REGULETTER

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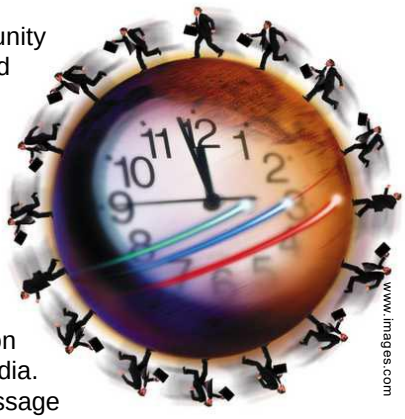
Special Articles

CUTS Centre for Competition, Investment & Economic Regulation

CUTS C-CIER

Consumers – Unite and Say 'No More' to Cartels

"Our competitors are our friends, our customers are the enemy" is an actual statement made by an executive of Archer Daniel Midland, in the famous case of the lysine (a feed additive) cartel, which was caught on videotape by the FBI of the US.



As the international competition community once again observed the second World Competition Day, in response to a global call by CUTS, on December 05, 2011 (dedicated to the theme, Cartels and their harmful effects on consumer), there is still a need to protect consumers from cartels. This would not only shake up businesses that have flagrantly engaged in exploitative practices, but would also bring the average consumer closer to the process of competition reforms in the developing world, including India.

To reach out to the people with the message that 'healthy competition helps people' and mark the day as significant, competition authorities, CSOs, development organisations such as DFID, UK and individuals around the world organised a range of activities including seminars, road shows, publishing newspaper articles, press releases, press conference on WCD. The cause has been supported by many countries.

The WCD as observed on December 05 allowed a scope for greater discussions and dissemination of the beneficial effects of competition to the average consumers. The date was chosen as on this day in 1970, the UN had adopted the UN Set on Competition Policy, a set of guidelines to countries on developing a competition regime. Now countries and CSOs have appealed to UNCTAD to move for an official adoption of the WCD.

Research shows that developing countries are very prone to cartels, because of the lack of effective competition regimes. Firstly, firms have realised that there is a low possibility of being punished when engaged in cartel activities, given that even in countries with a competition law, sanctions are not too prohibitive. Secondly, the probability of getting caught is very low in many countries, given the absence of competition laws in them or limited provisions thereof.

It is, therefore, that CUTS has been advocating for an International Competition Fund to be created out of fines levied by developed country authorities on international cartels, which have an impact on the developing world. Such a fund can be used to build capacity of competition agencies and advocacy groups in the developing world to be able to take effective action in arresting the malaise.

In order to further strengthen the movement at country level, it is imperative to adopt a National Competition Day to rally people around the idea of creating a healthy competition culture. CUTS has proposed January 13 as the National Day to the Ministry as it was on this day in 2003 when the President had assented to the Competition Act. Consumers have long being victims of exploitative practices of firms – and let's say '**No more**'.

Competition Law Lacks 'Surveillance'

The Government of Bangladesh is to formulate a competition law without keeping the provision of a surveillance level over the market manipulation as the country lacks capacity to do such a tough task.

The draft competition law, which includes formation of a competition commission, said the companies will come under surveillance if they undercut prices, relate conditions in sales of products and unfairly fix minimum prices through a syndicate. If a company crosses 40 percent of the market share it will be allowed to grow further, but it would be made accountable under the law. *(DS, 19.10.11)*

Anti-trust Regulations Weak

The Egyptian Association for Competition (EAC), an NGO that promotes competitive practices, has heavily criticised new amendments to Egypt's anti-monopoly law, saying they fall short of ensuring the independence and effectiveness of the Egyptian Competition Authority (ECA).

Egypt's cabinet approved amending the anti-monopoly law to increase the fine for violations by 500 percent, to at least US$50.8mn compared to US$8.4mn previously. The modifications also include an article exempting the first whistleblower who reports an anti-competition arrangement.

Mona Yassin, Vice Chairman, EAC dismissed the current status of ECA as inactive and needed more powers to be able to properly monitor all mergers & acquisitions in the country and maintain equal grounds for competition for businesses.

(www.english.ahram.org.eg, 29.09.11)

Ecuador Passes Competition Law

Ecuador's President Rafael Correa passed the country's first competition law. The new Regulation and Control of Market Power Law introduces merger control legislation in the Andean state, as well as behavioural penalties for cartels and abuse of dominance.

Lawmakers hope that it will regulate abusive business practices, improve quality and prices, and regulate economic concentration. The legislation also contains specific provisions aimed at the banking and media sectors and will bring "a change in the country's power and property structure".

Ecuador began drafting legislation two years ago. It was one of the few remaining Latin American countries without a competition law. The law will be enforced by a superintendent and a regulatory committee composed of four cabinet ministers. *(GCR, 12.10.11)*

Brazilian Mulls Antitrust Law

The Brazilian antitrust system underwent a modernisation with the approval, by the Brazilian Congress, of a new bill of law on October 05, 2011. The New Law was signed by the President of Brazil on November 30 and will come into force on May 29, 2012.

The main amendments to the current antitrust law comprise: (i) elimination of the current overlaps among three different agencies; (ii) adoption of a pre-merger review regime (as opposed to the current post-merge review); (iii) change in the requirements for submission of transactions to merger review; and (iv) amendment to penalties imposed on participants in cartels and other unilateral conducts.

(www.lawprofessors.typepad.com, 08.12.11)

Germany to Undergo Major Reform

The Federal Ministry of Economics and Technology published a bill for a major reform of German competition law – that is, the eighth amendment of the Act against Restraints of Competition. Once put into effect, the reform will bring about significant changes to the rules on anticompetitive abusive practices, merger control and fine proceedings.

The reform will also give additional powers to the competition authorities, particularly regarding the possible content of cease and desist orders. The bill may yet undergo substantial changes during the legislative process, but it is expected that the amendments to the act will come into effect on January 01, 2013. *(ILO, 08.12.11)*

Final Steps for Malaysia

Malaysia's first Competition Act has begun its final period of consultation before coming into force on January 01, 2012. Malaysia's Competition Commission will run a series of roadshows in the country's major cities which aim to explain the new regulations and hear feedback from business and consumer groups.

The consultations will be informed by new draft guidelines which establish the commission's interpretation of anticompetitive agreements, market definitions and complaints procedures.

The act addresses abuse of dominance and cartel agreements and grants the commission significant investigatory powers, including the ability to demand documents and to undertake searches and raids.

(GCR, 29.11.11)

Law Amends Merger Regime

The Competition Authority launched a public consultation in July 2011 concerning changes to the Slovak merger control regime. The law amending the merger regime was adopted on October 19, 2011 and will take effect as of January 01, 2012.

The new merger control regulation, in line with the European Union (EU) Merger Regulation (139/2004), abandons the dominance test as the substantive test for merger clearance and adopts the substantive impediment of effective competition test. The amendment also revises the thresholds for merger review. *(ILO, 01.12.11)*

Competition Commission has a Daunting Task

– Dithapelo Keorapetse*

Business people are motivated by the desire for bigger profits than their aptitude and the competences of their enterprises would usually provide and try to influence the market, frustrate their competitors and restrict the entry of new businesses as well as force up final product prices to achieve their profit objectives. Some scheming businesses engage in exploitative collaborative endeavours designed to boost the profits of their companies. Such alliances distort free market competition because they decrease productive efficiency and consumer welfare and may result in the misallocation of government resources. Consequently, they hold back growth and development.

> The objective of competition law is to discourage detrimental practices of this kind and ensure that competition is protected in Botswana markets

The objective of competition law, which has been recently enacted, is to discourage detrimental practices of this kind and ensure that competition is protected in Botswana markets. Botswana operates a free market economy, albeit mitigated by developmental state interventions over the years. The country seeks to attract meaningful foreign direct investment (FDI) and foster domestic investment through various financial schemes and other initiatives with a view to diversify its economy from the mining sector and develop a strong private sector. Therefore, free market economy requires some form of competition law.


Livemint

Competition law, also referred to as Antitrust Law, is necessary for Botswana's developing economy. Competition law is a legislation seeking to regulate trade and commerce by averting corruption, unethical business practices, unlawful restraints, price-fixing and monopolies, to promote fair competition and to encourage the production of quality goods and services at the lowest prices. Its primary goal is to protect public welfare by ensuring that consumer demands are met by the corporations and sale of goods and services are at reasonable prices.

Competition law seeks to make businesses compete fairly and it is premised on the belief that free trade system benefits the economy, businesses, and customers alike and forbids several types of restraint of trade and monopolisation.

Competition law is an important method for regulating the conduct of businesses in a free market economy like Botswana. Botswana has embraced the need to further liberalise its economy and has embarked on processes of economic policy reform anchored in market liberalisation, coupled with some degree of privatisation of state owned enterprises/parastatals. Competition law is therefore imperative to ensure not only that the consequent growth of the private sector serves the public interest but also that the efficiency of the state enterprise sector is enhanced.

The growing interest in competition law is reflected in the increasing number of countries that have adopted competition legislation. Many countries have competition laws in effect, many with a competition authority of some kind in place to enforce it. Competition law, especially in the US, articles 81 and 82 of the Treaty of the European Union, as well as the Clayton and Sherman Acts in the US, create duties for undertakings, corporations and businesses not to distort competition in the marketplace.

Cartels are restricted on both sides of the Atlantic and so is the abuse of market power by monopolists, or the substantial lessening of competition through a merger, acquisition, or concentration of enterprises.

* *Botswana Congress Party Youth League Vice President. The article appeared in the* Botswana Gazette *on October 19, 2011.*

ABUSE OF DOMINANCE

Drug Cos Face Monopoly Fines

China's National Development and Reform Commission (NDRC) imposed fines on two pharmaceutical companies for abuse of dominance in the market for blood pressure drugs. The fines are the first significant penalties the authority has issued for breach of competition law.

According to the NDRC, the pharmaceutical companies, Weifang Shuntong Pharmaceuticals and Weifang Huaxin Pharmaceuticals, had engaged in monopoly pricing for the blood pressure and anti-psychotic drug Reserpine, hiking the price per bottle by almost 700 percent once they had cornered the market in the raw material used to make the tablets.

The authority says the price hike on a popular drug was monopolistic and harmed China's healthcare reforms, which are intended to increase access to affordable drugs. *(Mondaq, 26.11.11)*

DG Comp Raids Airlines

The EC conducted unannounced inspections at the office of Brussels Airlines and TAP Portugal, broadening an investigation of alleged anti-competitive practices to look into possible collusion.

The Commission began investigating the two airlines for their code-sharing agreements, but have now expanded the inquiry into a full-scale cartel investigation. Normally code-sharing agreements allow airlines to sell tickets on routes they do not operate – but are operated by their partners – to extend the reach of their services.

But the Commission says the agreement between TAP Portugal and Brussels Airlines, a subsidiary of Lufthansa, allowed the airlines to sell as many seats as they want – including on routes between Portugal and Belgium, where they compete. *(GCR, 20.12.11)*

Italy Punishes Poste

Italy's Antitrust Authority fined postal company Poste Italiane US$50mn for abusing its dominant position, as it begins to take a tougher stance on anti-competitive conduct.

According to the authority, Poste Italiane abused its dominant position and took advantage of its control over the country's postal delivery network to exclude rivals and diminish their ability to compete in the market for guaranteed deliveries.

Poste Italiane is Italy's former incumbent postal operator, and owns and manages the largest delivery network in the country. *(GCR, 19.12.11)*

Coca-Cola Bottlers Settle in Chile

Two Coca-Cola bottling companies in Chile agreed with four rivals to stop using exclusionary practices, bringing an end to an abuse of dominance trial against them. In April 2011, Chile's Competition Tribunal began a trial against Embotelladora Andina and Coca-Cola Embonor, which bottle and sell Coca-Cola in the country, for allegedly abusing their dominant position.

The companies agreed to end exclusivity arrangements, which explicitly forbade stores that sell Coca-Cola to deal with soft drinks of other suppliers. They also committed not to offer rebates aimed at discouraging stores from selling or exhibiting competitors' products.

(www.latinlawyer.com, 25.11.11)

Fuel Sector Inquiry Concluded

The Competition Protection Commission completed an inquiry into the Bulgarian gasoline and diesel sectors. The investigation focused on commercial relationships between participants in the market for the production, import and sale of gasoline and diesel, at both wholesale and retail levels.

The inquiry also aimed to identify legal and administrative barriers to market entry which arose under the Bulgarian legal framework. The Commission found that certain provisions in the agreements between the wholesale market leader and its commercial partners might have retail price maintenance as well as a loyalty effect. *(ILO, 13.10.11)*

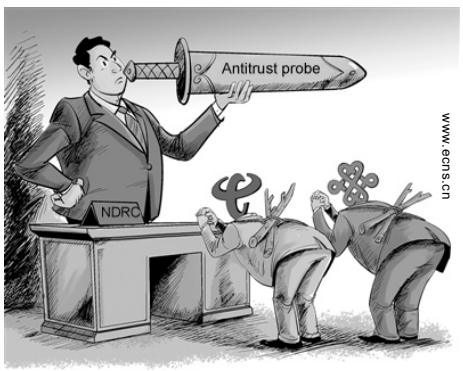
EU Probes Honeywell, DuPont

The EU's antitrust watchdog is probing whether Honeywell and DuPont are restricting competition in the market for new refrigerants for car air-conditioning systems. The European Commission (EC) has received complaints that the two companies entered into "development, licensing and production arrangements" that prevent rivals from developing new refrigerants that fulfill updated environmental standards.

The Commission is also investigating whether Honeywell International Inc. is abusing its dominant position in the production of the new refrigerant, known as 1234yf, and deceived authorities during its evaluation. *(AP, 16.12.11)*

Telecoms Bow to Regulator

China's two largest fixed-line telecoms operators have pledged to overhaul their broadband business in response to an antitrust probe into services costing three times more than in the west but running at a 10th of the speed.



China Telecom and China Unicom had submitted proposals promising to address the regulator's concerns and asking for a suspension of the investigation. The price supervision and anti-monopoly bureau at the NDRC accused the companies of price discrimination against competitors.

The first ever crackdown on the abuse of dominant market position in the sector underlines the antitrust regulator's growing muscle. Previously, the Chinese government has used its four-year-old anti-monopoly law mainly to scrutinise acquisitions of Chinese companies by foreign buyers.

(FT, 03.12.11 & ILO, 15.12.11)

CARTELS

India Examines Jute Monopoly

India's Competition Commission (CCI) began an investigation of an alleged price-fixing cartel in the country's jute industry. The probe was initiated following a complaint from two sugar trade associations who accused two major jute industry bodies of sharing information and excessively raising prices.

The complaint says: "The Indian Jute Mills Association (IJMA) and Gunny Traders Association have cartelised the market for packaging material for sugar, thereby infringing the CCI Act by jointly deciding sale prices and limiting [the] technical development of the industry."

The Jute Packaging Act of 1987 makes jute bags the obligatory packaging for sugar in India. The sugar associations argue this has paved the way for abuse of dominance, as the industry faces no competition from non-jute packaging suppliers.

(GCR, 06.12.11)

Canada Hits Sewer Cos.

The Canadian Competition Bureau announced that criminal charges had been laid against six companies and five individuals accused of rigging bids for municipal and provincial sewer services contracts in the greater Montreal area. Bid-rigging, in which two or more bidders agree among themselves on whether or how to submit bids, without informing the person calling for the bids, is a criminal offence under Section 47 of the Competition Act.

The accused companies and individuals conspired to pre-determine the winners of 37 municipal and provincial calls for tender in 2008 and 2009 related to the cleaning and maintenance of sewers. The bidders who were not pre-determined to win allegedly submitted inflated, token bids in order to mislead tendering authorities into believing that the processes were competitive.

(Mondaq, 30.11.11)

CCPC Slams 'Cheating' Banks

The Competition and Consumer Protection Commission (CCPC) of Zambia has commenced intensive investigations on all commercial banks countrywide which are suspected to have formed cartels to offer uniform interest rates to unsuspecting customers.

Brian Lingela, CCPC Director-in-charge, Consumer and Public Relations said issues of cartels would be a matter of priority for the Commission in 2012 to ensure that any uncompetitive business tendencies were dealt with according to the Competition and Consumer Protection Act (CCPA).

According to Section 9 (1(A) of the CCPA Number 24 of 2010, the law prohibits horizontal agreements between enterprises. *(ToZ, 27.12.11)*

LCD Makers Settle Price-fixing

Samsung Electronics, Sharp and five other makers of liquid crystal displays agreed to pay more than US$553mn to settle consumer and state regulatory claims that they conspired to fix prices for LCD panels in televisions, notebook computers and monitors.

The settlement is the latest arising from lawsuits alleging the creation of an international cartel designed to illegally inflate prices and stifle competition in LCD panels between 1999 and 2006, affecting billions of dollars of US commerce.

The accord follows a settlement in December 2011 by eight companies, including Samsung and Sharp, to pay US$388mn to settle litigation by direct purchasers of the LCD panels.

(Reuters & FE, 28.12.11)

Washing Powder Firms Accused

French competition watchdog imposed one of the biggest fines in its history on three of the world's largest consumer goods groups after it found that they fixed the price of laundry soap in the country for several years.

The Autorité de la Concurrence fined Procter & Gamble, Henkel and Colgate-Palmolive a total of US$470m for co-ordinating price differences and commercial strategies in French stores between 1997 and 2004.

Unilever escaped a fine as it had been the first to seek leniency, which "opened the door" for an investigation to take place. *(FT, 09.12.11)*

Dutch Watchdog in Phone Raid

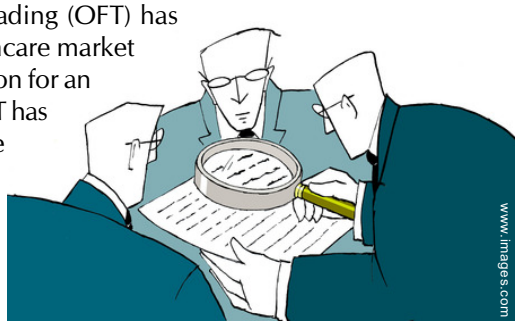
The three largest mobile phone operators in the Netherlands have been visited by the state competition authority in an investigation into possible cartel practices in mobile services.

The offices of KPN, the largest Dutch phone company, as well as rivals Vodafone and Deutsche Telekom's T-Mobile were visited by the Netherlands Competition Authority (NMa) to investigate alleged cartel practices in the mobile telecoms industry. Five KPN employees were questioned as part of the investigation.

The NMa had been specifically investigating "concerted practice with regard to mobile telecommunications offerings on the Dutch consumer market", as well as "the division of independent sales channels".

(FT, 07.12.11)

OFT to Review Private Healthcare



The UK's Office of Fair Trading (OFT) has referred the private healthcare market to the Competition Commission for an in-depth investigation. The OFT has found several issues in the market that "prevent, restrict or distort competition".

Prior to the referral, the OFT conducted a market study of the private health sector in the UK. The report raised concerns regarding customers' access to information on competing offers, barriers to new entrants and geographical pockets with a high concentration.

The OFT says patients, practitioners and health insurers cannot easily compare information on the quality and costs of private healthcare services.

(www.cityam.com, 09.12.11)

FINES & PENALTIES

ECJ Cuts Quinn Fine

The European Court of Justice (ECJ) reduced a US$12mn fine imposed by the EC on three companies in the Quinn Group for their roles in a cartel in the acrylic glass sector. The three companies, who manufacture plastics used in household appliances, had their fines reduced to US$11mn after the court agreed that the commission had not met its burden of proof when it found the companies' cartel involvement was "single and continuous".

The companies were three of seven fined a total of US$448mn in May 2006 for operating a glass cartel. The parties were found to have fixed prices and exchanged information between April 1998 and August 2000.

(www.rte.ie, 01.12.11)

Russia Hits Oil Cos.

Russia's Federal Anti-Monopoly body (FAS) fined the country's top crude producer Rosneft and mid-sized oil company Bashneft a combined US$80mn for breaching anti-monopoly regulations.

www.images.com

Federal watchdog FAS fined Rosneft US$56.42mn and Bashneft US$778.2mn. Russian authorities have been tightening supervision of oil companies amid rising oil products prices, a sensitive issue for Russia's growing number of car owners, with presidential elections due on March 04, 2012.

The FAS hit Russian companies with heavy fines in 2009 and 2010 for oil product price fixing, though the fines were reduced or annulled after court challenges. *(Reuters, 26.12.11)*

Poland Slams Telecom Cos.

Poland's Office of Competition and Consumer Protection (UOKiK) fined four mobile television companies a total of €25mn for colluding to block a rival from launching competing services.

UOKiK found that Polkomtel, Polska Telefonia Cyfrowa (TPSA), PTK Centertel and P4 had intentionally formed an alliance to challenge Info-TV-FM's bid to reserve the frequency needed to provide mobile phone television.

Having lost the bid, the telecoms companies continued to collude together in order to undermine Info-TV-FM and damage its reputation among consumers by using blogs and internet forums to publicly question the company's reliability. *(GCR, 24.11.11)*

Penalty for Privacy Breaches

Businesses breaching EU privacy rules will face fines of up to five percent of their global turnover under sweeping proposals to be unveiled in January 2012.

In the first significant update of data protection legislation since 1995, companies found to have mishandled any personal data they hold will face the highest levels of fines, which could extend to billions of euros for large multinationals.

The measures are being finalised within the EC. The proposals would bolster significantly the EU's powers on combating data protection breaches, such as when companies sell customer data to third parties without authorisation or fail to adequately protect information held by social networks and "cloud computing" services. *(FE, 06.12.11)*

Punishment on Late Submission

The Serbian Competition Commission has imposed, for the first time, a penalty for failure to adhere to its procedural rules. The Commission requested that Veropoulos doo, a grocery retailer chain, submit information relevant for the assessment of the notified acquisition of Delta Maxi by Delhaize.

Veropoulos missed the deadline set by the Commission for the submission of the requested data by 53 days. As a consequence, the Commission imposed a fine on Veropoulos of US$34,410.

The Commission approached all market participants, requesting different market information. All companies save for Veropoulos replied to the commission within the set deadline. As a result, Veropoulos was fined. *(ILO, 22.12.11)*

Nikkon Isolated Swiss Market

Switzerland's Competition Commission (Comco) has fined the Swiss subsidiary of camera company Nikon US$13.2mn for restricting parallel imports of its products. Comco says Nikon "isolated the Swiss market" by banning domestic suppliers from purchasing Nikon products from outside the country and simultaneously preventing foreign suppliers from exporting products to Switzerland.

Comco conducted dawn raids at Nikon in March 2010, in which it discovered emails discussing parallel import policy and put pressure on suppliers to comply with export restrictions. Nikon denies anti-competitive activity and will refer the decision to Switzerland's Federal Administrative Court. *(GCR, 16.12.11)*

Apple Sued Over Protection Plans

Apple has been fined US$1,144,440 by Italy's competition authority for selling consumers protection plans for its products without adequately informing them of a statutory two-year warranty.

The Antitrust Authority said Italy's consumer code gave buyers the right to two years of free care for their products, but three Apple divisions in Europe had been less than clear about this in information given in Apple stores in Italy and on its website.

Instead, Apple had emphasised its own one-year guarantee for its products and had been selling extended protection through its AppleCare Protection Plan to buyers, meaning the protection bought overlapped with the extra year provided by law.

Apple Italy, Apple Italy Retail and Apple International Sales were fined for failing to adequately inform consumers about the two-year guarantee and inducing them to sign up for overlapping protection plans as a result. *(FE, 29.12.11)*

Don't Make Amazon a Monopoly

–John Gapper*

Financial Times

Whoever thought up Amazon's latest idea for squeezing other retailers – offering money off to people who scanned prices in US stores with its smartphone app and then bought the goods on Amazon – deserves an award for bad timing

Amazon's US$5 offer is a textbook example of why the Supreme Court changed US antitrust laws four years ago to discourage free-riding by discounters. It has caused outrage among retailers and politicians at a time when Amazon needs all the political support it can get.

While Amazon is blithely using its rivals' property as a storefront, it wants antitrust authorities in Europe and the US to help it control the ebook market. The EC and the Department of Justice have launched twin probes, provoked by deals under which publishers set prices for their ebooks rather than letting Amazon, Apple and Barnes & Noble do so.

The chances of the EU abolishing such "agency" deals as an illegal form of price-fixing are significant but it should hold back. As the US accepts it can be good for consumers if suppliers price their products as they wish rather than giving a distributor free rein.

Amazon is eager to discount e-books on the Kindle in the same way that it discounts everything else but has been stymied by publishers who fear it will eliminate all e-reader competition.

Amazon's US$5 bonus to customers, who entered stores, scanned the prices and left empty-handed did not apply to books. It has still riled bookstore owners and authors, including Richard Russo, who wrote in the New York Times: "Maybe Amazon doesn't care about the larger bookselling universe because it's simply too big to care."

That's unfair on Amazon. In many ways, it has not only shaken up the publishing industry for the better – allowing authors to bypass traditional publishers and sell directly to readers – but has helped publishers to make a smoother transition to the digital world than, for example, music companies.

It has innovated with the Kindle, providing a seamless way for readers to buy ebooks, which aids publishers. The fact that book stores no longer control distribution, and that anyone can publish an ebook at a higher royalty rate than the big publishers offer is also beneficial – two of this year's Amazon bestsellers were self-published novels.

Amazon lets anyone who self-publishes an ebook on the Kindle set a list price, but reserves the right to discount. It wants to do the same with big publishers – obtaining their books at a wholesale price and then discounting popular ones in order to draw more people to its service.

Yet there is good reason not to take Amazon's side in the antitrust case. Minimum price deals between suppliers and distributors are presumed to be illegal in the EU and those on books have mostly been eliminated – the UK's Net Book Agreement was struck down in 1997. But such arrangements have been examined case by case in the US since 2007.

Amazon's US$5 discount offer is precisely the kind of behaviour cited by the Supreme Court in deciding that it was not always in consumers' interests to stop suppliers insisting on minimum prices. Otherwise, as a group of economists argued, "a customer may take advantage of one retailer's informed sales staff [and] convenient locations" and then buy from a low-cost discounter.

The ebook industry is such a case. The best thing for society as a whole is to encourage vibrant and open competition, with millions of readers, thousands of authors, hundreds of publishers, and plenty of outlets, not only physical but virtual. Assisting Amazon to become the monopoly ebook interface between author and reader would not be.

If some publishers want to set ebook prices above the level Amazon prefers, that is fine providing they do not collude to fix prices and there are alternatives. There is little danger on the latter front – anyone can now become a publisher and new ones are springing up all the time. Amazon has itself become a publisher and displays its titles generously in the Kindle store.

Minimum prices deals helped to erode Amazon's initial dominance in ereaders by encouraging competition from B&N and others. Even so, the Kindle still accounts for 60 percent of ebook sales. It is not the job of antitrust officials to hand Amazon back its monopoly.

* *FT Columnist. Abridged from an article that appeared in* The *Financial Times, on December 14, 2011.*

Australia Clears Gas Merger

The Australian Competition and Consumer Commission (ACCC) approved gas producer and distributor Arrow Energy's US$530mn acquisition of rival Bow Energy, despite concerns about rising gas prices.

The ACCC acknowledges the risk that Australian consumers are likely to pay higher gas prices in the future, but says they are likely to increase with or without the merger.

Australian gas producers and distributors are increasingly exporting their gas to countries in Asia where gas prices are rising rapidly, rather than selling it on the domestic market. The ACCC says prices to domestic users may rise as a result, but concluded that the merger between Bow Energy and Arrow Energy is unlikely to affect the process. *(GCR, 02.12.11)*

Anglo takes Control of De Beers

Anglo American is to pay the Oppenheimer family US$5.1bn to take control of De Beers, the world's biggest miner of diamonds. The deal will end the role of South Africa's leading business dynasty in a venture which transformed the crystallised form of carbon – one of the earth's most common elements – into a global badge of opulence.

The UK-listed mining group plans to buy a 40 percent stake in De Beers from the Oppenheimers, taking its stake as high as 85 percent. Cynthia Carroll, Anglo American's chief executive, argued that the deal took advantage of growing demand for diamonds in China, India and other emerging markets, making it a central element of its portfolio alongside iron ore, copper and platinum. *(FT, 05.11.11)*

SABMiller-Foster Bid Approved

Australia approved global brewer SABMiller plc's bid to acquire the Australian beer major, Foster's Group, on condition that the key operations of the company would remain in the country.

London-based SABMiller agreed to various undertakings, under which the management of Foster's operations will continue to be located in Australia under SABMiller ownership.

Besides, SABMiller would not relocate any of Foster's existing brewing facilities offshore to produce beer for Australian domestic consumption and would continue to invest in Foster's iconic Australian brand portfolio.

These undertakings recognise the significance of Foster's to the Australian economy, and to its community, and support Australian jobs. *(BL, 25.11.11)*

SA to Buy Shriram Capital

Shriram Capital is planning to buy back Sanlam Group's 26 percent stake in two insurance JVs in India – Shriram Life Insurance and Shriram General Insurance – to comply with the sectoral limits on FDI in the insurance sector imposed by the Indian government.

The buy-out of Sanlam's direct stake in these two ventures is part of the two step process aimed at securing regulatory approval for Sanlam's proposed ₹1,244 crore investment in Shriram Capital which would otherwise cause the direct and indirect foreign holding in the insurance ventures to breach the sectoral cap.

Shriram Capital will also increase its stake in Shriram Transport Finance from 21 to 25-26 percent. *(BS, 14.12.11)*

GSK Agrees Drug Settlement

GlaxoSmithKline has reached a record US$3bn settlement in principle with the US government over aggressive sales and marketing practices of blockbuster medicines including its lung treatment Advair and the diabetes drug Avandia over more than a decade.

The agreement, already signalled in a provision at the end of 2010, related to compliance, marketing and selling tactics of at least nine medicines, as well as wider litigation dating back to the 1990s.

The cash settlement, which is still subject to negotiation and expected to be finalised by the third quarter of 2012, would be the largest agreed at one time by a pharmaceutical company, beating Pfizer's payment of US$2.3bn to US regulators in 2010. *(FT, 04.10.11)*

Revitalisng Japanese Economy

Tokyo Stock Exchange, operator of Japan's largest share-trading platform, will merge with the Osaka Securities Exchange, its domestic rival, creating Japan's largest exchange group and bolstering the TSE's position as the third largest in the world by market capitalisation of company listings.

The proposed combination, expected to be completed by January 2013, was described by the pair as "a step towards the revitalisation of the Japanese economy". The combined value of stocks listed on the exchanges would be about US$3,600bn, trailing transatlantic exchanges operators NYSE Euronext at US$12,000bn and Nasdaq OMX Group at nearly US$4,000bn, based on data at the end of October 2011. *(FT, 23.11.11)*

Sony Ends Ericsson Venture

Sony is to take full ownership of its Sony Ericsson joint venture with Ericsson in a move designed to bolster its position in the mobile handset market. The deal will involve Sony paying its former partner US$1.36bn in cash for its share.

It also marks a definitive exit from the mobile handset manufacturing business for Ericsson – which was once a leading player in the sector – and will allow the Swedish company to concentrate on its network gear business.

It is likely that the Sony Ericsson brand name will disappear in the move, which comes almost exactly 10 years after the 50:50 joint venture was created. Under Sony's sole ownership, Sony Ericsson will move away from making older-style feature phones and concentrate on smartphones. *(FT, 28.10.11)*

Nippon Gets Nod for Sumitomo

Nippon Steel Corp., Japan's largest steelmaker, received clearance for its US$8.8bn all-share purchase of Sumitomo Metal Industries Ltd. to create the world's second-biggest steelmaker.

The merger will be completed by October 2012. Nippon Steel and Sumitomo Metal want to combine to counter intensifying competition from Asian and European rivals in what may be the country's largest non-bank takeover. That dovetails with government efforts to encourage takeovers to boost growth in the world's third-largest economy.

It is a positive move as Japanese companies face rising global competition. It is necessary to have an industrial policy to push major companies to consolidate so they can expand economies of scale. *(BL, 14.12.11)*

World's No. 1 Exchange Merger

Deutsche Boerse won US antitrust approval to buy NYSE Euronext in a US$9bn deal to create the world's No. 1 exchange operator, but the transaction still faces serious regulatory headwinds in Europe.

The US Department of Justice (DoJ) said that the deal won US approval on condition that a Deutsche Boerse subsidiary, the International Securities Exchange, divest its 31.5 percent interest in Direct Edge.

Deutsche Boerse and NYSE must also continue to provide some services, under the Justice Department approval, to Direct Edge, the fourth-largest US stock exchange operator, behind NYSE Euronext, Nasdaq OMX and BATS Exchange. NYSE Euronext shareholders have already approved the deal. *(Reuters, 22.12.11)*

Education Software Gets Nod

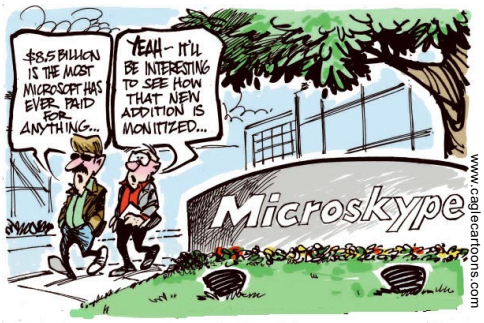
The US DoJ has approved a US$1.8bn merger between education software provider SunGard Higher Education and rival Datatel. Private equity fund Hellman & Friedman, which owns Datatel, will now be allowed to buy SunGard Higher Education from its parent company SunGard Data Systems.

The proposed combination of Datatel and SunGard Higher Education has cleared DoJ review and the companies are preparing to close the transaction. Both companies provide higher education institutions such as colleges and universities with management software used to organise student data.

The DoJ opened an in-depth review of the merger and issued a second request for information in October 2010. But it did not find any competition restrictions and cleared the transaction without conditions. *(GCR, 14.12.11)*

Microsoft Acquires Skype for US$8.5bn

Microsoft is set to win Brussels approval for its US$8.5bn acquisition of Skype, the online telephone service, signalling improved relations with European competition authorities.



Joaquín Almunia, EU competition commissioner, is to clear the proposed deal in spite of complaints from would-be rivals about Microsoft "bundling" the software with Windows.

It follows approval in June from the US Federal Trade Commission, which was satisfied that there was sufficient competition from rivals such as Google Talk. Competition reviews are still under way in Russia, Ukraine, Serbia and Taiwan.

Microsoft argued that putting together Skype, which has 145m active users in an average month, with users of its existing devices and software platforms would boost the attractions of its products. *(FT, 07.10.11)*

Coal Units Tie-up

China's Yanzhou Coal and Australia's Gloucester have agreed terms for a US$2.1bn merger that will see the creation of one of the largest coal groups in Australia.

Yanzhou will merge its Australian subsidiary, Yancoal, with Gloucester Coal, which is majority owned by Noble Group, the Hong Kong-based commodities trader. The deal "reflects the long-term strategy it has been working on together with the Gloucester board to create a leading Australian listed coal supplier. The deal is the second-biggest Chinese acquisition in Australia. *(FT, 24.12.11)*

Asia M&As Bounces Back

A strong recovery in Asia-Pacific mergers and acquisitions has pushed deal making activity ahead of the first 10 months of 2010 and may make 2011 the second-strongest year ever by value as sustained strength within the region makes up for a big fall in investment from outside.

Figures show that the value of M&A deals in the region in the year to mid-November was US$567bn, well ahead of the US$510bn recorded for the same period in 2010, when US$642bn of deals were completed in the full year – the second-highest ever.

The industry is unlikely to approach the record full-year Asia-Pacific total of US$727bn, achieved in 2007, when M&A volumes peaked worldwide. *(FT, 21.11.11)*

Airbus Criticises US on Boeing

Europe's Airbus accused the White House of derailing open competition by helping Boeing win a record aircraft deal in Indonesia as details emerged of a behind-the-scenes struggle over jobs and airplane sales worth almost US$22bn.

The planemaker's sales chief said lobbying over the deal on behalf of President Barack Obama had demonstrated double standards on free-market competition amid an ongoing row between Washington and Europe over aircraft subsidies.

Obama called the deal a "win-win" for US workers and Asian consumers and said his administration and the Ex-Im bank played a key role in facilitating the sale. Analysts say a deal between Lion Air and Airbus would have been a surprise since it has an all-Boeing fleet and Airbus has previously tried and failed to win its business. *(Reuters, 03.12.11)*

AT&T Wins Approval for Spectrum Deal

– Paul Taylor

Just days after AT&T withdrew its US$39bn bid for Deutsche Telekom's T-Mobile US unit, the US telecommunications group has won regulatory approval for its US$1.93bn purchase of wireless spectrum from Qualcomm, the US mobile phone chipmaker

The Federal Communications Commission announced that it had approved the deal – first announced a year ago – subject to certain minor conditions designed to preserve competition.

The purchase was approved by a three-to-one vote by the FCC's commissioners and means AT&T and Qualcomm should be able to close the deal by the end of this year. AT&T plans to use the spectrum to support its roll-out of a new 4G network based on LTE technology.

Julius Genachowski, the FCC chairman, had signalled the likely approval of the Qualcomm deal last month at the same time as he indicated his serious concerns about the proposed T-Mobile US purchase. AT&T, which also faced opposition to the T-Mobile US deal from the DoJ which sued to block it on antitrust grounds, subsequently withdrew its bid.

Like other US mobile operators, AT&T needs more spectrum because of the rapid growth in usage of data-hungry smartphones like Apple's iPhone.

While AT&T was still mulling over the future of the T-Mobile US bid, Verizon Communications, its main rival, announced plans to acquire valuable spectrum from a group of cable TV companies in two deals valued together at almost US$4bn. Those deals, which are designed to help Verizon Wireless accommodate users on its new LTE network, also require FCC approval.

Qualcomm put its spectrum holdings up for auction after deciding to abandon its wireless FloTV mobile television operations. The spectrum which is in the so-called 'beachfront' 700 MHz band is particular valuable because it covers more than 300m people across the US and is in a band that is particularly suitable for downloading mobile content to smartphones, PC tablets and other mobile devices.

While approving the deal, the FCC voiced some competitive concerns about the deal.

"Post-transaction, AT&T would hold a significant proportion of the available spectrum suitable for the provision of mobile voice or broadband services, particularly below 1 GHz spectrum, that has technical attributes important for other competitors to meaningfully expand their provision of mobile broadband services or for new entrants to have a potentially significant impact on competition," the commission said in its order.

As a result, the FCC imposed several conditions including requiring that AT&T's use of its new spectrum does not stop rivals from using neighbouring 700 MHz spectrum for broadband services and limiting AT&T's ability to use the Qualcomm spectrum in a way that would deprive rivals of the benefits of the FCC's roaming rules.

In response, AT&T said it welcomed the deal's approval and said expects to close the transaction in the coming days. "This spectrum will help AT&T continue to deliver a world-class mobile broadband experience to our customers," Bob Quinn, senior vice-president of federal regulatory issues at AT&T, said in a statement. "We appreciate the FCC chairman, the commissioners and their staff for completing its review before the holidays."

* *The article appeared in* The Financial Times*, on December 23, 2011.*

Alstom Fined in Bribery Probe

Alstom has been ordered to pay US$40m by Switzerland's attorney-general for negligently failing to stop bribery by some employees, in the most significant ruling yet in the international criminal probe into alleged systemic corruption at one of France's leading manufacturers.

In all the three cases, involving contracts in Latvia, Malaysia and Tunisia, Alstom was found to have used "consultants who used some of the money for illegal purposes, whether to influence the award of contracts or to pay kickbacks to employees".

The probe is part of a growing mosaic of corruption investigations of European industrial groups, including one that resulted in €1bn in fines being handed out to Siemens.

Alstom said it had "constantly stated that the company had never organised, authorised or allowed any act of bribery or any breach of the rules and current laws". *(FT, 23.11.11)*

Corporate Responsibility Improves

Only one in 20 of the world's largest companies now fail to report on corporate responsibility (CR) activities, but most of those that fail to do so are based in the US, according to a survey by KPMG. The study found that among 250 of the biggest global companies, 95 percent produce CR reports, with North America accounting for two-thirds of those that do not.

Although the overall level of CR reporting has increased significantly since the previous exercise in 2008, less than half of these 250 companies said they gained financial advantage from doing so, for example through achieving cost savings or gaining new sales of "green" products.

The KPMG study, which looked at the 100 largest companies in 34 countries, found that 83 of the US companies included in the survey now report CR activities, up from 74 in the 2008 study. *(FT, 07.11.11)*

Boosting Corporate Governance

Japan plans to strengthen financial regulations in areas such as merger and acquisition disclosure and corporate governance in the wake of accounting scandal at Olympus, which has shaken investor confidence in the market.

The Financial Services Authority would work with the country' stock exchanges to prevent the kind of 'dishonest' practices that occurred at Olympus.

The measures could include bolstering M&A disclosure, the role and independence of directors at Japanese companies and external auditing procedures. *(FT, 17.12.11)*

Apologised for Mislabelling

Wal–Mart sold pork that was falsely advertised as organic, according to the local government in Chongqing. 13 of the company's stores have been temporarily closed and some of its employees have been arrested.

Wal–Mart has taken steps to ensure no recurrence of the mis-selling, and has apologised to customers affected. The revelation came after a period where there had been several incidences of pork products contaminated with an illegal additive, a fact which would have increased the appeal of the 'organic' label. As things currently stand in China, there is no reliably robust organic certification system.

China has been one of the Wal–Mart's fastest growing markets, with nearly 350 stores across the country and new stores opening at a rapid rate. *(BR, 11.10.11)*

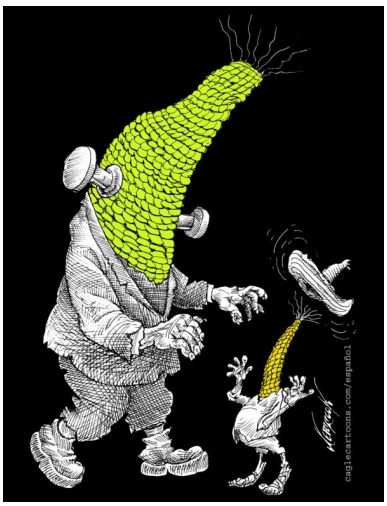
EDF Fined for Illegal Spying

A French court has found EDF and Kargus, the security firm it employed to carry out the work, guilty of spying on Greenpeace anti-nuclear campaigners. Activities included hacking computers owned by the group.

EDF said that it had employed Kargus to monitor the group but that the company had exceeded its brief. It has said that it intends to appeal the verdict. The court fined EDF 1.5 million euros and ordered it to pay compensation to Greenpeace.

Two EDF employees, Pascal Durieu and Pierre-Paul Francois, heads of the company's nuclear security, were given jail sentences for their part in commissioning the spying. Two employees from Kargus were also jailed.

The case, although arising from actions taken in 2006, highlights how high the stakes are for a number of companies committed to nuclear power as the post-Fukushima backlash plays out. *(BR, 11.11.11)*



Monsanto Sued for Bio-piracy

The Government of India is planning to sue Monsanto for contravening the country's Biological Diversity Act. The company is accused of having taken an indigenous aubergine species and used it to create a genetically modified version without permission.

It is legal in India to develop GM crops from indigenous crops, but in this specific case the government had put down a moratorium on the use of aubergines following negative reaction from farmers last year.

However, the case touches on a wider issue of the exploitation by multinationals of local resources and knowledge. Farmers argue that they have developed the breed of aubergine used locally over generations and the company is in effect stealing this development and then creating an end result which it will protect with its own patent. *(BR, 04.10.11)*

Investment Incentives and the Global Competition for Capital

– Kenneth P Thomas*

Investment incentives are a pervasive feature of global competition for foreign direct investment (FDI). They are used by the vast majority of countries, at multiple levels of government, in a broad range of industries. They take a variety of forms, including tax holidays, grants and free land. Politicians, at least in the United States, may have good electoral incentives to use them.

The Philippines has been estimated to spend one percent of GDP on "redundant" investment incentives; Vietnam's incentives were estimated at 0.7 percent of GDP in 2002; and US state and local governments spend approximately US$46.8bn per year on location subsidies.

Like all subsidies, investment incentives tend to be economically inefficient and make income distributions more unequal. At times, they subsidise environmentally harmful projects, such as building a shopping centre in a wetlands area. Incentives are not always a bad policy, but their use requires taking potential problems into consideration.

Bargaining over incentives is characterised by major information asymmetries, leading to the likelihood of a government paying more than needed to attract an investment. Companies often conduct an incentives auction even when they have already made their location decision, a clear sign of rent-seeking behaviour.

There are numerous cases in which developing countries have paid much higher incentives than those paid for similar investments in developed countries, reducing funds for infrastructure and education.

Given the potential problems and risks of using incentives, many analysts have sought policies to control them. The most comprehensive approach is embodied in EU regional aid policy, which sets a maximum level of subsidy for every region in the EU, with the highest subsidies allowed only in the EU's poorest regions; many richer areas are banned from providing regional aid to any company.

Outside the EU and several US states, information on incentives is only as good as a country's press corps. Australia and Canada collect reports on incentives from their states and provinces, but do not make this data public. Thus, transparency is the first step to reform in most of the world.

Beyond transparency, other reforms can make incentive policy more effective. This would include banning relocation subsidies, adopting job quality guidelines and "clawback" policies to reclaim incentives from firms that do not meet their investment or job creation commitments, requiring linkages with local enterprises, and adopting regional incentive control rules like those in the EU.

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* *Associate Professor and Research Fellow at University of Missouri-St. Louis. 'Investment incentives and the global competition for capital,' Columbia FDI Perspectives, No. 54, December 30, 2011. Reprinted with permission from the Vale Columbia Centre on Sustainable International Investment (www.vcc.columbia.edu).*

NEWS BRIEFS

White House Seeks Investment

The White House is considering a plan aimed at attracting at least US$1tr of new investment from abroad over the next five years. But that target could prove difficult to reach, given that the sluggish US economy may hold smaller potential payoffs to global investors.

The administration is trying to change the sentiment with a new effort to encourage foreign investors to take a second look at the US market. The State Department is directing its economic staff in embassies around the world, long focused on helping American companies win export business, to help find companies interested in putting money into the US. *(WSJ, 18.10.11)*

China Shifts Foreign-Investment Focus

China has reshuffled a list of key sectors where it wants to attract foreign investment, downgrading traditional industries like autos and putting more emphasis in emerging fields such as new energy sources.

The changes reflect a broader shift in the country's economic strategy, as leaders seek to shift away from dependence on heavy manufacturing and toward higher-tech and more environmentally friendly industries.

The National Development and Reform Commission, China's top economic planning agency, publishes a "foreign investment catalogue" every few years that divides investment into broad categories: encouraged, allowed, and restricted.

The catalogue reflects broad guidelines to be followed by other state agencies. Specific policies to encourage foreign investment, such as preferential tax structures or streamlined approval processes, are in the hands of various government agencies and local governments. *(WSJ, 31.12.11)*

Warning over UK's 4G Spectrum

The auction of spectrum in the UK for next-generation mobile services in 2012 could struggle to preserve competition in the market as well as raise money. The high costs paid by mobile operators to acquire spectrum for the previous generation of 3G services affected the competitive landscape in many markets around the world and hindered the roll-out of 3G network infrastructure.

The findings suggest the UK could face obstacles in its goal to preserve competition in the mobile market among the four main operators. Ofcom, the regulator, has committed to auctioning the spectrum in 2012 to broadcast 4G services, which will be needed to meet the demands of customers for data-hungry services such as video and the intent. *(FT, 11.12.11)*

Amendments to the Maritime Code

The Norwegian Ministry of Trade and Industry proposed amendments to the Maritime Code regarding casualty investigations. Changes include an increased investigative duty on the Accident Investigation Board, a duty to secure evidence after an accident for anyone involved and a 12-month time limit for issuing casualty reports.

The amendments implement EU Directive 2009/18/EC and are expected to be adopted in early 2012. The amendments include a notable expansion of the type of accidents that the board will be required to investigate.

All accidents defined as 'very serious maritime accidents' must be investigated when involving a Norwegian vessel, occurring in Norwegian waters or when they have an impact on significant Norwegian interests. *(ILO, 21.12.11)*

Harmonising Transport Insurance

The Transport Insurance Order (2011-839) was published in the Official Journal in France. It is based on Section 77 of the Law on Banking and Financial Regulation, which empowers the government to amend Title VII of Book I of the Insurance Code, notably with regard to the insurance of non-marine risks in fields such as aviation and aerospace.

The new order updates the rules applicable to transport insurance. Therefore, the reform aims not only to harmonise the insurance legal regime for transported goods, but also to compensate for the lack of rules specifically dedicated to aviation and aerospace risks.

The reform is designed to increase the international competitiveness of the French insurance legal regime. *(ILO, 18.10.11)*

Debut of New Telecommunications

Telecommunications is one of the most dynamic and rapidly growing sectors in India. To address the needs and concerns of this sector, the first national telecommunications policy was issued in 1994, followed by a second policy in 1999. The Department of Telecommunications (DoT) has recently issued the draft National Telecommunications Policy (NTP) 2011.

The draft NTP 2011 issued by the DoT aims at providing the people of India with secure, reliable, affordable and high quality converged telecommunication services; anytime, anywhere. Therefore, with this aim in mind, it has many more objectives and forward-looking strategies. *(ILO, 16.11.11)*

Expectations for Mining in Brazil

The legislature recently proposed a new regulatory milestone for mining, based on studies and understandings between different sectors of the government and organisations representing the mining industry in Brazil.

Aiming to encourage investment and boost the country's economic growth, the main objectives of this new regulation are to promote the social and technological development of the industry; encourage a better approach to regulation and resource management; and allow for sustainable exploitation.

In the Constitution, mineral resources are classed as assets owned by the federal government, which therefore has the power to grant rights related to such resources to Brazilian citizens or companies constituted under Brazilian law. *(ILO, 24.10.11)*

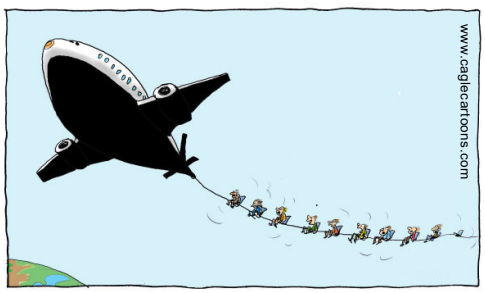
Land Bill Boosts Indonesia

Indonesia's Parliament passed land reform legislation that paves the way for large-scale infrastructure investment aimed at bolstering efforts to achieve higher growth in the emerging democracy.

The legislation should enable the government to purchase land needed for public infrastructure projects which have been held up by disputes with private owners.

The bill was seen as a major test of the nation's commitment to bureaucratic reform and an essential measure to ease the infrastructure shortages that are restricting the country's economic development. *(FT, 16.12.11)*

Assessing the Civil Aviation Act



The Department for Transport of UK has published a memorandum to the Transport Select Committee entitled "Post-Legislative Assessment of the Civil Aviation Act 2006". The memorandum provides a preliminary assessment of the effects of the Civil Aviation Act 2006, as part of the government's commitment to scrutinise the effects of legislation.

The Act seeks to promote sustainable aviation and the protection of passenger interests, and incorporates a number of standalone measures. It contains provisions relating to noise, vibration and emissions from aircraft and the regulatory powers of aerodromes, including powers to establish noise control schemes. It also addresses matters relating to public airport companies, policing, health and the Air Travel Trust Fund. *(ILO, 26.10.11)*

Checking Basel III Compliance

Teams of global regulators will fan out across the world from next year to ensure that new tougher capital and liquidity standards are enforced correctly, the Chairman of the Basel Committee on Banking Supervision said.

The Basel group, made up of regulators and central bankers from 27 big financial centres, sets global standards for bank safety and soundness that are then enforced by national regulators. But prior agreements have not always been honoured. Most prominently, the US has not yet fully implemented the 2004 Basel II agreement.

The committee will send "global review teams" to leading regulators around the world to check whether – and how – they are implementing 2010's landmark Basel III reforms.

(FT, 17.11.11)

Regulators to Audit Futures Cos.

Federal regulators have ordered an audit of every American futures trading firm to verify that customer money is protected, a move that comes after roughly US$600mn in client funds were discovered to be missing from MF Global, the bankrupt brokerage firm once run by Jon S Corzine.

The Commodity Futures Trading Commission, the federal regulator searching for the missing money at MF Global, will audit many of the nation's largest futures commission merchants, Exchanges like the CME Group will examine smaller firms to ensure they are keeping customer money separate from company money, a fundamental rule on Wall Street. *(FE, 11.11.11)*

Rating Agencies Face Shake-up

Sweeping changes to regulation of credit ratings are to be proposed by Brussels that would deal a blow to the business models of the big three agencies that issue them. Under one of the most contentious proposals, European regulators would be given powers to suspend credit ratings of countries undergoing bail-outs.

Among the changes, Brussels is also seeking to force issuers of financial products in Europe to regularly change the ratings agency they are using, in a bid to open up competition and avoid conflicts of interest.

The credit ratings agency engaged should not be in place for more than three years or for more than a year if it rates more than ten consecutive rated debt instruments of the issuer.

(FT, 21.10.11)

Brussels Extends Bank Aid Rules

European banks will be given lighter treatment for seeking state capital as a result of the sovereign debt crisis and will pay smaller fees for guarantees from cash-strapped countries under changes to Brussels rules.

About US$2.05tn worth of taxpayer support has been extended to the European financial sector since 2008, with about three-quarters of this sum going to state guarantees for wholesale bank funding.

This support is expected to rise sharply, putting renewed pressure on an EU state aid regime that is designed to ensure a level playing field by forcing banks to restructure and pay back taxpayers in return for state support.

(FT, 01.12.11)

Financial Sector Hit by Regulation

Financial services companies worldwide are being hit with, on average, 60 regulatory changes every working day, a 16 percent increase over 2010 and with no let-up in sight. Regulators around the world announced 14,215 changes in the 12 months to November, up from 12,179 for the same period a year earlier, according to research by the Thomson Reuters governance, risk and compliance unit.

The study tracks everything from the passage of laws and short-selling bans to the issuance of consultation papers and speeches that contain policy announcements; in short, everything compliance departments are expected to keep abreast of.

(FT, 09.12.11 & 10.12.11)

Watchdogs that Didn't bark

Four years after the banking system nearly collapsed from reckless mortgage lending, federal prosecutors have stayed on the sidelines, even as judges around the country are pointing fingers at possible wrongdoing.

The federal government has pressed few criminal cases against major lenders or senior executives for the events that led to the meltdown of 2007. Finding hard evidence has proved difficult.

Banks in the past two years have foreclosed on the houses of thousands of active-duty US soldiers who are legally eligible to have foreclosures halted. Refusing to grant foreclosure stays is a misdemeanor under federal law. *(BS, 22.12.11)*

Framework to Prevent Lehman-like Crisis

Global banking, securities and insurance regulators have proposed a framework for supervising financial conglomerates to ward off a Lehman-like crisis.

The objective of the framework is to close regulatory gaps, eliminate confusion on entities that fall in the interface of two or more regulators and effectively supervise unregulated entities in a financial conglomerate.

The principles outlined are supplementary and do not replace, banking, insurance or securities supervisory frameworks. It calls for greater exchange of information and coordination among supervisors (regulators).

The principles place greater emphasis on the conglomerate's ability to measure, manage and report all material risks to which the financial conglomerate is exposed, including those stemming from unregulated entities and activities that could be a cause of regulatory arbitrage. *(BL, 20.12.11)*

EU Watchdog Issues Warning Over Unregulated Forex Firms

–Brooke Masters*

The new pan-European Union securities watchdog has issued its first direct warning to consumers – urging them to be wary of unregulated firms offering foreign exchange products such as contracts for difference and forward contracts.

The Paris-based European Securities and Markets Authority (Esma) said it had seen a surge in forex products offered by unauthorised firms, which do not have to comply with investor protection rules that require firms to safeguard client assets and recommend only suitable products.

The notice particularly cautioned investors about platforms and brokers that claimed to be authorised and regulated by Esma.

The pan-European body does not directly license brokers and trading platforms; rather, it writes rules and guidelines for the 27 national authorities who do.

Since Esma opened its doors in January, its leaders have emphasised consumer protection as a top priority and said that they would not hesitate to intervene across the EU by warning against products and banning them if necessary.

The pan-European body does not directly license brokers and trading platforms; rather, it writes rules and guidelines for the 27 national authorities

The regulator is already looking at the rules for exchange-traded products and other investment funds aimed at retail customers.

"The ultimate objective of most of our work is to protect EU investors and consumers of financial products," Verena Ross, Esma executive director, said in a recent speech.

The warning notice issued on Monday also issued broad cautions for retail investors who were considering investing in foreign exchange to consider the high risk of volatility and the effects of leverage, which could amplify a bet by up to 200 times, juicing both returns and potential losses.

"This is the first time that Esma has used these new powers. This is unlikely to be a one-off, and I suspect we will see plenty more examples of the new European super-regulator baring its teeth in this way," said Michael Raffan, partner at Freshfields.

Market participants estimate that retail customers account for up to 10 per cent of daily volume in foreign exchange and that their presence helps explain why the triennial survey by Bank for International Settlements found average daily turnover in global forex markets had risen 20 percent to US$4,000bn, compared with 2007.

Regulators around the world are stepping up their focus on the market. Japan introduced leverage caps on retail investors in 2010 and tightened them this year. The US Commodity Futures Trading Commission has brought several enforcement cases and enacted new rules for retail forex brokers in August 2010.

* *Chief Regulation Correspondent. The article appeared in* The Financial Times*, on December 06, 2011.*

US Accused of Unfair Antitrust Tactic

–Kara Scannell*


The Economist

US authorities are using a little-known immigration provision to secure guilty pleas by foreign businessmen in antitrust cases, a move defence lawyers say unfairly presses non-US executives into co-operating with investigations

The tactic is likely to be brought to bear in the ongoing US and UK investigation into alleged collusion in the setting of the London and Tokyo interbank markets, which has ensnared US, European and Japanese banks and their employees. No individuals have been charged with any wrongdoing.

The US Department of Justice's (DoJ) leverage in securing guilty pleas arises from the fact that foreign executives convicted of felonies can be banned from entering the US for more than a decade.

The US's leverage is a 1996 memorandum of understanding between the DoJ and US immigration officials that US officials say provides immigration certainty for co-operators. The MoU is unique to antitrust cases and lawyers say the MoU is included in nearly every plea agreement. The net result is that in exchange for co-operation and a guilty plea, the US government will grant exemptions from travel restrictions to foreign executives.

The tactic is working. The DoJ has sent 50 foreign businessmen to prison for antitrust offenses since 1999. Only one has gone to trial, defence lawyers say. The exception was Briton Ian Norris, the former Chief Executive, Morgan Crucible who was accused of colluding with competitors to rig the price of auto parts. Norris lost his fight against extradition and was convicted on charges of conspiracy to obstruct justice.

Scott Hammond, Deputy Assistant Attorney General for Criminal Enforcement of the DoJ's antitrust division, said "the MoU was created to provide a potential inducement and benefit for non-US citizens residing outside the US who are willing to accept responsibility, plead guilty, and serve prison time for violations of US antitrust laws. It is a good carrot."

He said the US was not singling out foreign executives but was trying to hold them to the same standards of accountability as their US counterparts charged with the same crimes. It is one of several stiffer postures taken by the antitrust division. In 1999 DoJ stopped offering no-jail co-operation deals for foreign executives and in 2001 made it department policy to place indicted defendants on Interpol red notice lists for possible arrest and extradition.

Foreign executives are serving more time in prison, averaging 10-month terms in 2010, from an average of four and a half months in 2005. The terms are catching up to the average sentence for all defendants, both US and non-US citizens, at 30 months. DoJ says that since it has sought prison time for foreign executives, it has not had any repeat offenders.

Eric Grannon, a defence lawyer with White & Case, disagrees and says the MoU is a stick. "The rub is this MoU unquestionably is depriving non-US executives of their right to stand trial before a jury. They are being pressured with immigration consequences" and as a result are unwilling to challenge the antitrust allegations, said Grannon.

Unlike many other frauds, collusion has only recently been recognised as a crime by other countries, including the UK in 2003. It is not a crime in most Asian countries.

Other lawyers say that immigration restrictions are at the forefront of their clients' decisions to plead guilty because some of them plan to resume working for their employer after they serve prison time.

"Trading Club Med prison is tolerable when you know your whole future in the business is not ruined because you can't travel to the US," said Larry Callaghan, a former antitrust prosecutor who represents foreign executives in antitrust cases. He says prosecutors use the entry restrictions "brilliantly" to win co-operation.

The immigration wavier was included in the guilty pleas of Taiwanese businessman Jau Yang Ho, who pleaded guilty to an alleged conspiracy to fix prices of LCD panels; Christian Caleca, a French citizen who pleaded guilty to conspiracy to fix prices of sales of marine hoses in the US; and K.C. Suh, a Korean marketing executive who pleaded guilty to fixing prices of memory chips sold to computer makers, according to court filings.

Hammond of the DoJ said the idea that someone would plead guilty and serve time in a US prison for a crime they did not commit to gain entry to the US was "far-fetched".

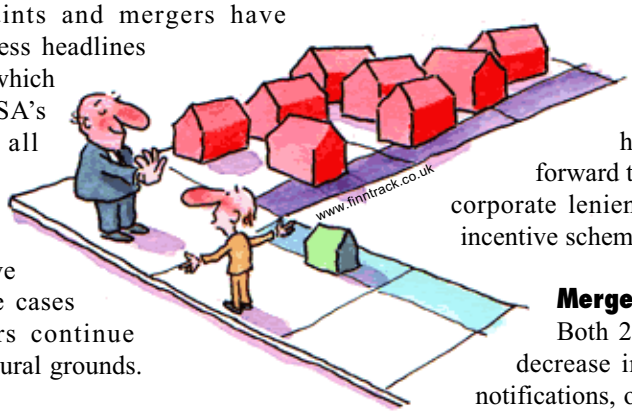
* *Abridged from an article that appeared in* The Financial Times*, on September 21, 2011.*

2011 in Review - Competition Law in SA

– Marc Menashe*

This article examines the long arm of the competition regime in 2011 and its impact on all aspects of the economy over the past 12 months

Competition complaints and mergers have dominated the business headlines over the past 12 months, which highlights the reach of SA's competition regime on all aspects of the economy.



On the complaints side, long-standing matters have been settled and in some cases withdrawn, while others continue through appeals on procedural grounds.

The Competition Commission faces continuing challenges by higher courts to the scope of its authority. This led to the first Constitutional Court hearing of a competition law matter. Also, some extraordinary mergers have been heard before the Competition Tribunal in 2011.

Current trends in 2011 suggest that settlements in high profile cases will continue in 2012, while new challenges on the extent of the commission's procedural handling of cases in complaint investigations will be at the forefront of the development of competition law in the years ahead.

Settlements and Complaints

Many high profile complaints have been withdrawn by the Competition Commission since the beginning of 2011. The Commission withdrew its investigation into the supermarket industry. It also ceased its investigation into four dairy companies after the regulatory body was found to have exceeded its authority against one dairy producer, Woodlands, before the Supreme Court of Appeal in 2010.

Complaints continue to be resolved through settlements instead of extended periods of litigation.

The Commission reached high-figure settlements in the first half of 2011 with Sasol and Aveng (Steeldale) with agreed penalties for the companies' respective cartel activities. In June, the Commission reached settlement agreements with four grain storage companies. Later in 2011, the Commission settled its cartel case against Apollo (Dunlop) Tyres for taking part in a price-fixing cartel between competing tyre manufacturers.

The Commission initiated few new investigations in 2011, the most noteworthy being its two-pronged investigation into the media industry for alleged predatory pricing and market allocation.

Instead, the Commission has adopted novel approaches to obtain information and resolve complaints. Suspected cartelists have been encouraged to come forward through the Commission's popular corporate leniency programme and other novel incentive schemes.

Mergers & Acquisitions

Both 2010 and 2011 were marked by a decrease in large and intermediate merger notifications, owing to reduced transactions as a result of the global financial recession. In 2010, 56 large and 138 intermediate mergers were filed while in 2011, these figures increased slightly to 63 large and 154 intermediate mergers.

Despite the modest number of merger filings in 2011, there have been several controversial transactions.

The most contentious merger though was Wal-Mart's acquisition of Massmart. In May 2011, the tribunal approved the merger between Wal-Mart and Massmart subject to a number of conditions intended to address substantial concerns related to employment and manufacturing in the local supply chain. The merger was taken on appeal and review to the Competition Appeal Court where government ministers and unions argued that the tribunal did not give sufficient consideration to public interest issues in assessing the effects of the merger. Judgment is pending in this matter.

Procedure & Authoritative Powers

The growing body of case law may impact on a number of important cases before the competition authorities in the years ahead. In 2011, unprecedented procedural issues of competition law were taken to the highest courts in SA.

In April, the Competition Tribunal refused to hear the Commission's case against South African Breweries because it said the commission had altered the original complaint too much. Even though the Commission has faced direct challenges on the extent of its powers to investigate complaints, the North Gauteng High Court gave its nod to the Commission's fight against anti-competitive conduct in the economy by dismissing an application brought by Agriwire in relation to the conditional immunity granted by the commission in terms of its corporate leniency policy to one of its competitors. The corporate leniency policy continues to be an effective tool in the Commission's prosecution of cartels.

* *Associate, Leading International Legal Practice Norton Rose SA. Abridged from an article that appeared in the* Business Live *on December 29, 2011.*

Vision 2030: What's Needed

–Trudi Makhaya & Simon Roberts*

Competition in a market economy is generally conceptualised as a rivalrous, information-generative process that seeks to produce the best ideas and mechanisms of production and distribution. The importance of the competitive process is enshrined in various schools of thought about the workings of market economies.

Vision 2030, the plan released by the National Planning Commission, presents a vision of a South Africa in which mass entrepreneurship is possible. In its proposals on the economy and employment the plan expects that small and expanding firms will produce 90 percent of the new jobs that are required for the achievement of full employment. This is premised on the creation of an environment that is conducive to business entry and expansion.

Although the focus is on removing the regulatory obstacles hindering entrepreneurs, it assumes that incumbent firms in concentrated markets cannot protect their positions against new challengers. For the plan to succeed it implies a positive understanding of competition as the ability to enter and compete effectively, where effort and creativity is rewarded rather than an inherited incumbency.

This raises a much wider set of questions than the role of competition law. A question that arises from recent decisions by the courts is how to strike a balance between the right of the public to enjoy the benefits of competition and the rights of respondents to a fair hearing.

The potential calcifying force of entrenched market power is widely recognised in modern microeconomics, along with the value of protecting the competition process in the interests of innovation, opportunity, economic growth and development.

A strong emphasis on promoting competition is important in South Africa because of the stifling nature of old networks. In the past these straddled the state and business, such as when agricultural co-operatives were appointed as agents of the control boards, or the cement industry was allowed to run its own cartel.

Although these networks may have lost the type of access they had to the state, recent competition cases have shown that they are able to continue to control private activity. Multilayer cartels have been uncovered in concrete pipes, cement, reinforcing steel, scrap metals, flour and bread.

What is often not recognised is that for cartels to be sustained they must not just agree among themselves, but must also keep out new entrants attracted by the high profits. So, not only are consumers harmed by the collusive prices, but so is opportunity.

The orientation to protecting their position through erecting defences to potential rivals has been characterised as "handicap competition", seeking strategies to disadvantage and undermine other firms outside the club through devious schemes, as compared with "performance competition" where managers commit themselves to winning in the marketplace through the legitimate pursuit of productivity and efficiency.

It is important that a country takes a view on the appropriate stance when weighing up the interests of new and entrenched business. Given our status quo, not facing up to the tension between the interests of entrants and incumbents is in effect a decision to support the existing networks, albeit with some new members likely buying into them.

It has only been through globalisation and concerns over inequality that competition law has gained traction in recent times. We believe that in South Africa it is necessary to take a positive stand on future competition through widening participation and increased diversity as guiding principles. This is consistent with supporting entrepreneurship and creativity whereby different ideas and approaches are introduced to the marketplace and tested.

It is important, therefore, to be vigilant in addressing the ways in which entrenched incumbents can protect their position, as well as seeking to craft remedies that facilitate entry and increased participation.

Such an approach by the competition authorities is complementary to an economic policy framework that is supportive of meaningful opportunity and entrepreneurship. This simultaneously requires a look at removing government-erected obstacles to small firms and effective actions to support the development of capabilities and the ability to compete in applying them in business. Such action is required if empowerment and economic freedom is to have meaning.

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* *Economists at the South African Competition Commission. Abridged from an article appeared in the* Mail & Guardian, *on December 02, 2011.*

Google's Travel Push Angers Web Rivals

–Jack Nicas*

Google Inc.'s newest push into online travel has begun to roil the industry, the latest example of the company extending its market power into increasingly diverse aspects of economic life.

Competitors say Google is abusing its power in Web search to gain sway over the US$110bn online travel business.

Starting in December, Google began placing its new flight-search service atop general search results so that its own results appear prominently above links to major middlemen such as Expedia Inc., Orbitz Worldwide Inc. and Priceline.com Inc.

Just how Google ranks and displays searches has become a key question for modern commerce, where Google stands as a gatekeeper for buying decisions. Once content to simply produce search results, the 13-year-old company is increasingly getting into the guts of these markets, too, offering everything from online music to local coupons to mobile phones.

In many ways, Google is still learning how to balance the conflicting demands of being both search-arbiter and market competitor.

In 2010, Google faced antitrust scrutiny from the US Department of Justice (DoJ) over its plans to acquire ITA Software Inc., the flight-data company that powers Google's new tool and some of its competitors, including Orbitz and Kayak Interactive Corp. Those sites opposed the Google-ITA transaction.

Google eventually made several concessions before the DoJ gave its final OK in April, agreeing to make travel data available to competitors. While Google was not required by the DoJ to link directly to the travel sites, it emphasised that it would "build tools that drive more traffic to airline and online travel agency sites." Competitors say that Google is now violating the spirit of that commitment.

Google acknowledges it has failed to make good on assurances it would link to the travel sites, but the company says it had no choice. There is no sign consumers are being harmed by Google's new features.

Competitors say Google is abusing its power in Web search to gain sway over the US$110bn online travel business

Identical queries on Google and the major travel websites nearly always yield the same lowest fare. Microsoft's Bing, which has less than a quarter of Google's audience, also places its flight-search tool atop search results.

The Justice Department declined to comment.

Google's flight search is a boon to airlines that have long struggled to draw traffic away from online travel agencies, which charge airlines for bookings. In 2010 those sites handled US$17.5bn, or nearly a third of the flights booked online.

Google lists booking links to the airlines as advertisements, but the company declined to comment on how much money it makes from the arrangement.

Earlier in 2011 Google attempted to weed out "low quality" websites from the top of search-results pages. Scores of sites began howling that Google discriminated against them, while others praised Google for improving results.

Google executives have long stated that search engine changes are done for users' benefit, not to punish specific websites. In talks with regulators and lawmakers, Google has often pointed to a federal court ruling in 2003 that stated that Google's search results are "opinions" and are "entitled to full constitutional protection."

The Federal Trade Commission has been investigating Google's practices for the past six months. In mid-December, leaders of the Senate's antitrust subcommittee urged the FTC to investigate further, raising questions whether Google could remain an "unbiased" search engine while owning products such as its flight-search tool, "from which the company derives substantial advertising revenues."

In a written response to the committee last month, Google Chairman Eric Schmidt defended Google products' placement, saying the company's fundamental goal is "to connect users to the information they seek," and thus for many searches, the company aims to provide answers rather than just links.

Google's tool is still imperfect. It only searches domestic flights. Google said it is working to add international ones, and ultimately, it aims to trigger the tool with searches such as "flights to somewhere sunny for under US$500 in January."

* *Reporter, Wall Street Journal. Amir Efrati contributed to this article. Abridged from an article that appeared in the* Livemint*, on December 28, 2011.*

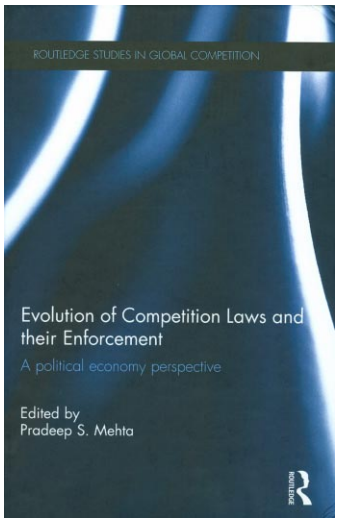
Evolution of Competition Laws and their Enforcement: A Political Economy Perspective

This edited volume identifies the various country specific factors that warrant changes in the design and implementation of competition laws.

The book covers case studies of nine countries of differing sizes and at varying stages of economic development that have at one stage or another repealed extant competition laws for new ones, and seeks to examine the motivations and contexts under which this was done. The countries examined include the Czech Republic, Hungary, India, Ireland, Poland, Serbia, South Africa, Tanzania and the UK. Tracing the evolution of competition regimes in the countries covered, the book provides lessons for countries still in the process of forming their competition regimes.

The contributions show that the road to strong competition regimes is seldom smooth, and that social, economic and political factors in the country hugely impact on the pace and effectiveness of competition reforms. The volume also addresses the issue of when the development of competition policies and laws can be seen to be in conflict with national development strategies.

This book can be purchased at:
www.routledge.com/books/details/9780415672139/



PolicyWatch

The October-December 2011 issue of the CUTS newsletter PolicyWatch encapsulates 'FDI in Retail' in its cover story which states that the government's decision to allow foreign direct investment (FDI) in multi brand retailing (MBRT) has attracted a huge debate in the country. It has been argued that the policy will result in greater benefits to consumers and farmers. However, concerns have been raised that the outcomes will be the opposite. The decision is now postponed to be adopted after wider stakeholder consultation.

A special article by Vinayak Chatterjee states that improved credit rating methods will help attract funds for infrastructure projects.

Another article by Ruchir Shrama says that no evidence supports the claim that rising inflation is a sign of growing prosperity. Most economic booms tend to be disinflationary in nature.

Besides, it carries regular sections on Infrastructure, Trade & Economics, Governance & Reforms, Corporate Governance, Report Desk, Competition Insight etc.

www.cuts-ccier.org/pw-index.htm

Economiquity

The quarterly flagship newsletter of CUTS Centre for International Trade, Economics & Environment (CUTS CITEE) encapsulates an article entitled, 'The Global South Needs a Multilateral Approach' in its cover story which states that the real challenge that the world faces today is to develop modalities of strengthening international cooperation and build common minimum commitments.

A special article by Grant Aldonas states that the multilateral trading system under the aegis of the WTO, once again, at a crossroad. Given that the Doha Development Round did not reach its conclusion even after a decade of costly negotiations makes us think what do we do to restore the credibility of the WTO as an institution.

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.

www.economiquity.org/

Sources

AP: Associated Press; BL: The Hindu Business Line; BR: Business Respect; BS: Business Standard; DS: Daily Star; EP: Ethical Performance; ET: Economic Times; FE: Financial Express; FT: Financial Times; GCR: Global Competition Review; IANS: Indo Asian News Service; ILO: International Law Office; TT: The Telegraph; ToZ: Times of Zambia; WSJ: Wall Street Journal

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