REGULETTER

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Special Articles

Global Welfare Consequences of Cartelisation in Primary Commodities

Anticompetitive practices particularly cartelisation in primary commodity markets across both horizontal and vertical chains has been seen to have severe developmental consequences contributing to the high prices and volatility in these markets.

The Southeast Asian natural rubber cartel is one such example of a type of export cartel that threatens the global supply of natural rubber today. On the other hand, the European banana cartel shows a slightly different picture. While the end consumers may benefit from low prices, small farmers in the producing countries bear the cost.

In 2009, the International Rubber Consortium (IRCo) announced plans to cut the rubber exports by a sixth causing serious panic world over. The Global Trade Alert estimated that such a jumbo measure has the potential to impact world trade worth US$26.3bn across a total of 105 trading partners. Today, there is a worldwide crunch in availability of natural rubber, and the rapidly rising prices are a major concern for all tyre manufacturers. This is attributable to the major production cuts and export quotas maintained by these big rubber growers.

The case of the European banana cartels is an example of cartelisation across the vertical chain as opposed to horizontal as seen in the earlier case of natural rubber. Banana exports are concentrated in Central America and the Caribbean. Some of the nations in these regions are quite dependent on banana exports. On the other hand, banana trade is controlled by only a limited number of companies, with just five major multinationals controlling more than 80 percent of all internationally traded bananas.

Given the lack of capacity of competition authorities in developing and least developed countries, there is a crying need for capacity-building reforms and technical assistance that equip countries to face such cross-border anticompetitive impacts. What is needed through such reforms is for domestic governments to correct market distortions by building the capacity of small commodity producers in order to reduce the impact of asymmetries in power relations between the small producers and large intermediaries/suppliers across the value chain.

At the international level, there may be a case for a multilateral governance process that recognises market power imbalances in the agri-food chain so that countries can coordinate with one another in the regulation of international agricultural markets. Similarly, although a multilateral competition policy would be best suited to challenge export cartels, the current state of the political debate makes it more likely that second-best solutions such as capacity-building in lesser developed target states will have to be established.

To this end, CUTS International with the support of Centre for Economic Policy Research and *Agence Francaise de Developpement* organised a symposium on "Trade and Competition Policy in Primary Commodity Markets" in Geneva on September 22, 2011. The papers presented at the symposium were published as an Ebook freely available at: *www.voxeu.org/reports/CEPR-CUTS_report.pdf*

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Competition Act Waits in Wings

The Philippines is moving closer to establishing its first comprehensive competition law, as a bill to consolidate and strengthen the country's existing antitrust legislation and create a Fair Trade Commission to act as an independent enforcement agency.

The Act would prohibit anticompetitive agreements and abuse of dominance and establish notification guidelines for mergers.

Competition law itself is not new to the Philippines. The country inherited the Sherman and Clayton Acts into its constitution from the US, and therefore has some of the oldest antitrust regulations in Asia. *(GCR, 29.02.12)*

Competition Threshold Increased

Under the Competition Act – Canada's antitrust law – there is a two-part test for determining whether a pre-merger notification is necessary. The test is based on the size of the parties and the size of the transaction.

Under the size of the parties test, the parties, together with their affiliates, must have aggregate assets in Canada or annual gross revenues from sales in, from or into Canada, in excess of US$400mn.

Under the size of transaction test, the value of the assets in Canada or the annual gross revenue from sales in or from Canada of the target operating business and, if applicable, its subsidiaries, will need to be greater than US$77mn in order to trigger the notification obligation. The size of transaction threshold can be adjusted annually for inflation; the new threshold took effect on February 11, 2012. *(ILO, 01.03.12)*

Make Competition Act Autonomous

The Portuguese government submitted a draft of the new Competition Act to the Parliament. The reform of the country's key competition legislation attracted a level of public participation rarely seen in Portugal's recent legal history.

A revision of the Act has been under consideration since 2008, if not before, but it was not until 2011 that it became one of the government's priorities. The government, the European Commission, the European Central Bank and the International Monetary Fund signed a memorandum of understanding which identified the revision of the Act as one of the structural benchmarks of the financial assistance plan for Portugal.

The main aim is to make the Act as autonomous as possible from the structures of administrative and criminal law and more closely harmonised with the EU competition framework.

(ILO, 01.03.12)

Malaysia Begins Competition Probe

Malaysia has marked the implementation of its Competition Act by opening an investigation of two airlines based on a concern that their cooperation agreement could raise costs and have a negative effect on customers.

Malaysia's Competition Commission asked Malaysia Airlines and AirAsia, the country's two largest airlines, to provide information and documents relating to their share swap agreement.

As part of the deal, AirAsia's major shareholder gained a 20.5 percent stake in Malaysia Airlines, while Malaysia Airlines' major shareholder purchased a 10 percent stake in AirAsia. Airlines agreed to cooperate in areas of ground handling, training and engineering.

(GCR, 05.01.12)

Harmonising Albanian Legislation

In order to harmonise Albanian legislation with EU law – and in particular with EU Regulation 1217/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of research and development (R&D) agreement – the Albanian Competition Authority approved the Regulation on the Exemption of Research and Development Agreement Categories.

The objective of the regulation is the block exemption from applicable competition restrictions of agreements regarding the R&D of products or processes up to the stage of industrial application and exploitation of the results, including provisions regarding IP rights. This exemption is intended to encourage undertakings in their technological R&D activity and cooperate with each another.

(ILO, 02.02.12)

India Simplifies Merger Rules

The Competition Commission of India (CCI) has amended its merger control rules, simplifying the merger review application process and exempting more non-problematic mergers from antitrust scrutiny.

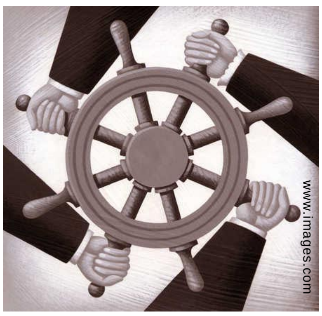
The changes introduce exemptions for intra-group mergers – or mergers between companies which are fully owned by the same parent company – allowing businesses to avoid a merger review by the CCI.

Other exemptions from antitrust scrutiny include acquisitions of up to 25 percent of a company's share – it was 15 percent under the previous rules – and acquisitions of shares through a buy-back, if they do not lead to control of the company. *(GCR, 29.02.12)*

Merger Control Guidelines Amended

Korea's Fair Trade Commission (KFTC) amended its merger control guidelines by extending the scope of merger reviews regarding large companies and increasing the number of deals that can apply for fast-track review.

Under the amended guidelines, the KFTC will review more transactions between companies with a turnover of more than US$1.8bn before the deals take place. The amendment means the KFTC will now also scrutinise these cases. Only deals in which crucial information such as the date of the transaction or the price cannot be confirmed in advance can be exempted from pre-merger review.



The amendment also widens the scope of the KFTC's merger reviews, which now takes into account transactions that confer joint control. *(www.bkl.co.kr, 03.01.12)*

Businesses to Face Powerful New Competition and Markets Authority

Following a year-long public consultation process, the UK government announced a suite of major changes to the UK competition regime on March 15, 2012. The reforms taken together represent a significant strengthening of the hand of the competition authorities. Most significantly:

- the two existing UK competition authorities – the Office of Fair Trading (OFT) and the Competition Commission (CC) – will be merged into a new body called the Competition and Markets Authority (CMA); and
- the authority will no longer have to show that individuals engaging in prohibited cartel activity acted "dishonestly" in order for those individuals to be convicted of the criminal cartel offence and face potential imprisonment.

Creation of a New CMA

To streamline decision-making in competition cases, the government will transfer the functions of the CC and the competition functions of the OFT to a newly-created CMA. Currently, the CC has a role as an in-depth "phase 2" review body in relation to mergers and market investigations referred to it by the OFT.

Combining the institutions may bring about certain process improvements, for example, enabling the CMA to "cherry pick" some of the best aspects of the current institutional procedures. However, a "phase 2" review which is under the same roof as a "phase 1" review, and subject to the same ultimate management structures, may not be sufficiently independent of the original review.

Removal of the Dishonesty Element in the Criminal Cartel Offence

At present, an individual faces possible imprisonment and fines if he or she dishonestly engages in prohibited cartel activities such as price-fixing, bid-rigging or market sharing.

The OFT has brought only one successful prosecution to date under the criminal cartel offence. The government believes that this paucity of prosecutions is a consequence of the current requirement to show that defendants acted dishonestly.

To facilitate criminal prosecutions and, by implication, convictions, defendants will no longer need to have acted "dishonestly"; acting secretly will suffice. In this context, the government has made the unexpected and rather puzzling proposal that the offence will not include arrangements the details of which the parties have agreed to publish before they are implemented.

Although the scope of this "defence" to criminality is unclear, the elements the prosecution will need to prove have clearly been considerably reduced, and the risks of enforcement action have correspondingly increased.

This attempt to bolster the criminal regime is mirrored by some strengthening of the civil investigatory powers, including for the first time powers to require individuals to answer interview questions during civil investigations.

Changes to the Mergers Regime

The UK is relatively rare in having a merger control regime which allows parties to complete mergers before regulatory approval or indeed elect not to make a merger filing at all.

These key characteristics remain in place, which will be welcome to corporate advisors that appreciate the flexibility of the UK regime. In addition the reforms will tighten merger control time limits and processes, as well as increasing merger fees.

Sectoral Regulators

The government also announced that the UK sectoral regulators, e.g., Ofcom, Ofgem, Ofwat, the Office of Rail Regulation and the Civil Aviation Authority, will retain their concurrent competition powers, with the CMA effectively taking the oversight and appeal role currently held by the CC.

Sector regulators will be required to consider first whether a competition remedy is more appropriate than use of sectoral powers to resolve their concerns.

The CMA will have increased oversight and the power to take competition cases from the sector regulators where they consider that they are better placed to deal with a particular case. The appetite of the CMA to seize jurisdiction in this way, of course, will remain to be seen.

Next Steps

Some of these changes will require new primary legislation. Others may be implemented without Parliament's involvement. The competition authorities and the Department of Business, Innovation and Skills will work together to establish timetables for reform of the latter category, and the government hopes to have the full reform package in place by Spring 2014.

– *This update was captured in the Berwin Leighton Paisner, on March 15, 2012*

ABUSE OF DOMINANCE

Greece Punishes Pepsi Subsidiary

The Greek Competition Commission (HCC) fined Pepsi-owned Tasty Foods US$21.4mn for abuse of dominance in the market for salty snacks. It is the largest fine the HCC has issued in more than two years.

The Tasty Foods implemented a "single, consistent and targeted policy" to exclude its competitors from the market. The company allegedly adopted tactics to prevent its rivals from selling their products in small retail outlets such as kiosks, grocery stores and small supermarkets.

The decision is a confirmation of the HCC's tough stance against anticompetitive practices aimed at eliminating competitors and exploiting consumers. *(Businessweek, 08.02.12)*

Italy Accuses Gas Distributors

Italy's Antitrust Authority fined Estra Reti Gas and its parent company Estra about US$357,637 for abusing their dominant position in the market for gas distribution. The authority concluded that the companies' abusive behaviour was intended to maintain their dominant position in gas distribution in the district of Prato, in Tuscany.

Estra, which is the incumbent company that manages Prato's gas distribution network, adopted anticompetitive tactics to stop the local government from conducting a public tender that could result in competitors challenging the company's position in the market.

The authority says Estra initially refused to submit information regarding the gas network to the local government, which prevented potential competitors from presenting a competitive offer in the public tender. *(Reuters, 01.02.12)*

SRR Accused for Non-compliance

France's Competition Authority fined SRR, subsidiary of telecoms company SFR, US$2.7mn for breaching emergency measures imposed on the company to address concerns of abuse of dominance.

SRR is a mobile phone carrier owned by SFR, active in the French islands of Réunion and Mayotte. In 2009 its main competitors, Orange and Outremer Telecom, complained to the authority that SRR was adopting discriminatory prices and charging its customers more to call other operators' mobile phone.

After receiving the complaint, the authority considered the price difference was not justified by different costs incurred by the operator and might amount to an abuse of dominance. *(www.whitecase.com, 25.01.12)*

Facebook Sued Over Monopoly

Web application maker Sambreel has filed a lawsuit against Facebook, accusing the company of trying to eliminate competition in the sale of online advertising. Facebook is the single largest supplier of advertising on the internet. Until 2011, Sambreel used the social networking site as a platform for its products.

Sambreel's main product – PageRage – allows users to customise their Facebook pages by adding designs that appear on their web browsers. PageRage and Sambreel's other products also compete with Facebook in the sale of online advertisements which change with every page download, known as "impressions".

Sambreel claims that Facebook "engaged in a pattern of anticompetitive behaviour in order to drive [it] out of the market". *(GCR, 20.03.12)*

Pfizer Fined over Generics

Italy's Antitrust Authority fined pharmaceutical group Pfizer US$14mn for abuse of dominance. Pfizer excluded producers of generic versions of its Xalatan drug, which is used for treating glaucoma, from the market.

Pfizer's sales of Xalatan accounted for 60 percent of the market for anti-glaucoma drugs. The company employed anticompetitive tactics to protect its market share from its competitors.

The authority says Pfizer artificially extended its patent protection on Xalatan beyond its natural end. In addition to the fine, the authority ordered the company to cease its practices, but Pfizer denies wrongdoing and says it intends to appeal against the decision.

(www.nortonrose.com, 18.01.12)

Fresh Probe into Airline Alliances

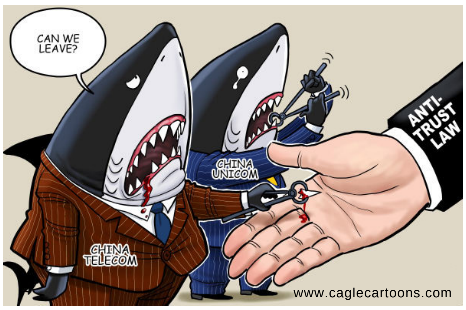
Brussels has stepped up its scrutiny of the partnerships that underpin the transatlantic airline business by launching an investigation into a joint venture between Air France-KLM, Alitalia and Delta Air Lines.

The European Commission is examining "as a matter of priority" whether the partnership is harming the interests of passengers by limiting the competitive pressure on ticket prices for some key transatlantic routes.

The three joint ventures have assumed a dominant position on routes between Europe and the US, controlling three-quarters of north Atlantic seating capacity. *(FT, 28.01.12)*

China Telecoms Case Heats Up

The debate over whether China's first antitrust probe on large state-owned companies will end up with a settlement or a fine has taken a new turn, following comments made by a government adviser.



China's National Development and Reform Commission (NDRC) is currently assessing how to proceed against telecom companies China Telecom and China Unicom, which are accused of employing anticompetitive practices to maintain their dominant position in the broadband market.

China Telecom and China Unicom promised the NDRC they would lower internet access price by 35 percent in five years, in an attempt to persuade the authority to end the investigation with a settlement. But such remedies were not enough to address NDRC's competition concerns. *(GCR, 10.01.12)*

CARTELS

France Breaks Endive Cartel

France's Antitrust Authority fined endive farmers for running a cartel since 1998 to keep prices of the bitter-leafed vegetable from falling for more than a decade.

The Antitrust Authority imposed fines worth almost a combined US$5.3mn on 11 farmers and seven producer unions and associations after they colluded to set prices to wholesalers and retailers between 1998 and now in an effort to apply antitrust laws to the agriculture industry.

The Authority said that since 1998, agreements and actions were carried out by market players to collectively coordinate pricing policies and control sales prices to wholesalers and retailers.

(www.marketwatch.com, 06.03.12)

CCB Fines Foam Maker

The Canadian Competition Bureau (CCB) fined foam makers Domfoam International Inc. and its associated unit Valle Foam Industries (1995) Inc. a total of US$12.5mn for participating in a price-fixing cartel for polyurethane foam.

CCB said that Domfoam and its affiliate, Valle Foam, pleaded guilty to agreeing with competitors to fix the price of polyurethane foam products made at plants in Brampton, Ontario; Delta, British Columbia; and Montreal, over a period of 11 years. The company's products are used mainly in carpet underlay, furniture and bedding.

CCB said the charges are the first to arise from its investigation into price-fixing in the polyurethane foam industry. *(www.plasticsnews.com, 09.01.12)*

Pharmacies Fined for Price Gouging

Chile's National Competition Tribunal (TDLC) fined two of the country's largest pharmaceutical companies US$38mn for colluding to fix the price of drugs. It is the largest penalty ever imposed by the Authority.

Salcobrand and Cruz Verde face fines of US$19mn each. A third company, Farmacias Ahumada, settled with Chile's National Economic Prosecutor (FNE) for US$1mn in March 2009 and agreed to assist with the authority's continuing investigation.

The TDLC has agreed with a complaint made by the FNE in December 2008 which accused the companies of "taking advantage of their enormous market power to eliminate price competition". The companies, which represent over 90 per cent of pharmaceutical sales in Chile, are said to have colluded to fix the prices of at least 222 medicines between December 2007 and March 2008.

(www.santiagotimes.cl, 30.01.12)

Spain Slams Honda & Suzuki

Spain's National Competition Commission (CNC) fined motorcycle manufacturers Honda and Suzuki US$5.3mn for colluding to exchange price information. The Commission said employees of the two companies sent each other emails sharing sensitive information regarding the price of all the companies' motorcycles with engines between 125cc and 1800cc.

According to the Commission, Honda and Suzuki agreed to disclose both wholesale prices and the recommended retail prices. The exchange of information took place in January 2009, and the companies introduced price changes that year.

The Commission said the practice was a "very serious" infringement of competition law, and fined Honda US$2.8mn and Suzuki US$2.5mn.

(GCR, 23.01.12)

Korea Penalises Samsung & LG

Korea's Fair Trade Commission (KFTC) fined Samsung Electronics and LG around US$40.4mn for colluding to increase the prices of their electronic products. According to the Commission, company representatives met between 2008 and 2009 to fix the prices of washing machines, flat-screen TVs and laptop computers.

Samsung and LG were fined US$23.1mn and US$16.9mn respectively. Both companies have been subject to other investigations by the KFTC and other antitrust authorities. *(GCR, 13.01.12)*

Argentina Opens Oil Investigation

Argentina's National Commission for the Defence of Competition has opened an investigation of the country's five largest oil companies for fixing the price of fuel. The Commission is investigating Repsol YPF, Argestina's largest oil company, Shell, ExxonMobil, Petrobras and Oil Combustible for allegedly raising the price of wholesale diesel fuel.

According to the Commission, the companies agreed to charge wholesale purchasers of fuel more than retail customers who buy it at petrol stations. It opened a preliminary investigation after receiving a complaint from Argentina's Transport Secretary Juan Pablo Schiavi and from trade associations of truck companies.

(Reuters, 17.01.12)

Apollo Tyres Arm Pays Fine

In what would be a first for any Indian multinational company, Apollo Tyres South Africa recently paid a fine of US$5.7mn to the South African Competition Commission (SACC) after being found to be in violation of the competition law in the country.

A probe by the South African anti-trust regulator has found that a tyre cartel operated between 1999 to 2007 among South African Tyre Manufacturers Conference and four local manufacturers – the South African units of Apollo, Goodyear, Continental and Bridgestone.

Following this, and Apollo Tyres South Africa's admission that it did engage in the cartel, the regulator slapped a fine of on the firm amounting to 4.75 percent of the company's total turnover in 2008. The settlement was reached in November 2011.

(FE, 12.01.12)

FINES & PENALTIES

Record Fine for Oil Cos.

Romania's Competition Council fined four oil companies a record US$340mn for an illegal agreement with four other companies.

The Authority has evidence that four companies – the country's largest oil company, Petrom; Russia's Lukoil; Italy's Eni; and Romanian company Rompetrol – agreed to cease trading a particular type of petroleum in 2008.

The evidence includes emails, letters and documents. The authority was able to levy by far its highest ever fines due to direct evidence of an "understanding" between the companies.

The case could represent another important first for Romania; the authority's case is continuing alongside a criminal investigation of the alleged agreement, meaning that it could culminate in the country's first antitrust cases against individuals.

(GCR, 10.01.12)

Cemex Hit with Abuse Fine

Mexico's Federal Competition Commission (CFC) fined concrete and cement manufacturer Cemex more than US$800,000, for allegedly stopping a rival from importing cement from Russia in 2005.

The CFC says that Cemex used its power in the market to stop 26,000 tonnes of less-expensive, Russian-made cement from entering the country.

The Commission says the ship that was transporting the cement was stuck in port for months before Cemex eventually convinced the port authority to turn the ship away.

The complaint in the case was first filed in 2006. The CFC did not respond to repeated requests for comment, nor did it elaborate on how Cemex convinced the port to hold the ship for months and turn it away.

(GCR, 15.02.12)

Doctors' Association Accused

The Netherlands' Competition Authority (NMa) fined the general practitioners' association LHV and some of its officials US$10.2mn for restricting doctors' rights to choose where to establish their practice, thus reducing competition.

The NMa also issued some of its first penalties to individuals, fining two LHV officials US$66,228 and US$33,114 each for their personal responsibility in setting the association's conduct.

The LHV is a trade association that operates throughout the country, representing the majority of Dutch doctors. According to the NMa, the LHV recommended that new GPs can establish their practice in certain areas only if the incumbent doctors agree.

The NMa fined the LHV for breaching competition laws, saying the policy "harms not only new doctors, but patients and health insurers who have less choice". It also ordered LHV to withdraw the recommendation.

(GCR, 09.01.12)

CCP Slams Oil Manufacturer

The Competition Commission of Pakistan (CCP) has passed an order on a show cause notice issued to Pakistan Vanaspati Manufacturers Association for contravening a number of provisions of the Competition Act 2010.

Pakistan Vanaspati Manufacturers Association is a representative association of all ghee and cooking oil manufacturers in Pakistan and registered under the Trade Organisations Ordinance 2007.

The CCP carried out a study of the ghee and cooking oil sector which indicated that manufacturers, acting collectively, did not fully synchronise their prices with changes in input prices. They acted independently of market forces and influenced market prices. *(ILO, 12.01.12)*

Fine for Resale Price Maintenance

The Finnish Market Court imposed a fine of US$3.9mn on Iittala Group Oy Ab, a Finnish design company specialising in houseware goods, for having implemented resale price restrictions infringing Finnish competition law. While the Finnish Competition Authority had requested that the company be fined US$5.3mn, the imposed fine is still the highest ever in Finland for resale price maintenance.

Between 2005 and 2007, Iittala was found to have restricted the resale of its independent retailers in Finland for the company's best-known products. Iittala's anti-competitive behaviour was intended to raise the prices of its products, and reduce competition between resellers of its products.

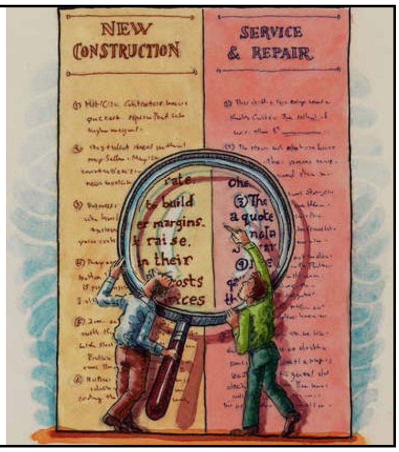
The retail price fixing activities covered the majority of Iittala's resellers across Finland, and lasted for several years. The Market Court stated that it considers the company's behaviour to be a hardcore restriction of competition. *(Mondaq, 15.02.12)*

New Antitrust Fine Guidelines

The Hungarian Competition Office issued new guidelines on determining fines in cartel and abuse of dominance cases. The guidelines are the result of a long dispute between the Competition Office and various courts.

The new guidelines apply to cartel and abuse of dominance cases. Although the Competition Office is expected to follow the rules, it remains free to deviate from them if it can provide comprehensive reasoning to show that such deviation is justified by the particular characteristics of the case.

According to the general principles set out in the guidelines, a fine must be an effective and material deterrent, but should also be proportionate to the infringement committed. *(ILO, 08.03.12)*



Mexican Experience in Screens for Bid-Rigging

– Carlos Mena-Labarthe*

Leniency has been the most useful tool for cartel detection and it has been one of the great success stories in cartel enforcement in various jurisdictions

It is a common place nowadays to say that antitrust authorities have relied significantly (or over relied) on leniency applications to detect cartels. Some intend this as a criticism; others intend this as recognition of the strategy. Indeed, evidence shows leniency has been the most useful tool for cartel detection and it has been one of the great success stories in cartel enforcement in various jurisdictions. It is without a doubt one of the most important institutional exports of the United States and it is only beginning to take off.

According to the International Competition Network, an international body devoted to competition law enforcement of which members represent national and multinational competition authorities, during the last two decades leniency programmes were adopted in more than 50 jurisdictions. This has transformed the way competition law is enforced in those jurisdictions, but also how competition authorities work and coordinate with each other as they have created a race to disclose illegal conduct by the participants of the cartel, nationally and internationally. Nowadays, companies and their counsel coordinate leniency applications all around the world and competition authorities coordinate their enforcement.

In Mexico, as in other parts of the world, we regard leniency as one of the most important and useful tools for the detection and prosecution of cartels.

Leniency programmes may have some effects that need to be addressed by the authorities and this is where screens take such an important role. Leniency programmes only work when you have severe sanctions including individual accountability, a good track record of enforcement and of course when you discover conspiracies without the use of leniency as well.

So, as various studies have documented in many interesting studies, despite the considerable success of leniency, some collusion remains undetected. And it may be true that this undetected collusion may be the worst, as it is still an on-going cartel that may still harm consumers for many years to come.

I recognise the great value of multiple approaches to detection and how authorities need to work in ex-officio detection as well.

Historically, but nowadays even more so, most competition authorities have started to search for alternative and complementary approaches to detect and investigate cartels; this is very important and should be given priority, especially in agencies and jurisdictions where cartel enforcement has over relied on leniency applications for detection.

There are many routes and efforts being explored. Some jurisdictions are working to promote complaints, extracting information from other cases, working with procurement officials and other enforcement agencies, even some countries are paying whistle-blowers for information.

One interesting method that has been advocated by many economists as well as some officers and legal consultants has been the use of empirical methods commonly known as screens.

As experience has proved, screens have flagged unusual patterns in a variety of countries and industries, and helped in the detection of cartels.

These empirical methods have their pros and cons. There have been great success stories, as well as some important waste of resources and never ending work to find a needle in a haystack where ultimately there is none.

In the Mexican experience, the Mexican Competition Commission has made some efforts to use screening to detect collusion and to prioritise investigation resources.

These efforts of course do not mean we have relied less on leniency in Mexico. Since 2006 when the programme was introduced, it has been one of the top priorities of the Cartel Investigations Division. Accordingly, we believe advancing both efforts are complimentary and should not be seen as unrelated or contraries.

* *Director, Division for Cartel and Interstate Commerce Restrictions Investigations at the Federal Competition Commission of Mexico. Abridged from an article that appeared on* www.competitionpolicyinternational.com *on March 13, 2012.*

Glencore and Xstrata in Talks

Mining giants Glencore and Xstrata are in talks to merge, potentially creating a company worth US$80bn, subject to competition approval. Glencore is the world's largest commodities trader, with a global turnover of US$145bn. Xstrata is one of the largest mining companies in the world, posting revenues for US$30bn.

The companies confirmed that they are discussing the deal, saying Glencore has until March 01, 2012 to make an offer for Xstrata's shares or drop its bid. Glencore already owns 34 percent of Xstrata.

A merger between the Switzerland-based companies, listed on the London Stock Exchange, would combine their market share in the production of several metals, and this could raise competition concerns among antitrust authorities worldwide. *(BBC, 02.02.12 & FT, 03.02.12)*

BA to Team-up with JAL

International Airlines Group and Japan Airlines announced plans for a joint venture that would seek to maximise the profitability of routes between Europe and Japan. JAL and British Airways, IAG's UK subsidiary, want to create a partnership business that would co-ordinate flight schedules between Europe and Japan and share revenues.

Such partnerships are more important than the three global airline alliances – Oneworld, SkyTeam and Star – because the joint ventures can combine their schedules to provide more daily flights to lucrative business customers.

However, the joint ventures have been subjected to intense scrutiny by regulators to determine whether they are adversely affecting passengers by limiting competitive pressure on ticket prices. *(FT, 09.02.12)*

EU to Rule on D Börse-NYSE Merger

The NYSE Euronext and Deutsche Börse tie-up faces its day of reckoning in Brussels, as European Union commissioners are expected to sign-off a recommendation to block a merger that allegedly stifles competition.

Senior officials are confident that a clear majority of the 27 European commissioners will back Joaquín Almunia, the competition commissioner, and prohibit the bid. But it is likely to come after an extremely contentious and rare debate at the full college of commissioners, a discussion of the like not seen in Brussels since merger control rules were pioneered in the early 1990s against stiff resistance from supporters of dirigiste industrial policy.

The potential dissenters are being led by Michel Barnier, the EU's top financial regulator, who is determined to air his views on the merger particularly given the sweeping market reforms he is overseeing. *(FT, 01.02.12)*

US Chemical Rivals to Unite

Eastman Chemical has agreed to buy its competitor Solutia for a total value of US$4.7bn. US-based Eastman Chemical, which produces chemicals, fibres and plastics, will pay US$3.4bn in cash to acquire its rival Solutia, which makes speciality chemicals, such as materials used in laminated glass, protective barriers and rubber processing. The company will also take on Solutia's debt.

The merger requires antitrust clearance in the US, as the companies' activities overlap in the markets for several speciality chemicals, particularly for products sold in the automotive and architectural markets. Eastman Chemical expects to close the transaction in mid-2012. *(GCR, 30.01.12)*

Asahi Kasei to buy Zoll Medical

Japan's Asahi Kasei Corp will buy US medical equipment maker Zoll Medical Corp for US$2.21bn as it looks to build a global healthcare business and reduce reliance on its chemicals and fibers operations.

Asahi Kasei, which is seeking to expand its presence in the US, will buy Zoll in an agreed cash deal for US$93 a share. The deal is Asahi Kasei's biggest acquisition by far. The transaction, which adds to about US$200bn that Japanese firms have spent on overseas acquisitions in the past four years, is expected to close in the second quarter.

Asahi Kasei derives more than half its sales from its chemicals and fibers businesses and almost a third from homes and construction materials.

(FT, 13.03.12)

ADP Acquires Turkish Stake

A new alliance between Aéroports de Paris and TAV, the Turkish airports operator, will aim to expand in Russia, Central Asia and the Middle East, the Turkish group said after ADP agreed to buy a 38 percent stake in TAV for US$874m.

As part of a concerted move into the growing Turkish market, ADP – which said it expected a double-digit return from the transaction as a whole – also agreed to buy a 49 percent stake in TAV's construction unit for US$49m.

The deal brings the operator of Paris Charles de Gaulle airport into alliance with the operator of Istanbul Atatürk airport in a transaction that would give the partnership a total of 180m passengers in 37 airports around the world. *(FT, 13.03.12)*

Bristol-Myers to Acquire Inhibitex

Bristol-Myers Squibb agreed to acquire Inhibitex for about US$2.5bn to gain access to its promising hepatitis C treatment. Recent years have seen significant advances for treating hepatitis C – a serious liver disease that afflicts an estimated 180 million people worldwide – while setting off a scramble among large drugmakers to secure the most promising products.

The Bristol-Inhibitex deal comes on the heels of Gilead Sciences' US$11bn acquisition of Pharmasset, which has its own promsing hepatitis C therapies. Inhibitex's lead asset is INX-189, an oral drug in Phase II or mid-stage development. *(FE, 08.01.12)*

Nestle-Danone Battle for Pfizer

Nestle will battle a Danone-Mead Johnson team for Pfizer's US$10bn infant nutrition business. The Pfizer unit being sold is a high-growth US$2.1bn turnover business with over 70 percent of sales in emerging markets and a key position in China, and has attracted the attention of the three largest players in the infant milk formula sector.

Nestle, the world's largest food group, is seen by many bankers as favourite due to its size and deep pockets, but it faces stiff competition from the French-American combine, which was brought together to overcome antitrust concerns.

The Pfizer business ranks as world number five in the infant milk formula market after Nestle, Mead Johnson, Danone and Abbott Laboratories, with over a quarter of its sales in China, where the US$6bn market is expected to double by 2016. *(FE, 19.02.12)*

Setback for Anglo-Lafarge Deal

Anglo American's planned joint venture with Lafarge to create a US$2.9bn building materials group was thrown into question after the UK's Competition Commission warned that it could increase the risk of prices being rigged.

The Commission is now considering whether to block the deal or force asset sales, with a final report due on May 01, 2012. With the UK cement market already in the hands of just four companies, the regulator said it was concerned that further consolidation could squeeze supplies and force prices higher.

The Commission said that although it had not found evidence of collusion, cement prices and profit margins have not been affected in the way it would have anticipated following a drop in cement demand over the past few years. *(FT, 22.02.12)*

DoJ Investigates Health Merger

The US Department of Justice's (DoJ) antitrust division is investigating the US$475mn merger between Highmark and West Penn Allegheny Health System over concerns the deal would reduce competition in the healthcare sector.

The merger would combine Pennsylvania's largest health insurer, Highmark, with Pittsburgh's second largest hospital group, West Penn, which is also embroiled in a civil antitrust lawsuit over collusion in the health-care sector.

A spokesperson for University of Pittsburgh Medical Centre says the authority is concerned the merger would give Highmark excessive control over the health insurance market in the Pittsburgh area. *(GCR, 20.02.12)*

Kellogg to Snap up P&G's Pringles

Procter & Gamble terminated the planned sale of its Pringles snacks business to -Diamond Foods and will instead sell it to Kellogg in a US$2.7bn all-cash transaction.

The world's largest consumer goods group by sales ended protracted uncertainty over Pringles by saying it would sell it to Kellogg, which will use it to triple the size of its international snacks business.

Pringles has annual sales of US$1.5bn and will become Kellogg's second largest brand after Special K cereal. Analysts opine that Kellogg was the better fit for Pringles. *(FT, 16.02.12)*

Walmart's Stake in Chinese Website

Walmart is taking a 51 percent stake in Yihaodian, a leading Chinese ecommerce website, in a significant move by the US retailer to boost its online presence in China. Walmart did not disclose financial details for the partnership with Yihaodian, one of the fastest-growing companies in China. But it already held a minority stake in the business, which sells more than 180,000 products ranging from grocery items to consumer electronics and apparel.

Founded in 2008, Yihaodian runs logistics centres in Shanghai, Beijing, Guangzhou, Wuhan and Chengdu and is able to offer same-day and next-day delivery. Yihaodian sales hit US$429m in 2011. The Chinese consumer ecommerce market is dominated by homegrown online retailer Taobao. Walmart has more than 350 stores in China, where it has been making steady progress. *(FT, 21.02.12)*

Spain Pushes for Bankia Merger

Spain's new government is pressing for Bankia, a group of savings banks listed in 2011, to seek a merger with another Spanish bank in a deal that would create the country's largest domestic lender by assets if it materialised, according to bankers in Madrid.

The three possible candidates are Santander, BBVA and Caixabank – the country's biggest institutions. But the first two have remained profitable through the crisis owing to their foreign investments, and their executives are wary of increasing exposure to the moribund domestic property market.

The third, Caixabank in Barcelona, denied that it was in discussions with Bankia, in Madrid, over a possible deal. Bankia also said it was not contemplating such a merger. *(FT, 18.01.12)*

Bell's Bid to Swallow Astral Media

Canada's largest telecoms company, Bell Canada Enterprises, has announced plans to acquire television company Astral Media, in a deal that will require approval from the Canadian Radio-television and Telecommunications Commission (CRTC) and Competition Bureau.

Bell will purchase Québec-based Astral for US$3.4bn. The transaction will give the company ownership of all of Astral's pay and specialty television services, radio stations, digital media properties and out-of-home advertising activities.

Astral employs about 2,800 people across Canada, about half of whom are located in Québec. Bell's latest venture is now subject to approval from industry regulator CRTC and the bureau. *(www.dwmw.wordpress.com, 16.03.12)*

FRAND or Foe?

"Where's the software?"

No sign of a ceasefire in the mobile industry's intellectual-property war

Go ahead, but we are watching you. That, in effect, is what competition authorities in America and the European Union told Google on February 13, 2012. In August 2011, the search-engine giant agreed to buy Motorola Mobility, a maker of mobile phones with 17,000 issued patents and 6,800 pending, for US$12.5bn. Neither America's Department of Justice nor the European Commission has found a reason to halt the deal, but both tempered their approval with words of caution.

The watchdogs sniffed the deal carefully because patents are powerful weapons and war is already being waged. This month Motorola Mobility won a court ruling in Germany to stop Apple selling several iPhones and iPads in its online store there; Apple managed to have the ban suspended. Microsoft and Apple have been firing regular volleys at devices that use Google's Android operating system. At the International Trade Commission (ITC), a popular American venue for patent disputes, Microsoft is suing Barnes & Noble over the bookseller's Nook e-reader. In April some Android phones made by Taiwan's HTC are due to be barred from America, after a ruling in Apple's favour by the ITC in December.

Google has hitherto been poorly armed, which helps explain why it is forking out US$12.5bn for Motorola Mobility's arsenal. The protection this affords to Android should help the spread of the operating system, which according to Gartner, a research and consulting firm, powered just over half of all smartphones sold in the fourth quarter of 2011.

Even so, Google's purchase won less than wholehearted endorsement from American and European officials. A lot of Motorola Mobility's patents cover technology needed to meet agreed industry standards that allow, say, phones to talk to networks. Once a standard is set, people have little choice but to use it.

In theory, companies with "standard-essential" patents (SEPs) can charge exorbitant royalties, refuse licences or ask courts to ban unauthorised products. In practice they usually do not: in return for having their know-how built into standards, holders of SEPs are required by international standard-setting bodies to license it on "fair, reasonable and non-discriminatory" (FRAND) terms. Loads of companies use the technology of others, sometimes freely, sometimes for a fee or in cross-licensing agreements. But because FRAND is in the eye of the beholder, an owner of an SEP may still demand more than others think is fair for a licence, and spark hostilities.

Although it let the Motorola deal go ahead, the DoJ compared Google unflatteringly with Apple and Microsoft. On the same day, it approved the picking of 6,000 patents from the carcass of Nortel Networks, a bankrupt Canadian equipment-maker, by a consortium that includes Apple and Microsoft, as well as Apple's purchase of patents once owned by Novell, an American software company. The department said that short statements by Apple and Microsoft promising not to seek injunctions against products using SEPs had eased its concerns about possible damage to competition, but it called Google's commitments "more ambiguous".

In a letter to the IEEE, a standards-setting organisation, Google said it would not go to court either – as long as licensees accept its terms. These include a maximum royalty of 2.25 percent of a final product's price, before mobile operators' subsidies; on a US$500 phone, that makes US$11.25.

Joaquín Almunia, the EU's competition commissioner, had already made his worries about the potential abuse of SEPs plain: he started an antitrust investigation into South Korea's Samsung, which has been seeking injunctions against Apple in several countries. He restated his fears – and pointed out that his approval for the deal did not imply a blessing for whatever Google might do in the future.

Google surely knew that: separately, Almunia's trustbusters have been examining complaints that the company abuses its dominant position in online search. Google looks like getting Motorola. But it may yet be got at.

– *The news appeared in* The Indian Express, *on February 23, 2012*

Big Tobacco Heads to Court

A class action lawsuit that argues that three of the major tobacco firms manipulated nicotine levels and hid evidence on the health effects of smoking is coming to trial after 15 years. The suit, which seeks up to C$27bn in damages, is the first of its kind in Canada.

Imperial Tobacco, JTI–Macdonald and Rothmans Benson and Hedges are the target of the suit, which is similar to the major action in the US that led to the industry paying out nearly $250bn over 25 years.

The damages reflect C$10,000 for each of the 1.8m Quebec residents who report that they are unable to quit smoking. A separate action is made up of people that have fallen ill with emphysema and cancer. Imperial Tobacco, in a statement, labelled the suits as an "opportunistic cash grab."

(BR, 13.03.12)

SEC Turns Whistleblower Tips

A tip from an accounting executive that a company poised to go public had allegedly filed misleading financial statements kick-started a Securities and Exchange Commission (SEC) investigation.

The lead is one of many coming into the SEC from company insiders looking to cash in on the new whistleblower programme. Defence lawyers say they are working on numerous internal investigations and SEC probes that started from whistleblower tips.

The SEC vets the tips through its market intelligence unit, a group of nearly 50 attorneys plus an embedded agent from the Federal Bureau of Investigation. They funnel good leads to enforcement attorneys to open cases. The whistleblower office also reviews whistleblower complaints and ultimately decides whether to grant rewards. *(FT, 13.03.12)*

US to Curb Foreign Bribery

The US government has dropped a case brought against 16 executives accused of bribing overseas officials, in a setback for its efforts to step up enforcement of the foreign bribery act. Citing mistrials and acquittals of three individuals, the DoJ filed a motion seeking to drop charges against the defendants.

The decision was an abrupt reversal on a case the DoJ had heralded as the "largest single investigation and prosecution against individuals in the history" of the foreign bribery act. It comes as the DoJ faces pressure to charge bank executives and companies for wrongdoing tied to the financial crisis.

The case began with a Federal Bureau of Investigation sting during which the defendants allegedly agreed to pay bribes to sales agents in order to win a US$15m contract to provide the Gabon military with uniforms, grenades and other equipment.

(FT, 22.02.12)

Greece Cracks Down on Graft

The Greek government has suspended more than 100 civil servants involved in awarding investment grants, following the arrest of two officials for taking bribes. These suspensions mark a rare attempt to crack down on graft, seen as a significant obstacle to attracting FDI to Greece.

Anna Diamantopoulou, Development Minister said that the entire staff of the investment department would be replaced immediately and that their bank accounts would be examined by the Financial and Economic Crime Unit.

Diamantopoulou said an "overriding priority" for Greece following its successful debt restructuring was to create a business-friendly environment for investors. She promised to contact individual companies, many of them German, to help them overcome problems with Greek bureaucracy. *(FT, 16.03.12)*

Walmart Blacklisted

The country's biggest pension fund, Algemeen Burgerlijk Pensioenfonds, has stated that it is to blacklist Walmart for a range of factors concerning its social and environmental practices.

In particular, it quoted the company's alleged noncompliance with the UN Global Compact. The fund, which had invested approaching US$133mn in Walmart in 2011, blacklists a small number of other firms – mostly for involvement in chemical or nuclear weapons.

The fund says it had met repeatedly with Walmart executives over recent years to persuade it to improve labour and environmental practices. Although it had seen some progress, it decided that this had been too slow.

(BR, 09.01.12)

Monsanto Guilty of Chemical Poisoning

Monsanto has been found guilty by a court in Lyon of poisoning farmer Paul Francois who suffered neurological problem after using the company's Lasso weedkiller. The suit charged that Monsanto had failed to provide sufficient warnings on the product label.

The ruling was the first time in France that a manufacturer of pesticides had been found guilty of poisoning. It potentially opens the door for a host of other claims from farmers that have suffered similar problems.

The company will review whether or not to appeal the decision. It said there was not sufficient proof to prove that exposure to the product had been the cause of the symptoms suffered in this case. Difficulties in showing causal links had led to previous such cases failing.

(BR, 14.02.12)

National Companies or Foreign Affiliates: Whose Contribution to Growth is Greater?

– Alice H. Amsden*

A priori, is there a growth/efficiency justification for government programmes designed to support and promote national companies (public and private) as opposed to, and in competition with, opening the doors to multinational enterprises (MNEs)? In competitive markets, there should be no difference. Where national companies close in capabilities to foreign affiliates do not exist, foreign direct investment (FDI) may stimulate development, if a country is lucky enough to attract it.

National firms are likely to be the more entrepreneurial of the two types because national firms know their local markets best. But foreign affiliates may have synergistic advantages from operating in more countries than the typical national firm. More specifically, without private or public nationally owned enterprises to secure home markets:

- Supplying outsourcing services to developed countries is unrealistic. Outsourcers, by definition, look overseas for national firms to undertake production, especially in electronics.
- Establishing brand names is very difficult.
- Dislodging a foreign legacy position in a natural resource industry like oil is undoable.
- Reversing brain drain of top national talent is more difficult.
- The illegality of imposing local content requirements under WTO law is binding. While foreign affiliates cannot be subjected to local content regulations, national enterprises have more incentive to build their own local supply chains and state-owned enterprises can help in this respect via procurement.
- The benefits of outward FDI undertaken by foreign affiliates located in the country ultimately accrue to the parent company at home.
- Foreign affiliates conduct almost no research and development in emerging markets; so competing in high-tech industries is problematic, unless governments are able to take a hard line with foreign investors, as in India and China.
- SMEs must be brought up to speed as subcontractors, and FDI rarely makes a large impact in this firm-size range, which is the object of numerous government programmes.

In the past, FDI was compared with no FDI, as if national enterprise had nothing to contribute. Now, the presence or absence of foreign affiliates must be compared against that of well-managed national firms. How different the results will be remains to be seen, depending on policy formulation and implementation. National firms must be nursed and nurtured to fulfill the functions that foreign affiliates are less likely to undertake.

* *Barton L. Weller Professor of Political Economy at MIT, Department of Urban Studies and Planning. 'National companies or foreign affiliates: Whose contribution to growth is greater?,' Columbia FDI Perspectives, No. 60, February 13, 2012. Reprinted with permission from the Vale Columbia Centre on Sustainable International Investment (www.vcc.columbia.edu).*

Europeans Welcome Chinese Investors

As cash-strapped European governments put assets up for sale, Chinese companies and funds are seen as increasingly welcome investors, displaying a growing firepower that is helping to reshape the global economy.

Some of the more surprising bidders emerging for European assets are China's power companies, often large conglomerates expanding into western markets for the first time.

As the euro zone crisis plays out, Chinese groups have been eager to examine the hard assets being sold, even though the bloc's debt has appeared to be a tougher sale to Beijing.

More Chinese deals are expected in 2012 as cash-strapped governments and companies put infrastructure on the auction block, particularly in the utilities sector. China's US$410bn sovereign wealth fund has also shown an interest in investing in infrastructure in developed countries. *(FT, 20.01.12)*

FDI Inflows Show India Attractive

India witnessed the second highest growth in FDI inflows in the world during 2011, which helped generate over two lakh jobs, reflecting robust faith of international investors in Indian growth and allaying fears of its fading global sheen.

Although, some international companies have expressed concern over stalled decision-making in the Indian bureaucracy, the majority has expressed intent to expand operations within the country during 2012, according to an Ernst & Young attractiveness survey.

The report cited potential of the home market, cost competitiveness and qualified workforce as the factors driving FDI into India. Total FDI inflows grew by 25 percent during January-November 2011, second only to Brazil where the growth was 48 percent. *(ET, 30.01.12)*

Foreign Mine Licences Curbed

Foreign investment in Indonesia could take a hit following a recent government decree barring foreign companies from owning more than 49 percent of certain mines. The new regulation by the government to keep at home a greater portion of the gains of the resource boom and growth in foreign investment.

The country is the world's largest tin producer, a leading exporter of coal, and is rich in copper, gold and other minerals.The move echoes a plan floated by Indonesia's central bank last year to cap foreign ownership of banks at 50 percent, which would force investors including Singapore's Temasek to divest significant holdings.

Under the mining decree, foreign holders of mining licences will have to begin divesting their share to Indonesian ownership, beginning five years after production starts. By the 10th year, at least 51 percent must be held locally. *(FT, 08.03.12)*

Tesco Attacks Seoul's Retail Policy

Tesco's chairman in South Korea – its biggest market outside the UK – has launched an unusually caustic attack on Seoul's policymakers, accusing them of being "red" for attempting to protect small family-run shops from the expansion of supermarkets.

Seoul has introduced a law that smaller urban supermarkets cannot open within 1km of small stores without first gaining the local communities' consent. It is also blocking large retailers from running certain kinds of store between midnight and 8am, when small stores generally cannot compete.

Such protectionism hurt poor consumers who would be able to get cheaper goods at Tesco than family stores. *(FT, 01.03.12)*

Lower Roaming Costs in GCC

Oman's telecoms regulator, the Telecommunications Regulatory Authority (TRA) has confirmed the implementation of regulatory price caps on the international roaming call charges in the Gulf Cooperation Council (GCC) countries.

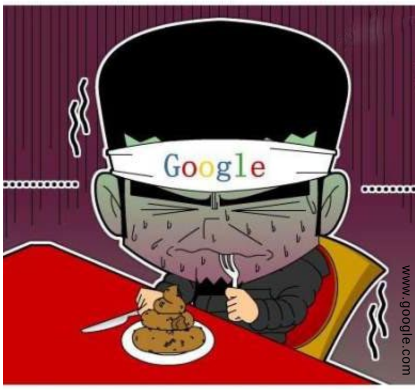
The price caps set a ceiling on the international roaming prices were implemented over a two years period. The caps apply to roaming calls within the visited country and to the home country or other GCC countries.

These regulatory price caps come in addition to the international roaming rates transparency obligations, which was mandated in 2007, where operators were obliged to inform consumers of the roaming charge as soon as they land on a visited network.

(www.cellular-news.com, 07.02.12)

China to Boost Web biz

China's Ministry of Industry and Information Technology (MIIT) released new regulations governing competitive practices in the Internet space to promote healthy industry growth and safeguard the rights of both companies and online users.



MIIT issued regulations to curb poor business practices in one of China's less regulated industries which is dominated by non-state-owned companies that would accuse competitors of foul play in order to gain the upper hand in the online arena.

The MIIT stated the rules would prevent companies from infringing on the "legal rights and interests" of other online service providers, such as by "maliciously" interfering with services from other companies on a user's device. *(ZDNet Asia, 03.01.12)*

'Too Big to Fail' to Expand

Global regulators may expand the definition of a too-big-to-fail financial firm, signing up domestic lenders, clearing houses and insurers to capital rules designed for the world's biggest banks.

The "framework should be in place for domestically systemically important banks by the end of 2012," Mark Carney, Chairman of the Financial Stability Board (FSB), said. The FSB will review its work on shadow banks by March, the board said.

Global regulators will also work on rules to ensure the robustness of clearing houses, the FSB said in the statement. Regulators should be able to take decisions by June 2012 on the "appropriate form" of central clearers dealing with derivatives. *(FE, 11.01.12)*

Energy Sector to be Reformed

The Greek Parliament passed Law 4046/2012,(1) which introduced structural changes to various sectors of the economy, as agreed with the EU under a memorandum of cooperation for a new loan programme for Greece.

These structural reforms are considered vital for the liberalisation of the energy market; in fact, key players in the market have consistently demanded their introduction and implementation for the past few years.

As a result, the obligations undertaken by the Ministry of Environment, Energy and Climate Change under the new loan agreement with the EU may be considered a positive development towards the full liberalisation of the Greek energy market. *(ILO, 26.03.12)*

Tepco Poised for Nationalisation

Japan will inject US$12.9bn of fresh capital into Tokyo Electric Power, owner of the Fukushima Daiichi nuclear power plant, in effect nationalising the financially strapped utility.

Tepco, Asia's largest private utility by sales, has lost 90 percent of its market value since reactors at Fukushima melted down in March 2011 after Japan's earthquake and tsunami. The government's cash injection would be matched by a roughly equal amount of loans from Tepco's private and public-sector banks.

A key issue yet to be resolved is how much control over Tepco's management the state will acquire.

(FT, 27.01.12)

Europe Changes Tone on Telecommunications Initiatives

– Kevin J. O'brien

By creating the world's dominant mobile phone technology standard in the 1980s, Europe and the companies that worked on the effort, like Ericsson and Nokia, played a major role in the birth of the global wireless industry. But three decades later, industry wide initiatives are no longer in vogue in Europe. Quite the contrary.

In March 2012, the European Commission's powerful competition directorate, whose antitrust investigations can lead to hefty fines, said it was examining a series of meetings that had been held since late 2010 by the chief executives of the five largest mobile operators in Europe to see whether they had colluded on standards.

The commission said it was looking into whether the group — Telefónica, Deutsche Telekom, Vodafone, France Télécom and Telecom Italia — was trying to develop standards that would exclude or penalise rivals that tap into the carriers' wireless networks, which are becoming the ubiquitous platforms for financial transactions and other forms of digital commerce.

A commission spokeswoman, Maria Madrid, said the decision to send questionnaires to the carriers had been a preliminary step that might or might not lead to a formal investigation. The chief executives have publicly complained about the inquiry, denying that collusion took place and saying that the commission has been kept apprised of events at each meeting.

Given European success at setting standards in the mobile phone business, there are several unanswered questions and a certain amount of irony about the current situation.

In 1982, Europe essentially sanctioned the same form of collaboration when it began work on Groupe Spécial Mobile, later the Global System for Mobile Communications. The effort drew together industry and government postal services, which ran European phone monopolies. Today, networks running the GSM standard, which specifies how cellphones connect to networks and to each other, cover more than 90 percent of the world's population.

The GSM effort, in many respects, could be viewed as a larger, more inclusive version of what the Big 5 carriers are doing as the mature industry looks to fend off advances by competitors like Apple and Google. While the smartphones and Internet services those companies provide can energise wireless traffic, they also provide a means to circumvent entrenched networks, siphoning revenue from carriers.

The timing of the commission's scrutiny also raises questions.

The examination in Brussels was opened two weeks after one of the chief executives, Vittorio Colao of Vodafone, publicly feuded with the European commissioner for telecommunications, Neelie Kroes, during the industry's annual convention in Barcelona, over the commission's efforts to lower the regulated prices of many mobile fees, which has eroded revenue for carriers.

The action by the competition panel has shaken the world of well-financed lobbying organisations in Brussels, where many industry associations routinely hold meetings of top business leaders that could, in a certain light, be construed as locales for potential collusion. Some lobbyists wonder whether legal lobbying efforts will now be tarred as illegal.

"We hold a lot of the same kind of industrywide meetings as the Big 5 telco operators," said one lobbyist from the telecommunications industry, who wanted to be anonymous to avoid inviting similar scrutiny. "Everyone does."

What is clear is that the tone of exchanges between carriers and lawmakers in Brussels, which has been deteriorating since the first caps on roaming fees were adopted in 2007, has hit a new low. The commission needs operators to build new networks to fulfill its Digital Agenda, which calls for every EU resident to have broadband service with download speeds of at least 30 megabits per second by 2020. In 2011, only 5 percent of the population did.

But operators are wary of investing in networks when regulators in Brussels are cutting roaming and mobile termination fees, two chief sources of income. They are also trying, without much success, to bill big content companies like Google and Apple for the digital traffic those companies' services generate on mobile networks.

– *The article appeared in* The International Herald Tribune, *on March 26, 2012*

Spain to ease Bank Merger Fears

Spain's larger banks will not be forced into politically motivated mergers, according to government officials, following concern that recent government pressure for consolidation could imperil the interests of their shareholders.

Banks in Spain, which have been encouraged by new legislation to swallow weaker rivals, will not be railroaded into "unnatural mergers" that would risk frightening international investors and draining foreign capital from the sector.

Investors in Spain's two largest banks by assets and those with the most geographically diverse shareholder bases, have expressed concerns that political considerations could create a "Lloyds-HBOS situation", in reference to the UK bank merger that saw the combined entity stumble into a state bail-out.

(FT, 14.02.12)

Global Body to Represent Big Banks

The world's biggest banks are set to have a new voice on the global regulatory stage as a little known body that acts as an umbrella group for three regional trade associations beef up its profile and changes its top management.

The Global Financial Markets Association (GFMA) plans to reinvent itself as a body to represent the interests of the world's biggest banks, as regulators around the world start to target the toughest new rules at a category of so-called GSifis – global systemically important financial institutions – most of which are banks, or GSibs in the jargon.

The GFMA encompasses the Securities Industry and Financial Markets Association in the US, the Association of Financial Markets in Europe, and Asifma, their Asian sister organisation. *(FT, 27.02.12)*

Overhaul of Banking System

Vietnam's Communist government has unveiled plans to force weak banks to merge and will potentially inject new capital into the ailing banking system as it tries to stabilise the economy.

The government wants to ensure that banks develop in a "safe, effective and stable" manner in order to support wider economic reforms, according to a three-year bank restructuring plan.

Analysts welcomed the publication of the restructuring road map, but criticised the lack of clarity about how the government would fund the recapitalisation of the banking system and questioned whether top leaders will have the political will to enforce it.

Vietnam has more than 40 banks and although the ownership is often unclear, bankers say that many of them are linked to tycoons and major state-owned companies. *(FT, 06.03.12)*

Legislation on Financial Regulator

The Indonesian Parliament finally passed the Bill on the Financial Services Authority. The long-awaited law is one of the most important in Indonesian history and will change the landscape of the country's financial industry.

The new authority's overall task is to ensure that the financial services industry is managed in a way that improves its transparency and accountability, providing greater protection for consumers and the public.

The authority will have a board of commissioners comprised of seven members who are in charge of the specific sectors. They will also have responsibility for audits, education, consumer protection and matters of ethical conduct.

The board will also include an ex officio representative from both Bank Indonesia and the Ministry of Finance. These members are to be selected by the Parliament from nominees proposed by the president. *(ILO, 20.01.12)*

SocGen Faces Disciplinary Probe

Société Générale is to face a disciplinary probe, which could result in fines, by the Autorité de Contrôle Prudentiel, the French banking regulator.

France's second-largest bank by market value made the disclosure in its annual report, in which it said that the regulator's inquiry focused on controls in its private bank over money-laundering and terrorism financing.

The regulator opened the disciplinary process in September. It was part of a broader inquiry being conducted at leading French banks.

The bank received the requests "as part of inquiries into information submitted to the British Bankers' Association regarding the calculation of some Libor rates and information submitted to the European Banking Federation regarding the calculation of the Euribor." *(FT, 08.03.12)*

Regulators Warn Against Ratings Plan

Forcing issuers to rotate the agencies that rate their bonds, as proposed by the European Commission, could do more harm than good by opening the door to lower quality ratings by inexperienced analysts.

The proposal is designed to encourage competition and cut down on chumminess between the raters – led by Moody's, Standard & Poor's and Fitch – and the companies that hire them.

The FSA's David Lawton said mandatory rotation could lead to a shortage of acceptable raters and the market would come "to a complete halt". High quality global journalism requires investment.

The rotation proposal also drew criticism from an industry panel that raised concerns about commission plans to have Esma supervise ratings methodologies. At the moment the watchdog focuses on ensuring internal procedures preserve analyst independence and are properly followed.

(FT, 01.03.12)

Too Big To Jail

– Simon Johnson*

US banks have grown beyond the reach of criminal prosecution

Among the fundamental principles of any functioning justice system is the following: don't lie to a judge or falsify documents submitted to a court, or you will go to jail.

Breaking an oath to tell the truth is perjury, and lying in official documents is both perjury and fraud. These are serious criminal offences, but apparently not if you are at the heart of US' financial system. On the contrary, key individuals there appear to be well compensated for their crimes.

As Dennis Kelleher of Better Markets has argued, the recent so-called 'robo-signing' settlement - in which five large banks 'settled' their legal liability for carrying out fraudulent foreclosures on mortgages - is a complete sellout to the financial industry.

First, there was no serious criminal prosecution - meaning that no one will be charged with a felony, and no one will go to jail. In terms of affecting executives' incentives, this is the only thing that matters.

Even the terminology used to frame the discussion is wrong. Kelleher, an attorney with extensive experience in private practice and the public sector, tells it like it is, "'robo-signing' is massive, systematic, fraudulent, criminal conduct".

Second, the civil penalties in this settlement - a form of fine - are minuscule relative to the size of the companies involved. In other words, from a corporate perspective, the penalty is a trifling affair.

Third, such fines are, in any case, paid by the companies' shareholders, not by their executives or board members. In the rare cases in which fines have been levied on individuals, either their insurance policies picked up most of the bill, or the penalties were trivial relative to the cash compensation that they received while committing their crimes – or both.

As if all of this weren't bad enough, the banks reportedly will be able to use government money to write down the value of mortgages, which amounts to subsidising them to pay their own meaningless fines.

The Obama administration and its allies have worked hard to sell its roughly US$20bn settlement with the banks as one that will have a meaningful impact on the housing market. But nothing could be further from the truth.

In fact, the Obama administration's settlement with the mortgage lenders is consistent with its track record on all of its policies related to the financial sector, which has been abysmal. But it is also puzzling. Why would the administration continue to bend over backwards to be lenient towards top bankers under these circumstances?

I honestly do not believe that the administration's stance reflects any form of corruption - payments made to individuals or even to political campaigns. And, in this case, it does not even appear to reflect the lobbying power of big financial players.

That power certainly explains why the Dodd-Frank financial reforms enacted in 2010 were not stronger, and why there is now so much opposition to effective implementation of that legislation. But mortgage lenders' criminal activities are another matter.

Indeed, at stake in the mortgage settlement are fundamental and systemic breaches of the rule of law - perjury and fraud on an economy-wide scale. The DoJ has, without question, all of the power that it needs to prosecute these alleged crimes fully. And yet US' top law-enforcement officials have consistently backed off.

The main motivation behind the administration's indulgence of serious criminality evidently is fear of the consequences of taking tough action on individual bankers. And maybe officials are right to be afraid, given the massive size of the banks in question relative to the economy.

Top bankers want to make a lot of money. They also want to stay out of prison. Political leaders can huff and puff as much as they want, but, without a credible threat of poverty and time behind bars, bankers have no reason to comply with the law.

The message to bank executives today is simple: build your bank to be as big as possible – and then keep growing. If you manage to become big enough, you and your employees are not just too big to fail, but also too big to jail.

The Obama administration has just made everyone else the sucker.

* *Former Chief Economist, IMF. Abridged from an article that appeared in* The Economic Times, *on March 16, 2012*

The World Bank is Flirting with Irrelevance

– Ian Goldin*

President Barack Obama will soon decide on a new World Bank president. Once again, the Bank's remaining 186 shareholders are spectators of the scandalous bilateral deal that since 1946 has allowed Europe to claim the International Monetary Fund and the US to appoint the head of the Bank. With emerging markets now accounting for more than half the global economy, there is no excuse for delaying a global search for the best-qualified candidate.

By the time the leadership is opened to a genuine contest, the Bank could have become irrelevant. About 65 years ago, the Bank was set up to help rebuild societies ravaged in the second world war. By the 1960s its focus had turned to development. Its incoming president urgently needs to reinvent it to focus on five global challenges.

First, governments – and especially democracies – are increasingly preoccupied with short-term concerns. Yet their decisions and investments shape society for the longer term. The Bank is the only global financial institution with a clear mandate to think beyond tomorrow. The average period of its loans is more than 20 years, and its key task is to assist countries in developing infrastructure and institutions for the coming decades.

Yet the Bank does not yet have the capacity to form a view on how the world is evolving and to provide global perspectives on shifting trends. This is vital if its clients are to make the difficult choices required to set priorities.

Only Singapore and China have the necessary expertise, which is absent even in advanced economies such as the UK or US. Change is certain. Social and investment choices require an understanding of the structural

The Bank's ability to realise its potential has been stymied by a culture where failure is hidden and success exaggerated

changes expected over the coming decades. The Bank has the unrealised potential to form a truly global perspective, and to consider the consequences for policy and investment.

Second, greater global integration has been associated with at least as rapid an increase in externalities that spill over national boundaries. The yawning gap between existing governance structures and the need for the management of our global commons requires urgent attention. Without the legitimacy, capacity or executive power to manage the widening range of global public goods, this mission creep is doomed to failure. The Bank cannot take on this responsibility without deep governance and administrative reforms. With such reforms, it has the potential to meet the crucial global challenge.

Third, the financial crisis is the first systemic crisis of the 21st century but certainly not the last. Increased integration and complexity mean that all countries will be subject to rising systemic risk. Poor countries and poor people everywhere are the most vulnerable.

Reducing systemic risk and building resilience are central to the Bank's relevance. It must also help to build the shock-absorbers and regulatory capacity to ensure that individuals and society are less subject to the vagaries of cascading shocks that will hit countries with increasing force and frequency from climate change, pandemics, finance and other sources.

Fourth, well over one billion people remain in urgent need of support to escape dire poverty. This is particularly true of individuals living in dysfunctional or failed states, but also of those in low- and middle-income societies that neglect their needs. The Bank, working through governments, has not adequately addressed the needs of those people that governments cannot or will not reach. Developing the means to act in these circumstances requires new authority and capability.

Fifth, tackling these challenges requires a cultural shift to ensure the Bank learns from others and from its history of success and failure. Its ability to realise its potential has been stymied by a culture where failure is hidden and success exaggerated. The world needs the Bank to meet its potential to address the pressures that threaten all societies. It faces a stark choice: a new leader could reinvigorate it. Otherwise, it will sink into irrelevance.

* *Former World Bank Vice President and Professor of Globalisation and Development and Director, Oxford Martin School, University of Oxford. Abridged from an article that appeared in* The Financial Times*, on March 06, 2012*

CCP Making Headway in Curbing Collusive Bidding

The Competition Commission of Pakistan (CCP) is making headway in curbing collusive bidding in public procurements as the Public Procurement Regulatory Authority (PPRA) has estimated US$8bn savings through revamped public procurement procedure.

In his presentation at the international conference, CCP Member Abdul Ghaffar said that as per PPRA, Pakistan spends an estimated 20-25 percent of its gros domestic product (GDP) on public procurement which comes around to around US$55-60bn equivalent to ₹5,312 billion.

The PPPRA has estimated US$8bn in savings from improved public procurement processes.

"There is a need to have exclusive federal as well as provincial institutions to regulate public procurements," CCP Member told the heads of the competition agencies.

Abdul Ghaffar further stated that reportedly the misuse of the public procurement in Pakistan as per Transparency International stood at around US$4bn and according to the PPRA the estimates come to around US$8bn.

Keeping in view the huge impact on economy and thus consumer welfare, curbing collusive bidding in public procurement is a priority area for CCP under its roadmap.

Furthermore, Public Procurement is highly susceptible to collusive bidding. Concrete steps have been taken by the CCP for capacity building of staff to investigate and prosecute the cases of collusive bidding, the Member of Federal Borad of Revenue, Government of Pakistan said.

Abdul Ghaffar further stated that the in case of collusion between any employee or employees of Public Procurement Agencies (PPAs) and prospective bidders for a particular procurement, the case is liable to be prosecuted by public prosecution agencies eg *National Accountability Bureau* (NAB), *Federal Investigation Agency* (FIA) or provincial anti-corruption agencies.

He explained that the PPRA is an autonomous body endowed with the responsibility of prescribing regulations and procedures for public procurements by Federal Government owned public sector organisations with a view to improve governance, management, transparency, accountability and quality of public procurement with regard to goods, works and services.

It is also endowed with the responsibility of monitoring procurement by public sector agencies/organisations and has been delegated necessary powers under the Public Procurement Regulatory Authority Ordinance 2002.

Punjab and Sindh have adopted PPRA Rules, 2004 and formed Punjab Procurement Regulatory Authority and Sindh Public Procurement Regulatory Authority respectively.

In Khyber Pakhtunkhawa procurement is regulated under North-West Frontier Province Public Procurement of Goods, Works and Services Rules, 2008. In Balochistan and Gilgit Baltistan Procurement is managed by provincial departments under their Purchase Manuals.

Collusive Bidding Agreements can be very difficult to detect as they are negotiated in secret. Some inside information or search and inspection is usually required to establish such conspiracies.

He said that the CCP is making efforts to build a liaison with PPRA to jointly pursue the objective of ensuring competitiveness in public procurements by exchange of information and sharing of resources.

In this connection, the CCP will ensure close liaison with PPRA at Federal Level and Procurement Regulatory Authorities at Provincial level.

There is a need for sharing and exchange of information with National Accountability Bureau, Federal Investigation Agency, etc. Moreover, the capacity building of CCP's staff to investigate cases of collusive bidding. Abdul Ghaffar further stated that the collusive bidding/bid rigging can take many forms.

Some of the broad categories included 'Cover Bidding' and 'Bid Suppression'. In case of Cover Bidding, where one or more bidders submit bids which are highly unlikely to be accepted, to give an impression of competition bidding.

However, Bid Suppression is in cases where one or more competitors who normally bid do not submit their bids so that a particular competitor's submission is accepted, he added.

– *The news appeared in the* Recorder Report *on December 03, 2011*

Daily Consumer Goods Trade in Finland

According to the FCA study on buying power in the daily consumer goods trade published today, retailers use their firm position with respect to suppliers in several ways that may be considered questionable for sound and effective economic competition. The FCA hence finds that there is a clear need for further investigations into the practices of the trade.

www.google.com

FCA study shows that daily consumer goods trade uses its buying power in several ways that are questionable for competition

The FCA investigated the phenomena related to the use of buying power with questionnaires directed to retailers and the food industry. The industries included were the meat processing, bakery, mill and pet food industries.

In addition to the responses to the questionnaires, the FCA also used other signals obtained from the market and the studies of the European Commission and the European Central Bank on the structure and practices of the markets considered. The financial situation of the actors and the role of foreign trade were also examined.

Gratuitous marketing allowance remarkably common

The majority of the suppliers who responded to the FCA's questionnaire do not feel that they obtain any value for the marketing allowance they have paid other than the opportunity to be included in the retailer's product categories.

Gratuitous marketing allowances may induce price increases because suppliers seek to pass on all their cost increases to purchase prices. The practice is particularly harmful for the entry of new businesses and hence the competitive situation in the entire field. In addition, gratuitous allowances may have a wider impact on the weakening of price competition in the field.

Own risk transferred to suppliers

The study explored several ways in which retailers transfer their own risk to suppliers. Repurchase requirements for unsold products are the most common way. In addition to suppliers, the transfer of risk may also have an impact on those competing actors at the retail level who are in a weaker position: if one retailer succeeds in transferring risks to the supplier, this may result in the supplier seeking to obtain better conditions when negotiating with relatively weaker retailers.

Private label products reinforce strong position of retailers

The increase in the number of private label products benefits consumers because it increases product variety and lowers prices. However, problems may occur in the long run, as the retailers have such a strong position in category management and pricing.

Moreover, as a manufacturer of private label products, a retailer is able to obtain better information about new brand products, in addition to which they have better information than before about the cost structure of products.

According to the suppliers' responses, retailers often price brand products above private label products. According to the study, this phenomenon and the possible competition distortions created by it could possibly be prevented by the suppliers' maximum resale price maintenance.

However, it is difficult to present tenable estimates about the possibilities and incentives of the supplier level to include conditions on maximum resale price maintenance into the agreements.

A complex problem not easily solved

To summarise, it may be stated that the highlighted practices between retail and suppliers lie in a so-called grey area when it comes to the application of competition law. No clearly prohibited, hard core restraints on competition were found.

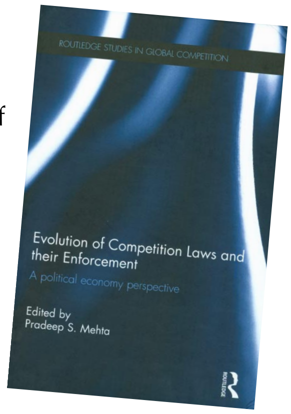
The buying power of retail does not in itself automatically mean the lack or distortion of competition. However, the nature of the detected phenomena and their apparent prevalence clearly motivate further measures to be taken.

It is also important to estimate other factors influencing the consumers' choice of retail outlet, such as the practices related to the placement of the retail outlets and the supply of supplementary services located in connection to them.

– *The news appeared on* www.kilpailuvirasto.fi *on January 10, 2012*

Publications

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



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

The contributions show that the road to strong competition regimes is seldom smooth, and that social, economic and political factors in the country hugely impact on the pace and effectiveness of competition reforms.

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

Did we make any difference? *Reforming Competition Law Regimes in the Developing World through the 7Up Programme*

CUTS has undertaken a number of research based advocacy and capacity building projects on competition policy and law issues in nearly 30 countries of Africa and Asia. One of the main goals behind these projects was to equip key national stakeholders with awareness and understanding on competition policy and law issues, so that they can play their (respective) roles in the effective enforcement of competition laws.

Having embarked on competition policy projects since 2000, it was also critical for CUTS to evaluate its effectiveness in achieving this goal, which is likely to witness far greater action pertaining to competition enforcement.

In a recently published (February 2012) book, Did we make any difference? Reforming Competition Law Regimes in the Developing World through the 7Up programmes, CUTS summarises its experiences of having worked on competition reforms across these countries – highlighting some of the benefits that have accrued to these countries and the challenges lie ahead.

www.cuts-ccier.org/pdf/Reforming_Competition_Law_Regimes_in_the_Developing_World_through_the_7Up_Programme.pdf

Policy Watch

The January-March 2012 issue of PolicyWatch encapsulates 'Catch the Signal of Change' in its cover story on the spectrum scam in India, which suggests that a hybrid model be adopted, wherein bidders can offer a bid with a one-time payment and a periodic payment for usage linked with earnings and spectrum-usage charges.

A special article by Arun Maira opines that If India's discordant democrats could come to consensus more quickly, India will be able to implement many difficult reforms. So, installation of democratic processes to arrive at genuine consensus must be the mother of all reforms.

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

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

Sources

BR: Business Respect; BBC: British Broadcasting Corporation; CD: China Daily; ET: Economic Times; FE: Financial Express; FT: Financial Times; GCR: Global Competition Review; ILO: International Law Office

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