REGULETTER

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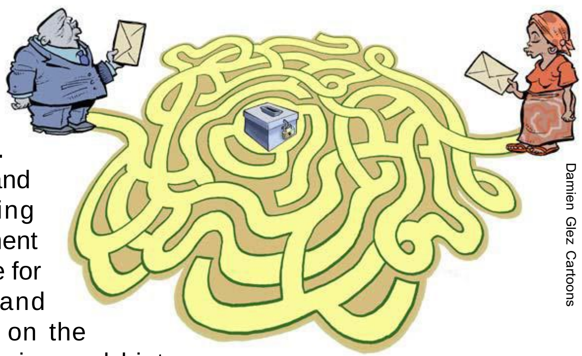
Inside this Issue

Special Articles

Harmonising National and Regional Competition Regime in the WAEMU

The eight West African Economic and Monetary Union (WAEMU) member states viz., Benin, Burkina Faso, Côte d'Ivoire, Guinea-Bissau, Mali, Niger, Senegal and Togo are characterised by various institutional, economic and region-specific factors that play a significant role in determining the efficiency of their national competition regimes. Most of these countries have struggled to evolve well-functioning competition enforcement agencies and take actions against anti-competitive practices that harm the economy and consumers.



Damien Glez Cartoons

It is a well-accepted fact that an economy does not have to be at a particular stage to fully justify the implementation of a competition law. Increasingly, governments and experts have been talking about competition enforcement as being an important recipe for economic development and poverty reduction – facts on the ground have started emerging and hint towards such a link. Therefore it is possible that such logic can be used to accentuate the enforcement of competition regimes in countries that are less developed like the WAEMU member states.

It is evident (including from research carried out by CUTS in the 7Up4 project, www.cuts-ccier.org/7Up4) that enforcement of domestic competition regimes in the region is strongly influenced by the regional competition legislation of WAEMU. The WAEMU competition regime gives exclusive rights to the WAEMU Commission on matters pertaining to state aids and anti-competitive practices in the entire Union. This is often found to contradict existing domestic competition regimes, which were developed before the implementation of the highly centralised WAEMU competition regime started.

Both the national and the regional competition regimes co-exist at the moment, but does not seem to be coherent and could result in jurisdictional disputes. Issues at the interface of the national and regional competition legislation adversely affects the enforcement of competition laws in the countries, thereby impacting their economies and the people.

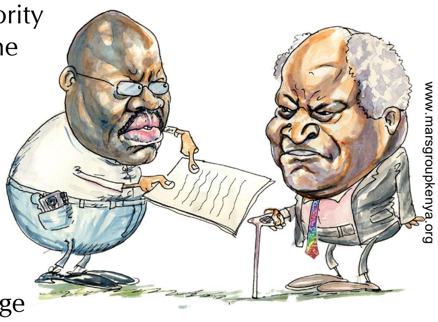
A recent assessment undertaken by CUTS makes the following recommendations to address such issues at the interface:

- providing more powers to national competition agencies for decision-making
- ensuring that sufficient resources are allocated to competition agencies
- evolving a strong network between the national competition agencies in the region – to aid information and experience sharing
- soliciting international cooperation for improvements in both the national and the regional (WAEMU) competition regimes.

Well-functioning competition regimes in this region have a huge potential to benefit the economy and consumers, and all efforts should be made to enable that.

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

Kenya Enters New Era of Enforcement



Kenya's government says a new and independent Competition Authority will open its doors on August 01, 2011. The authority will replace the country's Monopolies and Prices Commission, which is part of the Finance Ministry. President Mwai Kibaki approved Kenya's revised Competition Act at the end of 2010.

The authority will be in charge of detecting and sanctioning anti-competitive and collusive behaviour, including price fixing, abuse of dominance and excessive pricing.

Pradeep S Mehta, Secretary General, CUTS International, says the new law has been drafted to reflect modern economic times. The main challenge will be to get people to appreciate the contours of the new law. There is always resistance to the *status quo*.

Mehta says that this activity is inspiring Africa's emerging competition agencies. He adds that the Common Market for Eastern and Southern Africa is in the process of drafting a regional competition law, which, he says, would mean better implementation of national laws. *(GCR, 18.07.11)*

Reorganised Competition Authority

The act amending the Slovenian Competition Act was published in the *Official Gazette*. The new act (April, 2011) brings about the long-awaited reorganisation of the Competition Authority as an independent agency.

According to the new act, the Competition Authority will be independent from the executive branch. The amending act foresees that the authority will be governed by three bodies: the Agency Council, dealing with general matters regarding the governance of the agency; the Competition Council, deciding on individual cases; and the agency director, dealing with the day-to-day running of the agency.

The Competition Agency will commence operation on January 01, 2012. *(ILO, 28.04.11)*

New Competition Act Passed

The Finnish Parliament passed the new and renamed Competition Act. The changes to competition rules to be introduced by the new Act are mainly procedural in nature.

The new Act will increase the prioritisation of cases, extend inspection rights and clarify the rules on infringement penalties, leniency and competition-related damages.

The main substantive change relates to the introduction of the significant impediment of effective competition test in relation to merger control. The new Act is expected to enter into force on September 01, 2011. *(ILO, 14.04.11)*

Merger Control Commences in India

On June 01, 2011, the merger control provisions of the Indian Competition Act 2002 (as amended) and the accompanying Competition Commission of India (CCI) Regulations, 2011 came into effect.

As a result, qualifying M&A transactions that meet certain turnover- or asset-based threshold tests must be notified to the CCI for clearance prior to completion. Importantly, merging parties will be prohibited from closing transactions before the necessary CCI clearance has been received.

The final form Regulations have been improved considerably from the draft text originally proposed by the CCI. However, it is likely that the CCI will seek to 'make an impact' in its early days of operation, much as it has done in the cartel sphere. *(ILO, 02.06.11)*

Greek Amendments in Line

Far-reaching amendments to Greece's competition law have aligned it with European legislation. The amendments iron out discrepancies with European competition law and also aim to strengthen the powers of Greece's Competition Commission.

The new law bolsters the commission's ability to prosecute individuals for cartel offences. Alongside any fine imposed against a company, individuals may now receive a separate fine of between US$287,477 and US$2.9mn.

The amendment also introduces a five-year statute of limitations, preventing offences over five years old from being punished. *(GCR, 20.04.11)*

Mexico Close to Reforms

Mexico's lower house of Congress approved amendments to the country's competition law that would beef up its capacity to sanction behavioural violations.

The changes to Mexico's existing competition law will give the Federal Competition Commission increased powers to investigate and sanction cartel behaviour. The changes will mean the commission can issue higher fines, of up to 10 percent of a company's revenue.

The amendments also introduce the possibility of prison sentences for individuals found guilty of cartel behaviour and allow the authority to conduct dawn raids. *(GCR, 18.04.11)*

Czech Extends Competition Act

The Office for the Protection of Competition of Czech published a draft amendment to the Competition Act and opened a public consultation to receive feedback. The amendment is being prepared in response to the contemplated abolishment of the Act on Significant Market Power.

The main provisions of the abolished act will be incorporated in the Competition Act. The remaining, mainly technical, provisions will be included in the Act on Prices. Following the proposed abolishment of the Act on Significant Market Power, the legislature is considering extending the Competition Act by two sections, providing for a new type of prohibited conduct called 'abuse of significant economic position'. *(ILO, 28.04.11)*

ABUSE OF DOMINANCE

EC Shuts Down Greek Merger

The European Commission (EC) blocked a proposed merger between Aegean Airlines and Olympic Air on the basis that the merged entity would have 90 percent control of the Greek domestic air transport market.

The European Court of Justice addressed in *TeliaSonera* the circumstances in which a margin squeeze may constitute an abuse of dominance contrary to TFEU Art. 102. Significantly, the ECJ considered it unnecessary to show that the upstream input supplied by the dominant undertaking is indispensable to a downstream competitor's ability to compete.

The EU published a Consultation Paper on 'collective redress' in consumer protection and competition law fields which aims at identifying common principles on collective actions and how these can fit into the legal system of EU and member states.

(ACLEC, 09.04.11)

Bottling Companies Taken to Task

Chile's National Economic Prosecutor's Office (FNE) has launched proceedings against two Coca-Cola bottling companies for allegedly abusing their dominance. The FNE filed a case with the country's Competition Tribunal, alleging Andina and Embonor bottling companies restricted entry to the market by offering retailers incentives not to sell or advertise rival carbonated beverages.

The office says the companies gave vendors discounts on purchases, and offered them store equipment such as refrigeration units. It adds that the companies' actions "obstructed income, growth and competition," and recommended a US$19mn fine for each company. *(GCR, 21.04.11)*

Online Real Estate Targeted

Canada's Competition Bureau filed proceedings against Toronto's Real Estate Board (TREB) for allegedly abusing its dominant position in the online property listings market. The Bureau filed an application with the country's Competition Tribunal, claiming TREB is not allowing estate agents to share data from its listing system with customers.

TREB is Canada's largest real estate board, with a detailed listings system accessible by member estate agents. The Bureau says while agents are allowed to give customers the listings information by fax or email, they are prevented from using online means, such as password-protected websites.

(GCR, 01.06.11)

Record Fine for NZ Telecom

Auckland's High Court fined Telecom US$9.42mn for abusing its dominance by charging excessive prices for access to its telecoms network. It is the highest fine ever issued under New Zealand's Commerce Act.

Telecom is New Zealand's largest telecoms company. In October 2009, the court ruled that Telecom charged fixed rates for downstream rivals to access its network between 2001 and 2004. In his judgment, Justice Rodney Hansen says Telecom's actions were, "injurious to competitors, brought significant benefits to Telecom and were damaging to the competitive process."

(GCR, 19.04.11)

Microsoft Abusing Net Dominance

Microsoft filed a formal complaint with European antitrust regulators about Google's dominance of the internet search market in the region. Google bars competitors from accessing its YouTube video site for search results and has kept phones running Microsoft's operating system from working properly with YouTube.

A Microsoft unit and two other rivals, in 2010, lodged a complaint with the EU, which is investigating whether Google has violated the region's antitrust laws. Google is under growing pressure from global regulators that are probing whether the company uses its dominance of Web search to thwart competition. *(FT & WSJ, 01.04.11)*

DG Comp Raids Deutsche Bahn

The EC has opened an investigation of German railway magnate Deutsche Bahn, citing alleged abuse of dominance. DG Comp says dawn raids were carried out at the premises of Deutsche Bahn and some of its subsidiaries.

"It has been alleged that Deutsche Bahn group, and in particular Deutsche Bahn Energie, the *de facto* sole supplier of electricity for traction trains in Germany, [is] giving preferential treatment to the group's rail freight arm," says the commission.

Deutsche Bahn as a former monopolist is now facing competition on various fronts and this almost automatically triggers complaints from new entrants. Where an incumbent controls the supply, the network and the operations there is potential for discriminating against new entrants that are dependent on the incumbent's supplies and/or network.

(GCR, 01.04.11)

NSE Fined for Predatory Pricing

India's Competition Commission has fined the country's National Stock Exchange (NSE) US$1,214,331 for abusing its dominant position in the market for currency derivatives trading.

The penalty, which equals five percent of NSE's annual turnover, follows a five-to-two decision by the commission in May that NSE had engaged in predatory pricing in the currency derivatives market and pressured brokers to use its own trading software instead of open source programmes.

Economic Times

In addition to the penalty, the commission has asked the exchange to stop excluding open source software providers and end its zero pricing strategy in the currency derivatives market. *(GCR, 29.06.11)*

CARTELS

ArcelorMittal Anti-Trust Fine Cut

ArcelorMittal won an 80-percent reduction in EU antitrust fines after a regulator said it could not force the company to pay the share of the overall penalty earmarked for three units. The EC reduced the fine because the subsidiaries could not pay it and ArcelorMittal refused to do it for them.

The fines were cut to US$65mn from US$330mn. ArcelorMittal, the world's biggest steelmaker, and the three units based in Italy, Belgium and France, were among steel producers fined on June 30, 2010 for fixing the prices of steel used to reinforce concrete for 18 years until 2002. It's the second time the commission has cut fines for ArcelorMittal and its units.

(FE, 06.04.11)

EU Launches Massive CDS Probe

Goldman Sachs Group Inc, JPMorgan Chase & Co and 14 other investment banks face an EU antitrust probe into credit-default swaps (CDS) for companies and sovereign debt.

The EC opened two antitrust probes. It will check whether 16 bank dealers colluded by giving market information to Markit, a financial information provider.

It will also examine whether nine of the firms struck deals with ICE Clear Europe, a clearinghouse for derivatives, that block other clearinghouses from entering the market and give rivals "no real choice where to clear their transactions". CDS are derivatives that pay the buyer face value if a borrower defaults. *(BS, 29.04.11 & FT, 30.04.11)*

Legislation to Fix Book Prices

On March 18, 2011 the Swiss Parliament adopted new legislation through which book prices are to be fixed. The act, which also applies to online book sales, requires in particular the publisher or importer to set the final retail price of books that it publishes in, or imports into, Switzerland, with retailers being compelled to resell the books at the price so determined.

Given that the act is subject to an optional referendum, on March 24, 2011 the Competition Commission decided to suspend temporarily the investigation that it had opened in parallel to the legislative process. The purpose of the investigation is to determine whether distributors and marketers of French-language books in Switzerland hold a dominant position and, if so, whether they set their prices at an excessively high level.

(ILO, 05.04.11)

Traders Restricting Competition

The State Administration for Industry and Commerce of China published its first cartel decision in late January. The case concerned non-price-related conduct in the market for concrete in Jiangsu province. The Construction Material and Machinery Trade association in Jiangsu and 16 companies were found to have violated Article 13 of the Anti-Monopoly Law by dividing the market and restricting competition.

The Ministry of Commerce passed the *Interim Provisions on Matters Pertaining to the Implementation of a Security Review System for Mergers and Acquisitions of Enterprises within China Involving Foreign Investors*, which are open to public comment until August 31, 2011. *(ACLEC , 09.04.11)*

Hungary Charges Taxi Cartel

Hungary's Competition Authority has fined seven Budapest taxi companies US$179,236 for forming a cartel to eliminate a competitor. The companies were accused of colluding to attract clients from a rival, Radio Taxi, and force it out of the market.

Fotaxi received the largest fine of US$52,219 followed by City Taxi, which was fined US$36,695. Taxi 2000 got a US$31,052 penalty, and Buda Carrier was fined US$26,818. The fines were based on each company's 2009 turnover. All the companies, excluding 6x6 Taxi, received increased fines because they were previously penalised for competition violations.

(www.realdeal.hu, 18.04.11)

Indonesia Probes Chevron Tender

The Business Competition Supervisory Commission (KPPU) is investigating a tender conducted by Chevron Pacific Indonesia. KPPU acting spokesman, Zaki Zein Badron, said the commission had noted potential indications of unfair practices in a tender for the Chevron-operated Gendalo-Gehem project in the Makassar Strait.

The commission plans to summon all related parties involved the tender in 90 days for investigation purposes. Chevron Pacific Indonesia President Director, Abdul Hamid Batubara, said that Chevron would be ready to face legal processes based on the KPPU finding. *(JP, 27.04.11)*

Detergent Makers Fined

European antitrust authorities levied stiff fines on the household product companies, Procter & Gamble (P&G) and Unilever, for price-fixing that arose during efforts to make greener packaging for laundry detergents.

P&G, the maker of detergent brands like Tide and Ariel, was ordered to pay US$306mn. Unilever, whose brands include Omo and Surf, was fined US$148mn. A German company, Henkel, escaped a fine in exchange for blowing the whistle on the cartel.

The European competition commissioner, Joaquín Almunia, said that the companies had developed the cartel to make sure none gained a competitive advantage over the others, while seeking to meet environmental goals.

The companies formed the cartel after working on methods to reduce the weight of detergent powders and waste from boxes and bags. *(ET, 15.04.11)*

FINES & PENALTIES

Guidance on Antitrust Fines

French Competition Authority has released new guidance on how it sets antitrust fines. The guidance is designed to provide greater clarity and transparency on the methods used by the authority to decide financial penalties. It is also a reference tool for parties arguing a case before the agency.

The authority has moved away from earlier plans to fine companies based on the sale of products both directly and indirectly affected by anti-competitive behaviour. The new guidance narrows the scope of the fine to cover only those sales that have been directly affected by competition violations such as price fixing.

The authority has also provided guidance on how best to conduct an economic study to prove the impact of particular conduct on the relevant market. *(GCR, 18.05.11)*

South Africa Fines Grain Companies

South Africa's Competition Commission reached settlement agreements totalling more than US$2.9mn with four grain storage companies. Afgri Operations, Kaap Agri, MGK and Suidwes Agriculture admitted to fixing the daily storage tariff in the grain storage market and on the South African Futures Market.

The Commission began investigating the sector in 2009. It discovered that companies active in the industry had agreed the storage rates for the futures market. This acts as a reference point for the actual grain storage market.

In a separate case, the Commission also settled allegations of market sharing with Rand Merchant Bank and agriculture company NWK. Both admitted to anti-competitive market division relating to grain owned by the bank and stored in NWK's silos.

(GCR, 07.06.11)

Laws Allowing Fines are Needed

The Irish government should enact legislation to allow those breaching all kinds of competition law to be fined, the Competition Authority has urged. As a constitutional question hangs over the granting of such powers to the courts, the authority advocates the pre-emptive referral of the legislation to the Supreme Court by the President.

In the event of the court finding such legislation unconstitutional, the authority believes that the holding of a referendum is warranted. The call was made at a briefing by the authority in the context of a September 2011 deadline, imposed in the EU-IMF bailout, for the introduction of legislation to allow the courts to levy fines on breaches of civil and criminal competition law. Currently, the courts only impose fines in competition cases taken under criminal law. *(IT, 12.04.11)*

Microsoft Battles to Cut Fine

Microsoft claimed the fine imposed on it by the European Commission in 2008 was excessive. Microsoft wants court to cut fine. DG Comp fined Microsoft the then record-breaking amount for failing to comply with an order issued four years earlier. That order required it to license interoperability information – allowing non-Microsoft servers to operate with Microsoft software – for a reasonable fee.

The non-compliance fine was nearly double the original US$701mn penalty DG Comp imposed in 2004 for abuse of dominance. The Commission argued that in complying with the order in 2007, Microsoft showed that it was able to identify within a short time the measures needed to comply with its order.

Microsoft lodged its appeal against the fine in May 2008. The general court is expected to reach a decision in six months' time. *(GCR, 24.05.11)*

Jersey Issues Record Fines

Jersey's Competition Regulatory Authority (JCRA) has fined investor Brookfield Asset Management US$144,127 for failing to notify its acquisition of Prime Infrastructure. It is the highest fine the JCRA has issued to date. Prime Infrastructure is the parent company of both Jersey Gas and fuel company Kosangas. Jersey Gas has a 40 percent share of the market.

Canada's Brookfield made the purchase in December 2010, but did not notify the deal despite it meeting Jersey's merger thresholds. The authority says the relatively high fine was justified because it "wanted to remind the local business community in particular that compliance with the law was vital." *(GCR, 08.07.11)*

Unilever Creates 'Market Disorder'

China's National Development and Reform Commission (NDRC) has fined consumer goods company Unilever US$300,700 for announcing price increases that allegedly disrupted markets and caused panic buying.

It is the first time the NDRC has fined a foreign company under China's Price Law. Unilever was not charged under the country's Antimonopoly Law, but the NDRC indicated that this could occur if faced with similar cases in the future.

The NDRC says Unilever's behaviour could also have amounted to price signalling, which, if it were to influence rivals' pricing, would be an offence under the Anti-Monopoly Law. *(GCR, 06.05.11)*

J&J to Settle Bribery Charges

Johnson & Johnson will pay US$78mn to settle US and UK charges that it paid bribes and kickbacks to win business overseas. The company agreed to pay a US$21.4mn fine to settle Justice Department criminal charges and pay more than US$48.6mn in disgorgement and interest to settle allegations by the Securities and Exchange Commission.

The allegations date back to 1998 and involved sham contracts, bribes and kickbacks paid by J&J units to officials and doctors in Greece, Iraq, Poland and Romania to help earn millions of dollars in profits, according to authorities.

The New Jersey based pharmaceutical giant also settled a similar complaint with the UK Serious Fraud Office for conduct by its DePuy Inc. subsidiary, agreeing to pay US$7.9mn plus prosecution costs. *(BS, 10.04.11)*

3i Infotech to Sell Arm

Mid-cap information technology services and products company 3i Infotech is in talks to sell its US subsidiary, Regulus. The deal size was expected to be ₹450-500 crore.

3i Infotech said it would pay US$80mn, with an additional consideration of up to US$20mn, based on an earn-out linked to certain performance parameters. Regulus is one of the largest players in independent bill presentment and remittance processing.

The company processes one in every fifty check payments and produces an estimated one of every 25 consumer statements generated in the US, according to the company's statement. *(ET, 17.05.11)*

Labelux to Buy Jimmy Choo

Upscale British shoemaker and retailer Jimmy Choo was bought by luxury goods group Labelux from TowerBrook Capital Partners LP, the companies said. The companies did not disclose terms of the deal, but two sources familiar with the deal said it was worth about US$812mn.

Labelux, founded by Germany's billionaire Reimann family in 2007, was said in media reports to have outbid final-round bidder private equity firm TPG Capital. Jimmy Choo was founded in 1996 in London by Mellon, a former Vogue editor, and shoemaker Jimmy Choo, who sold his interest in 2001.

In 2010, Jimmy Choo reported net sales of 150 million British pounds. So far in 2011, sales are rising by a double-digit percentage. *(Reuters, 22.05.11)*

Nestle's Stake in Chinese Firm

Nestle, the world's biggest food company, agreed to take a 60 percent stake in China's Yinlu Foods Group for an undisclosed price, becoming the latest multinational to target China's fast-growing food and beverage sector.

Yinlu, from China's southeastern Fujian province, is known for its peanut milk and instant porridge products. The deal is beneficial to both Nestle and Yinlu and provides Nestle a way into a different market segment and lower-tier cities. The deal gives Yinlu the expertise, backing of a much bigger brand and exposure to upper-tier cities. *(BL, 18.04.11)*

Merck-Sun Pharma Close to Deal

Drug multinational Merck and Co. Inc. is close to signing a strategic marketing partnership with Sun Pharmaceutical Industries Ltd in the domestic market worth ₹60,000 crore. MSD Pharmaceuticals Pvt. Ltd, the local arm of the world's second-largest drug maker, would look at the strong marketing network that Sun, India's most valued pharma firm, has established in the country.

Sun, which has 4,000 people in the field and a large specialty doctor network, is ranked top in the therapy segments of psychiatry, gynaecology, neurology, cardiology and ophthalmology in India.

MSD has a broad portfolio of medicines in therapies such as cardiovascular diseases, diabetes, obesity, bone and respiratory afflictions, immunology, dermatology, infectious diseases, oncology, neurosciences, ophthalmology and child and women's health. *(Livemint, 11.04.11)*

Google Wins Nod for ITA Deal

Google Inc. won the approval of the US Justice Department for its US$700mn purchase of ITA Software Inc. on the condition that it would make travel data available to search-engine rivals and let the government review any complaints of unfair acts.

Google agreed to license ITA's travel information software to third parties, put up firewalls protecting client data and set up an arbitration process for disputes over fees.

The resolution of the matter allows the government to consider a larger investigation of California-based Google, operator of the world's largest search engine. The Federal Trade Commission, which also oversees US antitrust laws, is exploring a possible probe of Google's search business. *(BS, 09.04.11)*

Adani Acquires Australian Port

In its second-biggest acquisition in Australia, and its first in the port sector, the Ahmedabad-based Adani Group signed an agreement with the Government of Queensland in Australia to buy Abbot Point Coal Terminal Port. The ₹45,000-crore Indian company will take control of one of the largest coal ports in the region in an all-cash US$2bn deal.

Touted as the largest acquisition by an Indian port company outside India by company officials, it makes the Adani Group the largest Indian investor in Australia. The new buy will help the group tap synergies.

The acquisition of the terminal by Mundra Port and Special Economic Zone would help it ship coal from Galilee to its power plants in India and tap into the growing coal cargo in the region. *(FE, 03.05.11)*

Continental to Takeover Modi Company

The world's fourth-largest tyre maker, the German-based Continenta will buy Modi Tyres Company, a subsidiary of the listed Modi Rubber. Continental signed an agreement with Modi Rubber to acquire 100 percent shareholding in Modi Tyres Company Ltd (MTCL). MTCL already has a licensing arrangement with the German company to make Continental branded truck and bus tyres for the Indian market.


The Hindu Business Line

After completion of the transaction, MTCL will become a fully-owned subsidiary of Continental Corporation. The company will focus on local production and distribution of bias and radial truck/bus as well as radial passenger car tyres for the Indian market. Continental is also among the leading automotive suppliers worldwide. *(BL, 18.04.11)*

Vivendi to Buy Vodafone SFR

Vivendi SA agreed to buy Vodafone Group's 44 percent stake in French mobile-phone operator SFR for US$11.3bn to win full control of its largest unit and secure more stable earnings. The price includes US$286mn in SFR dividends to be paid to Vodafone. SFR and Vodafone will continue their commercial cooperation for the next three years. Vodafone will use US$6.4bn of the net proceeds to repurchase its shares.

Vivendi said the SFR deal values the French operator at 6.2 times 2010 earnings before interest, taxes, depreciation and amortisation, compared with typical valuations of about 5.1 times to 5.3 times for mature telecommunications markets. *(BS, 04.04.11)*

DuPont 'Confident' of Danisco Deal

DuPont, the US chemicals group, has urged Danisco shareholders to back its proposed US$6bn acquisition of the Danish food and enzyme maker after Chinese competition authorities removed the last remaining regulatory obstacle to the deal.

DuPont hopes the removal of regulatory uncertainty will encourage more Danisco shareholders to accept the recommended cash offer as it struggles to reach the 90 percent ownership threshold set as a condition for completing the deal.

The deal, which would be DuPont's biggest for more than a decade, would increase the US group's exposure to the food and nutrition industry at a time of surging demand from emerging markets. *(FT, 16.05.11)*

Canberra to Quash ASX Takeover

The Australian government rejected the Singapore Exchange's planned US$8.7bn takeover of its Australian counterpart after Wayne Swan, the country's treasurer, said he was 'disposed' to reject the deal as not in the national interest. However, he stressed that his view was preliminary.

A successful takeover would have created Asia's second-largest exchange by number of listings, behind the Bombay Stock Exchange, but ahead of exchanges in Tokyo and Hong Kong. It also comes as a wave of mergers and acquisitions sweeps through the securities industry, most recently Nasdaq OMX and Intercontinental Exchange's US$11.3bn offer for NYSE Euronext.

The Singapore Exchange had been invited to provide further comments to Australia's Foreign Investment Review Board, but people close to the exchange operator said Canberra had made its position clear. *(FT, 06.04.11)*

Glenmark Inks Licensing Deal

In a first-ever deal of a novel biologic molecule developed in India, Glenmark Pharma has entered into a licensing agreement with global major Sanofi to develop and commercialise a monoclonal antibody, GBR 500.

This could involve potential payments of US$613mn over a period of five years, if commercialised. GBR 500, used to treat chronic autoimmune disorders, is the first biological compound developed and out-licensed by a domestic company.

This is the first of a kind out-licensing deal of a novel molecule in India and across emerging markets. Drug discovery itself is a very difficult process and discovering and developing a novel biological entity is challenging. *(ET, 17.05.11 & BL, 16.05.11)*

Wal-Mart Gets Nod to Enter SA

US retail chain Wal-Mart gained clearance from South Africa's Competition Tribunal to buy local food retailer Massmart, subject to comprehensive commitments. The commitments reflect unique public interest provisions in South African Competition Law that requires merging companies to take employment issues into account.

Under the conditions of the deal, Massmart must reinstate the 503 employees it made redundant in 2010 and must retain its entire staff for two years post-merger. The company has also agreed to honour existing labour agreements with local trade unions and to cultivate local suppliers. South Africa's Competition Commission put forward the conditions after considering evidence presented at tribunal hearings. *(GCR, 31.05.11)*

Mofcom Clears Potash Deal

China's Ministry of Commerce (Mofcom) has ordered Russian potash producers Uralkali and Silvinit to maintain current sales and supplies of potash imports to Chinese consumers before allowing the companies to merge.

The deal would create a monopoly in the supply of potash imports that enter China over land, rather than by sea. While the conditions only apply to the Chinese market, the agency's analysis of the deal indicated increased concentration in the potash market globally.

It found that the deal would effectively eliminate one major competitor from an already concentrated market with high barriers to entry and would create the second-largest potassium chloride producer, with more than one-third of sales globally. *(GCR, 03.06.11)*

Ireland May Merge Two Banks

Ireland may merge two of its biggest lenders, as part of a raft of measures aimed at drawing a line under Europe's worst banking crisis. Ireland is trying to show investors, its taxpayers and the rest of the euro region that the nation has plugged all the holes in the banking system, whose collapse, so far, cost US$65.8bn in capital and crippled what was once Europe's most dynamic economy.

The third round of stress tests covers Bank of Ireland Plc, whose shares have dropped 65 percent over the last six months, Allied Irish, EBS and Irish Life & Permanent Plc. Noonan will set out how more money the banks need from a US$50bn bailout fund set aside for them. *(BS, 31.03.11)*

Marginal Rise in Asia-Pacific M&A Deals

Inbound foreign investments up 86 percent, outbound down four percent

If mergers and acquisitions (M&As) are a harbinger of economic activity, then Asia-Pacific might see only as much action as it did in 2010. According to the data captured by Bloomberg League Table, Asia-Pacific closed March-11 quarter with a total of US$158.8bn in deal volume, up only slightly from US$147.6bn seen in the corresponding quarter in 2010. There was, however, a slight improvement in the average deal size – 18 percent increase to US$101.6mn – thanks to a nine percent fall in the number of deals to 2,217. Interestingly, private equity deals nearly doubled this time around, making up about 15 percent (US$23.75bn) of all M&A transactions in the region.

www.images.com

Inbound interest rises...

Outbound foreign investment, at about US$37.83bn this quarter, was four percent lower than 2010's. Energy was the most popular target sector, with buyers investing close to US$13.24bn in energy targets. Inbound foreign investment, however, saw a sharp increase; inflows were up by about 86 percent, reaching US$27.18bn. But, here it was the industrial sector that was the popular target, attracting about US$8.74bn.

Regionally, China & Australia/New Zealand accounted for nearly half of the M&A activity in the Asia-Pacific, with US$40.91bn and US$36.63bn in deal value, respectively. China alone was responsible for approximately a fourth of Asia-Pacific's deal volume and was the most active country with 725 deals, making up about 29 percent of the total deals involving Asia-Pacific.

In rankings, Goldman Sachs captured the top spot for advisors in the Asia-Pacific after advising on 25 deals worth a total of US$37.1bn during 2010. This included two of Asia-Pacific's top transactions – Reliance Industries sale of operation contracts to BP and Equinox Minerals takeover of Lundin Mining Corp. On the legal advisory side, the top spot by deal volume went to Allen & Overy LLP, which advised on 22 deals worth a total of US$29.61bn.

...in India too

The trend was not any different back home, with inbound deals surpassing the outbound deal value by a significant margin. While India saw outbound deals worth US$3.72bn made this quarter, inbound deal value came in higher at about US$12.3bn. Reliance Industries-BP deal worth US$7.2bn, Siemens AG-Siemens India (US$1.35bn) and Reliance Life Insurance-Nippon Life Insurance (US$679mn) were among the top inbound deals reported during the quarter. Interestingly, the Reliance-BP deal was the second-highest deal (in terms of value) in Asia-Pacific during the quarter. Essar Group's acquisition of Zimbabwe Iron & Steel, Cals Refineries – Cenco and Atas Refineries and RHC Holdings – Dental Corp were among the major outbound deals.

As for India-specific rankings, it was Morgan Stanley that topped, having closed three deals worth US$7.88bn. Goldman Sachs (two deals worth US$7.2bn) and HSBC Bank PLC (three deals worth US$2.9bn) came in next.

Top Five M&A Deals

Target Name	Acquirer	Seller	Total Value (in US$bn)
Shopping Centres in US	Blackstone Group LP	Centro Retail Group	9.4
Operation Contracts in 23 oil and Gas blocks in India	BP PLC	Reliance Industries	7.2
PTT Aromatics & Refining PCL	PTT Chemical PCL		5.5
Cutbank Ridge and Business Assets	PetroChina Co Ltd	Encana Corporation	5.4
Lundin Mining Corporation	Equinox Minerals Ltd		4.8

(BL, 02.04.11)

AstraZeneca Settles Tax Dispute

AstraZeneca, the Anglo-Swedish pharmaceuticals group, has agreed to pay the US Internal Revenue Service US$1.1bn to settle two long-running disputes, clearing the way to greater predictability in its tax planning on both sides of the Atlantic.

The company said the deal would allow it to release provisions of US$500m this quarter and cut its effective tax rate for 2011 from 27 to 21 percent. It would also increase its target for core earnings per share from US$6.45-US$6.75 to US$6.90-US$7.20 per share. It expects ultimately to reduce its current US$2.3bn tax provision to about US$700m.

The arrangement follows the settlement of several transfer pricing disputes by multinationals, including GlaxoSmithKline. *(FT, 28.03.11)*

US Sue Banks' Executives

US regulators are expected to file up to 100 lawsuits against executives and directors of failed banks in the next two years, as they seek to hold people accountable for management failings and recover billions of dollars.

The Federal Deposit Insurance Corporation (FDIC) is only now beginning to step up its efforts to make an example of overly aggressive executives or inattentive directors of the 348 banks that have failed since 2008. The FDIC says the failures have cost its insurance fund US$59bn.

However, analysis by Nera Economic Consulting of material on the FDIC's website suggests it has lost US$80bn. The FDIC has authorised the filing of suits against 158 directors in total, seeking more than US$3.5bn. *(FT, 10.04.11)*

Greater Say in Decision-Making

Argentina's government is poised to increase its influence in 42 private companies – including big banks, a steelmaker and the biggest media group – in which it inherited stakes when it nationalised private pension funds in 2008.

The move raised concerns among some investors about government interference, but analysts said it did not yet signal a creeping nationalisation. An emergency decree scrapped a five-percent limit on voting rights which had applied to private pension funds' holdings in companies. The government can now seek more directorships and a greater say in decision-making. *(FT, 13.04.11)*

Church Against Bonus Excess

The Church of England is putting morality at the heart of the debate over executive pay, telling companies it will vote against "excessive" bonuses it believes are unjust. The Church Commissioner, which manages a US$8.6bn investment and property portfolio, has informed companies in which it holds a stake that it will not support any pay scheme where top managers would receive bonuses in excess of four times their annual salary.

Placing such specific limits on pay vaults the Church to the centre of a heated debate over whether investors are putting enough pressure on large companies to rein in multimillion-pound bonus awards. The Church, which holds nearly US$5.7bn in fixed interest, UK and overseas equities and another US$3bn in property holdings, loans and short-term deposits, boasted a return of 15.2 percent on the fund in 2010 after being hit hard in the financial crisis. *(FT, 15.04.11)*

JPMorgan Falls Foul of SEC Rules

Shareholders at JPMorgan Chase will be able to vote on investments linked to genocide after the Securities and Exchange Commission (SEC) threw out the firm's request to exclude the proposal from a proxy ballot at its AGM.

The SEC's decision is one of the first under its new legal regime instituted by the Frank-Dobb Act, and clears the way for further shareholder resolutions on genocide and investment.

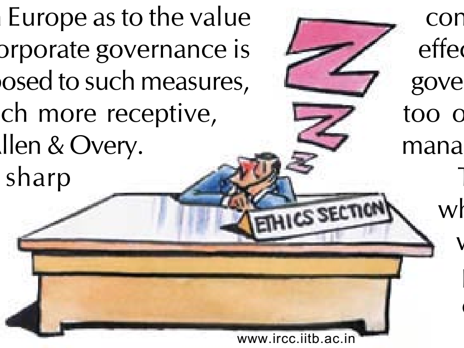
The shareholder proposal, part of ongoing shareholder action led by the Investors Against Genocide NGO, had requested that 'the board institute transparent procedures to prevent holding investments in companies that, in management's judgment, substantially contribute to genocide or crimes against humanity, the most egregious violations of human rights'.

JPMorgan 'no action' claimed that the shareholders voting on the proposal would not understand it, but the SEC disagreed and said the vote must be allowed to proceed. *(EP, 06.04.11)*

Corporate Governance Divides Opinion

Opinion among executives in Europe as to the value of EU-wide guidelines on corporate governance is split, with British bosses being opposed to such measures, but continental counterparts much more receptive, according to research by law firm Allen & Overy.

But, the survey showed a sharp difference between views in the UK and elsewhere. In the UK, about 64 percent of executives were opposed to such guidance. By contrast, 65 percent of continental European bosses were in favour.



The results come ahead of the EC's publication of a green paper, dealing with the governance of listed companies in the 27-country bloc. EU officials are concerned that self-regulation has not been effective in establishing adequate corporate governance standards across the board and that, too often, shareholders have failed to hold managements to account.

The green paper is expected to question whether boards might function better if they were more diverse – and whether, in particular, measures to increase the number of female directors might be desirable.

Brussels is also expected to argue that greater convergence in corporate governance rules across the 27-country bloc would make it easier for companies operating cross-border and reduce their compliance costs. *(FT, 04.04.11)*

Chinese Firms Invest Globally

Tens of billions of dollars of Chinese investment could flood into the US in the next decade, creating a multitude of American jobs, if officials do not succumb to a political backlash and throw up barriers, according to a report done for the Asia Society, the Kissinger Institute on China and the US and the Woodrow Wilson International Centre for Scholars.

The study forecast Chinese companies would unleash some US$1tr to US$2tr in new greenfield investments or mergers and acquisitions around the world by 2020. That would be a four to eight-fold increase of China's current outward investment of about US$230bn.

China is already the biggest foreign buyer of US government debt, with holdings of more than US$1.1tr as early 2011. But, US statistics showed just US$2.3bn in Chinese direct investments in companies with operations in the US at the end of 2009. *(ET, 05.05.11)*

Caja Faces Nationalisation

Caja Mediterráneo, the Spanish savings bank whose plan for a merger with three other cajas collapsed, is likely to be nationalised after requesting US$4bn from the official bank rescue fund.

The problems facing the Alicante-based bank known as Cam, which is heavily exposed to bad loans to property developers along the Mediterranean coast, help explain the difficulties faced by Spanish authorities and bankers in attracting outside investors for the troubled savings bank sector.

The US$4.01bn in aid requested by Cam from the Fund for Orderly Bank Restructuring will be in the form of equity to boost Cam's capital and is expected to translate into a majority holding for the state, which will then seek to sell the bank to a private investor. *(FT, 04.04.11)*

FDI to Focus on Job Growth

The UNCTAD is calling for shifting FDI in Haiti and other poor countries towards creating jobs and diversifying their economies. A report by UNCTAD noted that, while FDI to the 48 least developed countries (LDCs) grew rapidly over a decade to reach an estimated US$24bn in 2010, most of that was dedicated to natural-resource extraction.

Such investment also has not tended to 'fertilise' LDC economies by leading to greater links between foreign businesses and local firms that can spread know-how and technology and help spur broad-based, long-term economic growth.

Although FDI has been an economic boon to some LDCs, the report states that the majority of them remain marginalised from the world economy.

(www.caribbeannewsnow.com, 04.05.11)

IMF Urges Greek Asset Sales

Greece has far more potential than other countries to use privatisation to win back investor confidence, with current sales plans amounting to less than a fifth of possible asset disposals, according to a senior International Monetary Fund (IMF) official.

Antonio Borges, Director, IMF European Department, said the crisis-hit eurozone country had an 'extraordinary portfolio' of assets. Privatisation would have crucial confidence effects, as well as helping cut debt, he said. With financial markets fearing a debt restructuring, eurozone policymakers have focused increasingly on privatisation as an escape route for Greece.

Revenue raised could be used to reduce the amount of additional help needed under a revised bail-out plan. IMF and EU officials are reviewing progress on Greece's US$158bn rescue plan agreed a year ago. Borges said that as long as the reviews remained positive, IMF backing would continue. *(FT, 13.05.11)*

Economies Dismantle FDI Curbs

Most emerging economies, including India, South Africa and the Russian Federation, besides China and Turkey, have come in for qualified praise for their 'continued moves towards eliminating restrictions to international capital flows and improving clarity for investors'. This was highlighted in a joint report undertaken by the OECD and the Geneva-based UNCTAD and WTO for the G-20.

Stating that seven countries amended investment-specific policies, it said investment-specific policy changes were more common in emerging markets than in mature markets. It said India's new consolidated foreign direct investment (FDI) policy, which came into force on April 01, facilitates the expansion of established foreign-owned enterprises, allows the conversion of non-cash items into equity and permits FDI in certain agricultural activities.

The policy developments recounted in the latest report took place against the backdrop of a recovery and marginal increase of global FDI inflows in 2010, following steep declines in 2008 and 2009. *(BL, 24.05.11)*

FDI in Israel Up 16%

In Israel, the inflow of Foreign Direct Investment (FDI) rose by 16 percent from US$4.44bn in 2009 to US$5.15bn in 2010, higher than five percent the increase in global FDI, according to the UN Conference on Trade and Development's Annual World Investment Report (WIR 2011).

FDI outflows from Israel saw an impressive increase of 370 percent, from US$1.7bn in 2009 to some US$8bn in 2010. This significant growth was influenced amongst other factors by one giant US$4.9bn deal in the field of pharmaceutics by Teva.

FDI flows in 2010 to and particularly from Israel "reflect cautious optimism," according to the WRI. However, the FDI flows into and out of Israel in 2010 were still lower than the comparable average figures achieved in the period 2005-2007, prior to the global financial crisis.

(www.israelnationalnews.com, 31.07.11)

Lessons in Mediating for Dairy Warriors

– Peter Lichtenbaum and David Fagan*

Italian lawmakers are upset with the French – this time, for trying to buy some butter (in the form of dairy giant Parmalat). The Italians' response? A proposed review mechanism for foreign investment in strategic industries reminiscent of France's 'Danone Law', adopted in 2006 after PepsiCo's aborted attempt to buy the French yogurt maker.

The Italian-French food fight is emblematic of a global drive to screen foreign investment on purported national security concerns or national interests. Within the last few months, two European commissioners have proposed an EU-level committee to vet foreign investment on strategic grounds; Brazil proposed a review for investment in the agricultural sector; and most prominently, China rolled out interim rules for a national security-based review of foreign M&As of Chinese enterprises.

These proposals follow the adoption or amendment, within the past four years, of national security or national interest-based foreign investment review laws in the US, Russia, Germany, Canada and Australia, among others. This is a potentially worrisome trend. Countries need to resist the temptation to deploy such tests in a way that burdens the flow of international investment.

The US debated the role for such laws, following the 2006 Dubai Ports World controversy over the proposed sale of port management businesses in US sea ports to the UAE company. The result was a strengthened review process steered by the Committee on Foreign Investment in the US (CFIUS) that is focused on core security risks. This may not be perfect, but it upholds the principles of open investment and offers several lessons.

First, the review process should encourage investment and be tailored to apply to transactions implicating true national security interests. To support this principle, reviews should be led by a responsible agency able to assign appropriate weight to the interests of open investment, while also fully protecting against national security risks. The review process should be protected from political interference.

The risk with a 'strategic' sector approach, such as that implemented by France, is that it, in fact, serves as a pretext for other objectives. No one could seriously debate a country's right to promote domestic industrial growth. Yet, it is one thing to utilise governmental tools to develop industries, but quite another to limit access to those industries. Allowing foreign investment tends to promote sectoral growth, not retard it.

There has been a worrisome recent trend of countries adopting national security foreign investment review laws

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Also, the review mechanism should provide as much certainty as possible to investors. Little matters more to parties in a transaction than knowing what approvals they must obtain, the rules related to them and when they can expect to receive them. This requires quick time-frames for the review. Longer processes create uncertainty, which, in turn, can raise price tags for foreign investors or, worse, lead sellers to reject foreign bidders outright. Certainty also requires regulatory consistency so that investors can draw appropriate lessons for the future.

Third, the government agencies conducting the review should be accountable. In the US, there is no judicial review of CFIUS decisions, but there is reporting to Congress. This may not be the ideal model, but it is one that makes decision makers accountable while preserving limited timeframes for review. In all events, there should be mechanisms in place to ensure sound, objective decisions on foreign investment reviews.

Finally, the regulatory process should preserve confidentiality to reassure investors and sellers that their information will not be compromised, whether by revelation to the public or to domestic competitors. These four principles are fundamental to ensuring that a review process encourages foreign investment. Italian lawmakers and others should bear them in mind.There has been a worrisome recent trend of countries adopting national security foreign investment review laws.

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* *Partners at Covington & Burling LLP, an international law firm. The article appeared in* The Financial Times*, on April 21, 2011.*

Airline Ownership to Boost Investment

www.google.com

Brazil is preparing a legislation to allow greater foreign ownership of its airlines, in what is expected to be the country's first big reform. The move is designed to boost investment in the country's airlines, helping improve infrastructure, as Brazil gears up to host the football World Cup in 2014 and the Olympics two years later.

The new rules will also have to go through Brazil's senate, but are expected to come into force as early as June 2011. The proposal marks a dramatic shift for the country, which has long been reluctant to open up its airspace to foreigners, and is likely to bring much-needed investment to the airline sector. *(FT, 21.04.11)*

Peers Call for Audit Probe

Britain's antitrust regulator will decide whether to open a probe into market dominance by the 'Big Four' accounting firms, focusing on bank loans that force borrowers to use the largest auditors.

A UK House of Lords committee investigating the financial crisis said that the firms, which audit 99 of the 100 largest UK companies, should be probed by the London-based Office of Fair Trading (OFT) to determine whether their market dominance wrongfully limits choice.

The probe could be the most high-profile for the agency since it investigated banks' equity underwriting practices. The OFT would help determine whether loan terms unfairly favour Deloitte LLP, Ernst & Young LLP, PricewaterhouseCoopers LLP and KPMG LLP. *(BL, 04.05.11)*

Unilever Bows to Beijing

Unilever, the Anglo-Dutch consumer goods group, has bowed to pressure from Beijing to delay planned price increases, highlighting a new regulatory risk in an inflationary climate. While Chinese authorities routinely force state-owned enterprises to place public interest ahead of commercial concerns, Unilever's confirmation of the government's request signals that large foreign multinationals are not immune to such pressure.

Alarmed by the reaction, Beijing is understood to have contacted companies to urge price restraint. China's consumer price index rose 4.9 percent year-on-year in February 2011. Unilever would not say how long it would postpone the price rise. *(FT, 02.04.11)*

Traders to Disclose Strategies

Europe's top securities watchdog embarked on a far-reaching probe of automated trading firms by asking them to disclose trading strategies and details about the computer algorithms they use to drive their deals.

It is the first sign that regulators are making direct contact with the firms to understand high-frequency trading as watchdogs prepare to formulate regulations designed to tackle the rapidly growing phenomenon.

The trading method is used to eke out profits from tiny differences in prices across different trading platforms. The practice has come under scrutiny by regulators in the US and Europe. They want to know whether high-frequency trading provides liquidity to markets and whether high-frequency trades increase or reduce volatility in markets. *(FT, 12.04.11)*

Airlines' Duty Curbed

Airlines may no longer face open-ended obligations to feed and lodge stranded passengers after the EC acknowledged the industry's complaints and said it would revise a key piece of legislation.

Under the EU's six-year-old passenger rights law, airlines are required to feed and house passengers in Europe until they can be rebooked on other flights. The law was passed to protect consumers amid suspicions that airlines were delaying or cancelling partially full flights in order to save money.

A commission official acknowledged that policymakers had come to share the airlines' view that the legislation was never intended to cope with an extended closure of European skies. A key issue to work out was at what point the responsibility would pass from the airlines to governments. *(FT, 12.04.11)*

Resolving Ratings Impasse

Top EU regulators are to hold talks with counterparts at the US Securities and Exchange Commission in an effort to resolve an issue that could force banks to find billions of euros in additional capital.

Fresh EU rules to clamp down on the behaviour of rating agencies have cast doubt on the extent to which "third country" ratings can be used for regulatory capital purposes within the 27-country bloc. With the regulatory changes looming, banks and rating agencies have been warning that this could lead to market disruptions.

Now, documents published by the European Securities and Markets Authority show two individual, unnamed banks have estimated they would need to find another US$15bn and US$11.4bn in capital, respectively, unless a solution can be found. *(FT, 26.04.11)*

Antitrust Rumblings over Index

As shareholders in NYSE Euronext ponder the bid battle raging between the US exchange and its partner Deutsche Börse, on the one hand, and Nasdaq OMX and IntercontinentalExchange, on the other, they may not be paying much attention to the Eurostoxx 50 index.

However, the low-key business of indices, such as the Eurostoxx and in the US the S&P and Dow Jones indices, are emerging as a controversial issue in Europe. This is because the ownership of such indices is being concentrated among a handful of exchanges. They see them as a lucrative new source of revenue since products such as derivatives and exchange-traded funds can be created that are based on them. *(FT, 28.04.11)*

Bank Fee Commitments Published

The French Competition Authority published a commitments proposal for the Bank Cards Group, which has the aim of decreasing most inter-bank fees on card payments.

This proposal has been submitted by the Group with a view to invoking the settlement procedure and to try to resolve the competition issues raised by the Authority regarding the level of inter-bank fees.

These competition issues mainly concerned the method for calculating inter-bank fees related to card payments. The Group was suspected of assisting anticompetitive agreements between its members in order to impose excessive inter-bank fees for card payments.

(Mondaq, 20.04.11)

Turkey to Review Terms of Contract

When the New Code of Obligations enters into force on July 01, 2012, Turkish banks will have to put remarkable effort into reviewing their standardised terms of contract. The rules on standardised terms of contract in the new code are mostly adopted from several EU regulations and directives regarding standardised and unfair contract terms.

The most outstanding impact of the new code is the legal remedies available to the banks' corporate clients, which, pursuant to the Law on Consumer Protection and associated sub-regulations, were available only to consumer clients. In addition, the new code provides consumer/retail clients with a broader range of remedies, thereby aiming to place them in a stronger position.

Under the existing legislation, standardised terms of contract are regulated pursuant to the Consumer Protection Law. The Consumer Protection Law protects only the banks' consumer/retail clients from unfair terms. *(ILO, 24 .06.11)*

Global Banking Still Opaque

Indian Finance Minister Pranab Mukherjee said that there was an urgent need to relook the existing provision of the Organisation for Economic Cooperation and Development (OECD) on sharing banking data so that past information could also be shared among countries.

Mukherjee said the banking system was still opaque in various non-tax and low-tax jurisdictions. The minister added that while some countries had accepted to end bank secrecy in general, many had agreed to do so only from a prospective date and were not willing to exchange past banking information.

Such issues put a question mark on the efficacy of the present legal provisions for exchange of banking information. *(FE, 13.06.11)*

Mis-selling get Fast Treatment

Cases of widespread mis-selling of financial products are to be handled as a group to limit customer harm and speed compensation claims, under draft regulation reforms unveiled by the UK government.

The plans to fast track mass complaints are a direct response to the £6bn payment protection insurance scandal and large regulatory fines against UK banks for poor complaints-handling and investment advice.

The draft financial regulation bill provides the first "detailed blueprint" of the plan to split the Financial Services Authority into two new regulators. The Prudential Regulatory Authority, an arm of the Bank of England, will focus on the safety and soundness of banks and insurers. The Financial Conduct Authority will supervise markets and how all companies treat their customers and counterparties. *(FT, 16.06.11)*

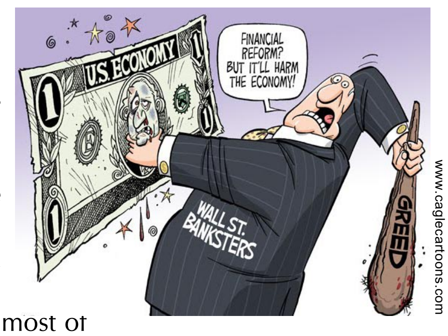
Lengthy Fight over Bank Ratings

Senior bankers warned there would be prolonged wrangling over additional capital requirements for about 30 of the world's biggest banks, as global regulators plan to group institutions by their size and structural complexity in the hope of avoiding another financial crisis.

Regulators are poised to place large banks into separate tiers or "buckets", with the biggest and most complex businesses attracting a capital surcharge of 2.5 percent of their assets, adjusted for risk, on top of the seven percent minimum capital ratio agreed in a new global bank capital framework, known as Basel III.

There are at least eight banks which are being targeted for the highest tier, meaning they would have to maintain a minimum core tier one capital ratio of 9.5 percent. Banks likely to be placed in the next tier down face a surcharge of two percent. *(FT, 18.06.11)*

Too Big to Fail, Too Big to Jail



The Large Complex Financial Institutions (LCFIs) are very large relative to the world assets. The 25 largest banks in the world account for US$44.7tr in assets in 2008, compared with only US$6.8tr in 1990. That would be equivalent to 73 percent of global GDP and 42.7 percent of total global assets as per the IMF data.

Second, they are very relative to individual countries. In 1990 none of the top banks had total assets larger than the national GDP. Today, they are seven. More than half have assets larger than the half national GDP, compared with only one in 1990.

Third, the concentration of LCFIs is increasing. Global banks dominate most of emerging market corporate and investment banking business. Fourth, the total size of financial assets has grown dramatically faster than the real sector from 108 percent of GDP in 1980 to over 400 percent by 2009.

Fifth, the LCFIs are highly complex and non-transparent, with 8 of 16 LCFIs identified by the Bank of England having over 1,000 subsidiaries. In sum, the LCFIs are larger than countries, global in life, national in death and too complex to understand, manage or regulate properly. *(ET, 30.06.11)*

The Nightmare of Taking on 'Too Big To Fail'

– John Kay*

Britain's Independent Banking Commission has recognised that it is better to create a structure that secures the right incentives than to try to control behaviour arising from the wrong incentives. I expected it would do so; that was the conclusion of an article.

There are no adequate answers. The UK banking commission's view of core technical issues is disappointingly thin

It has also recognised that the objective of regulation is not to prevent bank failures. Governments cannot prevent them – though they can bail out failed banks. Such an objective would stifle innovation and undermine management autonomy and responsibility. Institutions that run into trouble – like Lehman Brothers and Northern Rock – should be able to fail without unacceptable consequences for the financial system.

Too big, or too complex, or too diversified, to fail cannot be tolerated in a competitive market economy. A government backstop gives an overwhelming competitive advantage to large established firms and encourages the kind of risk-taking in which risk-takers receive much of the upside and little of the downside.

So the commission correctly focuses on increasing competition and on the separation of retail and investment banking. The analysis is effective, the direction of travel is right. But are the specific measures they propose sufficient to achieve the outcomes they seek?

The commission disposes of the widely reiterated assertion, that separation would encourage banks to move their headquarters abroad. The plan is to ring-fence UK retail banking activities, whether conducted by British or foreign owned firms, and UK retail banking activities are, by definition, conducted in the UK.

The other main argument the banks have deployed is better, but not much. They emphasise the costs of the split. As the report explains, the bulk of that cost is incurred in capitalising and funding investment banking without the support of a large retail deposit base and an implicit state guarantee. The banks' loss is directly matched by the public gain.

But the devil is in the detail. While the commission discusses the possibility of making depositors preferred creditors and correctly concludes that there are strong arguments for such a move, it fails to recommend such a change.

So their proposal is to rely heavily on a 10 percent capital ratio on these ring-fenced UK retail banking operations. This is a more than adequate equity base for a traditional, conservative retail bank. But would the retail banking subsidiaries of a financial conglomerate controlled by investment bankers resemble a traditional conservative retail bank?

Or would the treasury operations of such a bank develop to a size and scale more appropriate to an investment bank? Have we not learnt that a capital ratio is an inadequate regulatory tool on its own once the range of balance sheet assets multiplies?

And there are to be no limits on cross-dealing with other businesses in the group so long as the 10 percent capital ratio is maintained. Is this consistent with the overriding objective that government can confidently seize control of the retail activities of the retail arm of a failing conglomerate over a weekend, and put the rest of the institution in the hands of a liquidator?

There are no adequate answers to these questions. I continue to believe ring-fenced retail banking would have to restrict the assets that a retail bank could hold as well as the activities it could engage in. The report's discussion of these core issues is disappointingly thin.

The public can applaud the principle of separation of utility and casino banking. The detail of how it is to be accomplished is of interest only to the banks. If the initial position is not clear and robust, the final outcome will never be an effective one.

We can apply two tests to the proposals. Do market prices reflect an expectation that a failed investment banking division of a conglomerate bank will be allowed to fail? Are these banks beginning the radical simplification of corporate structure needed to make such resolution a realistic possibility?

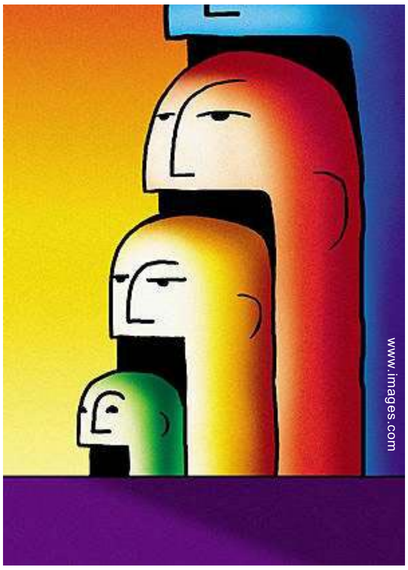
The market reaction so far suggests a view that the banks have got away with it. Sir John is understandably angry at this suggestion, as he stood up to unacceptable pressure from vested interests. But that the outcome is at once radical and weak is a measure of how biased the debate so far has been.

* *Britain's Leading Economist. Abridged from an article that appeared in* The Financial Times*, on April 13, 2011.*

Good Governance, ha'ah!

– Jeffrey D Sachs*

The world is drowning in corporate fraud, and the problems are probably greatest in rich countries – those with supposedly 'good governance.' Poor-country governments probably accept more bribes and commit more offences, but it is rich countries that host the global companies that carry out the largest offenses. Money talks and it is corrupting politics and markets all over the world.



Corporate crimes are the greatest in rich countries, those with the best rules and regulations

Hardly a day passes without a new story of malfeasance. Every Wall Street firm has paid significant fines during the past decade for phony accounting, insider trading, securities fraud, Ponzi schemes, or outright embezzlement by CEOs. A massive insider-trading ring is currently on trial in New York, and has implicated some leading financial-industry figures. And it follows a series of fines paid by America's biggest investment banks to settle charges of various securities violations.

There is, however, scant accountability. Two years after the biggest financial crisis in history, which was fueled by unscrupulous behaviour by the biggest banks on Wall Street, not a single financial leader has faced jail. When companies are fined for malfeasance, their shareholders, not their CEOs and managers, pay the price.

Corruption pays in American politics as well. The current governor of Florida, Rick Scott, was CEO of a major healthcare company known as Columbia/HCA. The company was charged with defrauding the US government by overbilling for reimbursement, and had to pay a fine of US$1.7bn. The FBI's investigation forced Scott out of his job. But, a decade after the company's guilty pleas, Scott is back, this time as a 'free-market' Republican politician.

When Barack Obama wanted somebody to help with the bailout of the US automobile industry, he turned to a Wall Street 'fixer', Steven Rattner, even though Obama knew that Rattner was under investigation for giving kickbacks to government officials. After Rattner finished his work at the White House, he settled the case with a fine of a few million dollars.

But why stop at governors or presidential advisers? Former vice-president Dick Cheney came to the White House after serving as CEO of Halliburton. During his tenure at Halliburton, the firm engaged in illegal bribery of Nigerian officials to enable the company to win access to that country's oil fields – access worth billions of dollars. When Nigeria's government charged Halliburton with bribery, the company settled the case out of court, paying a fine of US$35mn.

Corporate corruption is out of control for two main reasons. First, big companies are now multinational, while governments remain national. Big companies are so financially powerful that governments are afraid to take them on.

Second, companies are the major funders of political campaigns in places like the US, while politicians themselves are often part owners, or at least the silent beneficiaries of corporate profits.

As a result, politicians often look the other way when corporate behaviour crosses the line. Even if governments try to enforce the law, companies have armies of lawyers to run circles around them. The result is a culture of impunity, based on the well-proven expectation that corporate crime pays.

There is a need of a new kind of politician leading a new kind of political campaign, one based on free online media rather than paid media. When politicians can emancipate themselves from corporate donations, they will regain the ability to control corporate abuses.

So the next time, when there is a corruption scandal in Africa or other poor region, neither the US nor any other 'advanced' country should be pointing the finger at poor countries, for it is often the most powerful global companies that have created the problem.

* *Professor, Economics and Director, Earth Institute Columbia University and Special Advisor to UN Secretary-General on Millennium Development Goals. Abridged from an article that appeared in* The Financial Express*, on May 21, 2011.*

Allowing Parallel Imports to Lower Medicine Prices

– Mosadeq Sahebdin*

"Intellectual Property Rights can damage markets in Mauritius when parallel trade in legitimate goods is not permitted. The Competition Commission of Mauritius supports allowing parallel trade in branded goods. In particular, we support the import and sale of trademarked goods sold at lower prices in other countries, without restriction by IP rights-holders. For a number of products, the result would be lower prices for consumers in Mauritius"

These are the general comments of the Competition Commission over the recent decision of the Pharmacy Board to refuse an import permit to a parallel importer of trade-marked medicines.

The matter under examination concerns a recent decision of the Pharmacy Board. Parallel importers in the medicines sector are known to have, during the past years, imported trade-marked medicines such as Gaviscon, an antacid, and to sell these at lower prices than the so-called sole representatives of the manufacturer. As an example, Gaviscon sold in 300 ml bottles by the official representative costs Mauritian Rupees (MUR) 214, while the same medicine in 250 ml sold by a parallel importer costs MUR 82. You do not need to calculate the per litre price to see that the parallel import is much cheaper.

Yet, according to our sources, the Pharmacy Board, whose members can be judge and party at the same time, has decided to rely on the Intellectual Property Rights (IPRs) Act to support its controversial decision. It needs to be recalled that, since the implementation of the Fair Trading Act, there is no such thing as sole representative, unless the manufacturer decides to deal exclusively with its appointed agent.

In the medicine sector, as in the case of many other goods, trade-marked items can be available at much lower prices through large conglomerates purchasing in bulk. They, in turn, sell the same trade-marked goods at lower prices. This is how parallel importers have been able to offer for sale trade-marked medicines cheaper, alongside generic medicines also known to be cheap.

We aver that the Pharmacy Board has erred in relying its decision on the presence of such medicines as Gaviscon and Lemsip on the IPRs list of the Mauritius Revenue Authority (MRA). According to informed sources, the presence of goods on this list does not imply that the patent holder can be the exclusive importer. This would be in contradiction with the Fair Trading Act. According to an MRA source, the import of patented goods by importers other than the patent holder only enables the latter to check whether these goods are fake or not. If they are found to be authentic, the customs would have no other choice than to allow delivery of the goods.

The Pharmacy Board's decision has to be queried. It is feared that it may be related to the recent manoeuvres of the major medicine companies to use the Intellectual Property Rights to pressure the Kenyan government to ban cheap medicines from India. Taking into account that medicine manufactures tend to decide the selling price of a medicine according to the gross domestic product (GDP) of the country, according to a recent study by Health Action International (HAI Africa), the decision of the local authority would lead to the exploitation of patients through exclusive dealing and, in the long run, the abuse of a monopoly situation in the medicines market.

The stand of the Competition Commission, as enunciated above, is hence pertinent and needs to be supported.

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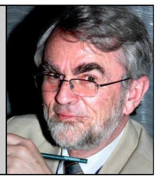
* *Consumer Activist and Member, HAI Africa. The article appeared in* l'express Weekly, *on April 29, 2011.*

Competition Laws Bring Economic Democracy

Policies on industry, trade, competition, investments, and state-owned enterprises are linked, and it is their combination that determines the real level of competition in a country



What is your experience with the implementation of competition laws?

Enforcing competition laws brings economic democracy, which goes together with political democracy. Competition law ensures there will not be barriers preventing people from moving into certain markets. It also makes sure there will be no exploitation of consumers by firms tempted to abuse their market power.

How can competition authorities ensure that laws in their respective countries, especially developed ones, do not discriminate against foreign companies?

The competition authorities do not have the power to change other laws. But if some laws are against the principle of competition, they can give an opinion saying those laws are not consistent with the principles of fair and non-discriminatory competition. Then the government or parliament should think whether such inconsistency is an oversight, or whether there are other ways to reach social and political goals without destroying competition.

There are reports of the EU insisting on competition clauses in the India-EU Free Trade Agreements. Will this be disadvantageous for a developing country like India?

FTAs eliminate or reduce governmental barriers to trade. India and the EU have competition laws. If EU firms manoeuvre to create barriers to the entry for Indian products or services, then the competition law will apply and Indian companies will be able to complain and gain effective access to the European markets.

Is there a need to exclude the banking sector, which is sensitive due to its systemic issues, from competition laws?

We do not want to eliminate competition in the banking sector because competition between banks is absolutely necessary to promote financial innovation and cheaper credit. What we need is the proper combination of competition and regulation often achieved through cooperation between the sectoral regulator and the competition authority.

How can competition authorities assess and award damages?

There are very few countries where competition authorities directly award damages. In some countries, competition authorities have to establish the existence of a violation, for example a cartel. Then those hurt by the cartel can go to a civil court, cite the competition authorities' finding, and seek damages. In other countries, victims of an anti-competitive violation directly go to civil courts.

Is there a need to arrive at damages that will act as a deterrent for companies?

If it is very expensive to engage in an anti-competitive practice, a firm will think twice before doing it considering the risks involved. If in addition to the fine, the firm has to compensate the consumers for the overcharge due to the anti-competitive practice, this will make it even more expensive for the firm to engage in an anti-competitive practice and this will increase the deterrence.

How can competition law act on 'duopolies', like in the case of Boeing and Airbus in the aviation industry, also backed by their respective governments?

Airbus and Boeing probably compete fairly intensely on innovation and prices. Both companies have taken each other to the WTO Dispute Settlement Body where it was found that both companies were government-subsidised. Though the WTO discipline on state aids need to be stronger, at least it exists and there is an enforcement mechanism.

Can a cooperation agreement between the competition authorities in the concerned countries help?

If there is a cooperation agreement between competition authorities in the concerned countries, the competition authority in the 'victim' country can ask the other authority to gather proof against the firm so that the domestic law of the 'victim' country can be used to punish such firms.

What about sectors where there is a government monopoly, like Railways?

In sectors like railways there are at least two reasons for government to intervene. First, having a developed communication network generates positive externalities. Second, some forms of competition, particularly the provision of competing infrastructure such as railway lines could be wasteful. But competition in the provision of railway services, for example competition in the operation of freight or passenger trains, can be quite useful to improve the quality of the service and lower its cost.

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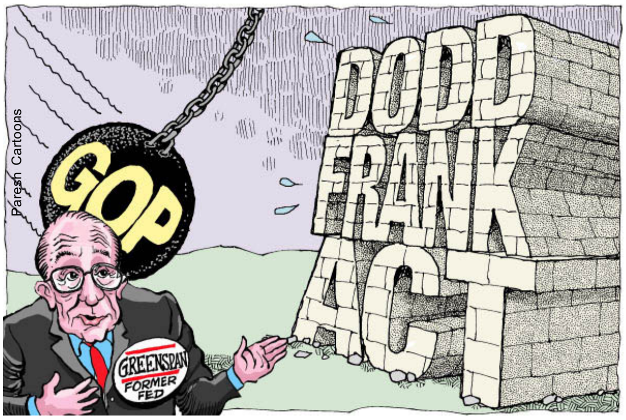
* *Excerpts from the interview of Frederic Jenny, Chairman, Committee on Competition Law and Policy, OECD, Paris. The interview appeared in* The Hindu Business Line, *on May 03, 2011.*

Greenspan Warns on Dodd-Frank Reforms

– Tom Braithwaite*



Alan Greenspan, the former Federal Reserve chairman, has attacked the Dodd-Frank financial reforms warning they could create the 'largest regulatory-induced market distortion' in the US since the imposition of wage and price controls in 1971

In an article in Financial Times that might encourage Republican attempts to unwind the law, Greenspan said the reforms, passed by Congress in 2010, would be impossible to implement, distortive to markets and a possible threat to US living standards.

The Dodd-Frank legislation was the Obama administration's response to the financial crisis, signalling a 're-regulation' of financial markets after the deregulation championed by Greenspan in the 1990s.

In spite of the crisis, Greenspan sticks to his guns, writing that regulators are ill-equipped for more intrusive supervision because they 'can never get more than a glimpse at the internal workings of the simplest of modern financial systems and that "with notably rare exceptions (2008, for example), the global 'invisible hand' has created relatively stable exchange rates, interest rates, prices, and wage rates".

The light-touch regulation he favoured has gone out of fashion after the 2008 crisis and Greenspan was criticised in January 2011 by Democratic appointees to the Financial Crisis Inquiry Commission.

Their report found that: "More than 30 years of deregulation and reliance on self-regulation by financial institutions, championed by former Federal Reserve Chairman Alan Greenspan and others, supported by successive administrations and Congresses, and actively pushed by the powerful financial industry at every turn, had stripped away key safeguards, which could have helped avoid catastrophe."

But, Greenspan is unrepentant and Republicans in Congress are becoming bolder in re-adopting the same anti-regulation stance.

Members of the House financial services committee, including Spencer Bachus, chairman, have blocked funding increases for the Securities and Exchange Commission and railed against a new Consumer Financial Protection Bureau.

Democratic senators have joined Republicans in trying to delay or repeal a new rule that would force a reduction in the debit card fees charged to retailers. Greenspan cites the 'interchange' rule as one of several problems thrown up in the law's implementation and predicts that regulators 'will in the coming months be bedeviled by unanticipated adverse outcomes'.

Given what he sees as its overly interventionist approach to regulation, Greenspan says that Dodd-Frank's 'most surprising failure to rein in supposed market-determined excess' is to avoid a draconian clampdown on bankers' pay, which he says would be of 'doubtful' use.

Greenspan takes the opposite view to his predecessor at the Fed, Paul Volcker, who intervened in the financial reform debate to argue for tougher restrictions on the trading activities of banks.

Volcker famously said that the most useful financial innovation of the past 30 years was the automated teller machine.

Other than the cash machine, Volcker said, in 2009, "I wish that somebody would give me some shred of neutral evidence about the relationship between financial innovation recently and the growth of the economy".

Greenspan writes that 'financial complexity has appeared to grow with the rising division of labour, globalisation, and the level of technology' and that "the vexing question confronting regulators is whether this rising share of finance has been a necessary condition of growth in the past half century, or coincidence. In moving forward with regulatory repair, we may have to address the as yet unproved tie between the degree of financial complexity and higher standards of living.

* *Business and Politics Correspondent, Financial Times. The article appeared in* The Financial Times*, on March 30, 2011.*

Real Reasons Cement Price is High: Iweta

As a well known industrialist with diverse interests both in his Delta state base and beyond, Prince David Iweta discusses the problems of local manufacturers, especially those in the cement sector, with deep passion.

Can you lead us through the background to the present situation in the cement industry?

I think in the cement industry today, there is absolute crisis, and the crisis is artificial; created by the deceitful effort of a cabal whose members are also using the Federal government agencies, like the Ministry of Commerce and Industry, to perpetrate evil against the country. Now, before; the commencement of our democracy of 1999, cement had a duty of five percent, and that five percent duty had remained, and there wasn't anything like cement import licence quota that is allocated year by year or introduced by any group.

But, immediately this cabal came in, they decided to encourage the government in power which seemed to be in partnership with them, to create a policy that ushered in the era of the introduction of cement import licence.

What were the specific factors that jerked cement price so high that the President had to intervene?

By 2007, When President Yar'Adua came in, the price of cement was just as it is now, and he said, 'no, this cannot continue to happen'. He called all the companies that had cement bagging plant that had been denied access before now, and a few people he felt could help to bring down the price, and granted them cement import licences, not to bring bulk, but to even bring in bags, so that the price would crash. Government granted six of us special licences with which we were expected to bring down the price. And then we did, and what happened?

In 2010, the new Minister of Commerce and Industry, Jubril Matins Kuye cancelled the unused portions of the licences that were granted by President Yar'Adua. Again, the same minister increased the duty of bulk cement from five to 15 percent, and introduced a compulsory Cement Technology Institute levy of 20 percent, thereby making the total duty on imported cement to be 35 percent.

Given the picture you have just painted, will the price of cement come down as directed by the President?

If the local cement manufacturers are sincere and patriotic, and do not want to exploit Nigerians, it is very, very possible and at a profit in their favour, to sell the locally manufactured cement irrespective of all issues. If they doubt it, they should collect the energy cost that they claim they use. Most of them use gas, they use coal too. Therefore, the cabals are out to destroy this country, and they have been exploiting this country to the bones.

Excerpts from the interview which appeared in The Nigerian Voice*, on June 23, 2011.*

BOOK REVIEW

REALITY IGNORED

(Kenneth M. Davidson)

How Milton Friedman and Chicago Economics Undermined American Institutions and Endangered the Global Economy

by Pradeep S Mehta, Secretary General, CUTS

The Wrong Road for Public Policy

This is a wonderful book. It is an engaging, insightful, and often entertaining critique of the Chicago School Economics, the most influential political and economic dogma of the past 40 years. This has been prevalent in the USA and as a part of the Washington Consensus has been the cornerstone of the Bank-Fund philosophy of lending to poor countries.

The author played a small part in the grand academic and political debates, but his cameo appearances in this book provide concrete, and sometimes amusing, illustrations that can only be gained from an insider's observations. This is not a technical book filled with mathematical formulae, charts, graphs, and technical jargon. It is a book for all of us, for the policy makers, for the academics, and especially for the general reader whose fate is often determined by issues discussed in the book. This book can help us understand the dangers of placing too much faith in a heavily flawed economic philosophy.

Davidson spent over 25 years enforcing competition laws at the US Federal Trade Commission. In his prolific writing, he has advocated government and corporate policies that are likely to promote free markets and economic growth. However, he has emphasised that competition, especially competition from small and new businesses, is responsible for most of the growth in the American economy and other economies around the world. He continues his work as a Senior Fellow at the American Antitrust Institute and as a consultant and teacher in transitional economies around the world, including at CUTS.

Available on Amazon.com
Paperback US$19.50, Kindle US$9.50

Economiquity

The quarterly flagship newsletter of CUTS Centre for International Trade, Economics & Environment (CUTS CITEE) encapsulates an article entitled 'Get Plan B Working for Doha' in its cover story. Osama bin Laden's death is an opportunity to close the Doha deal, argued the hugely optimistic Jagdish Bhagwati in the Financial Times. He was reacting to an editorial in FT which called for giving up on the Doha Round of the WTO due to an impasse. In fact, the Doha Round was launched soon after the 9/11 tragedy to send a message to the world, that we are together and will not be fazed by the horrendous attack on the symbolic World Trade Centre in New York about 10 years ago.

A wide range of news articles relevant to WTO and Doha Round and international

trade are covered under section on world economic updates. Subsequent sections highlight news item around the world focusing upon climate change, migration, remittances, and development economics and economic literature covering research documents pertinent to development and international trade issues.

Besides, back page provides a brief overview of the publications of the Centre.

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


ECONOMIQUITY

April-June 2011

Get Plan B Working for Doha

Osama bin Laden's death is an opportunity to close the Doha deal, argued the hugely optimistic Jagdish Bhagwati in the Financial Times. He was reacting to an editorial in FT which called for giving up on the Doha Round of the WTO due to an impasse. In fact, the Doha Round was launched soon after the 9/11 tragedy to send a message to the world, that we are together and will not be fazed by the horrendous attack on the symbolic World Trade Centre in New York about 10 years ago.

For far too long US President Barack Obama Obama has been silent on the US's approach to the Doha Round, with his aides arguing that there is not enough on the table, while developing countries have countered that the Doha Round is a development round, which seeks to correct the imbalance which resulted from the Uruguay Round agreements.

On the other hand, all countries are investing a significant amount of political and negotiating capital in negotiating preferential trade agreements (PTAs) which are second or third best options of trade liberalisation. There are three essential virtues of trade multilateralism: non-discrimination, gradual liberalisation of tariff and non-tariff barriers, and binding commitments to rules.

None of these essentials is guaranteed in PTAs. Contrary to multilateral trade liberalisation, PTAs can erode a country's policy space in a much bigger way. This is because PTAs are negotiated at the level of applied tariffs; on the other hand, multilateral trade liberalisation talks are focused on reducing bound tariff levels.

It is true that the higher the bound level the higher will be the actual cut in tariffs but for countries like India, which has consistently maintained a large gap between bound and applied rates, there will not be much erosion of its policy space. Furthermore, all new generation PTAs (particularly those with the EU and the US) have chapters which are WTO Plus in nature.

Thirdly, there are certain disciplines of trade rules to which countries can be bound only through multilateral agreements. The only way to discipline the scandalous nature of agricultural subsidies as practised by the US and the EU is the WTO forum.

Governments do not trade, firms do. The role of sovereign governments is to facilitate trade by reducing costs. And this can best be done by adhering to three essentials of trade multilateralism.

Given the fear that lack of progress will dirty the waters, some movement on the Doha Round has happened, when major trading powers met at the Big Sky APEC summit and OECD Ministerial Meeting. They have now have concluded that the original plan for Doha will not work out – certainly not for this year-and therefore a Plan B needs to be worked by the negotiators at Geneva. Other than hearing the traditional noises on helping the poor countries, we do not know what Plan B will entail.

Headlines

The Growing Risks of Our Four-Speed World
During the worst days of the financial crisis, investors .... page 3

Time for a New Era of Growth with Social Justice
Discontent worldwide is reaching dangerous levels. In three-quarters of the 82 countries........ page 11

Life without Doha
Some critics rushed in to declare that Doha was dead – indeed, that they, being smart, had already .... page 15

INSIDE

Watchdog says IMF is 'Fixated' 2
US Repeating the Mistakes of 1937 4
Leaders Call for Supervision in Commodities 5
First Anti-subsidy Duties on China 7
World Population to Cross 7 billion 10
Why US Steals Medics from Poorer Nations? 13

25 years CUTS International

CUTS Competition Distortions Dossier

In April-June 2011 edition, several issues have been covered, and three are particularly on the lack of 'competitive neutrality' against the public sector.

Competitive neutrality means providing a level playing field to businesses, whether in private sector or public sector, to operate easily. In a mixed economy like India's, this issue becomes more important that the government does not discriminate against private sector by mollycoddling the public sector.

There are many such instances which we have reported in the earlier editions. For example, offering sovereign guarantee to LIC's insurance policies and not the same to private insurers. Or asking public sector units to keep their moneys only in public sector banks, and so on and so forth.

In this issue, we have reported three cases of competitive neutrality against the public sector. Apparently, these have arisen due to the severe governance deficit in our country, which Anna Hazare is battling against. These stories are that of Air India, Vaccine Units and captive coal mining blocks to power and other consuming industries.

By the way, the Government of India is also in the process of adopting a National Competition Policy to promote healthy competition in the economy. Of the competition principles to be covered in the Policy, one crucial one is on competitive neutrality. Comments have been invited on the draft Policy by 22nd August, which can be seen at: www.mca.gov.in/Ministry/Draft_Policy.html.

This Dossier and earlier ones can be accessed at:
www.cuts-ccier.org/Competition_Distortions_India.htm

Sources

ACLEC: Asian Competition Law and Economics Centre; BL: The Hindu Business Line; BS: Business Standard; EP: Ethical Performance; ET: Economic Times; FE: Financial Express; FT: Financial Times; GCR: Global Competition Review; ILO: International Law Office; JP: Jakarta Post; IT: Irish Times; WSJ: Wall Street Journal

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