REGULETTER

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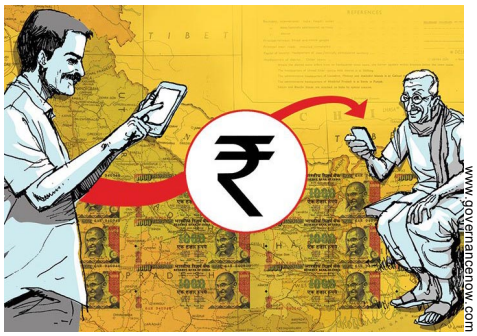
Special Articles

Putting Consumers at Driver's Seat on the Road to Less Cash Economy

The use of physical currency is costly for society, with the poor spending more time, efforts and resources than the rich to access cash. These include the opportunity cost of travel to bank branches or ATMs, withdrawal charges, and the need to submit physical documents to open and access bank accounts. This acts as a disincentive for the poor, who turn to expensive yet easy-to-access informal sources of finance for their needs.

Perception about cash among stakeholders reinforces its use. Cash is perceived to be cheapest, safest, fastest and thus most convenient way of making payments. Preference of cash by retailers, wholesalers, vendors and other stakeholders to whom recurring payments are made also makes it difficult to reduce dominance of cash in the economy.



A multi-pronged strategy to correct cash related perceptions, incentivise and promote use of digital means in necessary. Such strategy should have equal focus on consumers and merchants, regulatory reforms and policy initiatives required to push for digital payments.

Consumers: Public information and awareness campaigns about benefits of digital payments qua cash payments would be extremely important. Such campaigns will need to convince consumers of the security, convenience, speed and economy of digital payments. The transaction history generated as a result of digital payments is increasingly being used as tool by lending institutions to assess creditworthiness and provide finance to the consumers. This could also attract consumers.

Small merchants: Research suggests that merchants and small vendors are caught in cash trap as they receive cash from consumers and are required to make payments to wholesalers and large vendors in cash. They are also increasingly concerned about the costs of digital payments, and the commission/ fees required to be paid to the banks and payments infrastructure providers. Case studies showcasing the benefits experienced by peer merchants by using digital modes of payments could motivate this group to take up digital payments. The regulations should mandate transparency about charges/ commissions to prevent harassment of small merchants and consumers.

Large merchants: Whole sellers prefer cash to other modes of payments owing to its perceived convenience, and absence of trail. Digital payments bring with themselves possibility of regulatory scrutiny and harassment from taxation authorities. These could be key factors prompting large vendors to persist with cash heavy structure. Incentives in form of regulatory and policy level reforms would be required to enable seamless transition of large vendors from informal to formal economy, without harassment related to taxation matters.

A recent Tufts University revealed that the residents of Delhi together spend 6 million hours and ₹9.1 crores (US $1.5 million) to obtain cash. To reduce such costs, there is a need to put consumers at driver's seat on the road to less cash economy.

CUTS Centre for Competition, Investment & Economic Regulation
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'Twin-Track' Approach

While the European Commission (EC) is the antitrust arbiter-in-chief, national competition authorities in the **European Union's** (EU) 28-member countries also play a role in fighting cartels and monopolies.

The twin-track enforcement stems from a landmark reform in place since May 2004, when the EU grew from 15 to 25 countries in an eastern expansion and the EC sought to offload some of its antitrust work.

Europe's twin-track approach to antitrust enforcement is more pronounced than the arrangement employed in the US, where enforcement is primarily the purview of either the Department of Justice or the Federal Trade Commission.

(www.thestreet.com, 20.06.16)

Adopting New Competition Rules

New competition regulations came into force in the **Philippines**, a day after the country's fledgling antitrust enforcer announced it would conduct a comprehensive review of a €1.32bn deal involving the nation's two largest telecommunications providers.

The new rules set out the duties and functions of the four-month old Philippine Competition Commission, which was established following the adoption of the Competition Act.

The new implementing rules represent a sophisticated new competition regime that reaches the frontier of modern, economic effects-based competition law, and which fits very closely with other ASEAN competition regimes. *(GCR, 20.06.16)*

New Filing Thresholds in Force

The Parliament of **Latvia** adopted changes to its competition law. The amendments abolish the existing market share threshold and reduce turnover thresholds, which are now triggered if the parties' combined domestic turnover is at least €30mn; and domestic turnover of at least two parties is at least €1.5mn.

Parties may choose to voluntarily notify if they are concerned the authority will require a post-closing notification. Fines for failure to notify/ unauthorised completion are up to three percent of a party's annual turnover.

It is not yet known whether worldwide or domestic turnover is taken into account. The changes came into force on June 15, 2016.

(Lexology, 17.06.16)

Expanding Reach of Antitrust Law

An **Indonesian** parliamentary working committee proposed amendments to Indonesia's principal competition law. The amendments are expected to be passed by the Parliament and take effect in 2016.

The proposed amendments would extend the Indonesian Competition Law's extraterritorial coverage of foreign conduct impacting Indonesia, remove a controversial exemption for intellectual property licencing practices, shift the merger control system from post-merger to pre-merger notification, and delegate substantial new investigative and rulemaking powers to competition authority.

(www.jdsupra.com, 24.06.16)

MoU to Enhance Competition

The **South African** Competition Commission and the EC's Directorate-General for Competition have signed an memorandum of understanding (MoU) to strengthen cooperation in competition law enforcement between the two agencies.

The MoU unlocked technical cooperation initiatives for the development of competition policy, competition law and the enforcement thereof.

The cooperation extended to experience and knowledge-sharing on operational issues affecting the efficiency and effectiveness of the respective agencies, as well as competition policy and enforcement in the respective jurisdictions.

(www.engineeringnews.co.za, 23.06.16)

Rules on Leniency Set Out

The **Albanian** Competition Authority recently adopted the Fine Leniency Programme, which elaborates on the leniency rules set out in the Competition Law.

The programme is modelled on EU rules. Its main goal is to combat cartels, based on the fact that a typical cartel outcome sees consumers pay 10 to 20 percent higher prices.

The programme explains that any undertaking which initiates a cartel cannot benefit from the leniency proceedings. However, there is one exception: if two parties have entered into a restrictive agreement in which both parties play an equal role, both parties may apply for leniency.

(ILO, 14.04.16)

A Step Closer to Introduction of Competition Regime

Nigeria moved a step closer to the introduction of a competition regime after a public hearing in the House of Representatives, the tone of which raised hopes among observers that a proposed bill will be passed into law within a year.

The hearing considered two separate bills: one proposed by a member of the house and the other by the executive branch of the government. The draft laws will now go through a committee stage where they will be harmonised, before the final version is voted on by the house and sent to the president to be signed into law.

The new bill will replace the current Consumer Protection Act and Authority, with a combined Competition and Consumer Protection Commission. Under the proposed law, Commission decisions could be appealed to a tribunal and ultimately to the Federal High Court.

(GCR, 09.06.16)

Competition Law Tightens up across Africa

Derek Lotter*

A more active and interventionist competition law regime is developing for investors in Africa, as their involvement has sparked the creation of new laws and regulators

Competition law regimes are now established throughout Africa and are becoming increasingly active and interventionist in terms of regulating what is regarded as anti-competitive conduct on the continent.

As an example, Kenya has become one of the most active competition regimes in Africa and recently conducted dawn raids at the offices of fertiliser companies and the fertiliser trade association to which the companies belong.

The Competition Authority of Kenya has issued two voluntary disclosure programmes applicable to trade associations in the financial, agriculture and agro-processing sectors, allowing for contraventions to be reported in exchange for immunity from prosecution. The authority also published additional guidelines on the substantive assessment of mergers; the balancing of public interest considerations and the control of unwarranted concentrations of economic power.

In addition, Ethiopia now has an active competition law regime and regulator and is accepting merger filings, although not if a Common Market for Eastern and Southern Africa (COMESA) filing is made, as Ethiopia is a COMESA Member State.

Meanwhile Botswana has recently issued guidelines on refusals to deal, market definition, predatory conduct and discriminatory conduct. The country is also conducting market inquiries into shopping malls and charter flights. In addition, Ghana's draft Competition Bill is expected to be published as a revised draft later this year.

In Malawi, the President has approved reforms in relation to the competition and consumer protection regime of the country, including amendments to the Competition and Fair Trading Act.

In Mozambique, the competition legislation came into effect in July 2013 and progress has been made towards the establishment of the **Mozambican Competition Authority**, which is expected to be in operation in 2016.

In Namibia, new revised merger thresholds have been published, although they are not yet effective and a review process is underway to bring the law in line with developments in the fields of competition, economics, law and policy.

In South Africa, the Economic Development Minister Ebrahem Patel has said that his department intends to introduce legislation to further strengthen efforts to tackle anticompetitive practices that impose unnecessary costs on consumers, undermine industrial policy objectives and reduce the competitiveness of the economy.

Certain provisions of the Competition Amendment Act came into effect in May 2016. These provisions effectively introduce criminal liability for individuals to South African competition law and, in particular, allow for directors and managers to be held criminally liable for causing a company to engage in, or 'knowingly acquiescing' to a company's involvement in price-fixing, market division or collusive tendering.

The **Swaziland Competition Commission** published the final guidance on market inquiries, which set out the parameters within which the Commission will conduct market inquiries. The Commission announced a market enquiry into the retail banking sector in August 2015. In addition, Zambia's **Competition and Consumer Protection Commission** recently issued merger guidelines.

The **COMESA Competition Commission** is also going from strength to strength, especially with regards to the amendments to the COMESA competition rules – including a substantial reduction in filing fees payable for mergers and the introduction of meaningful thresholds for mandatory merger notification.

Further, the Tripartite Free Trade Area (TFTA) was officially launched in June 2015 and consists of the member states of COMESA, the East African Community and the South African Development Community. Competition policy is being discussed as part of the current phase two of TFTA negotiations. The expectation is for these negotiations to be completed by 2017.

A functioning competition regime has come to be seen as a requirement for a market-based economy in Africa that incentivises investment. It is quite clear that the continued investment interest in Africa has spurred the amendment of competition law.

* *Head, Competition in Bowman Gilfillan's Africa Group. Abridged from an article that appeared in the* African Law & Business, *on April 26, 2016*

How Independent will be the Bangladesh Competition Commission?

M S Siddiqui*

Entrepreneurs with foreign direct investment (FDI) and also local investors in new ventures may face stiff competition from existing players in any sector of business. The experience of developing countries shows that once big businesses are able to take the political rein, they can easily entrench their monopoly strongholds by influencing government policy. New investment feels secure in a level playing field and this may be ensured by fair competition.

Experience shows that the government should establish a 'competition commission'. A competition commission is responsible for the implementation of legislation relating to the following areas: competition, anti-dumping and subsidies, consumer protection, advertising, unfair competition, metrology, quality control and non-tariff barriers, bankruptcy procedures, trademarks, patents, plant varieties, appellations of origin and transfer of technology.

The UNCTAD and World Bank promote and support developing countries, including Bangladesh, to frame Competition Law and UNCTAD gives technical support for the draft of such laws. Bangladesh Parliament passed the Competition Act 2012 but has yet to set up a Competition Commission (CC).

Independence of Competition Commission: The model law promoted by UNCTAD on competition has been formulated to establish the most efficient type of administrative authority which is independent of the government and has powers to conduct investigations and apply sanctions, etc., while at the same time provides for the possibility of recourse to a higher judicial body. The nomination and appointment and removal of chairman and members of CC should be in such a manner that the CC may work without any influence and fear. Budgetary independence would ensure funding does not become a tool for influencing the activities of the CC.

Competition law and Competition Commission are one of the most important elements that helps promote economic development and equality in developing countries

The Bangladeshi law has some questionable provisions which need to be addressed in order to make the CC really effective.

Formation of CC: Countries that emphasise the independence of Competition Commission allow the latter to appoint and employ its own personnel. The Bangladesh law empowers the government to appoint secretary of the Commission and the terms and condition of his job will be determined by the government. The Commission will have authority to appoint staffs of their own but at the 'request' of the Commission, government will send staffs on probation.

Appeal Against Verdict of CC: The UNCTAD model law suggests that any aggrieved party may appeal within certain days to the appellate body or to an appropriate judicial authority against the whole or any part of the decision of the Administering Authority, or on any substantive point of law.

CC of Bangladesh is supposed to be a quasi-judiciary body. It may reconsider the decision upon request from an aggrieved party and the appellate authority has been given to the government. The verdict given by the government and Sessions Judge is final. The appellate power given to the two authorities – Sessions Judge and Government – seems confusing. This also gives an undue authority to the government to control the CC. The standard practice should be to allow appeal to higher court considering the responsibility, authority and importance of CC.

Improvement: The Bangladesh competition law does not apply to government-controlled businesses on national security ground.

The CC's functions may overlap with that of the power and energy regulatory commission or the telecom commission, potentially leading to conflicts over jurisdiction or turf wars if the laws and policies are not framed carefully.

The existing law will apparently make the CC a department of the government while the World Bank and UNCTAD emphasise on the independence of such body. Let us hope that CC of Bangladesh will gain independence in course of time with appropriate amendment to the law.

* *Legal Economist. Abridged from an article that appeared in the* Financial Express, Bangladesh *on April 19, 2016*

ABUSE OF DOMINANCE

Electricity Distributor Threatened

The **Bulgarian** competition regulator issued a statement of objection to Energo Pro Grid for abusing its dominant position in the market of connecting clients' sites to the electricity distribution grid.

It said Energo Pro's refusal prevented Kayko – from running a normal operation. Kayko was forced to stop operating as an industrial client of electricity.

This loss affected consumers because they could not access goods or services produced and provided by Kayko. It should be noted, however, that the Commission did not clarify why Energo Pro's refusal to connect Kayko was unjustified.

Energo Pro said that it had not received any notification from the watchdog and also denied any wrongdoing.

(www.newsbase.com, 26.05.16)

End of Bumpy Ride for Uber

The Competition Commission of **India** (CCI) *prima facie* closed the case for alleged abuse of dominance under Section 4 of the Competition Act against taxi service provider Uber.

The case was filed by Meru Travel Solutions Private Ltd against Uber India Systems Pvt Ltd, Uber BV and Uber Technologies International Inc (collectively, the 'Uber group'). Meru alleged that the Uber group had abused its dominant position by way of predatory pricing in the provision of taxi services in Kolkata.

The CCI found that the relevant product market in the case at hand was the 'market for services offered by radio taxis and yellow taxis of Kolkata'. The CCI confirmed that there was stiff competition between the Uber group and other taxi service providers in this market. According to the CCI, since Uber was not dominant in the market, the question of abuse did not arise.

(ILO, 09.06.16)

Intel Fights Record Antitrust Fine

Intel Corp. attacked the **EC** for being unfair in a probe that led to a record US$1.2bn fine. The key issue in the investigation was loyalty rebates to lower retail prices, Daniel Beard, a lawyer for Intel said. But the EC failed to analyse 'all relevant circumstances' to see if the rebates shut out rivals, he said.

The world's biggest chipmaker is making a final attempt to overturn the penalty doled out in 2009 for unfairly squeezing out Advanced Micro Devices Inc. No date for a ruling has been set.

Two years ago, the EU General Court rejected Intel's first appeal. That ruling was a timely boost to the Brussels-based EC, which is embroiled in lengthy probes of search engine giant Google and chip designer Qualcomm Inc.

(www.bloomberg.com, 23.06.16)

Swisscom Hit for Pay-TV Abuse

Switzerland's Competition Commission fined the country's former state-owned telecommunications monopoly €64.9mn for abusing its dominant position in the market for live pay-TV broadcasting of certain football and ice hockey games.

The Swiss enforcer said that Swisscom had refused to supply competitors in the pay-TV market with the right to broadcast some foreign football leagues and Swiss football and ice hockey championships, which Swisscom had the exclusive right to broadcast by way of its Teleclub premium sports channel.

The authority said the broadcasting company had reduced the right of other competitors, such as Cablecom, to access its sports content. Those competitors could only offer customers Swisscom's sports content if it was sold in combination with another Teleclub package.

(Reuters, 24.05.16)

Broadcaster Distorts Competition

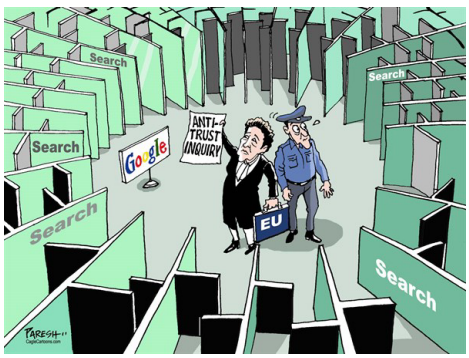
The **French** Competition Authority fined the country's incumbent radio and television company TDF €20.6mn after it blocked rivals from expanding their digital terrestrial television broadcast infrastructures between 2006 and 2010.

The authority said TDF abused its dominant position in the broadcast market to harm its main competitors, Towercast and Itas Tim, which were both looking to develop their digital broadcast infrastructures while looking to transition from analogue broadcasts.

TDF took advantage of its reputation as a former state-owned monopoly to deceive local authorities about the perils of new broadcast pylons near its own facilities, the authority said. *(GCR, 06.06.16)*

3rd Antitrust Charge to Hit Google

Alphabet's Google may face a third **EU** antitrust charge this time focussing on its revenue mainstay AdWords ad placement service.



The world's most popular Internet search engine is already under fire from the EC for promoting its shopping service at the expense of rivals and for using its Android mobile operating system for smartphones to squeeze out competitors.

The Commission has asked Google's rivals to share information related to search advertising with the tech giant, a step suggesting the EU competition enforcer could be poised to hit Google with a fresh charge.

The company could be fined up to US$7.4bn or 10 percent of its global turnover for each case if found guilty of abusing its dominance.

(http://ewn.co.za, 29.06.16)

PRICE FIXING

Model Agencies in Price Collusion

Five of **London's** top model agencies – FM Models, Models One, Premier, Storm and Viva – have been named in an inquiry into price collusion by the UK Competition and Markets Authority (CMA).

The watchdog said that in a two-year period to March 2015, the agencies "agreed to exchange confidential, competitively sensitive information, including future pricing information, and in some instances agreed a common approach to pricing".

Models One is the biggest modelling agency in Europe. The watchdog can impose significant penalties of up to 10 percent of turnover, depending on the seriousness and duration of any infringement, and any decision could also lead to damages claims from clients. *(FT, 25.05.16)*

Sanctions on Sugar Suppliers

Mexico's Federal Economic Competition Commission has sanctioned seven companies, 10 individuals and a trade industry €4.23mn for fixing the price and restricting the supply of sugar in Mexico, after the companies and individuals responded to a drop in sugar prices by forming a cartel.

During the investigation, the companies admitted to the allegations against them; the enforcer subsequently determined that their conduct caused estimated damage to consumers of €41.58mn.

(GCR, 22.06.16)

Cardboard Cartel Crushed

Korea's Fair Trade Commission has fined 45 corrugated cardboard suppliers a total of €78.8mn after they conspired to fix prices, after sanctioning a dozen companies in the same market for the same offence.

The enforcer said that the companies had participated in a cartel that rigged the price of corrugated cardboard boxes and paper for a period of seven years, between 2007 and 2014.

The companies colluded to raise the price of corrugated cardboard boxes and paper by as much as 25 percent, which led to customers paying between 6 and 20 percent more for those products. *(KT, 13.06.16)*

Fine Slapped on Vending Machine

Italy's Antitrust Authority has fined eleven companies and one industry trade association over €100mn for market sharing and price-fixing, marking one of the highest fines the Italian enforcer has ever imposed.

The Italian authority said 11 companies operating in the country's food and beverage vending machines market had entered into an anticompetitive agreement in a bid to maintain each company's respective market power. The authority said the cartel began between 2007 and 2008 and lasted until between July 2014 and March 2015.

The companies implicated in the cartel are Gruppo Argenta, Gesa, Gruppo Illiria, IVS Italia, Liomatic, Ovdamatic, Sellmat, Serim, Sogeda, Supermatic and Buon Ristoro Vending Group. *(GCR, 15.06.16)*

New Probe in Ready-Mix Concrete

Turkey's Competition Authority is investigating 10 producers of ready-mix concrete, over concerns the companies are fixing prices in the country's Aegean region.

The Turkish enforcer was concerned that the companies were carrying out concerted practices or otherwise restricting competition in the ready-mix concrete market, particularly around the city of Izmir.

The companies implicated are: Batýbeton, Çimbeton, Mendeþ, Varol, Rivery Mining Concrete, Kavuklar, Yarbay, Dere, Akçansa Çimento and Modern Concrete. *(GCR, 19.05.16)*

IT Investigation Activated

Spain's competition watchdog is investigating 11 information technology service providers for bid-rigging, after a tip from the country's tax authority that the companies may have colluded on a public tender.

Spain's National Commission of Markets and Competition said it had reasonable grounds to believe the IT service providers had fixed prices, shared the market and exchanged commercially sensitive information relating to 'activities in development and maintenance of systems and applications'.

The enforcer said it launched a preliminary investigation after receiving a report from the country's tax administration agency, which had accepted bids on a contract to supply IT infrastructure development and maintenance.

(www.law360.com, 25.04.16)

Colgate Rinsed for Detergent Deal

Colgate-Palmolive has been hit with the equal third biggest penalty for cartel conduct in **Australian** history for price and supply fixing of laundry detergents.

The personal care and cleaning products giant has been ordered by the Federal Court to pay US$18mn in penalties after it admitted entering agreements that limited the supply and controlled the price of laundry detergents.

It will also pay US$450,000 of the Australian Competition and Consumer Commission's (ACCC) costs and engage in an updated three-year trade practices compliance programme.

The ACCC launched Federal Court action against the three major laundry detergent producers in December 2013, alleging that Colgate, Cussons and Unilever had engaged in cartel conduct, along with supermarket Woolworths.

(TA, 28.04.16)

Monopoly is Not a Game

Noah Smith*

One of the basic lessons of economics is that monopolies are bad news. When there's only one company in a market, it can jack up prices to above their efficient level. That gives a big boost to profits, but results in too few people being able to afford to buy what the company is selling. Most markets are not monopolies, but a similar principle holds for situations where there are only a few companies, called oligopolies. A lack of players stifles competition, raising profits but lowering overall economic output.

It is therefore natural to ask whether the US' subpar economic growth is caused by a decrease in competition, and in fact, a bunch of people have been suggesting this explanation lately. Nor is merger and acquisition activity unusually high. Although last year was a record, the number and total value of merger deals has been pretty stable since the turn of the century.

How about those big banks? The US' megabanks may still be too big to fail, but the sector still is much less concentrated than in countries such as Canada, Germany, Japan and the UK.

In an article entitled "Too much of a good thing?," the Economist cites high rates of profit, record levels of merger activity and increasing industrial concentration as evidence of reduced competition

The airline sector is the poster child for high concentration in US industry. But this might have merely been what the industry needed to survive. Profit margins have traditionally been so razor-thin that US airline bankruptcies for decades were regular headlines in the news. The recent consolidation might serve only to raise airline profits to normal, sustainable levels.

If monopoly power increased one would expect to see higher profits, lower investment as firms restricted output, and lower interest rates as the demand for capital was reduced. This is exactly what we have seen in recent years!...[O]nly the monopoly power story can convincingly account for the divergence between the profit rate and the behaviour of real interest rates and investment.

Larry Summers, American Economist also brings up the possibility that information technology is making it much easier for companies to be monopolies, by creating strong network effects or by extending their reach across larger

geographical areas. I too have suggested this idea recently. Another force pushing us toward increased industrial concentration might be globalisation – prominent theories predict that international trade leads to a larger number of companies around the world, but fewer within each country.

There is also some academic work suggesting that financial innovation may be reducing competition much more than would be implied by the modest rise in industrial concentration. The University of Michigan's Martin Schmalz, along with private-sector co-authors Isabel Tecu and Jose Azar, recently found that when mutual funds own pieces of a number of different companies in an industry, competition in that sector falls. Passive investing – index funds, exchange-traded funds and the like – has led to an increase in this sort of distributed ownership. Those new funds have allowed investors to diversify their risk, but that may be coming at the expense of healthy industry competition.

So we should definitely be keeping a wary eye on the level of competition in the economy.

More importantly, the problem of competition requires a broad shift in our thinking about the proper roles of government and private industry. Free-market orthodoxy has taught generations of Americans to think that the private sector runs best when left to its own devices, but monopoly power throws a big wrench into the equation.

If the level of competition fluctuates naturally as technology, finance and globalisation change, then the appropriate level of government intervention changes too. It may be that an efficient economy needs government to constantly fine-tune a nation's industrial structure, enforcing antitrust more stringently when natural forces diminish competition, but backing off when competition increases on its own.

* *Assistant Professor of Finance at Stony Brook University. Abridged from an article that appeared in* The Hindu Business Line *on April 04, 2016*

Microsoft to Acquire LinkedIn

Microsoft Corp. snapped up LinkedIn Corp. for US$26.2bn in the largest acquisition in its history, betting the professional social network can rev up the tech titan's software offerings despite recent struggles by both companies.

The deal is Chief Executive Satya Nadella's latest effort to revitalise Microsoft, which was viewed not long ago as left behind by shifts in technology. Nadella hopes the deal will open new horizons for Microsoft's Office suite as well as LinkedIn, both of which have saturated their markets, and generally bolster Microsoft's revenue and competitive position.

Nadella said today's work is split between tools workers use to get their jobs done, such as Microsoft's Office programmes, and professional networks that connect workers. The deal aims to weave those two pieces together. *(WSJ, 14.06.16)*

RCom to Close Aircel Alliance

Reliance Communications (RCom) is likely to sign a binding pact soon with Aircel for a US$6bn merger, with the combined entity likely to displace Idea Cellular from the third position. Reliance currently holds the fourth position in the pecking order led by Airtel and followed by Vodafone.

The combined entity will potentially be India's third largest telecom firm by subscribers and is expected to have EBITDA (earnings before interest, tax, depreciation and amortisation) of ₹.5,000-₹.6,000 crore in the next financial year with revenue of ₹.25,000 crore. *(TH, 24.06.16)*

Pfizer-Anacor to Boost Innovation

Pfizer will acquire Anacor Pharmaceuticals for US$5.2bn. Anacor has developed a product, currently under review by the Food and Drug Administration, known as crisaborole, to treat eczema. The company, based in Palo Alto, Calif., also makes a topical treatment called Kerydin for a form of toenail fungus.

Over the last few years, Pfizer had been trying to make big bets overseas in an effort to become more competitive and lower its tax bill. After terminating deals with AstraZeneca and most recently, Allergan, Pfizer has turned to relatively smaller, American biotechnology companies for acquisitions.

Pfizer may decide to split its company in two, with brand-name products on one side and older, generic products on the other. Anacor's drugs would fit with the innovative business. *(NYT, 17.05.16)*

Microsoft Sells Patents to Xiaomi

Xiaomi Corp. has agreed to purchase around 1,500 patents from MicrosoftCorp. in an example of the rising costs facing the Chinese smartphone startup as it expands outside China.

The deal reflects Xiaomi's efforts to acquire the intellectual property it needs to one day sell its devices beyond developing markets. One of its ultimate goals is to sell its phones in the US.

For Microsoft, the move is the latest in a yearslong push to collect royalties from electronics makers who use Google Inc.'s Android operating system, which Microsoft says uses some of its technology. *(WSJ, 31.05.16)*

Conditional Nod to Brewery Deal

Anheuser-Busch InBev NV's US$104bn takeover of SABMiller Plc was conditionally approved by South Africa's antitrust regulator, moving the record brewing-industry deal another step closer to completion.

The Pretoria-based Competition Tribunal said that conditions include a change in the timing of the sale of SABMiller's US$634mn stake in South African drinks maker Distell Group Ltd.

AB InBev now has approval in 16 jurisdictions, and will 'continue to engage proactively with the relevant authorities' where the maker of Budweiser and Stella Artois still needs clearance. *(www.bloomberg.com, 30.06.16)*

HDFC, Max Life Enter Merger Talks

The prospective merger of HDFC Life and Max Life, which will create the biggest private sector insurance company, has thrown up a crucial question: will this set off a race for consolidation in the life insurance industry which has been pegged back by poor profitability?

Many companies such as Aviva, Exide Life and IndiaFirst Life have been struggling after eight years of operation in a market which is dominated by Life Insurance Corp, with more than 70 percent share.

This is the first of its kind in Indian life insurance market, and is expected to open the floodgates for more deals in the segment. *(ET, 18.06.16)*

www.media2.intoday.in

Air India Merger Led to a Mess

Ashwani Lohani, Chairman and Managing Director, Air India, has blamed the national air carrier's woes on the merger with Indian Airlines that never took off as expected and previous bosses who pinned the responsibility on employees for its dismal state of affairs.

Air India merged with the erstwhile Indian Airlines in 2007 which led to several human resource woes and huge operational losses. It posted its first operational profit, since the merger, in 2015-16.

Although Air India is slowly getting back on track, there are 'still miles to go before one can relax and watch the planes fly, albeit without the need to constantly worry and fret.' *(TH, 19.05.16)*

FMC, Technip Tie-Up

FMC Technologies Inc. and French oil-services rival Technip SA agreed to merge, forming a significant new player in an energy industry racked by a nearly two-year slump in crude prices.

The all-share deal would result in a new company named TechnipFMC with a market value of about US$13bn. The combined company had US$20bn in revenue in 2015, greater than Baker Hughes Inc.

The tie-up brings together the engineering and construction expertise of Paris-based Technip with the underwater equipment and systems of Houston-based FMC. The merger is expected to be completed early in 2016, with the new company being based in London with operational headquarters in Houston and Paris. *(WSJ, 19.05.16)*

World's Biggest Tech Acquisition

Dell and EMC announced that the entity formed after the record-breaking merger of the two companies would be called Dell Technologies.

'Dell EMC' will be the name and sub-brand for the company's enterprise business. It will cover products and solutions sold directly and through the channel to business and institutional customers.

The US$67bn Dell-EMC deal was announced in October 2015. The completion of the deal, which is expected by October 2016, will create the world's largest privately controlled, integrated technology company. The combined entity is expected to draw benefits from Dell and EMC's complementary product portfolios, sales teams and R&D investment strategies. *(FE, 03.05.16)*

Marriott-Starwood Gets Clearance

The EC's Directorate-General for Competition has unconditionally approved a US$12.2bn tie-up between US-based hotel groups Marriott and Starwood.

The EU enforcer today said the merger would not affect competition in Europe's markets for hotel accommodation, hotel management and hotel franchising. Marriott, which owns The Ritz-Carlton, Marriott and Delta hotels, is set to buy out Starwood, which operates brands including Sheraton, St Regis and Westin. The deal would create the world's largest hotel company.

The commission said although the post-merger company had "significant presence" in Europe's 4 and 5-star hotel market its market power would be effectively constrained from other chain and independent hotels.

(GCR, 27.06.16)

EU Signals Review of Bayer-Monsanto

European competition regulators will closely review a potential takeover of Monsanto by the German chemical maker Bayer if a deal were to be consummated.

Bayer offered to pay US$62bn for Monsanto to create a new titan in the world of farming. Monsanto, the top producer of genetically modified crop seeds, rejected that offer as too low, but has said it is open to continuing talks about a potential deal.

Margrethe Vestager, Commissioner in charge of European Competition Policy, said that the EC would consider concerns they had raised about the potential impact that a merger between Bayer and Monsanto might have on prices, on the availability of seed products and on research and innovation. *(NYT, 30.06.16)*

SKY-Vodafone to Combine

Vodafone and SKY TV have officially submitted their application to merge into one combined group to the New Zealand Commerce Commission.

The new company will continue to sell services and products under the existing brands, although there will also be bundled services. The Commission needs to make sure any merger does not substantially decrease competition in the market.

If successful, Vodafone UK would own 51 percent of the New Zealand business, with the rest of the shares on the NZX. SKY does not participate in the market for the provision of fixed-line services or mobile phone services.

(Newshub, 29.06.16)

SBI to Create Banking Powerhouse

In a definitive push for consolidation in the banking sector, the Union Cabinet gave a go-ahead to the merger of State Bank of India (SBI) with its five associate lenders and *Bharatiya Mahila* Bank. The combined entity would create a financial sector powerhouse, with total assets worth ₹29.7 lakh crore.

SBI has indicated it wants to complete the merger in 2016-17. While India's largest lender would reap benefits of scale and a larger balance sheet, it will be a major challenge to integrate staff and rationalise branches.

In the near term, SBI would concentrate on valuation to finalise the swap ratio for merger. The valuation process would take about two months.

(BS, 16.06.16)

Two Steel Giants to Restructure

China's two major steel companies announced restructuring plans, but no details were revealed. Wuhan Iron and Steel and the Shanghai-based Baosteel were planning for 'strategic restructuring' and trading of their shares would be suspended.

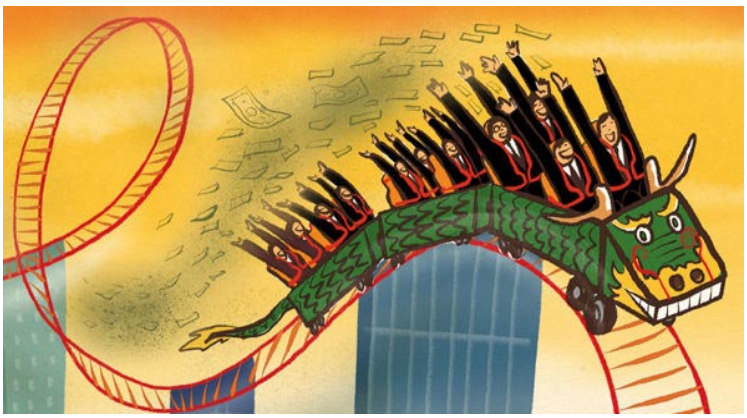
The final restructuring plans, however, were yet to be confirmed and endorsed by supervisory bodies. Baosteel is China's largest iron and steel company and the fifth in the world. In 2015, its steel output totalled 36.11 million tonnes.

Wuhan Iron and Steel ranks the sixth in China and reported 26 million tonnes of steel output in 2015.

(Xinhua, 27.06.16)

Money Bags

China's global investment spree is fuelled by debt



The Economist

"We are on a wild ride," Tom Mangas, the boss of Starwood, an American hotel group that owns the Westin and Sheraton brands, wrote to employees. He was referring to the bidding war over Starwood between Marriott, another American hotel operator, and a group led by Anbang, a Chinese insurer. Anbang first raised its offer to US$14bn, and then abandoned its pursuit of Starwood altogether. But Mangas could just as well have been talking about the wave of China-led mergers and acquisitions that is sweeping over the world

Anbang's volte-face notwithstanding, Chinese firms with little international experience and lots of debt have emerged as the biggest buyers of global assets. They have announced nearly US$100bn in cross-border M&A deals in first half of 2016, already more than their US$61bn of foreign acquisitions in 2015.

Instead, a new concern is growing: that the surge in outbound investment is a sign of weakness in the Chinese economy. This view is easily exaggerated. The yuan's gradual depreciation against the dollar over the past two years has indeed changed calculations, as has slower domestic growth. But rather than sparking a stampede to the exits, it is more accurate to say that these changes have alerted Chinese firms to the fact that they are still woefully underinvested abroad.

A senior banker working with Chinese firms says the prospect of a further depreciation of the yuan is at most 'a nice add-on' when making deals. Strategic considerations are more important for buyers, both to bolster their position at home and to speed expansion abroad. When deals are actually completed, they will lead to substantial one-off outflows of capital. But if the investments are any good, they should generate a regular stream of inflows, in the form of profits from the companies concerned.

A second category of concerns, about the financial structure of the deals, is more unsettling. Chinese buyers, by and large, are far more indebted than the firms they are acquiring. Of the deals announced since the start of 2015, the median debt-to-equity ratio of Chinese buyers has been 71 percent, compared with 44 percent for the foreign targets, according to *The Economist*'s analysis of S&P Global Market Intelligence data. Cash cushions are generally also much thinner for Chinese buyers: their liquid assets are roughly a quarter lower than their immediate liabilities. The forbearance of their creditors makes these heavy debts more bearable in China than they would be elsewhere. But the Chinese buyers are financially stretched, all the same.

Where, then, are they getting the money for the deals? For many, the answer is get more debt. Chinese banks see lending to Chinese firms abroad as a safe way of gaining more international exposure. The government has encouraged them to support foreign deals. As long as the firms to be acquired have strong cash flows, the banks are happy to lend against the targets' balance-sheets, bringing debt to levels usually only seen in leveraged buy-outs.

For the buyers, there are two strong financial rationales for the deals, albeit ones that highlight distortions in the Chinese market. First, debt-funded buyouts can actually make their debt burdens more tolerable. Take the case of Zoomlion, a construction-equipment maker with 83 times more debt than it earns before interest, tax, depreciation and amortisation. It wants to buy Terex, an American rival with debt just 3.5 times larger than its earnings, for US$3.4bn. Even if the purchase consists entirely of borrowed cash, the combined entity would still have a debt-to-earnings multiple of roughly 18, a marked improvement for Zoomlion.

Second, Chinese buyers know that one key financial metric works to their advantage: valuations in the domestic stockmarket are much higher than abroad. The median price-to-earnings ratio of Chinese buyers is 56, twice that of their targets. In effect, this means they can issue shares domestically and use the proceeds to buy what, from their perspective, are half-price assets abroad. This also gives them the firepower to outbid rivals in bidding wars. To foreign eyes, it might look like the Chinese are overpaying. But so long as their banks and shareholders are willing to stump up the cash, Chinese companies see a window of opportunity.

– *The news item appeared in* The Economist*, on April 02, 2016*

US Politics Scares Overseas Investors

Noah Smith*

Sometimes, an economic paper delivers such a disturbing result that you have no choice but to sit up and take notice. That was the case when I saw this new study by Stony Brook University's Marina Azzimonti. Azzimonti's hypothesis is that political partisanship is deterring overseas investment in the US.

When we think of foreign direct investment (FDI), we usually think of rich countries investing in poorer ones – a US multinational buying a factory in China, for example. But the US increasingly depends on other countries' investment to put its people to work. Nowadays, you hear lots of stories of Chinese companies building copper tubing factories in Alabama, German companies creating chemical plants in Louisiana or Japanese auto makers building record numbers of cars in the US. But these are not isolated anecdotes – the numbers tell the same story. FDI into the US has increased relative to gross domestic product.

Americans do not often talk about the need to lure foreign direct investment. But with the US's own companies hoarding cash, and its own manufacturing industry failing to add jobs, policymakers should probably start thinking about how to get overseas corporations to put their factories, offices and research centres in the US.

What draws FDI? Intuition suggests that things like good infrastructure, good education and a predictable regulatory environment should make a difference, and those are all things that are desirable in their own right. But when economists have looked into the impact of these factors on FDI, the relationship has proven frustratingly hard to find. We just don't know as much as we would like about what concrete steps a government can take to bring in more foreign investment.

An interesting new study suggests that partisan conflict is a major impediment to FDI into the US

That's why Azzimonti's paper is so interesting. Her hypothesis is that partisan conflict is a major impediment to FDI into the US.

Partisan conflict creates doubts about the direction of public policy. Remember the brinkmanship in the 2011 debt-ceiling fight, when it looked as if the US government might be forced into a technical default on its debt, and the country received a credit downgrade from Standard & Poor's? That kind of thing seems like it might act as a serious negative to overseas companies thinking about building factories in the US.

No matter what the eventual outcome of the political tug-of-war, the very presence of hyper-partisanship creates risks that policy will suddenly change. Some economists claim that policy turmoil creates big negative macroeconomic impacts. Since multinational capital is far more mobile than most, we'd expect the effect on FDI to be even larger.

Azzimonti tests this using an index of partisan conflict created by the Federal Reserve Bank of Philadelphia. The index uses text-mining of newspaper articles to measure the importance of partisan battles.

She then correlates this index with FDI inflows. Azzimonti finds that when partisan conflict increases by one standard deviation, FDI tends to fall about 25 percent. That's a very big impact!

Of course, this evidence is only suggestive. The sample period is short – only about three decades. And the US is the only country being studied. Empirical macroeconomic research like this is inherently difficult, because of all the other things that are going on at the same time.

Partisan conflict changes rapidly, since issues like the debt ceiling come and go within a month's time. Economic variables, like growth and inflation, change much more slowly – economies rarely suffer a dramatic downturn or spectacular boom within a single month. Hence, Azzimonti's result should get a little more attention than the typical paper of this type.

The upshot here is that partisan conflict is probably hurting the US economy. The rise of the Tea Party and other intransigent partisan warriors in 2010 and afterwards is an especially disturbing development. America's politicians should realise that their ideological crusades are bad for business, and bad for American workers.

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* *Assistant Professor of Finance at Stony Brook University. Abridged from an article that appeared in the* Mint*, on June 27, 2016*

Doing Well by Doing Good

Ethiopis Tafara*

In the years ahead, successful companies will take the lead in tackling the most urgent development challenges

Two years ago, Tesla chief executive officer Elon Musk decided to open access to his company's patents to anyone – a move that ran completely counter to traditional competitive behaviour. Why would a company give away its hard-earned designs and technology to its rivals?

Whatever one may think of Musk, his courage must be appreciated. He is rewriting the rules of business, based on the belief that Tesla's success depends on that of the entire market for electric cars, and that his company's commercial interests are inseparable from the interests of society.

Consider Kenya's M-KOPA, a company that installs solar power kits and collects payments via mobile phones. By delivering electricity at lower prices than their customers would otherwise have to pay for kerosene lighting, M-KOPA has delivered solar power to more than 330,000 low-income households in Kenya, Uganda, and Tanzania. New connections are being added at a rate of 500 homes per day.

Phasing out kerosene has an immense impact on the lives of M-KOPA's customers, their children's health, and the environment. But the company cannot be considered a charity: its revenues are projected to reach US$60mn in 2016, having increased by 400 percent in just two years.

Another example is to be found in Peru, where more than 30 financial institutions chose a similarly unconventional path to profitability, working together to establish Modelo Perú –a platform that provides digital financial services.

In Peru, cash transactions had been the norm. The participating companies decided that it was in their collective interest to create a single national platform for mobile payments, and they worked with the government and four telecommunications companies to construct one. Today, the number of Peruvians with access to affordable financial services has expanded significantly. And the institutions behind the project have gained access to a much deeper pool of consumers than they would have if each had developed a separate digital platform.

My own organisation, the International Finance Corporation, also knows the value of rewriting the rules. In 2006, we introduced performance standards to help our client companies mitigate risks by applying environmental and social principles and advancing the private sector's leadership in responsible development.

Initially, other financial institutions were sceptical of our approach; they saw the application of strict standards as a sure way to lose business and profits. Within a few years, however, major banks and development institutions came together to establish the Equator Principles based on our environmental and social standards.

Today, our standards are applied to project finance around the world. They have helped level the playing field within the banking industry. In addition, through the Sustainable Banking Network – an association of central banks, regulators, and financial trade associations – we are helping countries develop national policies to boost green finance. And we are seeing a growing appetite for this kind of expertise, from within governments and the private sector.

The world has the momentum to create a mass market for sustainable finance, one in which investment decisions are driven as much by environmental and social and good governance criteria as by creditworthiness. Companies that have signed the UN Principles for Responsible Investment have combined assets under management totalling US$60tn.

A growing number of businesses recognise that today's formula for success includes a focus on pressing societal needs. As Musk has found out, the trick is to address those needs in ways that are profitable and sustainable in the long run, and then, when a beneficial business solution is identified, to work together to facilitate its large-scale deployment. With a willingness to challenge assumptions and change conventional perceptions, we can change the world for the better.

* *Vice President for Corporate Risk and Sustainability and General Counsel at the International Finance Corporation. Abridged from an article that appeared in* Mint *on June 30, 2016*

New EU Airport Rules

In the past few years the **EU** legal framework regarding airports has been highly revised, obliging the aviation authorities of member states to revise national regulations accordingly. The basic regulation was amended, which enlarged the European Aviation Safety Agency's (EASA) competences to include aerodromes, air traffic management and air navigation services within the EU safety system.

Subsequently, EU Regulation 139/2014 now requires member states, civil aviation authorities, airports and their management companies to ensure full compliance with the new rules by December 31, 2017.

In parallel, the EASA integrated the regulatory framework by setting the acceptable means of compliance, certification specifications and guidance material for airport facilities.

(ILO, 13.04.16)

Bunkering Operation Guidelines

The Guidelines for Bunkering Operations in **Nigeria** were issued by the Department of Petroleum Resources pursuant to Sections 9(1)(e) and 4(1) of the Petroleum Act and Section 48(7) of the Petroleum Regulations.

They apply to all vessels engaged in bunker fuel business or trade within any part of Nigeria's territorial or internal waters.

Any party intending to participate in bunkering operations must obtain a bunkering licence from the minister of petroleum resources. Engaging in bunkering operations in Nigeria without a licence can incur a penalty of US$1mn (or its equivalent in naira) and criminal prosecution.

(Lexology, 01.06.16)

Corruption in Healthcare Sector

The **German** government introduced a draft bill to amend the Criminal Code. This draft bill was discussed in all lobbying sectors and had various pros and cons. In particular, the pharmacists's lobby tried to differentiate between medicinal products prescribed by doctors and medicinal products ordered by pharmacies from the pharmaceutical industry.

The main argument for this differentiation was that ordering a medicinal product is a simple commercial act rather than an act specific to the healthcare sector, and thus a pharmacist acting incorrectly does not act on the same healthcare level as a doctor or clinic acting in direct contact with a patient.

However, this argument was unsuccessful and the code now covers not only doctors, dentists, psychotherapists and physiotherapists, but also pharmacists, nurses, midwives and speech therapists.

The final bill was passed by the Parliament and then passed to the Federal President for signing and became effective on May 30, 2016.

(Lexology, 01.06.16)

Tax Cuts for Oil & Gas Industry

The **UK** government announced its budget for 2016. The government has said that it wants to ensure that the tax regime supports the objective of maximising economic recovery of oil and gas while ensuring a fair return on those resources for the nation.

The government has also announced its intention to support the industry through the challenging commercial conditions caused by the steep fall in oil prices.

The government has effectively abolished petroleum revenue tax, reducing it from 35 to 0 percent with effect from January 01, 2016. It has halved the supplementary charge from 20 to 10 percent. Again, this change took effect on January 01, 2016.

(ILO, 02.05.16)

Better Markets Bill Introduced

The **UK's** government is set to propose legislation that would boost competition, open up markets and increase consumers' power, though one practitioner says the announcement has left the country's competition bar 'none the wiser' about the substance of the intended reforms.

The government announced the Better Markets Bill, saying it would speed up the decision-making processes of the UK's Competition and Markets Authority; simplify how the country's economic regulators operate; help to keep costs low for UK consumers; and increase customer switching in the mobile phone, broadband, banking and energy markets.

Pointing to the competition authority's March proposal to boost competition in the UK's energy market, the government said it intends to 'act quickly' on the enforcer's recommendations. *(GCR, 19.05.16)*

MTN Launches 4G LTE in Ghana

Telecommunication giant MTN has launched its 4G LTE service in **Ghana**. According to the Chief Executive Officer of MTN Ghana, Ebenezer Twum Asante, the 4G service will bring speed and reliability on the go.

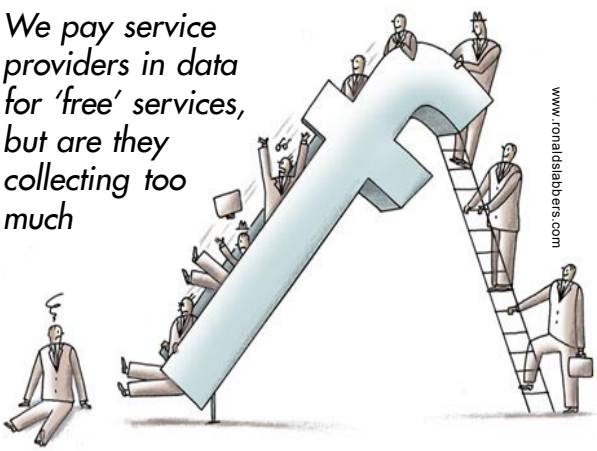
He noted that the launch was part of activities marking the 20th anniversary of MTN in Ghana. With a 4G-enabled device and an MTN 4G SIM card, any subscriber can enjoy MTN 4G service in every regional capital and in many towns across the country.

The CEO of MTN also noted that the company's 4G service is the only 4G service directly accessible on mobile phones and offers unprecedented internet speed and capabilities that will change the way users communicate, socialize, entertain, do business, and participate in activities of all kinds.

(http://m.starrfmonline.com, 21.06.16)

Are you Being Ripped off for News on Social Media?

Marek Martyniszyn*



We pay service providers in data for 'free' services, but are they collecting too much

Some 45 percent of Irish people now access news through Facebook, according to a survey by the Reuters Institute. There is no charge, but is it really free? And are we as consumers getting a good deal?

In the online world, various services are offered to users for free. At least, that is the common perception. For example, email accounts, maps, social media are provided without monetary remuneration. Instead of our money, service providers collect, analyse and store data related to how we use such services.

Sometimes, especially in case of social media platforms, this also includes our personal data. Typically the collected data is used to improve the service and for advertising purposes.

Target ads

The latter is the key to the business model. These 'free' services are financed through advertising. The more the service providers know about you, your preferences and needs, the better they can target ads at you. Moreover, sometimes services providers also sell the collected data to third parties. Therefore, the data we provide and generate as users is valuable. Companies know how to and do monetise it. That is how they make money.

As pointed out by the EU Competition Commissioner, Margrethe Vestager, the provision of services in exchange for data are 'business transactions, not free giveaways. So consumers have a right to be treated fairly, just as they would if they had paid in cash'.

The question is then whether we, the consumers, are getting a good deal. Are we being exploited? Irish and European competition law prohibits dominant firms from charging excessive prices. Although the online service providers do not charge us in pounds or euros, they collect data.

It may well be that they collect too much of it in violation of competition law. It would be a challenging task to establish how much data is fair to collect, but it is not much different from finding out how high a price must be to be considered excessive. We are just substituting money with data.

Data protection breach

The online providers may be in breach of law also by collecting users' data beyond their consent. This would constitute a breach of data protection laws. In some cases, it may also constitute a violation of competition law. By collecting more data about users, a dominant firm may be illegally gaining a comparative advantage over its actual or potential competitors, and in this way, it may be further strengthening its already significant position in the marketplace.

Similar allegations were recently raised by the German competition authority the Bundeskartellamt (BKA) in relation to Facebook. The theory is that Facebook did not adequately inform users about the type and scope of the collected data and its potential use. The firm was able to do so thanks to its dominant position on the market.

In other words, thanks to its position, consumers could not simply say no to the T&Cs as there was no real alternative to Facebook.

Controversial

The German Facebook case is controversial. Commentators in the US are likely to argue that Europeans are yet again picking on US tech firms. However, the fact is that there are some important substantive differences in competition and data protection laws between the US and the EU.

Regardless of the outcome of that particular investigation, it highlights some important questions sitting on the intersections of competition law and data privacy. They call not only for enforcement and remedial action in appropriate cases, but also for a broader public debate.

We, as consumers, should be aware of the nature of the online trade-offs we are facing when using 'free' online services. We need to understand how we pay for them and what the price is. The respective agencies, on the other hand, need to have the necessary tools to make sure we are not being ripped off.

Competition law is one of the systems that is in place to protect consumers from such exploitation.

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* *Lecturer in Law at Queen's University Belfast. Abridged from an article that appeared in the* Irish Times, *on June 17, 2016*

'Guillotine' to Freeze Transfers

Brussels is exploring granting bank regulators tougher 'guillotine' powers to freeze transfers out of a failing bank to prevent it haemorrhaging cash before authorities can intervene.

The European Commission will study options for a 'moratorium tool' that could be applied across the EU. While work on the measure is at an early stage, the powers would abruptly halt payments to bondholders and potentially even prevent depositor withdrawals.

The tool could have a 'stabilising' effect while regulators are preparing a decision on how to intervene at a bank.

(FT, 15.05.16)

National Bankruptcy Law Passed

The **Indian** Parliament has passed the country's first national bankruptcy law, a move that could turn one of the slowest insolvency regimes of any major economy into one of the fastest.

The reform will give banks a clear path to wresting control of insolvent companies unable to repay their debts. Its adoption is seen as a major breakthrough that will allow banks to recover their dues in a timely manner, in contrast to the current system in which they often wage protracted legal battles in an attempt to recover what they are owed.

The new law, which has been cheered by investors, will provide a single framework for the recovery of debts within 180 days by all creditors of insolvent companies. *(FT, 12.05.16)*

Banking Sector Consolidation

The number of **Kenyan** banks needs to shrink by about half in the next three years as the sector battles its 'worst crisis of confidence' in two decades.

Joshua Oigara, Chief Executive of Kenya Commercial Bank (KCB) said that he expected the consolidation of east Africa's largest financial sector from its current 42 banks would happen in an orderly manner.

Kenya is one of the most densely served African countries, with its 42 financial institutions competing over a population of 40 million people. Nairobi-listed KCB is Kenya's largest bank, with assets of US$6bn. It also has subsidiaries in Tanzania, Uganda, South Sudan, Rwanda and Burundi.

(FT, 25.04.16)

IMF Call for Bank Reforms

The International Monetary Fund (IMF) has warned that ultra-low interest rates pose a threat to the profitability of **Germany's** €13tn financial sector, as it steps up its call for the country's banks and insurance groups to restructure.

The fund's warning of 'multiple challenges' to the sector, spelt out in its annual review of the German economy, comes in the wake of widespread domestic criticism in Germany of the European Central Bank's negative interest rates.

The report concludes that such rates have eroded banks' profitability from their retail operations and will weaken life insurers' ability to meet their commitments, which often involve paying policyholders fixed amounts.

(FT, 30.06.16)

FinTech in the Land of Bankers

The Financial Market Supervisory Authority (FINMA) of **Switzerland** recently spent time and effort evaluating digital business, financial technology (FinTech) and technological neutrality.

On January 01, 2016 FINMA revised its Anti-money Laundering Ordinance, with new provisions for the handling of and compliance with duties of care regarding the Anti-money Laundering Act in connection with new payment methods and virtual currencies.

On March 18, 2016 FINMA introduced a new circular facilitating video and online identification of clients (Circular 16/7) by modifying the act's duties of care. The client onboarding process can now be handled completely digitally, provided that the financial intermediary meets specific requirements. *(ILO, 08.04.16)*

Guidance on Dormant Accounts

The **Luxembourg** financial sector regulator (CSSF) has issued Circular 15/631, which provides guidance on the definition and treatment of dormant accounts.

The circular applies to credit institutions and all other financial sector professionals subject to the prudential supervision of the CSSF that keep or manage third-party assets on accounts opened for that purpose.

Professionals should maintain regular contact (at least annually) with their clients and monitor client relationships with vigilance. They must also set out rules to determine clearly when a relationship has become inactive and when an account has become dormant. *(ILO, 15.04.16)*

Big Banks Still too Big to Fail

The US' top bank regulators have added an unexpected voice to the growing chorus of critics worried that the biggest American banks, nearly eight years after the financial crisis, are still too big to fail.

The Federal Reserve and the Federal Deposit Insurance Corporation said that five of the nation's eight largest banks – including JPMorgan Chase and Bank of America – did not have 'credible' plans for how they would wind themselves down in a crisis without sowing panic.

That suggests that if there were another crisis today, the government would need to prop up the largest banks if it wanted to avoid financial chaos.

(BS, 14.04.16)

Wrong Cover

Mark Buchanan*

How big banks fail at risk management

In his new book *The End of Alchemy*, former Bank of England Governor Mervyn King makes a bold argument: No matter how fine-tuned our regulations, no matter how sophisticated our risk management, they cannot properly address the hazards that the financial system in its current form presents.

As it happens, mathematical analysis points to the same conclusion.

Prior to the 2008 financial crisis, global regulators required banks to assess the riskiness of their investments with a measure known as 'value at risk' – an estimate of how much, given recent price history, they might lose on a very bad day (say, the worst one in a hundred).

As of 2019, they will have to use a new measure, known as 'expected shortfall' that is supposed to do a better job of capturing the kind of severe losses than can happen in a crisis.

Missing Data

Calculating either measure entails gathering historical data on the investments in question – be they stocks, bonds or derivatives – and assuming that the future will look something like the past. This is a flaw in itself, because regulations, technology and political and economic conditions keep changing, making the future invariably new and different.

But there's a deeper mathematical problem: Too little data.

Mathematicians Jon Danielsson and Chen Zhou have examined how much data would be required to get reliable estimates of either value-at-risk or expected shortfall, even in a world where the future is like the past. Suppose you wanted a reasonably accurate reading of expected shortfall – say, an estimate likely to fall within five percent of actual losses.

For the complex portfolios of large financial institutions, this would require decades of price history on hundreds or thousands of different assets – something that simply does not exist for many of those assets (many firms do not even stay in business that long, for example). With less data the result would be illusory, offering no meaningful sense of the risk present at all.

To be clear, this is not an issue with the definition of expected shortfall. All such summary measures suffer from the same shortcoming. Given that the entire point is to help banks and regulators control risk by giving them a clear view of it, this is a fundamental failure. Newer measures may be harder for banks to manipulate, but this is a pointless improvement if the numbers bear no relation to risk in the first place.

Far from Optimal

This line of mathematical research also has implications for a central concept of asset management: portfolio optimisation, the idea that, by choosing the right combination of assets, an investor can get the same return with less risk. Because it depends on price histories to figure out what the right mix would be, the method suffers from the same data inadequacy problem.

In a series of works over the past decade (see here, most papers from 2007 onwards), physicist Imre Kondor and colleagues have shown that optimising a portfolio of dozens or hundreds of assets is often simply impossible.

In short, the measures of risk used by the world's largest financial institutions may be so far from optimal as to be useless. Which suggests that Mervyn King is probably right on another point: Achieving a resilient financial system – one that won't pose a threat to the economy – will require much more radical change than policy makers have contemplated so far.

* *American Physicist and Author. The article appeared in* The Hindu Business Line *on May 27, 2016*

Antitrust Official Describes Fight Against Anticompetitive Laws

A senior official at China's National Development and Reform Commission (NDRC) said sectoral regulation and local bureaucracy can stifle competition, but said her agency has tools to fight those effects.

Speaking at two conferences in Brussels and Friday, Li Qing, Deputy Director General of the NDRC's price supervision and anti-monopoly bureau, outlined how her agency interacts with other parts of China's government in pursuing greater competition.

Responding to economist David Evans' new book, '*Matchmakers'*, Li spoke favourably of the potential of multi-sided platforms that can challenge the dominance of incumbent companies, and said regulators should be careful not to choke off these new business models.

"We should acknowledge and respect the new characteristics of the multi-sided platforms, but with cautious supervision," she said.

While the basis of the existing competition rule is very well established, "the characteristics of the emerging industries and the business model have not been fully exposed. If we make a judgment too early, that would be a pricey lesson which may affect innovation," Li said.

Regulators should be independent, but also "have to coordinate and balance the industrial regulation and the antitrust supervision," she said. Industrial regulation is forward-looking, whereas "when we [antitrust authorities] see a problem we should pay attention, but only when there is anticompetitive conduct."

"In consideration of the [taxi] regulation, the regulator did not take adequate consideration of the competition factors," she said. "It has been quite difficult to change" regulations embodied in decrees, she said, particularly given the further complication of local level regulation of the taxi industry.

"The traditional model and the new model compete together, and the fierce competition may lead to conflicts," Li said. She noted that in an interview, the minister of the department of transportation had said the traditional taxi industry should increase its level of service quality and that the government we should encourage the development of the new business model in the taxi industry.

Li agreed that the government should support and not crack down on the new business model for the taxi industry, "but we should also stress the supervision and assure the service quality" of vehicles and drivers.

"We should also enhance the reform and solve the remaining problems" for companies having paid for licences to operate taxis, likely through government redemption of the licences, to allow the traditional taxis and those using multi-sided platforms to compete together fairly, she said.

While the provisions against administrative agencies abusing their powers to eliminate or restrict competition have been in effect since 2011, Li said the NDRC last year made a "breakthrough" of substantial inroads of regulating such abuse, through five investigations of core consumer areas such as transportation, telecommunications and pharmaceuticals.

The types of abuse of administrative powers included local protectionism and forcing companies to conduct monopolistic activities, she said.

Li attributed the root of abuse of administrative powers to government agencies lacking awareness of fair competition. "So either for protecting their own interests or local interests, they're conducting anticompetitive activities," she said.

Another important instrument for competition policy, Li said, is the Chinese government's commitment to the fair competition review mechanism, the purpose of which is to guarantee that various government policies do not impede competition. Before a policy comes into effect, it has to undergo fair competition review to identify any anticompetitive provisions, she said.

Through this pre-emptive action, Li said, the government can prevent excessive intervention in the market, and guarantee that the market plays the decisive role in allocating resources. While China looked to the European Union's prohibition on state aid in designing this mechanism, she said, the Chinese law is "much broader than that."

– *The news item appeared in the* Global Competition Review *on June 06, 2016*

COMESA Competition Law: Recent Developments

Cameron Firth*

While the COMESA Competition Commission (CCC) has had significant teething problems, recent developments indicate that the Common Market for Eastern and Southern Africa (COMESA) Member States are making a substantial effort to prioritise competition law enforcement and ensure that the CCC is regarded as a serious competition authority

What is COMESA?

The COMESA is a supra-national organisation with 19 Member States – Burundi, Comoros, Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Namibia, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia and Zimbabwe.

What is the COMESA Competition Commission?

The CCC commenced operation on 14 January 2013, enforcing a merger control and antitrust regime under the COMESA Competition Rules (Rules) and COMESA Competition Regulations (Regulations).

Merger Control Developments

Following the CCC's commencement, an immediate impact was felt in the area of merger control. Its Rules and Regulations created a requirement for every business operating in the region to consider whether a COMESA merger filing was necessary when entering into an M&A transaction or joint venture.

In response to calls for greater clarity and legal certainty, the revised CCC Guidelines on the merger control rules (Revised Guidelines) were published. The main changes brought about by the Revised Guidelines were:

- the introduction of turnover and asset value thresholds for merger notification; and
- clarification that the CCC has exclusive jurisdiction over transactions that meet the turnover thresholds.

After the introduction of turnover and asset value thresholds, the number of transactions reviewed by the CCC fell significantly: 66 transactions were reviewed by the CCC in 2014, but only 15 in 2015. The transactions reviewed have been across a wide variety of sectors including insurance, food additives, water treatment, agro-chemical, banking, telecommunication, non-alcoholic beverage, publishing, packaging and retail.

Although the introduction of turnover thresholds was a welcome development, it is uncertain whether the significant decline in CCC filings resulted from this. Commentators have speculated whether the reduction in filings could be attributed to some legal advisers taking the view that, at this stage, a failure to make a COMESA filing does not attract significant penalties.

The CCC's exclusive jurisdiction to examine transactions is also subject to significant uncertainty. When the Revised Guidelines were first published, it was reported that the Kenyan Competition Authority took the view that domestic merger control rules continue to apply even if a filing must be made to the CCC. This position was supported at the 2016 ABA Antitrust Spring Meeting, where a former COMESA Competition Commissioner indicated that the CCC does not have exclusive jurisdiction over cases within its jurisdiction. This is likely to create issues for transacting parties who may have to make multiple filings in different COMESA Member States and the issue of where to file requires careful consideration taking into account the specifics of any particular transaction.

Antitrust Investigations

Having concentrated on making improvements to its merger control regime throughout 2013 and 2014, the CCC's Executive Director, George Lipimile, indicated in August 2015 that the CCC would be commencing a series of antitrust investigations. These investigations would include a sector inquiry into shopping malls, as well as investigating cartels in the fertiliser, bread and construction industries. Investigations into all these industries are already being carried out by the more developed competition authorities in Africa (e.g. the South African authority and Botswanan authority).

In February 2016, the CCC announced that it had commenced the sector inquiry into shopping malls.

Looking to the future

While the CCC has had significant teething problems, recent developments indicate that the COMESA Member States are making a substantial effort to prioritise competition law enforcement and ensure that the CCC is regarded as a serious competition authority.

– *Partner in the EU, Competition and Regulatory Group and is Co-head of Life Sciences and Healthcare, UK. Abridged from an article that appeared in the* Lexology*, on June 14, 2016*

World without Leaders

Kanti Prasad Bajpai*

The major powers, who must uphold global order, are beset by internal and external change, and none of them is capable of leading. We are assailed by challenges that have left the world without leadership and without effective institutions. Should we be exuberant in such a world?

Every major power is struggling with economic, social, and political churning. In the wake of the crisis of 2008, the financial sector in the West is now so regulated that it has become risk averse to an unhealthy degree and cannot lubricate the markets. At the same time, Western governments have become allergic to stimulus spending and are relying on monetary instruments which have largely not worked.

China by contrast has overstimulated and is now sitting on a mountain of debt and bubbles. Its growth has fallen and could fall further, with negative consequences for the world economy. Russia is a commodity economy which has seen the price of its major commodity, oil, collapse. It is also under Western economic sanctions. India stands out for growth but little else, with a stagnant manufacturing sector and the spectre once again of food inflation. It cannot lead the global economy out of its troubles.

The global economic outlook is made more uncertain by the retreat from free trade. Global free trade morphed into regional free trade some years ago; now even regional trade is suspect. Hillary Clinton is opposed to TTP, Donald Trump wants to tear up virtually all regional agreements, and Brexit would diminish the EU trading space. The EU and US may in addition step back from TTIP. In Asia RCEP is practically dead, thanks to New Delhi which is trying to wriggle out of various regional trade commitments. On top of it all, there are disruptive technologies on the way that could increase inequality and unemployment worldwide.

The major powers are also experiencing the rise of clacking, madcap conservatives – religious fundamentalists, racists, hypernationalists, cultists, homophobes, anti-abortionists and misogynists. The problem is that the first three of these fringe groups are no longer fringe. In an era of enormous uncertainty, they propagate snake oil certitudes, yearn for some golden past, and scorn the so-called secular, cosmopolitan elite. This conservative coalition uses mob politics to impose its will and is opening spaces for the other crazies – the cultists, homophobes, anti-abortionists and misogynists.

Political illiberalism is becoming the norm in every major country. We in India are feeling the sharp end every day. Rule of law is giving way to 'rule by law' – the use of the law to attack activists and political opponents. We have joined a distinguished club – China, Russia, Turkey, Hungary, and Gulf, West Asian and African autocracies. This club looks to grow larger if Trump wins in the US and if right-wing parties come to power in Europe. Elite bashing marks this rather dreary grouping, when it is a balance between elites and masses that ensures freedom.

The retreat of domestic political liberalism is being matched by a retreat from internationalism. In the conspiracy-theory world of the new populism, international institutions are being painted as exploitative instruments in the hands of arrogant, unfeeling, deluded, and above all, selfish elites.

Bowing to every prejudice thrown up by the mob is the new norm

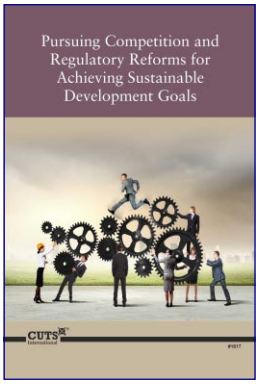
Many working class Britons and other Europeans want to get out of the Brussels-dominated EU. Many Americans, particularly Republicans, regard the WTO, IMF, World Bank and WHO as sinecures for overpaid experts. Russia and China spend most of their time looking for ways to check Western control of these institutions. India is too weak to have much influence and is generally fearful of international organisations.

The world desperately needs leadership. Unfortunately, leadership today is 'leading by following', bowing to every prejudice thrown up by the crowd. Except for Barack Obama, who is about to exit the stage, it is hard to see anyone with the intellectual and personal qualities equal to the task.

* *Indian Academic-Analyst and former Headmaster, Doon School, Dehradun, India. Abridged from an article that appeared in* Times of India *on June 18, 2016*

Forthcoming

Pursuing Competition and Regulatory Reforms for Achieving Sustainable Development Goals



In September 2015, countries adopted the 2030 Agenda for Sustainable Development along with a set of 17 'goals' referred to as Sustainable Development Goals (SDGs) to end poverty, protect the planet, and ensure prosperity for all. World leaders agreed to develop structured national action plans to achieve these ambitious 'global goals' through the participation of both state and non-state actors. The international community made commitments to support such processes and programmes.

CUTS' mission of is well aligned with a number of these SDGs. Hence, it endeavoured to explore how some of its initiatives under specific programmatic areas synergise with some of the SDGs. Pursuant to this ambition CUTS envisaged this volume. It presents a set of 16 papers contributed from across the globe from Australia to Argentina and will enhance the visibility of competition and regulatory reforms in the context of the achievement of the SDGs. The volume will be released at the Fourteenth Session of UNCTAD at Nairobi, Kenya, on July 17-22, 2016.

New Database – UNCTAD University Project Maps over 1,400 IIAs

UNCTAD launched the IIA Mapping Project database. The new database is part of UNCTAD's IIA Navigator and contains a detailed mapping of 1,400 international investment agreements (IIAs). The IIA Mapping Project is an ongoing effort that aims to map all IIAs for which texts are available (about 2,700).

The IIA Mapping Project is a collaborative initiative between UNCTAD and universities worldwide to map the content of IIAs. The resulting database offers a tool for policymakers, researchers and other investment and development stakeholders to understand trends in IIA drafting, assessing the prevalence of different policy approaches and identifying treaty examples. The IIA Mapping Project builds upon UNCTAD's Investment Policy Framework for Sustainable Development.

The IIA Mapping Project database allows users to:

- view elements of over 1,400 investment treaties;
- select treaties based on key elements (e.g. qualifiers for fair and equitable treatment, scope of the expropriation clause or investor-State dispute settlement); and
- compare treaty elements over time and across countries.

Individual treaties are mapped by law students from participating universities, under the supervision of their professors and with the overall guidance and coordination of UNCTAD.

http://investmentpolicyhub.unctad.org/News/Database/Home/506

We want to hear from you...

Please e-mail your comments and suggestions to **c-cier@cuts.org**

We put a lot of time and effort in taking out this newsletter and it would mean a lot to us if we could know how far this effort is paying off in terms of utility to the readers. Please take a few seconds and suggest ways for improvement on:

- Content
- Number of pages devoted to news stories
- Usefulness as an information base
- Readability (colour, illustrations & layout)

Sources

BS: Business Standard; ET: Economic Times; FE: Financial Express; FT: The Financial Times; GCR: Global Competition Review; ILO: International Law Office; KT: Korea Times; NYT: New York Times; TA: The Australian; TH: The Hindu; WSJ: Wall Street Journal

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