REGULETTER

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Special Articles

Towards effective Competition Regimes in Africa

The African continent is seeing steady growth in adoption of competition legislation since the 2000s. This is in spite of the fact that competition policy was taken out of the Doha Agenda negotiations of the WTO in July 2004. Countries, aided by organisations like CUTS, UNCTAD, World Bank etc., realised the value of having a competition regime for the benefit of its own economy even though it was not a part of the global trade agenda. Consequently, during the past two decades many jurisdictions in Africa have adopted competition policy as a tool for economic and market governance.

Following a sequential approach, Botswana adopted the National Competition Policy in July 2005 after going through an audit of its economic legislations to see how they prevented competition. It then adopted the Competition Act in 2009. A similar sequence is now being followed in several African countries, such as Ghana, Uganda, Mozambique etc.

However, some of the older countries revised their competition laws totally such as South Africa, Tanzania, Kenya and Zambia. Many others legislated their competition laws in spite of opposition from business which has been the case in many developing countries trying to introduce one. Many leftist CSOs too opposed on ideological grounds that this will lead to takeovers of local firms by foreign companies and that they would be uncompetitive. However, that never happened. As a result, today 27 African countries have competition laws and many more are in the queue.

In terms of competition enforcement the South African Competition Commission (SACC) leads. It has raised more than US$300mn in fines for cartel settlement agreements. Its leniency policy has been particularly successful, having assisted in the uncovering of numerous cartels. SACC has also pursued a number of abuse of dominance cases, market enquiries and dawn raids across numerous industries. After a new competition law in December 2016, the Competition Authority of Kenya increased its manpower and become more active.

Growth in competition enforcement is happening not only at the country level but also at the regional level. The Common Market for Eastern and Southern Africa (COMESA) has a regional law being implemented across the 20 country common market, while the East African Community Competition Authority seeks to enforce Competition Act, 2006 in consultation with COMESA to avoid duplication and harmonise measures. In West Africa, there's the WAEMU regional law for the eight Francophone countries and another one in ECOWAS across 15 member countries, which includes WAEMU, in different stages.

African countries are gradually waking up to the reality that a robust competition regime that regulates market failures encourages businesses to become more competitive, increase innovation and widen consumer choice. However challenges such as lack of finance, inadequate capacity, overlapping of roles among regulatory authorities are prevalent. Also, for competition culture to succeed, it is important that governments, private sector, regulators and consumers become aware of benefits from promoting competition measures.

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

EU Antitrust Damages Directive

The **Hungarian** Parliament adopted a major amendment to the Competition Act (57/1996), which took effect on January 15, 2017. An important part of this amendment was the timely implementation of the EU Antitrust Damages Directive (2014/104/EU) into Hungarian law.

It was possible to claim damages for a competition law infringement under Hungarian law before the directive's implementation under the general civil law rules on damages and a few special supplementary provisions. However, the directive's implementation introduced detailed rules for damages claims arising out of competition law infringement and the enforcement thereof.

The Hungarian legislature chose to include the new rules in a new chapter of the Competition Act, instead of incorporating them into a new, separate legislative instrument.

The directive's implementation also introduced several new solutions to competition infringement Hungarian law. It will be interesting to see what effects the new rules will have on the private enforcement of competition law in Hungary, which – to date – has rarely been pursued. *(ILO, 18.04.17)*

Big Data Subject to Competition Law

A report by a study group at **Japan**'s Fair Trade Commission concludes that the collection and use of big data should be subject to the country's Anti-Monopoly Act.

In recent years, it is expected that knowledge derived from 'big data' analysis will inspire further innovation across the existing industrial boundaries in the context of the spread of Internet of Things and the advancement of artificial intelligence-related technology.

The increasing importance of data utilisation in business activities makes it necessary to consider the competition policy issues in order to promote data utilisation. *(CPI, 07.06.17)*

Competency in Merger Control

The 9th amendment to the **German** Competition Act (ARC) finally came into force on June 09, 2017.

The main reason behind this substantial change of German competition law was the implementation of the EU directive 2014/104/EU on Antitrust Damages Actions. German legislators have taken this opportunity to make further changes to the existing competition law regime.

The new provisions expand the competence of the Federal Cartel Office in the areas of merger control, digital markets, and private antitrust enforcement. Also, gaps in the enforcement of fines have been closed. *(CPI, 12.06.17)*

Act on Private Enforcement

The Parliament of **Poland** adopted the Act on Private Enforcement of Competition Law, which transposes the EU Antitrust Damages Directive (2014/104/EU) into Polish law.

Although it was previously possible under general tort law to file a civil lawsuit for damages caused by an infringement of competition law, few potential complainants sued cartelists in Poland. This was mainly due to the difficulty in proving the extent of the damage and the causal link between it and the breach of competition law.

The Act on Private Enforcement of Competition Law aims to enhance enforcement of the payment of compensation by companies that have infringed competition rules. *(ILO, 15.06.17)*

Radical Interventions Underway

South Africa's Competition Act will undergo radical changes so that competition authorities can act against companies who perpetuate skewed ownership structures and over-concentration in certain markets in the economy.

Economic Development Minister Ebrahim Patel said the proposed amendments will enable competition authorities to also act where big players in the market create barriers of entry to keep smaller players out.

Patel said that he tabled the framework of amendments to Cabinet and that it will bring about radical interventions. *(www.fin24.com, 25.05.17)*


Business Standard

A New Era of Antitrust

Zimbabwe is expected to enact a revised competition law. The country's Cabinet has reportedly approved the National Competition Policy (NCP). One element of the NCP is to reduce the time it takes the Zimbabwean Competition and Tariff Commission (CTC) to review mergers and acquisitions from 90 to 60 days, thereby encouraging 'brownfield' investments.

The NCP is part of a larger project to encourage investment and is closely linked with the country's industrial and trade policies, known as Zimbabwe Agenda for Sustainable Socio-Economic Transformation, Zimbabwean Industry and Commerce Minister Mike Bimha emphasised on the need for 'a level playing field'. *(www.africanantitrust.com, 23.05.17)*

Three Ways the FCA's Competition Agenda Can Work for your Business

Phil Deeks*

Phil Deeks considers three fundamental areas financial advice firms should be focusing on to ensure they are on the front foot for embracing the FCA's increasing focus on competition

www.techohiogove.files.wordpress.com

Effective competition is beneficial for all market participants – industry and consumers alike. It should therefore come as no surprise that this is a core focus for the Financial Conduct Authority (FCA) of the UK in achieving all three of its statutory objectives – protecting consumers, ensuring market integrity and promoting effective competition.

Although the FCA's concurrent competition powers that it has the authority to enforce the prohibitions under UK and European Union competition law where it did not before – such as pricing – firms should not view it as just another regulatory hurdle to overcome.

Let's take a look at three fundamental areas financial advisory firms should be focusing on to ensure they are on the front foot for embracing the FCA's of the UK increasing focus on competition. If addressed appropriately, these areas provide benefits that will put firms in the optimal position to compete effectively in the financial advice market.

The Virtuous Circle

The FCA's nirvana state is a virtuous circle of competition that mutually benefits customers and firms. Effective competition can deliver lower prices, improve service quality and result in product and service innovation.

Improving the balance of competition in markets can also lead to benefits for firms, as customers are more inclined to switch and shop around. Conversely, when competition is ineffective, customers are less likely to find services and products that are good value for money, and many firms can be disadvantaged by anti-competitive forces, such as market concentration and dominance.

Effective competition provides firms with incentives to deliver products and services that customers want. Firms with a customer-centric culture and services and products that represent good value for money are therefore most likely to thrive.

Value For Money

Many consumers today are disengaged from financial advice, believing it does not offer good value for money. Effective communication is therefore essential to change negative perceptions and educate consumers on the value of advice.

This needs to occur at two levels. First, firms have an obligation to engage the wider market and educate future generations on the value of advice in order to ensure the market survives.

Second, at an individual level, effective communication will give customers confidence in the value of *the firms'* advice by setting expectations of the benefits and return of their investment.

Culture

Creating products and services that are good value for money has its roots firmly in culture. A culture that creates the right outcomes for customers is likely to provide good value for money and not introduce barriers to exit. In turn, this gives customers the freedom to make informed choices, which leads to this virtuous circle of competition.

The 'box ticking rules' culture of yore is far behind us. Now, the FCA expects firms to be more focused on the outcomes and doing the right thing for clients, rather than merely complying with the rules. The regulator is forming a view of firms' culture during every interaction. From thematic reviews to regulatory reporting, every encounter counts.

It is important that firms have an in-depth understanding of their culture - and how this guides staff's actions and behaviours and, in turn, influences their products and services, quality of client communication and the outcomes clients receive. Crucially, this means firms not only have to identify their culture but are also able to evidence and measure its outputs.

In markets that are optimally competitive, firms have more opportunity, clients have more choice and the regulator oversees a market that works well. Firms that have a culture focusing on delivering value-for-money products and services to the right clients are likely to thrive in a landscape with an ever-increasing focus on competition.

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* *Technical Director at The Consulting Consortium (TCC). The article appeared in Professional Adviser on June 30, 2017*

PRICE FIXING

Auto Parts Giant in Collusion

Japanese and **German** bearing manufacturers have faced fines totaling US$1.7mn for collusion. In response to Korean auto-part makers' attempts to cut costs by diversifying their suppliers, the global manufacturers have avoided competition by fixing their bearing prices through telephone calls and face-to-face meetings between executives.

According to the Korean Fair Trade Commission (KFTC), Tokyo-based NSK and Osaka-based JTEKT agreed in 2002 to fix the prices of their bearings used for Hyundai Santa Fe and Tucson SUVs by the end of 2009.

The KFTC also revealed non-aggression treaties among the four manufacturers: NSK, JTEKT, NSK's Korean affiliate and German-based Schaeffler Group's Korean unit. The two local subsidiaries are 100 percent owned by their global headquarters.

(KH, 26.06.17)

Nokia Networks Penalised

Spanish Communications and Competition Regulator (CNMC), has fined Nokia Solutions and Networks Spain a total of €1.74mn (US$1.94mn) following anticompetitive behaviour in the tender to modernise and maintain the country's railway communication system on high-speed train lines.

Specifically, the CNMC accused Nokia of abusing of its dominant position and engaging in a margin squeeze when setting its wholesale and retail prices for wireless digital systems used in the GSM-R rail communication system.

The probable result of the anticompetitive conduct was that Nokia's main competitor in the GSM-R telecommunications market decided against participating in the tender, added the CNMC. Nokia Networks now has two months to appeal the fine before the country's contentious-administrative courts. *(CPI, 05.06.17)*

Pharma Companies under Scanner

Three international pharmaceutical manufacturers are to be investigated by **South Africa's** Competition Commission for their alleged excessive pricing of cancer medicines.

The Commission initiated separate investigations against Roche Holding AG (Roche), Pfizer Inc and Aspen Pharmacare Holdings Ltd.

It said in a statement that it has reasons to believe that Roche and its US-based biotechnology company, Genentech Inc have and continue to engage in excessive pricing, price discrimination and exclusionary conduct in the provision of breast cancer medicine in South Africa.

(PTI, 15.06.17)

First RPM Penalty on Hyundai

The Competition Commission of **India** (CCI) has levied a penalty of ₹420.26 crore on car manufacturer Hyundai Motor India Ltd for violating antitrust laws in the supply of genuine spare parts and diagnostic tools.

While Hyundai was penalised two percent of its annual turnover in India for three years 2009-10, 2010-11 and 2011-12, Reva and Premier were exempted from penalties.

The regulator held that the three companies had entered agreements that adversely affected market competition and abused their dominant position in the supply of spare parts.

(www.mondaq.com, 16.06.17)

EU Fines Car-Lighting Cartel

The **EU** fined car lighting system producers Automotive Lighting and Hella US$30.1mn for operating a cartel with Valeo, which escaped a fine.

"The Commission has sanctioned another cartel in the automotive sector. Three lighting producers harmed car and commercial vehicle manufacturers by colluding instead of competing against each other," Competition Commissioner Margrethe Vestager said in a statement.

The three companies, which make headlamps or daytime running lights, discussed quotes for tenders and negotiation strategies and exchanged information on the status of negotiations with customers regarding price increases.

Valeo revealed the existence of the cartel, thereby escaping a fine of over €30.5mn. Automotive Lighting was fined €16.3m while Hella received a fine of €10.4mn. *(Reuters, 21.06.17)*

Meat Suppliers Raided

The **South African** Competition Commission raided meat-supplying companies in three provinces on suspicion of price fixing.

The Commission conducted simultaneous search and seizure operations at 13 premises of seven companies as part of a continuing investigation into the alleged fixing of prices and trading conditions

The companies whose premises were raided are Karan Beef, Sparta, Chalmar, Beefmaster, Morgan, Beefcor and Fabvleis. The companies operate in Gauteng, the Free State and Northern Cape. *(www.businesslive.co.za, 14.06.17)*

Hiring Whistleblowers against Cartels

The **Philippine** Competition Commission (PCC) will recruit whistleblowers to report anticompetitive practices, such as price-fixing.

The antitrust body is also investigating the power generation and cement industries following complaints of alleged collusion among the sectors' few players.

The PCC plans to grant individuals immunity from prosecution and exempt them from fines in exchange for information on fixing prices and imposing barriers to entry.

Balisacan, the former Economic Planning Secretary, is taking on the task of dismantling anticompetitive practices in the Philippines, which the World Bank has outlined as among the country's key challenges. *(Bloomberg, 18.06.17)*

ABUSE OF DOMINANCE

FTC wants a Word with Uber

Adding to the embattled ride-hailing company's troubles, Uber is now reportedly under investigation for privacy violations by the **US** Federal Trade Commission (FTC).

Currently it is purely speculation exactly what has the FTC investigators interested in Uber, which was reported by Recode. The site speculated that it could be the employees' use of 'god view,' a tool that was used by some Uber employees to track the locations of some politicians and celebrities.

It is unknown what stage the Uber investigation is at, and it could well go away without any charges being filed. FTC investigations are usually kept under wraps, but Recode says it has spoken to four different sources 'familiar with the matter.'

(https://arstechnica.com, 15.06.17)

Google Fined Record €2.4bn by EU

The **European Union** has handed Google a record-breaking •2.42bn fine for abusing its dominance of the search engine market in building its online shopping service, in a dramatic decision that has far-reaching implications for the company.

The European regulators said that by artificially and illegally promoting its own price comparison service in searches, Google denied both its consumers real choice and rival firms the ability to compete on a level playing field.

www.thelibertarianrepublic

On the back of the finding that Google is the dominant player in the European search engine market, the EU regulator is further investigating how else the company may have abused its position, specifically in its provision of maps, images and information on local services.

The Commission's decision suggests the company may need to fundamentally rethink the way it operates. *(TG, 27.06.17)*

Jio Offers not Anticompetitive

India's anti-trust regulator offers for free voice and data from Reliance Jio Infocomm, a unit of Reliance Industries, did not amount to anti-competitive actions, rejecting a complaint by rival Bharti Airtel.

Bharti filed its complaint with the CCI saying Jio, backed by billionaire Mukesh Ambani, had engaged in 'predatory pricing' after entering the market with temporary offers of free voice and data, with certain caps.

CCI said Jio's offers did not amount to anticompetitive behaviour given the telecom provider was a new entrant and hence did not have a dominant position in India, nor was it preventing others from offering similar services. *(Mint, 09.06.17)*

Is Amazon a Monopoly?

Amazon has sent changes the grocery store market with its US$14bn bid to buy Whole Foods. The deal will add an additional US$16bn in revenue to Amazon's already enormous top line, which is expected to hit US$200bn in 2018.

US antitrust laws are geared toward ensuring consumers benefit from business activities — primarily considered in terms of price level and access to products, not level of competition.

It seems likely that this will be the case. Amazon's logistics capabilities could bring down the cost of products sold at Whole Foods by allowing for greater purchase orders and efficient delivery. Listing Whole Foods products on Amazon would also increase access for more people.

Furthermore, the deal is unlikely to decrease competition in a significant way. Whole Foods will continue to operate under its own name and Amazon's expansion into groceries is not especially large, yet.

(www.theatlantic.com, 18.06.17)

Bank Fined over Card Payments

Bank of **Cyprus**, the only eurozone bank to forcibly bail in depositors during the financial crisis, has been fined €18m by the island's competition regulator for abusing its dominant market position in the credit cards.

The bank, which was restructured as part of the €10bn international rescue of the Cypriot banking sector in 2013, said in a statement that it would appeal the fine "through all available court processes".

The Cyprus Commission for the Protection of Competition announced the fine on May 22, 2017.

The lender said it would reflect the fine "appropriately in its financial results for the quarter ended March 31, 2017 but added it did not intend "at this stage" to adjust its guidance.

(FT, 24.05.17)

Gas Exports Investigated

EU antitrust regulators will investigate whether Romanian state-owned gas pipeline operator Transgaz is hindering gas exports to other EU countries, a move which could result in a hefty fine for the company if found guilty of breaking EU rules.

The European Commission's investigation followed raids a year ago which targeted Transgaz, Romanian state-owned gas producer Romgaz and gas firm OMV Petrom.

Transgaz may have used interconnector transmission fees, under investment in building relevant infrastructure and unfounded technical arguments to prevent exports, the Commission said.

(www.energy.economictimes.indiatimes.com, 01.06.17)

Antitrust Cartel Cases

What can companies expect under the Trump administration?

This article discusses existing trends related to domestic and international cartel cases and offers a perspective on what could happen under the Trump administration. It also explores the factors that make these cases so complex and the importance of having the right cartel team in place to craft an informed global strategy.

Antitrust trends

Historically, purely domestic cartels were the primary focus in the US. However, in the past 10 years the Department of Justice (DoJ) has focussed on international cartel cases, and domestic cases have become more the exception than the rule. In that time, there has also been an increase in enforcement activity outside the US.

There are also more investigations and cases being brought in highly regulated industries, such as the airline and pharmaceutical industries. Previously, the DoJ had been reticent to investigate highly regulated industries because these cases are frequently complicated. However, the DoJ now aggressively pursues highly regulated industries regardless of the complexities in these cases.

Antitrust Division activity

In the past few years the DoJ has filed a number of domestic cartel cases. While overall cartel enforcement is increasingly international, the DoJ has pursued a number of domestic cartel cases, some of which have been heavily publicised.

The Trump administration will not want the US government to be victimised by cartel conduct. Thus, in that way, domestic cartels may still be something on which the DoJ focuses under the new administration.

Antitrust under Trump administration

It is difficult to predict how the trends and policies that have evolved over the past decade will play out under the Trump administration. The president has already made some picks for antitrust leadership that suggest that antitrust enforcement will decrease in some areas. The cartel space will be an interesting one to watch because on the one hand.

Trump is a pro-business president, but on the other hand, he ran on a populist platform and the consumer protection side of antitrust enforcement is a foundational populist belief – particularly where US consumers are being disadvantaged in some way. This is highly likely to be something that Trump will wish to pursue aggressively, particularly where foreign companies are selling price-fixed products into the US market.

Increase in threat of criminal prosecution

Previously, when a company was under investigation it could expect to be investigated by only a few cartel enforcement agencies – for example, the DOJ, the European Commission and the Japan Fair Trade Commission. However, in recent years, there has been a proliferation of cartel enforcement laws. Increasingly, companies are facing a real threat of severe punishment, and not just in a couple of jurisdictions.

Internal investigations

With numerous regulators involved and an increasing number of jurisdictions with criminal penalties and civil remedies for victims, a company may need to reconsider its strategy of how, when, what and to whom to report on the results of an ongoing internal investigation. This field is a landmine for companies that are under investigation. Typically, multiple jurisdictions investigate the same conduct and levy separate and severe penalties, which creates a 'pile on' effect.

Crafting informed global strategies

In order to form an effective global strategy, a company facing investigation must be attuned to the issues from the outset. It must know what to anticipate and expect, not just in the initial agency investigation, but also the inevitable follow-on civil litigation – which no longer takes place only in the US. Companies face huge risk from the beginning and the investigation team can take steps to manage this risk from the outset.

These hybrid cases are complex and governed by different regulations in each jurisdiction, meaning that a company often needs counsel in supporting practices in addition to a strong cartel team.

Being able to identify the scope of the potential problem upfront – whether this is how many jurisdictions will be involved or how many different types of legal issue will be implicated – is critical so that a company understands why an investment upfront can pay off and save money later in the investigation.

* *Legal Correspondent, Financial Times. The article appeared in* The Financial Times, *on January 05, 2017*

Verizon Wraps up Yahoo Deal

Verizon has taken over Yahoo, completing a US$4.5bn deal that will usher in a new management team to attempt to wring more advertising revenue from one of the internet's best-known brands.

Yahoo's email and other digital services such as sports, finance and news will be run by Tim Armstrong, who has been running AOL since Verizon bought that company for US$4.4bn two years ago. Armstrong will now be CEO of a new Verizon subsidiary called Oath, which will consist of Yahoo and various AOL services.

About 2,000 Yahoo and AOL workers are expected to lose their jobs as Verizon trims expenses and eliminates overlapping positions.

(TS, 13.06.17)

Standard Life-Aberdeen to Combine

The **UK** Competition and Markets Authority (CMA) has given the merger of Standard Life and Aberdeen Asset Management the green light.

The move brings the US$12bn US mega-merger a step closer. The deal received shareholder approval and will create a global top 25 player, running £670bn of client assets. Standard Life CEO Keith Skeoch and Aberdeen boss Martin Gilbert will run the business as joint-CEOs.

The combined group revealed its Senior Investment Management line-up, with Rod Paris to be Chief Investments Officer. Devan Kaloo is set to be Global Head of Equities, with Hugh Young heading Asia, as well as sitting on the Asset Management Executive Committee. *(BBC, 22.06.17)*

Conditional Nod to Dow-Dupont

The merger of Dow Chemical and DuPont, two of the world's largest chemical companies, cleared a major hurdle after the companies reached a proposed settlement with **US** antitrust regulators to address competitive concerns.

The proposed settlement over the agreed US$142bn deal would resolve a lawsuit that was filed publicly, in which the US Justice Department said it was concerned about the impact of the merger on competition in the market for crop-protection chemicals, as well as two chemical products used to make flexible food packaging, among other industrial applications.

Approval is conditioned on the divestiture of some assets, including parts of DuPont's crop-protection portfolio and Dow's global ethylene acrylic acid copolymers and ionomers business. *(FT, 05.06.17)*

Santander buys Banco Popular

Spain's biggest bank Santander is to buy struggling rival Banco Popular for a nominal €1 after European authorities determined the lender was on the verge of insolvency.

Santander will ask investors for around €7bn (US$7.9bn) of fresh capital to cover the cost of bolstering Popular, which has been weighed down by billions of euros of risky property loans.

The rescue, which followed a declaration by the European Central Bank that Banco Popular was set to be wound down, marks the first use of an EU regime to deal with failing banks adopted after the financial crisis.

(SN, 07.06.17)

Green Light to Cabcharge-Yellow

Cabcharge will see a greenlight from the competition watchdog to buy the Yellow Cabs network in Queensland for US$20mn.

The **Australia** Competition and Consumer Commission (ACCC) said that the deal would not reduce competition because there are a variety of payment systems and the taxi industry is already under pressure from ride-sharing services like Uber.

The ACCC found that it was unlikely the acquisition would result in Cabcharge foreclosing competition from alternative non-cash payment system providers, as there are a number of alternative systems available and it is drivers who choose which system to use. *(TA, 22.06.17)*

Microsoft Acquires Cyber Firm

Microsoft confirmed that it will acquire Hexadite, an Israeli startup that uses AI to identify and protect against attacks. The idea is to expand Microsoft's existing security portfolio with an infusion of new technology based around new innovations in areas like AI and machine learning.

"Our vision is to deliver a new generation of security capabilities that helps our customers protect, detect and respond to the constantly evolving and ever-changing cyberthreat landscape," said Terry Myerson, Executive Vice President, Windows and Devices Group, Microsoft.

He said that Hexadite's technology and talent will augment their existing capabilities and enable our ability to add new tools and services to Microsoft's robust enterprise security offerings. *(www.techcrunch.com, 08.06.17)*

Flipkart-eBay gets CCI Nod

The Competition Commission of **India** (CCI) has given approval for e-commerce major Filpkart's acquisition of eBay India. It is an agreement under which the two will jointly pursue cross-border trade opportunities to make Ebay's global inventory accessible to more Indian consumers. Bangalore based Flipkart will operate the eBay's business in India.

The fair trade regulator CCI has also given permission for eBay's subscription of convertible preference shares (CPS) issued by Flipkart. As per the agreement, Flipkart will also purchase 100 percent share capital of eBay India.

In exchange for an equity stake in Flipkart, Ebay will make a US$500mn cash investment and sell its Ebay.in business to Flipkart. *(BL, 15.06.17)*

SKY-Vodafone Drops Merger Plan

Sky Network Television and Vodafone **New Zealand** have terminated their merger agreement which aimed to create the country's largest telecommunications and media group, and have withdrawn an appeal against the Commerce Commission's rejection of the plan.

The competition regulator had rejected the media merger, saying the combined group would substantially lessen competition. Sky and Vodafone filed an appeal against the Commission's ruling in the High Court in March, to give them time to consider the regulator's reasoning against the decision, and amended their appeal to detail their arguments.

"Sky and Vodafone New Zealand will continue to work together to strengthen our commercial relationship for the benefit of the customers and the shareholders of our respective organisations," the companies said in a three-sentence statement. *(CPI, 25.06.17)*

Airtel-Telenor Alliance Approved

Bharti Airtel, the country's No. 1 phone company, has received statutory approval from the CCI, for its proposed merger with the Indian unit of Norway's Telenor.

The acquisition is slated to bolster Airtel's 4G spectrum holdings and revenue market share, strengthening its hand in the battle against Reliance Jio Infocomm. Airtel will pocket 43.4 units of 4G spectrum in the 1800 MHz band once the Telenor deal is concluded.

Airtel will also take over Telenor India's outstanding spectrum payments of some ₹1,650 crore and other operational contracts, including tower leases with Bharti Infratel and Indus Towers, besides employees and 44 million customers. *(ET, 06.06.17)*

Creating Largest Chemicals Group

ChemChina and Sinochem are planning to merge in 2018, creating the world's largest chemicals group with US$100bn of revenues.

With 1.4 billion mouths to feed, China is eager to control technology in seeds, herbicides and pesticides despite widespread domestic opposition to genetically modified crops.

Bankers say the merger of the two domestic groups is politically driven, aimed at ensuring ChemChina has the financial strength to absorb Syngenta. The heavily indebted chemicals conglomerate will have achieved China's largest overseas acquisition when the Syngenta purchase is concluded. *(FT, 09.05.17)*

ChemChina's Syngenta Deal Cleared

ChemChina's US$43bn planned takeover of Swiss pesticides and seeds group Syngenta has received approval from China's Ministry of Commerce (MOFCOM).

The deal still requires regulatory approval from India, after US and European Union competition authorities gave conditional approval. Canada's Competition Bureau issued a 'no action' letter on the deal in February 2017.

The deal is one of several reshaping the agricultural chemicals and seeds market, even as such tie-ups prompt fears among some farmers that bigger, more powerful suppliers could push up prices and economise on developing new herbicides and pesticides.

(Reuters, 11.04.17)

Broadcom-Brocade wins Consent

Chipmaker Broadcom Limited has won US antitrust approval to buy Brocade Communications Systems.

The US$5.5bn deal, which already has won approval in Europe and Japan, is the latest in the chip industry as companies bulk up in response to growing demand for chips in connected devices and cars.

As a condition of approval, Broadcom agreed to build a firewall to prevent the merged company from using information it gains as Cisco System Inc's supplier to compete in selling the switches as Cisco's competitor.

Broadcom supplies Cisco, and Brocade competes with Cisco, in making fiber channel switches that transfer large amounts of data between servers and other devices.

(Reuters, 03.07.17)

Walgreens Scraps Rite Aid Merger

The much-anticipated acquisition of Rite Aid Corporation by Walgreens Boots Alliance, Inc. fell victim to antitrust concerns. After spending months undergoing antitrust scrutiny, the two companies have scrapped the deal and planned a smaller buyout.

Under the new deal, WBA agreed to buy 2,186 Rite Aid stores. The stores are mainly located in the Northeast, Mid-Atlantic, and Southeastern regions of the US. In addition to the stores, Walgreens will also buy three distribution centers — located in Connecticut, Pennsylvania, and South Carolina — and related inventory.

The sale will cost Walgreens US$5.175bn in cash. Walgreens will also pay Rite Aid US$325mn in termination fees.

(www.modernmedicine.com, 29.06.17)

AT&T-Time Warner to Get Approval

AT&T could get antitrust approval from the Department of Justice in the next 60 days. AT&T announced that it was purchasing Time Warner for a whopping US$85bn, and that would include all of Time Warner's businesses, including the Cable News Network, CNN.

This is only the first step in getting the merger approved, and AT&T will likely need to do some concessions to get approval from regulators for this deal, since it is essentially buying a competitor.

Buying Time Warner was part of AT&T's plan to tie it in with DIRECTV and offer a great package, especially for cord cutters.

(www.androidheadlines.com, 29.06.17)

Volatility after Downgrades could Foster Mergers & Acquisitions

Morne Van Der Merwe*

The recent credit rating downgrades by S&P Global and Fitch will affect mergers and acquisitions (M&A) activity in South Africa (SA).

The economy's health and M&A activity are intrinsically linked and regional economic difficulties present challenges for deals. Most significant is the effect on investor confidence, especially the attitudes adopted in bank lending and capital markets. After Brazil was similarly downgraded, the country saw a sharp rise in the cost of capital, especially private funding and risk-based investment. Divestment also increased, especially from funds that required adequate investment grading, such as pension funds.

However, the rand has shown to be far more resilient than most had expected. After a period of sell-offs and volatility, there is hope for a normalisation of the economic environment and a rally of business to restore investor confidence. This may create big opportunities for acquisitions and a shift in deal financing and buying patterns to take advantage of the volatility.

The perception of South Africa as an entry point into the continent and as a destination for medium-to-low risk developing market investment could be hit

In the short term, there are expectations that M&A activity will be created by investors withdrawing from the South African market due to the downgrades, voluntarily or as a result of complying with regulatory or policy requirements.

SA plays a major role as an investment hub for Africa, particularly in southern Africa, but it shares this role with other strong African economies including Nigeria. SA and Nigeria are facing currency woes and the trickle-down effects of the Chinese slowdown.

The downgrades in SA's credit status are expected to negatively affect the perception of the country as an entry point into the continent and as a destination for medium-to-low risk developing market investment. As almost half the continent's M&A activity flows through SA, the downgrades will no doubt have a negative knock-on effect in the rest of Africa as well, unless SA's standing as a stable economy can be maintained.

Africa also has its own primary drivers including a ballooning consumer market and rapid increase in middle-class households in certain economies. An increase in the development of African telecommunications industries and the opportunities for business created by this, as well as by a rapidly developing financial services sector, are also key drivers of investment activity.

Mining, as always, plays a crucial role as a driver for African M&A and the changing winds for global commodities will continue to influence African deal flow. Private equity exits will probably drive the sell-side of M&A activity for the foreseeable future.

According to the index, the global drivers for M&A activity are disruption and technological innovation, after-sales services, core competencies, divestments and defence spending. As these factors affect the world's largest economies — especially the Americas, Europe and China — they will no doubt affect M&A activity in Africa as well, which is largely influenced through the trajectory of foreign investors.

The interest displayed by bidders targeting African investment should and could be higher than the US$6.1bn for the first quarter of 2017. There are many untapped opportunities for attracting foreign direct investment, which the government has acknowledged.

Africa could substantively increase its attractiveness as an investment destination in the Middle East and the EU. According to the report, bidders in the Middle East invested only US$7m in Africa in the first quarter of 2017 and investors from the EU spent US$481m in that period.

Due to the growing financial services sector, domestic banks have made significant investments in technology. Consumer growth is at an all-time high, with an increase in demand for foreign brands and products. This has led to increased retail and shopping centre development in the property sector, which is backing the increase in the consumer market.

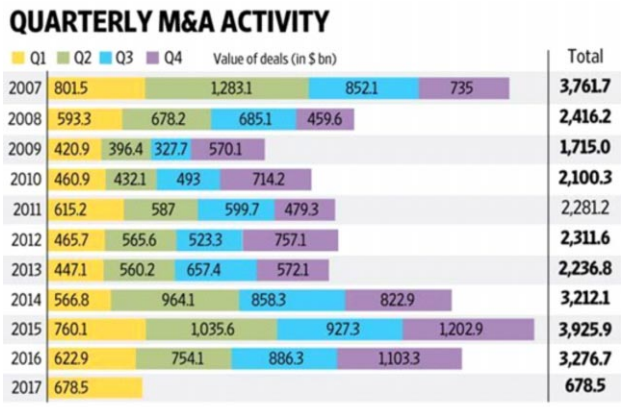
It seems that despite political and regulatory uncertainty, Africa remains rich with M&A investment possibilities. Consequently, many jurisdictions on the continent have been introducing investment-friendly legislation and regulations to attract foreign interest.

* *Co-managing Partner at Baker McKenzie Johannesburg. Abridged from an article that appeared in* www.businesslive.co.za *on April 24, 2017*

A Mixed March Quarter for Global M&As

While the total number of deals fell 17.9 percent compared with the first quarter of 2016, overall deal value was up 8.9 percent to US$678.5bn

Of all the ways to describe how mergers and acquisitions (M&As) kicked off in 2017, 'exceptional' is not one. Global M&As had a mixed first quarter with a dip in the number of deals but a rise in the overall value of deal activity, according to a Mergermarket report. While the total number of deals fell 17.9 percent compared with the first quarter of 2016, overall deal value was up 8.9 percent to US$678.5bn. In the first quarter of 2015, deal value was US$760.1bn, the highest since 2008.



Spike in consumer sector deal-making

While the volume of deal-making dipped, one dynamic that played out was that the average deal value rose and one saw the return of mega deals, as in 2015. This comes after a gap of one year as 2016 largely focused on mid-market activity. Due to ongoing uncertainty regarding upcoming European elections, transactions will be viewed as more precious, with larger sums being invested in fewer deals, said the report. This is reflected in the average size of disclosed value deals at US$403.4mn, the highest Q1 level in Mergermarket records (since 2001) due to nine recorded mega deals, up from eight in Q1 2016.

A standout trend, however, has been the number of consumer mega deals announced, with a record three deals valued over US$10bn resulting in the sector deal value (395 deals, US$136.1bn) reaching its highest value in Q1 since 2008 (497 deals, US$180.2bn). This rebound in activity follows on from a slow 2016, where just one mega deal was announced: Danone SA's acquisition of WhiteWave Foods Co. Big consumer deals were seen in Q1 2017, such as British American Tobacco Plc.'s bid to buy a stake in Reynolds American Inc. for US$60.8bn to create the world's largest publicly traded tobacco business; French lensmaker Essilor International SA buying Luxottica Group SpA, the maker of Ray-Ban sunglasses, for about US$25.4bn in stock; and Reckitt Benckiser Group Plc. buying Mead Johnson Nutrition Co. for US$17.8bn. The spike in consumer deal-making caused Q1 value to account for 61.6 percent of total 2016 consumer activity (2,181 deals, US$220.9bn).

Asia focus: India pips China as Chinese buyers scale back

The Asia-Pacific region (excluding Japan) experienced a relatively slow start to the year compared with two strong years previously. There were 697 deals worth US$124.8bn announced during the first quarter, down 10.4 percent by value compared with Q1 2016 (817 deals, US$139.3bn).

The largest announcement of the quarter—Vodafone Group Plc.'s US$12.7bn sale of Vodafone India to Idea Cellular Ltd—saw two Indian firms join forces. The Vodafone deal bolstered Indian Q1 M&A value, with 76 deals worth US$18bn announced, standing 95.2 percent ahead of Q1 2016 (110 deals, US$9.2bn) by value, despite trailing by 34 deals.

A clampdown by the Chinese government on capital outflows in general and the acquisition of foreign targets specifically had a dampening effect, with outbound purchases by Chinese buyers dropping 86 percent (by value) compared with the same quarter last year. There were 75 Chinese outbound deals worth US$11.8bn announced in the first quarter of the year, a steep drop from both Q1 2016 (96 deals, US$82bn) and Q4 2016 (87 deals, US$42.3bn). This, coupled with increased protectionism from the US and UK, may signal the end of China's outbound acquisition spree, at least in the short term, the report said.

TOP DEALS

Deal value ($ bn)	Bidder company	Bidder country	Target company	Target country	Target sector
60.7	British American Tobacco Plc.	UK	Reynolds American (57.83% stake)	US	Consumer
29.6	Johnson & Johnson	US	Actelion Pharmaceuticals	Switzerland	Pharma, medical & biotech
25.4	Essilor International SA	France	Luxottica Group SpA	Italy	Consumer
17.8	Reckitt Benckiser Group Plc.	UK	Mead Johnson & Company	US	Consumer
17.2	ONEOK Inc.	US	ONEOK Partners Lp (60% Stake)	US	Energy, mining & utilities

* *The news item appeared in* Mint*, on April 07, 2017*

China's Markets are too Big for Global Investors to Ignore

Dan McCrum*

On their current trajectory, China's capital markets will one day be the world's largest. The US$7tn collective value of domestic shares ranks only behind the US, and the US$9tn bond market third, or possibly second, depending on the calculation used to measure Japan.

So global investors will eventually have to decide how much money to allocate in the direction of the People's Republic, with this week's decision by MSCI to include 222 so-called A-shares in its emerging market share index providing a foretaste. As much as US$500bn of buying could be prompted in five to 10 years, HSBC estimates, by full inclusion of A-shares in international indices.

Bond investors can also ponder what they are missing. For international investors who earn zero income in Japan, and not much more than that in Europe, a 3.5 percent yield on 10-year government bonds issued by China might appear tempting, were China to become an index member proper.

Add together just sovereign debt and the bonds issued by the three big state-owned policy banks, and the market rivals that of Italy and Germany combined. Optimists in the region can start to imagine potential investment flows numbered in the trillions of dollars.

Yet to do so would mean to start treating China's government bond market like any other, and to look at it now highlights some of the largest questions around its economy.

For instance, short-term interest rates are higher than those for 10-year government bonds, an inversion of the normal situation where investors expect to receive more income the longer they are prepared to lend.

Optimists start to imagine potential flows in the trillions of dollars

Such an inverted market tends to be read as a sign of fear: that a recession or other economic danger approaches that will cause long-term interest rates to fall, or has prompted a rush for safe short-term securities.

In China that seems unlikely, but it may signal something else with consequences for investors around the world. This year there has been a crackdown on some of the excesses in the financial system, including wealth management products sold with high interest rates to finance lending.

At the same time the People's Bank of China appears to be providing as much liquidity as needed to ensure stability, but has pushed up the cost as seen in higher short-term interest rates.

With such a tempering of the excess of credit pumped into the economy, it seems likely some construction companies, property developers and manufacturers will find it harder to borrow in the second half of this year. While economic data has been stable, some heat has been coming out of the property market.

For China, a lender to the rest of the world as a result of a trade surplus, it highlights a deeper question: why would the country want or need a big influx of foreign capital? Rebalancing the economy away from investment-led growth has long been promised, after all.

Policymakers also still appear to view inflows of investment as much more helpful than attempts to move profits in the opposite direction, and strict capital controls remain in place. A trillion dollars of reserves have been spent defending the currency in the past three years.

The US$3tn left is formidable, but it is worth remembering that while financial assets in the economy used to broadly grow in line with reserves, the explosion of credit has shrunk the comparative firepower of the central bank to offset outflows, were say US dollars once more to be in high demand.

The great expansion of China's financial markets, which makes them too big for the world to ignore, also means that they become much harder for the authorities to manage should capital again take flight.

* *Capital Markets Editor, Financial Times. Abridged from an article that appeared in* The Financial Times *on June 23, 2017*

Visible Socialist Ideals Tango with the Invisible Enigma of Greed

Sébastien Thevoux-Chabuel*

The rise of populism evidenced by recent events on the world political stage has forced fund managers to gauge the threat to their investment portfolios from a new angle. The bias against "big" is spreading to nearly all sectors, from political institutions to food, retail, banking and fashion. People feel they have been duped by false pledges and manipulated by companies and politicians alike. Indeed, this distrust applies to both politics and economics.

Citizens are also consumers, and the same patterns of distrust apply to their economic behaviour. Fund managers who are doing their homework are very conscious of the fact that consumers, just like employees, display growing distrust of companies. Consumers are increasingly opting for the new, the local, the small, the fringe, the tangible, the well grounded and those who seem to tell them the truth. They dare to oppose the establishment as they have lost trust in the system.

In a world of increasing consumer scepticism, large-scale advertising can actually be a disincentive for consumers. When did you last see an advertisement for Zara, the fashion retailer? The answer is probably never. Some of the best and most trusted global brands of the past ten years (such as Inditex and Starbucks) have adopted a minimalist approach to advertising. They have been smart and patient enough to prove the value of what they offer through facts and the consistency of what they stand for. These companies demonstrate that they care about their employees and they invest in their supplier relationships.

More and more, consumers ask themselves, "Would I want to work in this company?" at the same time as they decide if they want to buy something from the company. Fund managers should therefore be looking more carefully at corporate culture and its threat to their investment portfolios. They should worry about companies that have traditionally prospered from irresponsible globalisation or treated their workforce badly.

Democracy and capitalism are preparing for battle Electorates feel the system is not working for them

Take the example of sexual harassment and IP theft allegations against Uber and one begins to see just how fast a company's reputation can be shattered, particularly when ex-employees take to social media to voice their concerns. Given the many high-profile resignations that have followed at the car-booking app, it is apparent that poor corporate culture is at the heart of its issues. The question is, could it have been avoided if stakeholders had applied more pressure on the company to be a good corporate citizen? If investors do not step up, populist regulators will play a greater role, with some unintended consequences.

Citizens across the world have shown an increasing distrust of politicians. The root cause for this bull market in populism is that electorates feel the system is not working for them, and maybe even against them.

Democracy embodies the socialist notion of one person, one vote. This is in direct conflict with the cumulative voting system called capitalism, in which one dollar is accorded one vote. The ethos of capitalism is agnostic at best about whether the economic pie is distributed justly and, more cynically, is antagonistic to the idea. Democracy and capitalism usually make for strange, albeit collaborative, bedfellows.

However, if both recognise that they benefit hugely from the other, an expensive divorce can be avoided. For the equity investor, the focus of research ought to be on companies' unique ability to create and share value in a sustainable manner. It is in the common interest of all citizens, consumers, employees and shareholders.

Long-term investors will be rewarded for incorporating Environmental, Social and Governance (ESG) analysis into their research in the pursuit of a better understanding of the purpose and corporate culture of companies, if not to steward both of them.

* *Portfolio Manager and Head of the ESG team at Comgest, the French fund house. Abridged from an article that appeared in the* Financial Times*, on June 19, 2017*

BASAs Reviewed in Civil Aviation

The **Nigerian** Civil Aviation Authority Director General revealed that, as of December 2016, Nigeria had executed Bilateral Air Service Agreements (BASAs) with 90 countries.

Over the years, questions have arisen as to the effectiveness and profitability of these BASAs for the Nigerian economy. BASAs are treaties that allow international commercial air transport services between the signatory countries. They promote international air links, which support and enable the movement of persons and cargo, as well as trade and tourism.

The agreements provide the framework under which identified airlines from the signatory countries fly into designated airports in each other's territory. *(ILO, 14.06.17)*

Undoing Net Neutrality Rules

The **US** Federal Communications Commission (FCC) has officially begun undoing net neutrality rules the agency passed two years ago.

The FCC voted 2-1, along political party lines to begin a rule-making process to replace the Open Internet order, or net neutrality rules, adopted in 2015 by the agency, then headed by Chairman Tom Wheeler, a Democrat.

The 2015 rules derive the FCC enforcement power from regulations formulated for telephone companies within The Communications Act of 1934. Republicans have called such regulation as heavy-handed and burdensome for ISPs.

(www.usatoday.com, 05.05.17)

Amendments to Cabotage Act

The National Assembly of **Nigeria** enacted the Coastal and Inland Shipping (Cabotage) Act in 2003 to enhance indigenous participation in the maritime sector. The Act focuses on the development of tonnage and the establishment of a financing fund to bankroll domestic vessel acquisition.

With a coastline measuring over 800 kms and a wealth of natural resources – including hydrocarbon deposits, zinc, ore, iron and billions of crude oil reserves – Nigeria has numerous global trade opportunities.

The export of its hydrocarbon deposits is beneficial to Nigeria's economy and, in light of this, the Cabotage Act has a fundamental role in the advancement of the country's economy and trade relations.

(ILO, 05.04.17)

Competition in Payment Systems

UK's three retail payment systems operators are to be forced to allow firms to compete for contracts to provide their central infrastructure under plans designed to break the stranglehold of the big four high street banks over the payments market.

The Payments System Regulator has confirmed that it will order a competitive procurement process when the main retail payment systems — Bacs, Faster Payments and the Link interchange network — buy central infrastructure services that will enable new providers to enter the market.

(www.law360.com, 22.06.17)

Enhancing 4G Broadband Service

The National Communications Commission (NCC) of **Taiwan** once again issued a public alert to encourage mobile users of 2G and 3G global system for mobile communications (GSM) services to transfer to a 4G mobile broadband service.

The NCC has been coordinating the process with existing 4G mobile broadband service operators, which have been simultaneously operating 2G and 3G services to achieve a seamless transfer from 2G and 3G to 4G by June, 30 2017.

As a result of significant promotion of 4G services initiated by all existing mobile broadband operators, the number of 2G users dropped from 500,000 in December 2016 to 220,000 in May 2017. *(ILO, 31.05.17)*

New Austerity Measures on Anvil

The **Greek** Parliament adopted a new round of austerity cuts which the government hopes will secure a pledge of debt relief and loan disbursements by EU-IMF creditors.

The bill entails •4.9bn (US$5.4bn) in pension cuts and lower tax breaks in 2018-2021 and was passed by a majority of 153 lawmakers from the ruling coalition.

A total of 128 voted against the measure and 17 MPs from the neo-Nazi Golden Dawn party were absent during the debate as they were barred after one of their members shoved a rival in the house, prompting a showdown.

(ET, 19.05.17)

Shaping the Digital Single Market

The Digital Single Market strategy aims to open up digital opportunities for people and business and enhance **Europe's** position as a world leader in the digital economy.

A Digital Single Market (DSM) is one in which the free movement of persons, services and capital is ensured and where the individuals and businesses can seamlessly access and exercise online activities under conditions of fair competition, and a high level of consumer and personal data protection, irrespective of their nationality or place of residence.

The Commission published the mid-term review of the Digital Single Market Strategy on May 10, 2017. It shows the progress made in implementing the Strategy since 2015 and where further actions are needed.

(www.ec.europa.eu, 02.06.17)

The FCA Needs to Bare its Enforcement Teeth

Peter Smith*

The Financial Conduct Authority will have a blockbuster moment when it publishes its final report into the UK asset management sector.

The UK watchdog said investors were being short-changed by a sector bloated by fat profits earned by actively managed funds delivering sub-par returns. It found investors were not getting value for money and the sector was rife with potential conflicts of interest.

One of its more punchy proposals, and one dreaded by the industry, is to force fund companies to present investors with an all-encompassing annual fee. That would chime with Mifid II rules due to come into force next year that require asset managers to disclose all charges and express them in hard currency terms and as a percentage.

With many investors in the dark about complex charging structures, the FCA argues the annual-fee proposal would improve transparency and competition.

The FCA is a young institution that came into being just four years ago, with its "promote competition" mandate effective a year later.

But it needs to demonstrate it has sharp teeth. It must force the industry to move beyond its "tick the box mentality" when it comes to compliance. "Asset managers too often observe the letter of the law but not the spirit," is the view of one industry veteran.

History is not on the FCA's side.

Previous UK regulators have struggled to police the industry properly. And concerns over high fees, performance and opaque structures are hardy perennials for an industry that has been around for centuries.

Dating back to 2001, the City regulator at the time, the Financial Services Authority, had a good regime in place, including the Treating Customers Fairly (TCF) guideline. TCF is one of 11 overriding FCA principles for financial services businesses, which also include managing conflicts of interest and communicating in a manner that is clear, fair and not misleading. But the FSA was ineffectual.

The big question for the FCA is how strong it can be on enforcement.

There are concrete steps the FCA should consider to stamp out bad practice, including naming and shaming individuals. There should be financial penalties on individuals as well as companies when rules are breached. There could also be periodic audits to check how the rules are being implemented.

The FCA will argue that it does use its powers adequately. On top of public enforcement actions, it also works behind the scenes to stamp out bad practices.

UK regulator must force industry to move beyond tick-box mentality

It has imposed some big fines on high-profile names: Invesco Perpetual (£18.6m) for breaching investment limits and introducing leverage into funds without proper disclosure; Aviva Investors (£17.6m) for failing to prevent an "abusive practice" known as cherry-picking for as long as eight years; Threadneedle Asset Management (£6m) for failing to supervise its trading desks appropriately and supplying the regulator with "inaccurate information"; and Aberdeen Asset Management (£7.2m) for failing to make sure client money it deposited in outside money market funds was protected in case of a financial collapse. In 2012, BlackRock was fined £9.5m by the then UK watchdog for failing to make sure that £1.3bn in client assets were properly ringfenced for more than three years.

In 2016, the FCA said it had found evidence of closet tracking and accused five investment managers of incorrectly marketing actively managed products. That finding came after it examined 19 asset managers and 23 actively managed funds with combined assets of £50bn. But no names have been made public. And it is unclear whether any sanctions were imposed.

That raises the question of how widespread closet tracking is and which other managers are doing the same thing.

When the FCA releases its final report and proposes final remedies, subject to consultation, there will be a blaze of publicity. But the real test will be in the follow-through. In that, the FCA must show it will not tolerate bad practice.

* *Editor of FTfm. Abridged from an article that appeared in the* Financial Times*, on June 12, 2017*

Boosting Fintech Innovations

The **Swiss** Federal Council initiated a consultation procedure on new financial technology (fintech) regulations in February 2017. The revised provisions ensure that barriers to market entry for fintech firms are reduced and that Switzerland's competitiveness as a financial centre is maintained.

The consultation will end on May 08, 2017. The proposed amendments to the Banking Act and the Banking Ordinance aim to ease the regulatory framework for innovative fintech companies and will support and enable innovation, while simultaneously taking into account the potential risk involved with their business model for customers and the financial system as a whole. *(ILO, 18.04.17)*

Easing Banking Regulations

The White House issued a roadmap for loosening **US** banking regulations, including a recommendation to ease 'stress tests' for large banks.

President Donald Trump requested the report in a February decree aimed at reducing the financial regulations imposed by the Dodd-Frank financial regulation law, adopted after a meltdown of the US mortgage market triggered the global financial crisis of 2008-2009.

The 150-page report will feed into Senate debates about gutting Dodd-Frank, which toughened bank regulations, prohibited federally insured banks from engaging in risky trading, and established the Consumer Financial Protection Bureau to oversee credit cards, mortgages and other financial products, among other measures. *(BL, 13.06.17)*

Postponing Bank Capital Rules

Singapore's banking regulator will delay by a year the implementation of global rules designed to rein in trading risks - the latest sign that the post-crisis overhaul of the world's banking system may be stalling.

The move follows similar postponements by banking regulators in Hong Kong and Australia as concerns grow over the complexity of the rules and as it is also uncertain how they will fit with other capital reforms yet to be finalised.

The Monetary Authority of Singapore notified local banks of the delay to the so-called 'fundamental review of the trading book' that also flagged a number of other regulatory issues, two people briefed on the matter said. *(www.cnbc.com, 05.07.17)*

New Concessions to Creditors

Azerbaijan's biggest bank has offered creditors, including Fidelity and Allianz, a series of concessions in a bid to calm disquiet over its US$3.3bn restructuring, amid claims that its mishandling of the issue could hurt the country's investor profile.

The state-run International Bank of Azerbaijan, under pressure from a US lawsuit, was forced into negotiations with a group of investors. The bank has offered creditors new terms, including extra amortisation payments on new debt, a guaranteed choice of new bonds and an increased interest payment.

But some bondholders say the company is causing long-term damage to the Central Asian economy's reputation by imposing haircuts, repayment delays and a forced exchange of bonds for sovereign paper, instead of tapping its national reserves. *(FT, 20.06.17)*

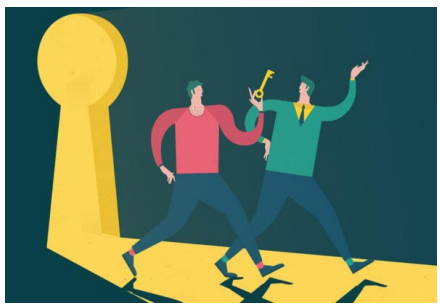
Emergency Loans for Banks

The **European** Central Bank (ECB) has for the first time published its rule book for giving emergency loans to ailing lenders, breaking with the secrecy that fuelled controversy over the programme during the financial crisis.

ECB-sanctioned 'emergency liquidity assistance' (ELA) was a lifeline for a clutch of banks that were cut off from normal financing channels during the crisis. Greek banks are still using •44bn of ELA help.

The ECB specified its conditions for allowing ELA as well as the price and duration of loans provided. The eurozone's national central banks, which provide the emergency funding, will have the option to reveal the amount of support available to their country's banks — though they are unlikely to go public in situations where individual institutions seeking help could be identified. *(www.today.world.itthon.ma, 19.06.17)*

Directive to Open up Banking



For centuries banks have enjoyed an almost exalted status. Governments and regulators have allowed them to dominate much of the financial services landscape, including current accounts, deposit accounts, loans, payments, debit cards, credit cards, mortgages, pensions and insurance, on condition they keep money and credit flowing around the economy.

Barriers to entry have been so high and customer inertia so strong that the banks have been able to thrive despite offering what has often been a poor and anachronistic service.

Much of this will change on January 13, 2018 when the **EU**'s second payment services directive (PSD2) takes effect. The legislation aims to give consumers better protection when they make online payments, to promote the development of innovative online and mobile payment systems, and to make cross-border European payment services safer.

The directive will effectively prise open the payments market, while compelling banks to release their tightly held customer data to third-party companies, which will be lightly regulated as long as they can prove their data defences are robust and that the customer has given their consent. *(www.raconteur.net, 23.04.17)*

China's Banking Watchdog Vows to Sort Out 'Chaos'

James Kynge

Shrinking a bubble without popping it is the task facing Guo Shuqing

"If the banking industry becomes a complete mess, as the chairman of the China Banking Regulatory Commission, I will resign!" There can be little doubt that this declaration, attributed to regulator Guo Shuqing, signals an upsurge in Beijing's will to discipline its unruly financial system and rein in a huge credit bubble. The threat to resign, reported by the respected Caixin media company, was said to have been made at an official meeting of financial regulators.

But the questions for investors are a great deal more nuanced than Guo's warning. So vast is the netherworld of shadow finance and so prevalent is the chicanery that the regulator is targeting that any uncompromising effort to clean it up would shake China's financial architecture to its timbers.

"It is clear that 'inappropriate' transactions and financial arbitrage are system-wide phenomena in China, not the actions of a few isolated entities," said Chen Long, economist at Gavekal Dragonomics, a research company. "Basically every commercial bank in China is involved in at least some of the long list of activities now targeted by regulators."

However, it is not as if nothing will happen. "I definitely think that Mr Guo's words suggest that the party and [President] Xi Jinping are dead serious about getting tough on shadow banking, wealth management products and indebtedness," said Frédéric Cho, founder of Frederic Cho Advisory, a specialist China investment consultancy.

Already, the ripples are being felt. Scarcer liquidity last week drove up interest rates in the money markets that banks and companies use to fund themselves. The Shibor overnight rate jumped to its highest level in two years, while the cost of borrowing for three months rose to 4.3 percent, up from 2.8 percent six months ago.

This tightening, reinforced by a stream of official exhortations to get tough on financial irregularities, contributed to a 2 percent drop in Shanghai's share index last month and a decline in the prices of iron ore and other commodities in recent weeks. It is also adding to stress in China's domestic bond market.

The reason for this lies in the pre-emptive nature of Chinese policy. Although regulators have yet to publish exactly how they plan to clean up what Guo called 'chaos' in the banking system, the strength of the message communicated in internal meetings has prompted state-owned institutions into self-restraint.

For example, banks know that the surge in their lending to Non-Banking Financial Institutions (NBFIs) will be a key target of the clean-up.

Thus, they have begun to moderate their NBFI loans, which amount to Rmb26.5tn, or a whopping 23 percent of total corporate and household lending. The growth rate in NBFI lending came down from 50 percent in December 2016 to 24 percent in March, according to Gavekal Dragonomics.

Another target is likely to be the "wealth management products" issued by banks but often kept off balance sheets to elude capital regulations. These WMPs, the outstanding amount of which stands at Rmb29tn (US$4.2tn) or equivalent to 40 per cent of GDP, are also seen as prime drivers of shadow finance chicanery.

Few would argue that such objectives are not an urgent priority for a corporate sector that is the most indebted and the most highly leveraged in the world.

The trick, however, will be in implementation. Shrinking a bubble without popping it is not an easy manoeuvre, but it is nevertheless the task with which the Oxford-educated Guo finds himself lumbered.

"The question is whether the new tough attitude will last just until the party congress this autumn, or if it is actually the start of a real clean-up of all the knotty issues in the financial sector," said Cho. "But in the period leading up to congress, I'm pretty sure that liquidity will get tighter."

* *Energing Markets Editor, Financial Times. Abridged from an article that appeared in* The Financial Times*, on May 02, 2017*

Amazon goes back to the Future of Food

John Gapper*

Supermarkets' strengths are becoming weaknesses as technology changes retailing

Just when we thought we understood Amazon, it surprises us. We are used to observing an online retailer that cuts prices relentlessly to undermine brick and mortar stores. It has now decided to buy Whole Foods Market, a premium chain for Americans who can afford fancy cheese and fish.

If it wanted to turn physical, the Amazon of our imagination might have followed Aldi, the private German retailer, by investing US$5bn to expand its US discount stores, or have directly taken on Walmart's 3,500 grocery and hardware Supercentres. Jeff Bezos, Amazon's founder, is instead entering the top end of the grocery market by offering US$13.7bn for Whole Foods.

This suggests either that Bezos has lost his bearings or that many people think about Amazon in the wrong way. In fact, it is not so much an online discounter as a vast convenience store. Making things easier, either by cutting prices or by delivering goods simply, is his master plan.

The Whole Foods deal brings to mind not Walmart, Aldi, or Kroger, the largest traditional US supermarket, but a company that predated them: the Great Atlantic and Pacific Tea Company. A & P was a precursor of US supermarkets and the way that it combined efficient technology with high street grocery outlets provides clues to Mr Bezos's thinking.

Before A & P, Americans shopped at small-town stores that were "often run in a haphazard manner" and purchased their supplies from "a byzantine collection of jobbers and middle men that was rife with corruption", according to Paul Ellickson, an economics professor at Rochester university.

Like an early 20th century Amazon, A & P cut through all of that. In 1913, it opened 'economy stores' on high streets, supplying them through its own network of warehouses and delivery trucks. It offered its own private label brands, which were fresher and less likely to be out of stock. A & P expanded to 16,000 stores in 1930 as economies of scale allowed it to undercut independents.

The combination of Amazon and Whole Foods suggests that history is starting to repeat itself. The supermarket itself has reached an apotheosis in huge suburban stores run by Walmart, as well as Carrefour and Tesco in Europe, and many shoppers are looking for alternatives. Amazon's Whole Foods deal is an experiment rather than the solution, but it is intriguing.

The supermarket's strength is becoming its vulnerability in an age when technology is changing the rules of retailing. It reduces costs and prices by grouping together many kinds of goods in one place, from tins of beans to fresh fish and meat, and persuading shoppers to bear the cost of final delivery. They drive to stores to load their trolleys and purchase everything at once.

Technology now offers a way to unbundle the traditional supermarket — to sell different things in different ways. Instead of having to shop for bulk household items, dried pasta and rice, and fresh fish all at once, the shopper's leisure time can be allocated more enjoyably and effectively. Routine goods can be ordered online and delivered directly, leaving time to pick the choicest produce in person.

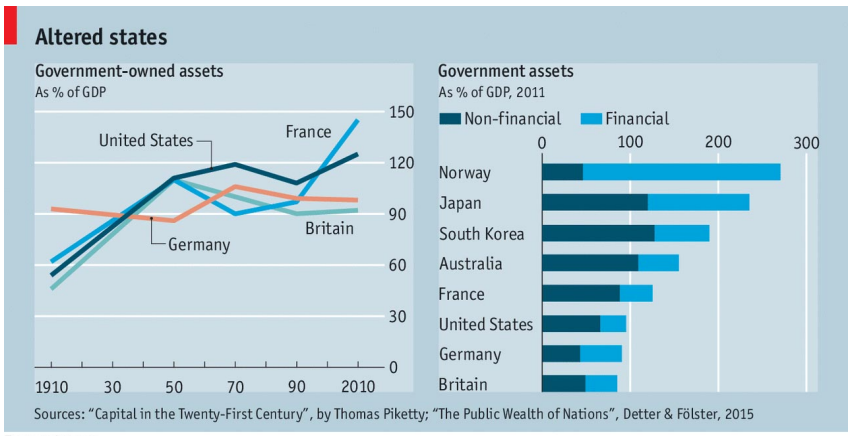
Having experimented with Amazon Fresh, its online grocery service, in cities in the US and elsewhere, Amazon has clearly realised that it needs a physical network as well. It has to expand in order to attain what Chris Baker, a partner of the consultancy Oliver Wyman, calls 'a virtuous cycle of volume, turnover and freshness'.

Beyond the Whole Foods acquisition lies a tantalising vision of the 21st century A & P, an enormous, efficient retail enterprise that deliver a wide array of fresh, cheap groceries to a network of small and large outlets, as well as directly to homes. That would be the ultimate convenience store and I imagine that Bezos knows it.

* *Associate Editor and Chief Business Commentator of the Financial Times. Abridged from an article that appeared in the* Financial Times, *on June 21, 2017*

The Perils of Nationalisation

More state ownership is not the right answer to economic ills



When Jeremy Corbyn unveiled his Labour manifesto ahead of the recent British election, opponents gawked at pledges to renationalise the postal and rail systems. Such enthusiasm for state ownership smacks of a philosophy long since abandoned by leaders on both left and right. Despite Labour's decent electoral performance, nationalisation is not everywhere on the march; Donald Trump made public his desire to privatise air-traffic control on June 05, 2017. But the rise of Corbyn and Bernie Sanders hints at a weakening of the rich-world consensus that the less of the economy owned by government, the better. That is a pity. Expanded state ownership is a poor way to cure economic ailments.

For much of the 20th century, economists were open to a bit of *dirigisme*. Maurice Allais, an (admittedly French) economist who won the Nobel prize in 1988, recommended that the government run a few firms in each industry, the better to observe the relative merits of public and private ownership. Economists often embrace state control as a solution to market failure.

But in the 1970s economists came to see state ownership as a costly fix to such problems. Owners of private firms benefit directly when innovation reduces costs and boosts profits; bureaucrats usually lack such a clear financial incentive to improve performance. Firms with the backing of the state are less vulnerable to competition; as they lumber on they hoard resources that could be better used elsewhere. Inattention to cost-cutting is not always a flaw.

State-owned firms pose risks beyond that to dynamism. Government-run companies may prioritise swollen payrolls over customer satisfaction. More worryingly, state firms can become vehicles for corruption, used to dole out the largesse of the state to favoured backers or to funnel social wealth into the pockets of the powerful. As state control over the economy grows, political connections become a surer route to business success than entrepreneurialism. Even botched privatisations can improve governance in corruption-plagued emerging economies.

If antipathy to nationalisation is fading, however, that has less to do with newfound confidence in state competence and more with disappointment in private business. Recent economic growth has done more to enrich shareholders and a small set of highly skilled workers than the public as a whole. Tech dynamos like Google and Facebook delight consumers, but these companies increasingly wield unsettling economic and social power. Both the financial crisis and growing suspicion of Silicon Valley fan suspicions that private ownership is not a sure way to advance the public good.

Modern forms of public ownership are designed to look more benign than the old models. The new nationalisation might involve governments sitting quietly in the boardroom, grabbing a share of profits for the public purse and reminding firms not to neglect their social responsibilities, while leaving enough shares in private hands to harness the benefits of red-blooded capitalism.

Hire, not fire

Even this modest version of state capitalism could disappoint. Shared ownership, even at small scales, has the potential to blunt competition in ways that harm consumers. The rise of large asset managers, like BlackRock and Vanguard, means that huge stakes in firms representing much of the stockmarket are controlled by a few passive investors running money for private savers. Recent research suggests that this concentrated ownership may be bad for competition.

Some on the left might see higher prices as an acceptable cost for a reduction in corporate power. Yet there are other risks to consider. China's state-owned sector is proving difficult to shrink in part because it accounts for so much employment. Governments trying to deliver good jobs may be tempted to lean on state-controlled firms to hire more staff, particularly in countries with powerful public-sector unions. Consumers and taxpayers would bear the costs of such bloating. Corporate power, inequality and underemployment are all real worries. Expanding state ownership is the wrong way to tackle such ills.

* *This news item appeared in the Finance and Economics section of the print edition of* The Economist *under the headline "National treasure" on June 17, 2017*

Meet the true star of financial innovation – the humble ATM

James Shepherd-Barron*

It recalibrated our relationship with cash, credit and risk, and the bank manager

Innovation is all the rage right now — especially in finance, where disrupters range from blockchain to crowdfunding. But the most groundbreaking innovation in the sector may actually lie behind us. 50 years ago next week, one of the greatest financial inventions in recent history was unveiled, and has been quietly transforming our relationship to money ever since. I speak, of course, of the humble automated teller machine.

In 2009 Paul Volcker, berating a banking industry that had taken finance to the brink of disaster, quipped that "the ATM has been the only useful innovation in banking for the past 20 years".

Aside from this praise from the former chairman of the Federal Reserve, the ATM has been omnipresent but under-appreciated. Like a late-developing child, it sits mute and misunderstood in our high streets, appearing to do little more than dispense banknotes. Yet the ATM is far from dumb; with more than 11,000 working parts and linked to "intelligent" software systems, it is one of the most sophisticated inventions to come out of the UK.

When the ATM came along in 1967, consumers experienced not just an encounter with a new technology, but an entirely new way of relating to machines. Initially sceptical of having to push buttons and remember personal identification numbers, the machine's no-nonsense exterior and intuitive user interface eventually won people over. The ATM blazed a trail towards today's 24/7 "always-on" culture.

It also heralded a world where cash and technology have been brought together. It changed the way we pay for almost everything we consume — and even the way we think, recalibrating our relationship with cash, credit and risk. And it banished the age of deference by allowing us to get hold of our money whenever we wanted, not when some faceless bank manager found it convenient. These were no small achievements in the postwar world.

But what else has the ATM done to warrant our deeper appreciation? First, we should give some thought to its ubiquity. We take them for granted precisely because they work more or less the same way everywhere, even in some of the most remote and inhospitable places on the planet. ATMs can be found high up in the mountains of the Himalayas, below decks in naval warships, and embedded in church organs. There is one in the back of Alice Cooper's car, and another in Buckingham Palace. The Pope uses one in the Vatican, with instructions in Latin. More than 3m have been installed around the world.

More impressive is the pioneering technology lurking behind a rather clunky and utilitarian façade. The micro-cameras, accelerometers and biometric scanners in our laptops and smartphones were tested in ATMs years earlier. These gadgets, along with a multitude of other scanning and security devices, are what keep our money safe. Trying to physically steal cash from a modern ATM is a waste of time: before a thief can strike, banknotes are fused together with glue or acid in the plastic cassette in which they are stacked.

The ATM has begun to play a key role in disaster response and humanitarian operations, too. During flood relief efforts in Pakistan recently, ATMs were flown in underslung from helicopters to help distribute much-needed cash to survivors. Mobile, solar-powered, satellite-linked, iris-recognition ATMs are also deployed in the refugee camps of Kenya, Lebanon, Jordan, and Somalia. In Turkey, pre-paid debit cards are used at ATMs to pay stipends to exiled Syrian teachers. Having started the cash revolution 50 years ago, ATMs are still in the thick of the action.

But is the ATM, that icon of pioneering inventiveness and banking transformation, a manual typewriter in an era of touchscreen smartphones? The evidence would suggest not. With bank branches closing and another ATM being installed somewhere in the world every three minutes, it is likely that the next generation of ATMs will be even more relevant than their predecessors, and to more of us than ever before.

* *Disaster Management Consultant. The article appeared in the* Financial Times *on June 23, 2017*

Publication

Policy Watch

The April-June 2017 issue of the newsletter carries Cover Story entitled 'Economically Responsible Justice' which suggests that in the rush to fill judicial vacancies, there should be no compromise in the quality of judicial decisions and ensure judges are capable of dealing with increasingly complex issues interlinking law, economics, technology and allied fields. It carries an exclusive interview of Railway Minister of India, Suresh Prabhu who believes that Goods and Services Tax (GST) is a major opportunity for Railways.

The newsletter also encapsulates an article 'Record Foreign Direct Investment, Start-up Push Result of Big, Brave Reforms'. In addition, it carries another feature where Securities and Exchange Board of India Chief Ajay Tyagi states that Independent Directors are not Independent. Besides, the newsletter carries regular news on Infrastructure, Financial Sector, Trade & Economics, Governance & Reforms, Education, Health, Competition etc.

This newsletter can be viewed at: www.cuts-ccier.org/pdf/pw_Jan-Mar2017.pdf

World Investment Report 2017

UNCTAD has just released its World Investment Report 2017. The Report:

- presents FDI trends and prospects at global, regional and national level, as well as by sector;
- analyses the latest developments in national policy measures for investment promotion, facilitation and regulation globally; and
- highlights the trends in investment treaties and investment dispute settlement, and presents 10 options for further reform of the investment treaty regime.

The 2017 edition, subtitled "Investment and the Digital Economy", investigates the internationalisation patterns of digital MNEs, as well as the digitalisation effect on global companies across industries and on global value chains. It also provides insights to policymakers on the effect of the digital economy on investment policies and how investment policy can support digital development.

The report can be accessed at: http://unctad.org/en/PublicationsLibrary/wir2017_en.pdf

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

BBC: British Broadcasting Corporation; BL: The Hindu Business Line; CPI: Competition Policy International; ET: Economic Times; FT: The Financial Times; ILO: International Law Office; KH: Korea Herald; PTI: Press Trust of India; SN: Sky News; TA: The Australian; TS: The Standard; WSJ: Wall Street Journal

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