called Arthur Holgate & Son, which owned parks in Cumbria, Dumfries and York. It fell into difficulty after the financial crisis because of some dubious interest rate swaps that its bankers, Barclays, flogged it. When these Devil's derivatives drained the capital from the business, those same bankers stepped in and pulled the plug.

Now this is hardly an unfamiliar story. Between 2000 and 2012, thousands of small businesses were mis-sold such products by their bankers, often with similar, dismal results. Lives were ruined, families left in destitution. Others found themselves in thrall to so-called high risk units like Royal Bank of Scotland's highly controversial Global Restructuring Group (GRG), where they were pushed into restructurings on pain of foreclosure, some with disastrous results. Once in dispute with their bankers, the owners found their opportunities for redress severely limited. Corporate lending is an unregulated activity. So there was the Financial Ombudsman Service, a sort of voluntary arbitration bureau, but that could recompense them only up to a total of £150,000 (rising to £350,000 next year).

UK should help small businesses hold banks properly to account

Revelations about skulduggery have sometimes forced banks to do more in recent years. They have established *ad hoc* schemes to compensate victims of some of the grosser rip-offs, such as those involving interest rate swaps, GRG and the scandal at the Reading branch of HBOS.

But while these at least offer the chance of a hearing without the attendant risks and costs of court action, they are still far from satisfactory. The bank has to agree to set them up; it appoints the 'independent' assessor, and there's only one-way disclosure: the customer disgorges their evidence but the bank does not give up what it has. Offers are made on a take-it-or-leave-it basis with the alternative to flip back to litigation. The gross imbalance in power remains.

There is a way to even the scales: establish a truly independent tribunal system, offering quick, low-cost justice to a wider range of claimants. This would not turn small business lending into a fully regulated activity. But it would allow customers to take action for breaches of the regulator's 'conduct of business' rules.

That would acknowledge that small business owners deserve some of the protections afforded individual customers. It would also iron out some of the kinks deterring corporate litigants, such as the fact that in many cases where a company sues its bankers, that institution is also the secured creditor. Which means any compensation can simply end up back in the bank's own vaults.

A fairer system should be in everyone's interests. It would encourage the better banking practice all parties claim to favour, while helping small businesses to prosper by giving them more confidence to borrow to invest.

Yet the UK government is now showing signs of bending to industry interests. These favour merely extending the ombudsman mechanism by increasing maximum compensation to £600,000. Without giving it the power to compel evidence, that is unlikely to achieve very much.

When disputes arise, companies need a fair hearing. Take the Holgates' case. Offered £311,000 under a redress scheme for the loss of their company, they appointed a liquidator to pursue a case against the bank and went to court. They ended up collecting about £10m on the courtroom steps.

Most owners will not take this step for fear of the financial consequences. That protects the strong against the weak. A fairer system would not.

* *City Editor of The Financial Times. Abridged from an article that appeared in* The Financial Times *on November 11, 2018.*

GDP is No Longer an Accurate Measure of Economic Progress. Here's why

Pushpam Kumar*

It is critically important we monitor societal progress and design responsive policies to 21st century challenges, such as climate change, the marginalisation of more than a billion people, resource depletion and emerging pollution-driven health crises. We need reliable metrics to know how we are performing on the yardsticks of our economy, sustainability and social harmony. Unfortunately, our radar to track progress is far from satisfactory. Countries still use a 20th century metric to measure wellbeing: Gross Domestic Product (GDP).

GDP provides measurements of output, income and expenditure quite well, and these are needed to understand and devise fiscal and monetary policies. But this measure flatly fails when it comes to wellbeing. Its founder, Simon Kuznets, cautioned half a century ago that it is useful mainly in tracking income. More recently, other economists suggest knowing change in per capita wealth of all types is key to monitoring sustainability.

Hence growing international interest in a tool that still captures financial and produced capital, but also the skills in our workforce (human capital), the cohesion in our society (social capital) and the value of our environment (natural capital).

Work has advanced on some of these elements. The UN Environment Programme-led Inclusive Wealth Index shows the aggregation through accounting and shadow pricing of produced capital, natural capital and human capital for 140 countries. The global growth rate of wealth tracked by this index is much lower than growth in GDP. In fact, the 2018 data suggests natural capital declined for 140 countries for the period of 1992 to 2014.

Interestingly, many countries record GDP growth while they lose natural capital. One can see the trade-off among various types of capital, but the report clearly conveys that mixing income with wealth is bad economics and dangerous for sustainability measurement.

The Index's findings include strong recommendations to help reach global sustainability targets, including the UN Sustainable Development Goals. Closely tracking countries' productive bases is key, as a declining asset base implies a non-sustainable trajectory. Many of the assets critical for maintaining productive bases are either not priced or are priced at much lower levels than they should be. This is especially true for natural capital and human capital assets.

Natural capital assets such as forests and water bodies have only been valued for the products they provide for the market, such as timber and fish. However, these ecosystems offer a much larger suite of services, such as water purification, water regulation and habitat provisioning for species, among many others. These are clearly valuable services.

The Inclusive Wealth Index also helps policy-makers prepare to negotiate for reductions in greenhouse gases as well as for compensations accruing from climate change. Further, past reports have shown conclusively how countries can become unsustainable in absolute terms when population growth is factored into the computation. Understanding the impact population growth has on productive bases is a critical variable that leaders should factor into policy-making.

Canada's Comprehensive Wealth project adds one number for evaluation and policy-making on top of GDP: a per capita sum of the five elements of prosperity. It draws on data from Statistics Canada – one of the finest statistical organisations in the world – which measures many elements of prosperity separately, to varying degrees of depth.

The report raises several red flags, most notably that Canadians' comprehensive wealth only grew at an annual average rate of 0.2 percent from 1980 to 2015. In contrast, GDP grew at an annual average rate of 1.31 percent over the same period. In other words, the good GDP results of Canadians don't have a strong foundation reflecting growth in earning potential, sustainable natural stocks, and diversified financial and produced capital.

People deserve an accurate sense of how well their economies are performing, with a view to long-term sustainability. GDP has and always will have valuable short-term insights, but to respond to 21st-century pressures we need a modern economic measure. Canada can lead the world as the first nation to adopt comprehensive wealth, making a commitment to the knowledge that empowers meaningful action.

* *Chief, Ecosystem Services Economics Unit. Abridged from an article that appeared in* www.weforum.org *on November 13, 2018.*

Rethink the Purpose of the Corporation

Martin Wolf *

The business corporation is among the most remarkable of all human innovations. Corporations are warring armies battling for supremacy in markets. The resulting symbiosis between command and competition has proved very fruitful. The unprecedented economic development seen since the middle of the 19th century would have been impossible without the resources and organisational capacities of that great invention — the limited liability joint-stock company.

Yet, as Colin Mayer of Oxford university's Saïd Business School argues in a remarkable and radical new book, Prosperity, all is not well with the corporation. The public at large increasingly views corporations as sociopathic and so as indifferent to everything, other than the share price, and corporate leaders as indifferent to everything, other than personal rewards. Judged by real wages and productivity, their recent economic performance has been mediocre. Furthermore, corporations have been allowed to corrode competition, as Jonathan Tepper and Denise Hearn argue in another important new book, The Myth of Capitalism. In short, bad ideas have seized the corporation and let competition waste away.

Prof Mayer's main target is Milton Friedman's argument that the purpose of companies is only to make profits, subject to law and (minimal) regulation. Today, this is presented as the obligation to maximise shareholder value. Behind this is the view, which goes back to Adam Smith, that the principal challenge is the 'agency problem' — the relationship between owners and agents (the managers).

The idea that businesses pursue profits and only profits, can, he argues, only produce bad businesses and dire outcomes. This is so for three reasons: human, social and economic.

The first is most important. Profit is not itself a business purpose. Profit is a condition for achieving a purpose. The purpose might be making cars, delivering products, disseminating information, or many other things. If a business substitutes making money for purpose, it will fail at both.

Second, when legislators allowed incorporation of limited liability companies, they were not thinking of profits, but of the economic possibilities afforded by huge agglomerations of capital, effort and natural resources. Not least, the long-term commitments embedded in the corporation allow it to focus on innovation: arguably, the most important contribution of the corporation is to make innovation routine.

Finally, the core theory of the firm is that of the late Ronald Coase, who argued that the market could be a less efficient way of organising production than a hierarchical organisation, because of transaction costs. This is another way of saying that markets are incomplete, especially where long-term commitments are concerned.

How, above all, can such long-term trust be sustained if the constantly reiterated aim of the corporation is to serve the interests of those least committed to it, while control is also entrusted to those least knowledgeable about its activities and at least risk of damage by its failure? Yet these are reasonable descriptions of the place of shareholders in publicly-owned companies with widely-distributed shareholdings.

The idea that businesses only pursue profits leads to dire outcomes

In addition, given the mantra of shareholder value maximisation and the inability of shareholders to monitor management, rewards have increasingly been linked not to the performance of the business in delivering on its purposes, but to accounting profits and the share price. Yet both are subject to manipulation.

The implication of Prof Mayer's book is that the canonical Anglo-American model of corporate governance, with equality among shareholders, widely distributed share-ownership, shareholder value maximisation and the market in control is just one of many possible ways of structuring corporations.

The bigger the corporations, the more competitive must be the markets. The corporation is indeed a great invention. But what has made their contribution so remarkable has, above all, been the competitive markets in which they are embedded. The weaker the competition, the less their profits will tell one about a company's real economic contribution. We must fix the corporation and competition, together.

* *Chief Economics Commentator, Financial Times. Abridged from an article that appeared in* The Financial Times*, on December 12, 2018.*

OPINION

Easiest Fix for Facebook: Break it up

Joe Nocera*

Occam's razor is a principle that says when something happens that can be explained in multiple ways, the simplest explanation is usually the right one. The same is true of solutions: the simplest, most straightforward solution is usually the best way to solve a problem.

In the US, social media giant Facebook Inc. has become a problem. It makes its money —US$23.3bn in 2017 adjusted earnings — by running roughshod over privacy concerns, selling users' data to advertisers. Along with Amazon, Apple and Google, it has "aggregated more economic value and influence than nearly any other commercial entity in history", as the marketing professor Scott Galloway wrote in Esquire earlier this year.

It's a monopoly, having either bought or crushed most potential competitors. It stifles innovation.

And then there are the issues that have emerged since the 2016 election: how Facebook looked the other way as Russian interests spread disinformation; how it was slow to act as its platform was used to foment murder and rape in Myanmar; how it turned over user data to Cambridge Analytica, the sleazy political data firm working on Donald Trump's presidential campaign; and, in the most recent revelation, how it tried to discredit critics in the most odious of ways—by linking them to George Soros, the Jewish financier who has been demonised by the anti-Semitic right.

As more has emerged about Facebook's business tactics, as well as its efforts to quash complaints, critics have come forth with lots of ideas about what to do about Facebook.

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The Japan Times

Over 30 senators have co-sponsored a bill that would force Facebook to abide by the same disclosure rules for political ads as television and newspapers. The New York Times called for congressional hearings. Antitrust economists have come up with a number of intriguing ideas to rein in Facebook.

But the idea that makes the most sense—the one with the best chance to dilute Facebook's power, spur innovation and insert competition into the social media industry—is the solution Tim Wu proposes in his new book, The Curse of Bigness. It's the Occam's razor solution: break Facebook up.

With Facebook floundering, Instagram is now viewed internally as the growth driver. Many people who are tired of Facebook for one reason or another are turning to Instagram as their social media platform of choice. Many of them don't even know that Instagram is owned by Facebook.

But the idea that your only option if you don't want to use Facebook is to use a company owned by Facebook is crazy. Competition would force Facebook to face its problems more squarely, and it would give consumers options they don't now have.

The only way to get the "decentralisation over concentration and competition over monopoly" that this country once valued is to break up Facebook. If Instagram, WhatsApp and Facebook were competitors, you likely wouldn't need a raft of new regulations. Competition itself would take care of most of Facebook's current problems. It would have to: if the company didn't fix itself, customers wouldn't stick around.

One of Wu's core points is that there's nothing wrong with saying that too much industry concentration is something we should oppose—that even if consumer prices aren't affected, there are a raft of negative consequences, both political and economic. Rarely are those negatives on such vivid display as they are right now at Facebook.

Nor is there anything wrong with calling for monopolistic companies to be broken up. Standard Oil was much more formidable than Facebook is today, but the government took it on, broke it up and made the economy healthier. Breaking up Facebook would be easy by comparison.

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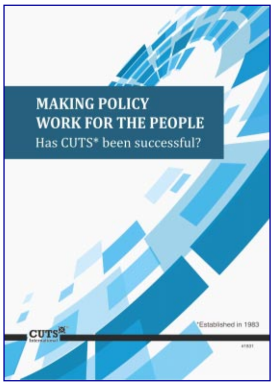
* *Bloomberg Opinion Columnist. Abridged from an article that appeared in the* Mint *on November 23, 2018.*

Publication

Making Policy Work for the People: Has CUTS Been Successful?

CUTS is broadly defined as an evidence-based policy advocacy organisation. Over the years, it has made significant contributions to either help define or shape policy for the betterment of the consumer and thereby society, at large. Our list of successes runs long and this Booklet is an attempt to capture the organic growth and subsequent progress of the organisation since its inception. These success stories are based upon outcomes from our various projects and a result of our consolidated energy that the organisation has evolved which now defines us.



The aim is to present major impact stories that have made difference in the public policy area, both globally and locally. It will further provide guidance for pursuing the Vision of CUTS in future by way of synchronised efforts of our various offices in Asia, Africa and in Europe. It further envisages serving an additional purpose of acquainting relevant stakeholders with the organisation's thinking, goals and impactful growth.

www.cuts-international.org/Policy_Wins/

Fact Sheet on Intra-European Union Investor-State Arbitration Cases

UNCTAD released its "Fact sheet on intra-European Union investor-State arbitration cases." Intra-European Union (EU) investor–State arbitration has been a prominent topic in domestic and international policy debates. Recent developments related to the *Achmea* case put a spotlight on the future of intra-EU disputes based on bilateral investment treaties and the Energy Charter Treaty.

This IIA Issues Note presents statistics and facts on intra-EU investor-State arbitration cases by the end of July 2018.

Highlights:

- The overall number of known intra-EU investor-State dispute settlement (ISDS) cases – treaty-based arbitrations initiated by an investor from one EU member State against another EU member State – totalled 174 by July 31, 2018, which constitutes 20 percent of the 904 known ISDS cases globally.
- Most known intra-EU cases were brought against three EU member States: Spain (40 cases), Czechia (30) and Poland (19). Investors from the Netherlands, Germany, Luxembourg and the UK initiated about half of the known intra-EU arbitrations.
- 95 per cent of intra-EU cases were based on investment treaties signed in the 1990s or earlier. About 45 percent of cases were brought pursuant to the Energy Charter Treaty (1994).
- By July 31, 2018, some 91 intra-EU ISDS cases had been concluded and 83 were pending. Out of the concluded cases, 47 per cent were decided in favour of the State and 27 percent in favour of the investor, with monetary compensation awarded. The remaining cases were settled, discontinued or the tribunal found a treaty breach, but did not award monetary compensation.
- A review of 49 decided intra-EU cases provides information on the following issues: the affected investment, the types of challenged measures, the alleged rationale and the alleged adverse effects of the challenges measures. Annex 2 contains a mapping of principal issues (jurisdiction, admissibility and merits) discussed by tribunals in these cases.

https://investmentpolicyhub.unctad.org/News/Hub/Home/1607

Sources

CNBC: Consumer News and Business Channel; CPI: Competition Policy International; ET: Economic Times; FT: The Financial Times; GNA: Ghana News Agency; ILO: International Law Office; KH: Korean Herald; TG: The Guardian; WSJ: Wall Street Journal

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