REGULETTER

A Quarterly Newsletter

CUTS International

Volume 14, January-March 2013

Desperate Times Calls Drastic Measures

Inside this Issue

Special Articles

The provisions of Intellectual Property Rights (IPRs) are considered to achieve economic, social and technological improvement for a country in all aspects. Among the instrument of IPRs, patent is the most contentious issue deliberated widely at the international level. Patents are mostly debated for their role in pharmaceutical industry.

The patent provisions are unique in the world and are, *inter alia*, aimed at ensuring that "protection and enforcement of patent rights contribute to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations". Albeit, the exclusive rights in the form of IPRs have potential to stifle competition and the abuse of IPRs by their holders.

India's accession to the World Trade Organisation (WTO) and obligations to implement Trade Related Aspects of Intellectual Property Rights (TRIPs) Agreement has seen the change in the Indian pharmaceutical industry. The industry had to adopt product patent in all fields of technology from 2005. Re-introduction of product patent since 2005 has crucial significance. The basic apprehension was whether India will go back to the pre-1970 situation of multinational corporation (MNC) monopoly and high prices?

Though the market share of the patented drugs in not very significant, however, the industry trends shows that post 2005, MNCs have started marketing new patented drugs at exorbitant prices particularly for life threatening diseases such as cancer. Imports of high priced finished formulations are expanding rapidly with manufacturing investments lagging behind. The aggregate market share of the MNCs in the formulations market has gone up dramatically with the taking over of some Indian companies by the MNCs.[1]

Compulsory licensing is the tool which across the world is granted on almost similar grounds like unreasonably exorbitant prices of an essential facility or commodity; or patent being not worked in the country; or where substantial public interest is affected by the way IPR holder is exercising its right.

> ***Patent is the most contentious issue deliberated widely at the international level. Patents are mostly debated for their role in pharmaceutical industry***

India's first ever compulsory licensing case *Bayer v. Natco*[2] is an appropriate example of compulsory licensing enhancing public welfare. The Controller General of Patent while awarding the license to Natco observed, "a right cannot be absolute. Whenever conferred upon a patentee, the right also carries accompanying obligations towards the public at large. These rights and obligations, if religiously enjoyed and discharged, will balance out each other. A slight imbalance may fetch highly undesirable results. It is this fine balance of rights and obligations that is in question in this case."

The cancer drug Nexavar is now available at ₹8800 instead of ₹2.8 Lakh for a month dose. It means that the same drug after compulsory licensing is available at just three percent of its earlier price.[3]

India is the one of the largest producers of antiretroviral drugs for middle and low income countries. A lot of Indian companies cater to various developing and least developed countries in Asia and Africa where cancer and HIV is widespread. In *Bayer v. Natco,* the Bayer was sanctioned six per cent of profits from sale of sofranib by Natco-pharma. This indicates that though profitability of an IP is diluted to an extent by compulsory licensing but still the incentive for innovation does not vanish completely.

However, a feeling of wariness may arise in companies that innovate and spend a lot of resources in making a new product. But, this case highlighted the need to improve access and affordability as only two per cent of total patients of liver and kidney cancer had access to the drug made by Bayer. This attracted provisions of section 84 of Indian Patent Act 1961 and hence the compulsory licensing order was passed.[4]

In an another landmark decision recently, the Indian apex court rejected pharma giant Novartis AG's plea to preserve its patent over a lifesaving cancer drug Glivec used to treat chronic myeloid leukemia (CML) a type of blood cancer. The decision drew a huge sigh of relief for thousands of patients in India and in various other developing countries as it ensures access to the lifesaving drug at affordable pricing

India has an estimated 3 lakh CML patients, and around twenty thousand added every year. Glivec is sold by Novartis for about ₹1.2 lakh per month. India manufacturers sell the generic version of the same drug at a monthly cost of ₹8,000 only per month.

The judgement clearly mentioned that Novartis failed to establish that the incremental invention in Glivec possesses both novelty and significant increase in drug efficacy for it to be eligible for a patent. Moreover, Imatinib, the active component in the Glivec, is on the National Essential Drug List in India. Thankfully, section 3(d) of India's patent law guards against such evergreening of the patented products

> ***India's accession to the World Trade Organisation (WTO) and obligations to implement Trade Related Aspects of Intellectual Property Rights (TRIPs) Agreement has seen the change in the Indian pharmaceutical industry***

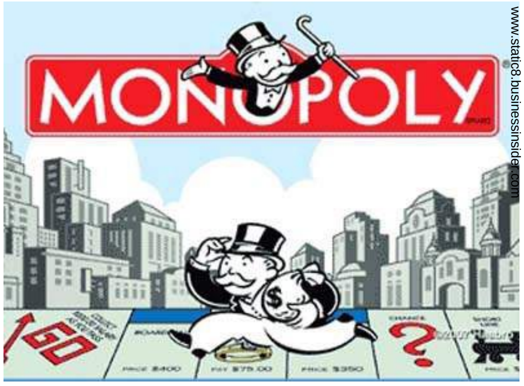
This decision should not be seen as India's patent laws and their enforcement are unfavourable to innovation and prevent new drugs from being introduced. In fact, patents are not the only way to spur innovation.

When Dr. Jonas Salk, the inventor of the revolutionary polio vaccine, was asked in 1955 whether he had a patent on the vaccine, he replied, "the patent belongs to the people….."

---

1 Multinationals and Monopolies, Pharmaceutical Industry in India after TRIPs, Sudip Chaudhuri, 2011
2 C.L.A. No. 1 of 2011, Order pronounced on March 09, 2012
3 www.pharmatimes.com/article/12-03-12/India_s_first-ever_compulsory_license_-_a_game-changing_move.aspx, Accessed on November 26, 2012
4 C.L.A. No. 1 of 2011, Order pronounced on March 09, 2012

Antitrust Regulations in Mexico



Nearly two years after Mexico introduced its new, more aggressive antitrust law, the country's Federal Competition Commission (CFC) has quietly opened consultations on regulations that will finally provide guidance to the business community about how the agency intends to enforce the revised statute.

The consultations mark the first sure sign of progress toward implementing rules that will govern how the CFC enforces some of the law's most crucial provisions, including how it will collect evidence and the timeframes in which it will conduct investigations.

The draft regulations include guidance on multiple issues relating to the new law, including how quickly companies must submit documents to the CFC during investigations; information about how the enforcer will conduct hearings, carry out dawn raids and collect evidence; what companies must do to qualify for merger control exemption; and information about how the agency will conduct international cartel investigations. *(GCR, 01.03.13)*

France Refines Merger Guidelines

The French Competition Authority (FCA) issued new draft merger control guidelines, clarifying areas such as the use of remedies, the fast-track process and the role of the trustee. The FCA says its experience in the last four years has proved the value of dealing with merger reviews quickly and flexibly.

The revisions place particular emphasis on the pre-notification phase, creating more opportunities for companies and the authority to discuss the potential upstream problems posed by the transaction and the specifics of the markets in question.

The guidelines also provide information about what type of remedies will be considered. *(GCR, 25.02.13)*

UAE Prepares for Competition Law

The UAE's first antitrust/competition legislation recently came into effect on February 23, 2013. Federal Law No (4) of 2012 (Law), primarily regulated by the Ministry of Economy, aim to prohibit and penalise anticompetitive agreements, abuse of dominant position within a given market and provides a framework for merger control and regulation.

Enterprises falling within the scope of the Law will benefit from a six-month transitional period to review their practices and align themselves within the parameters of the Law. Entities operating within the oil and gas, electricity and water, financial services, pharmaceuticals, transportation, telecommunications and waste management sectors are also currently exempt from the Law.

(www.reedsmith.com, 18.03.13)

Class Actions Coming to Korea

New legislation has been proposed in Korea to open the door to private antitrust damages lawsuits, a Fair Trade Commission official announced. Dae-Young Kim, head of the KFTC's international division, said the future for Korean competition law enforcement lay in the courtroom through private damages claims.

He said the KFTC's proposals include provisions for class action lawsuits, treble damages and injunctions, and that these would work alongside public enforcement to "compensate consumers damaged". The proposals were in line with the KFTC's "aggressive" stance towards antitrust enforcement. In 2012 the authority handled 52 behavioural cases and issued US$620mn in fines.

(GCR, 15.03.13)

Portugal's New Leniency Policy

Portugal's Competition Authority has modernised its leniency programme to bring it in line with European standards in a fresh attempt to improve its cartel enforcement record. The new rules will no longer apply to a number of anticompetitive agreements and will make it easier for potential whistle-blowers to request immunity in exchange for key information.

The new leniency programme will only apply to cartels and no longer cover vertical agreements or other concerted practices. It will introduce a clear marker system, which allows potential whistle-blowers to apply for leniency before having gathered all the relevant information. *(Mondaq, 24.01.13)*

China Simplifies Merger Rules

China's Ministry of Commerce (Mofcom) said it intends to introduce simplified merger control procedures in the coming year, after months of deliberation. The reform would allow the agency to distinguish between mergers with little or no impact on competition and deals that could raise greater antitrust issues. Following the overhaul, the agency would be able to examine simpler mergers within a shorter timeframe.

Mofcom began working on a merger control reform at the end of 2011 after registering a spike in merger filings and consequent delays in examining the notified deals. Over the past year, practitioners say the authority has prepared and circulated several drafts of the new procedures.

(www.lexology.com, 28.02.13)

COMESA Receives 1st Merger Filing

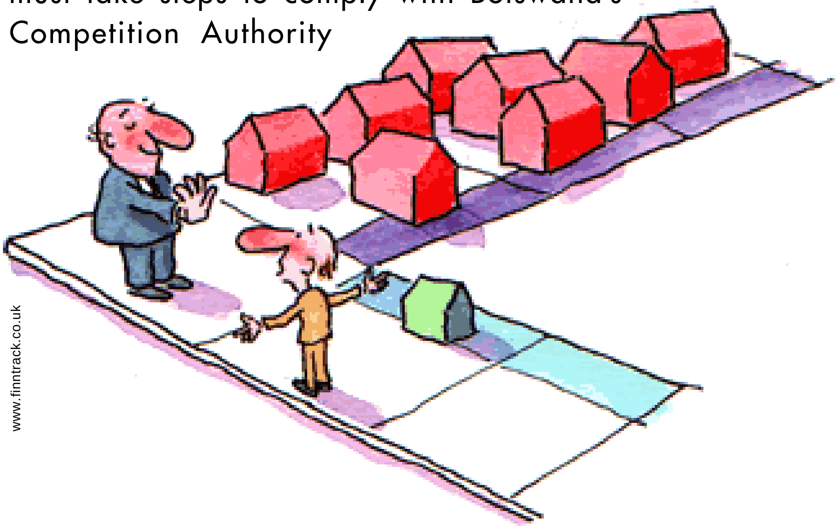
Electronics companies Philips and Funai have become the first companies to file a merger before the COMESA Competition Commission (CCC), an act which lawyers say "legitimises" the regional African authority.

Japan-based Funai is seeking approval for its acquisition of Philips' lifestyle entertainment business, which develops, manufactures and sells products including headphones, home media players and portable DVD players. Funai is involved in making and distributing DVD and Blu-ray products. Neither party operates alone in the COMESA jurisdictional countries; they have sales through distributors and remote agents. *(GCR, 27.03.13)*

Botswana Competition Law Penalties Revised

Jason Van Dijk & Jay Page

Any business trading in or into Botswana must take steps to comply with Botswana's Competition Authority



Botswana's guidelines on fines, published in January, signal that its Competition Commission means business and will impose serious fines for competition law violations. The guidelines are intended to make the calculation of penalties by the regulator and by parties charged with anti-competitive conduct more transparent and predictable, but it remains to be seen whether that will be achieved.

The Commission must consider the nature, duration, gravity and extent of the contravention; any loss or damage suffered as a result of the conduct (in particular by consumers); the market circumstances in which the contravention took place; the level of profit derived from the contravention; what amount would serve as an adequate deterrent (to both the guilty firm and other enterprises) while remaining proportionate to the infringement; whether the product is an essential good, and whether the firm has previously contravened the Competition Act.

Other factors which may be taken into account include the degree of co-operation with the Competition Authority and whether the firm applied for leniency. Unlike in South Africa, the Botswana Commission will take into account whether a company is actually capable of paying the fine and whether levying too hefty a fine might lead to the enterprise shutting down or becoming insolvent. The Botswana guidelines set out both aggravating and mitigating circumstances that may result in a higher or lower penalty being imposed.

These include the involvement of senior managers and directors in the prohibited conduct; whether an infringement was intentional, rather than negligent; engagement in coercive or retaliatory measures against a leniency applicant or other enterprises to continue with the infringement; continuation of the infringement after the Competition Authority commenced the investigations and acting as a ringleader or instigator of the infringing conduct.

Circumstances that may result in a lower fine being imposed include that the firm acted under severe duress or pressure; was genuinely uncertain whether the agreement or conduct was prohibited; took adequate steps to ensure compliance with the Botswana Competition Act and terminated the infringement as soon as the Competition Authority intervened. A balance needs to be struck between the need to deter anti-competitive conduct against the rights of companies to receive a fair and proportionate penalty.

In practice, the Botswana Commission is likely to consider all of the factors which must be taken into account and then to take any aggravating and mitigating circumstances into account as well. These factors are very similar to the factors contained in SA's Competition Act and the approach adopted by the South African competition authorities when determining the appropriate penalties. As in SA, Botswana's Competition Act caps an administrative penalty at 10 percent of the guilty firm's turnover. In SA, a penalty can only be imposed on a firm's turnover generated in one year.

However in Botswana, the Commission is empowered to fine a guilty firm based on its turnover generated over the entire period that it was engaged in the prohibited practice, up to a maximum of three years.

The Botswana Competition Commission clearly means business. Although it has not imposed any penalties for anticompetitive conduct to date, any business trading in or into Botswana must take steps to comply with Botswana's Competition Act, to avoid potentially significant penalties.

– *The article appeared in the* Business Day *(South Africa), on March 11, 2013*

ABUSE OF DOMINANCE

Poland takes on Mobile Sector

Poland's Office of Competition and Consumer Protection has opened an investigation of the country's three largest mobile telephone operators over allegedly abusing their collective dominant position.

The office (UOKiK) claims Polkomtel, Polska Telefonia Cyfrowa and Polska Telefonia Komórkowa Centertel used their collective dominance to restrict the expansion of rival Play in the mobile telephone market.

The companies, who together control the largest number of mobile phone users in Poland, each increased the cost of connecting calls to Play's mobile network to more than double that of connecting to each other's networks. *(GCR, 20.03.13)*

Pakistan Targets Electricity Cartel

The Competition Commission of Pakistan opened an investigation of four electricity companies for alleged abuse of dominance and collusion regarding the procurement of power transformers.

Power transformers are often equipped with on-load tap changers, which are mechanisms that help regulate a transformer's voltage output. The authority has issued show cause notices to the National Transmission and Dispatch Company, Lahore Electric Supply Company, Faisalabad Electric Supply Company and Multan Electric Power Company.

(www.globalenergyreview.co.uk, 25.03.13)

India Hits Cricket Association

The Competition Commission of India (CCI) has fined the national governing body of India's popular cricket leagues ₹22mn (US$9.8mn) on several counts of abuse of dominance.

The enforcer says the Board of Control for Cricket in India (BCCI) abused its dual position as national "cricket regulator" and commercial organising body and adopted a "strategy of monopolising the entire market" to exclude potential competing organisers of cricket leagues.

The BCCI organises the Indian Premier League and a number of trophies, and also selects the national team's players and officials that participate in international cricket events. *(GCR, 12.02.13)*

Banks Fined for Abusing Dominance

The Competition Council of Bosnia and Herzegovina fined UniCredit Bank dd Mostar, Raiffeisen Bank dd Sarajevo, Turkish Ziraat Bank Bosnia dd Sarajevo and Tenfore doo Banja Luka for abuse of a dominant market position.

The Competition Council determined that between 2005 and 2012, UniCredit Bank, Raiffeisen Bank, Turkish Ziraat Bank Bosnia and Tenfore had abused their dominant market position when effecting international money transfers between natural persons without a bank account in Bosnia and Herzegovina.

The abuse of market position occurred when the banks entered into restrictive exclusivity clauses in agreements with Western Union Network (France) SAS. *(ILO, 31.01.13)*

SNCF Holding Monopoly

The French Competition Authority has found France's national state-owned railway company, SNCF, guilty of several instances of abuse of dominant position within the context of the opening up of the rail transport sector to competitors.

The Authority defined the relevant markets in which SNCF holds a monopoly and subsequently identified five abusive practices among the 13 notified objections. It initially accused SNCF of using confidential strategic information about competitors, which it had obtained through its position as the delegated rail infrastructure manager, in order to exclude certain competitors from strategic markets.

The authority ordered SNCF to establish an analytical accounting system to allow for the precise identification of the costs incurred by its full trainload freight business.

(ILO, 28.02.13)

Investigation against Abloy Closed

The Finnish Competition and Consumer Authority (FCCA) has closed its investigation into suspected abuse of dominant position by Abloy Oy in the locking and security contracting market.

The FCCA opened its investigation in 2006 because of suspicions that Abloy attempted to prevent the entry of competing products into the market, *inter alia*, by weakening the price and purchase terms of such Abloy authorised locking firms, which had taken new competing products in their product assortment or had noticeably marketed such products.

During the negotiations, Abloy amended its practice. Therefore, the FCCA concluded that imposing commitments or proceeding with the investigation was no longer necessary and closed the investigation.

(FCCA, 19.03.13)

Telmex Slammed with Antitrust Fine

www.img.zonebourse.com

Telmex, the Mexican landline unit of America Movil SAB, was fined US$51.6mn by the Mexican Competition Authority for abusing its dominant position.

The sanction follows an investigation into the market for lines leased to competitors. Telmex did not provide service for almost two years to rival Axtel SAB in 32 cities and six inter-city routes.

While Telmex is still reviewing the antitrust ruling, its initial conclusion is that evidence the carrier provided to the agency was not properly taken into account. The carrier has 30 business days to appeal the decision.

Telmex has about 80 percent of the nation's landlines, and Mexico City-based America Movil also controls 70 percent of the mobile-phone market.

(Bloomberg, 08.02.13)

CARTELS

Taiwan Hit Power Firms

Taiwan's Fair Trade Commission has fined nine power companies €162mn for price fixing. The fines are the largest in the FTC's history

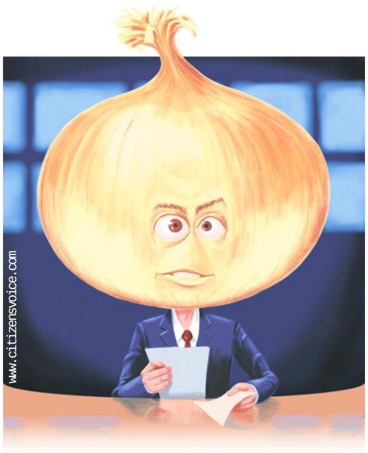
It is also the first occasion on which the commission has applied the maximum penalties allowed in its fining guidelines – 10 percent of turnover in Taiwan for the preceding fiscal year. The nine power companies sell electricity to the state-owned Taiwan Power Company (Taipower).

The Authority found that between August 2008 and October 2012 the companies met at least 20 times to discuss their pricing agreements with Taipower, which had requested price adjustments to reflect lower interest rates.

(www.globalenergyreview.co.uk, 25.03.13)

Netherlands Unearths Onion Cartel

The Netherlands' Competition Authority (NMa) has fined seven onion producers €4mn for operating a cartel. The Authority says the onion producers colluded to destroy parts of their onion fields sown in 2009 to reduce supply and obtain higher prices for their produce. The enforcer says the companies also exchanged competitive information "to make sure that the cartel participants respected the agreements".



According to the NMa, the companies grow and supply about 80 percent of the Netherlands' onion seedlings, which are later planted to produce onions fit for consumption.

(GCR, 05.02.13)

LG Posts Loss after EU Fine

LG Electronics, the world's second-largest television maker by revenue, reported an unexpected loss for the fourth quarter as a big fine in the EU for price-fixing outweighed an improved performance in its mobile phone business.

In December, LG, which derives about half of its sales from TVs, was fined €492m by the EU antitrust regulator as part of a record combined €1.47bn price fixing penalty on cathode-ray tube TV makers including Philips, Panasonic and Toshiba.

The profit margin at LG's TV business shrank to 0.3 percent in the fourth quarter from 0.8 percent in the third quarter due to slowing demand as the company struggled to compete with Japanese rivals. *(FT, 30.01.13)*

Germany Penalises Nestlé

Germany's Federal Cartel Office (FCO) fined Nestlé €20mn for exchanging information with rivals on consumer goods, in another branch of the office's wide-ranging investigation. Nestlé allegedly exchanged "competition-relevant information" with rivals regarding consumer goods, the FCO says, which was "likely to have a decisive influence on the companies' market conduct". The products in question include frozen pizza, pet food, hot beverages and confectionery.

Nestlé has confirmed that it will appeal against the ruling. The Authority says this branch of its investigation is now closed as Nestlé was the final cartelist to be sanctioned in the proceedings. The probe was triggered in 2008 by a leniency application from Mars, which was granted immunity from fines. *(GCR, 27.03.13)*

Car Part Makers Fined in Japan

Japan's Fair Trade Commission (JFTC) has fined three more companies over cartel activity in the car parts sector, its third decision in the wide-ranging investigation.

The Authority found Koito Manufacturing, Ichikoh Industries and Stanley Electric rigged tenders for the supply of vehicle headlamps and tail lights to car manufacturers including Toyota, Nissan and Mitsubishi. The companies were fined €38mn, although Stanley Electric escaped a penalty after applying for leniency.

The JFTC says: "The violators substantially restrained competition in the fields of headlamps and [tail] lamps ordered by each automobile company, by designating successful bidders and managing to have the designated successful bidders win the bids, respectively." *(GCR, 22.03.13)*

Spain Fines Asphalt Cartel

Spain's Competition Commission has fined ten construction companies €16mn for price fixing and bid rigging on public and private tenders for asphalt. The companies allegedly fixed prices and allocated projects and customers for road conservation, restoration and construction from 1998 to 2011. According to the Authority, the "very elaborate cartel" affected more than 900 projects in Cantabria, northern Spain.

Allegedly at the centre of the cartel were the so-called 'G5' – Senor, Arruti, Emilio Bolado and Acansa, Asfin and Ascan. Between 2006 and 2010, those companies allegedly divided government-organised tenders, rigged bids for private work and allocated the market for the direct sale of asphalt.

(www.theconstructionindex.co.uk, 13.03.13)

CADE Targets IT Cartel

Brazil's Council for Economic Defence (CADE) began legal action against an alleged bid-rigging cartel in the information technology market. CADE says it has evidence that seven IT companies and 10 of their executives rigged bids organised by government bodies in the federal district, Brasilia.

The Authority says the executives "communicated intensively" by email to allocate bids and exchange sensitive commercial information about price, clients and tender conditions. It also says this behaviour has harmed government bodies in Brasilia by, "eliminating competition" in auctions for outsourced IT services and leading to higher prices.

The Authority began its investigation following a referral from the federal prosecutor, which conducted dawn raids on the companies' Brasilia offices. *(GCR, 15.02.13)*

Microsoft Fined for Non-compliance

The EC has fined Microsoft for breaching commitments made in 2009 to give users of its software an easy web browser choice. Microsoft breached commitments regarding its Internet Explorer web browser

Joaquín Almunia, the EU Competition Commissioner, said that by violating the undertakings Microsoft committed a "very serious infringement". He said it was the first time the Commission had found and punished a breach of conditions agreed through DG Comp's commitments procedure.

The Commission found that Microsoft had failed to introduce the choice screen in one version of Windows 7 between May 2011 and July 2012. The condition was binding for five years – until 2014 – but more than 15 million users did not have the opportunity to choose a browser through the screen.

(FT, 07.03.13 & IE, 06.03.13)

FINES & PENALTIES

Turkey Penalises Banks

Turkey's Competition Authority has issued record fines against 12 banks for allegedly colluding over interest rates. The Authority's competition board fined the banks €467mn after finding they agreed on maximum deposit rates, credit card interest rate increases, and commissions and fees for card services.

The penalised banks include three state-owned and nine private and international banks operating in Turkey. Garanti Bankasý received a €90mn fine – the largest ever imposed on a single entity. Akbank was ordered to pay €73mn, Yapi Kredi €64mn), and Ziraat Bank and Isbank €63mn each. Other banks fined included Denizbank, Finansbank, ING Bank, Vakifbank and HSBC's Turkish unit, Halkbank.

(GCR, 11.03.13)

NMa Fines Group Transport Cartel

The Netherlands' Competition Authority (NMa) has fined three companies and six individuals €8.9mn for bid rigging in the group transportation sector. The Rotterdam Mobility Centre (RMC) was fined €8.3mn for its part in two cartels, while BIOS was fined €643,000 for its role in one illegal agreement. IJsselmeer Cities Taxis went bankrupt in November 2010 and therefore only received a €1,000 fine. Six executives received fines of up to €120,000 each.

In the first case, the Authority says RMC and IJsselsteden conspired to rig bids for contracts for transporting school children, the elderly and disabled people from December 2007 to August 2010. The companies allegedly allocated 'home markets' and decided on a case-by-case basis which customers to approach for business.

(GCR, 04.03.13)

FCO Charges Incomplete Merger

In January 2013, the German Federal Cartel Office (FCO) fined the head of a food conglomerate for failure to disclose information in a merger notification.

In 2011 the food company Tönnies Holding GmbH u. Co. KG notified its planned acquisition of slaughtering company Heinz Tummel GmbH & Co. KG to the German FCO. The German Act against Restrictions of Competition places an obligation on notifying parties to disclose all companies controlled by them.

This obligation also applies to any controlling shareholders, meaning that if any shareholder has control over a company involved in the transaction, and also has control over another company, then that shareholder must disclose details of those additional interests. *(www.lexology.com, 06.03.13)*

China Hits State-Owned Distillers

China's National Development and Reform Commission (NDRC) fined two distilleries for resale price maintenance, the highest fine issued for an antitrust infringement in the country to date.

The China National Radio announced the ruling, which saw distiller Kweichow Moutai fined €30mn and rival Wuliangye Yibin sanctioned €24mn. The fine is approximately 1 percent of the companies' turnover for 2012. It is the largest antitrust penalty levied on Chinese state-owned enterprises.

The two distilleries are China's largest. Wuliangye Yibin manufactures several spirits including baijiu, a Chinese white spirit, and Kweichow Moutai makes moutai, a darker spirit. Both are hugely popular in China, making up 55 percent of the country's spirit market. *(GCR, 19.02.13)*

Korea Punishes Cookware RPM

The Korea's Fair Trade Commission (KFTC) has fined cookware manufacturer Fissler Korea for resale price maintenance. Fissler Korea is the exclusive seller and importer of goods made by Germany-based Fissler, which include items such as cooking pots and induction hobs.

The KFTC says that Fissler Korea ordered its 49 franchise shops across the country to set a minimum price for its goods. The company imposed sanctions such as penalties, contract cancellations and supply suspensions against stores that applied lower prices.

The Authority says Fissler ranked the shops according to their level of compliance and 19 shops were sanctioned. It also made the stores monitor each other to ensure they all observed the practice. *(GCR, 06.02.13)*

EC Fines Iberian Telecom Cos.

The European Commission (EC) hit Telefonica SA and Portugal Telecom with US$105mn in antitrust fines for agreeing in a joint venture takeover contract not to compete with each another on the Iberian Penninsula.

The commission's competition watchdog said the two global telecoms violated European antitrust rules by deliberately staying out of each other's home markets from July 2010 to February 2011. The larger Telefonica will pay US$89mn and Portugal Telecom will pay US$16.2.

(www.law360.com)

Antitrust Chief Holds Aces in Google Case

When US antitrust authorities gave Google's search engine a clean bill of health, it naturally appeared a setback for Europe's own ongoing probe of the internet company.

Yet to Joaquín Almunia, the EU's competition chief, there is a bright side. **Speaking in an interview with the Financial Times that sheds new light on his two-year long Google investigation**, Almunia insists that the **Federal Trade Commission decision** will be **"neither an obstacle [for the European Commission] nor an advantage [for Google]".**

Almunia is also busy on other fronts. He is investigating Gazprom, Samsung, Apple and alleged Libor cartels, and last year shot to prominence in the US by blocking the NYSE-Deutsche Börse tie-up.

But the Google search case has long been the world's antitrust cause célèbre and its conclusion in Brussels will be central to his legacy as competition commissioner.

What Almunia is determined to change – ideally within months, through a voluntary deal – is the way Google presents its own services in general search results, allegedly to the detriment of consumers and its rivals in restaurant, weather, maps and comparison shopping. "We are still investigating, but my conviction is they are diverting traffic [to their own services]," said Almunia, casting it as a potential abuse of dominance.

To Almunia, the problem is "the way the things are presented" in Google search results. It signals the settlement will cover the form and labelling of the Google search page in order to "restore the level playing field". This is not just a matter of rivals being hurt; consumers are being deflected from "the service that will offer them the best results for the user" towards Google's own commercial services, he claims. But this analysis notably stops short of the sweeping curbs the small army of anti-Google complainants are demanding. Almunia makes clear that any Google settlement will not interfere with the inner workings of its search engine.

For Google, a settlement does not require it to admit wrongdoing and avoids years of legal warfare and the potential of a hefty commission fine, which can be up to 10 percent of turnover. The commission, meanwhile, wins legally binding commitments on Google's future behaviour. In principle, Mr Almunia says "it is better, it's quicker, it's simpler and everybody will benefit from the solutions".

This would not necessarily best please the complainants, led by Google's arch rival Microsoft. They will have an opportunity – along with others – to feed comments back to the commission in a "market test" of the settlement. But Almunia will probably prove hard to move.

Does he fear a complainant will take its grievances to court and allege the commission has failed in its duties? "We're not worried," is the commissioner's reply.

The interview is full of asides about the Google rivals "making a lot of noise" and he expects them to continue to do so. "Neither Google nor the commission have contributed to the noise and fury. The orchestra is in another place," he says.

He admits the Google talks have not been "easy", particularly given they are dealing with a "moving target" – Google changes its algorithm 500 times a year and its search results presentation varies from country to country.

But he is ready to gently praise Schmidt's handling of the investigation, saying he clearly heeded the lessons from Microsoft's decade-long battle with Brussels.

Will this settlement mean users of Google see a tangible difference? "I hope so," he says.

– *Excerpts from an interview of Joaquin Almunia, EU Competition Commissioner by Alex Barker in Brussels that appeared in the* Financial Times, *on January 11, 2013*

DoJ Approves T-Mobile/MetroPCS

The US Department of Justice's (DoJ) antitrust division has cleared the merger between T-Mobile US and MetroPCS – the country's fourth and fifth-largest mobile operators – after finding it might have a "pro-competitive" effect.

The deal will see T-Mobile, the country's number-four carrier and smallest nation-wide mobile company, merge with MetroPCS, a Texas-headquartered mobile telecoms company with 9.5 million subscribers and coverage of 90 percent of the US.

The DoJ examined the effect of the deal at both national and local levels. As a regional provider, it found that MetroPCS faces limitations stemming from a lack of nationwide spectrum, networks and scale. It, therefore, 'exerts little influence on these aspects of mobile wireless competition'.

(GCR, 13.03.13)

Tele2 Sells Russian Arm to VTB

Swedish telecoms group Tele2 is to sell its Russian mobile operator Tele2 Russia to local bank VTB for US$3.55bn, in one of the largest deals in the region since the financial crisis. Tele2 intends to give US$1.92bn of the proceeds back to shareholders through a special dividend, after a disappointing profit outlook, which sent the shares down 11 percent in February 2013.

VTB is paying US$2.4bn in cash and assuming US$1.15bn in net debt to take over the Russian business. Tele2 Russia is the fourth-largest mobile operator in the country, but had faced an uncertain future after missing out on a 4G licence last summer. Rumours had abounded of a break-up bid by its three bigger rivals.

(FT, 28.03.13)

EC Clears Rosneft/TNK-BP

The European Commission (EC) has cleared Rosneft's US$54.8bn acquisition of TNK-BP deal that creates the world's largest publicly traded oil group. Russian state-owned Rosneft can now proceed with its purchase of TNK-BP, a joint venture between BP and AAR, a consortium of Russian billionaires. The acquisition is the third-largest oil deal ever and reduces Russia's oil companies from four to three.

Both Rosneft and TNK-BP are involved in the exploration and production of crude oil and the production and marketing of refined products, including several petrochemicals. The EC found the deal did not raise competition concerns as the merged company 'would continue to face constraints from a number of strong competitors', while its customers would have the choice of switching to other suppliers and means of transportation.

(www.article.wn.com, 08.03.13)

Shell, BASF Agree Toxic Pay-out

Oil producer Shell and German chemical company BASF agreed to pay compensation that could reach US$316mn to workers exposed over three decades to toxic chemicals at a Brazil plant.

Brazil's public labour prosecution service said 60 people were killed from prolonged exposure to chemicals used to make pesticides at the plant. The factory began operating in the 1970s in Paulinia in Sao Paulo state until government authorities ordered it to shut down in 2002.

Shell and BASF would also make a separate payment for collective moral damages which would be used to build a maternity clinic in Paulinia and for donations to special health centers.

(Reuters, 11.03.13)

NMa Allows Hospital Merger

The Netherlands' Competition Authority (NMa) says a merger between the Reinier de Graaf Group and the Haga Hospital would not violate competition law. The two hospitals are located in the province of South Holland. The chairmen at both hospitals saw the merger as an opportunity to cooperate in the field of complex medical treatments.

The NMa has stated that the merger would have no adverse effects on competition in the area. The decision was reached after the NMa examined the effects the merger would have on travel times and the flow of patients. The merger provides that both hospitals will remain independent foundations but that they will come under one administration.

(GCR, 22.01.13)

BSkyB Swoops on Telefónica UK Unit

UK media company BSkyB has announced it is buying Telefónica UK's broadband and fixed-line telephony business. The £180mn deal would see BSkyB leapfrog Virgin Media as the UK's second-largest provider of broadband internet, behind market leader BT. BSkyB has 4.2 million subscribers, and will add 500,000 through buying Telefónica UK's O2 and BE broadband and fixed-line telecoms divisions.

BSkyB's longstanding competition counsel Herbert Smith Freehills has been retained to advise on the deal, while Telefónica is being represented by Slaughter and May. The acquisition further cements BSkyB's position as the leading triple play provider in the UK, with 3.6 million triple-play customers.

(www.news.silobreaker.com, 01.03.13)

Mega Airline

American Airlines won bankruptcy court approval to combine with US Airways and form the world's biggest airline. "The merger is an excellent result. I don't think anybody disputes that," Judge Sean H. Lane said before issuing his decision. But the judge declined to sign off on a proposed US$20mn severance package for Tom Horton, currently the CEO of American's parent AMR.

The approval is an important milestone for American, which filed for Chapter 11 in November 2011 after having long resisted using the bankruptcy process to cut labor and other costs. The merger still needs approval from Department of Justice antitrust regulators and US Airways shareholders. It is expected to close by the fall. *(www.freep.com, 28.03.13)*

BCE's Astral Bid gets Nod

Canada's Competition Bureau has approved Bell's acquisition of rival media company Astral under the condition that Astral divests 13 television channels. The C$3.4bn merger will give Bell ownership of Astral's pay and speciality television services, radio stations, digital media properties and out-of-home advertising activities.

Under conditions announced yesterday, Astral will divest ownership rights to five English-language and six French-language pay and speciality television channels. Bell is also prohibited from imposing 'restrictive' bundling requirements on any provider seeking to carry The Movie Network or Super Écran.

The Bureau says the agreement preserves competition in the supply of English and French pay and speciality television programming in Canada. Without conditions, it says, the deal would have led to increased prices, less innovation and reduced choice for television programming.

(www.cp24.com, 18.03.13)

Allianz to Buy Turkish Insurer

Allianz has boosted its position in Turkey through a €684mn deal to buy non-life and pensions businesses from Yapi Kredi bank in a move that marks the consolidation of the country's developing insurance sector.

The German group said the deal would make it the largest insurer in Turkey by premiums. Allianz made clear last year it wanted to grow by finding a partner in Turkey, a market it called one of the world's fastest-growing for insurance.

The transaction follows a €1.5bn deal in 2012 in which Eon, the German utility, took a half share in Enerjisa, a Turkish power company, as part of its strategy to expand in emerging markets to make up for low growth in western Europe. *(FT, 28.03.13)*

Humulani/High Power Merger

The South African Competition Tribunal has unconditionally approved a merger between High Power Equipment and Humulani Marketing, controlled by Invicta Holdings. The transaction, which will result in High Power becoming a wholly owned subsidiary of Humulani, is a strategic investment that would broaden the product offering to the plant hire, construction, quarrying and mining industries in Africa.

The tribunal rejected the Competition Commission's proposed conditions, which were aimed at addressing the Commission's alleged competition concerns. The tribunal is yet to provide reasons for rejecting the proposed conditions, which sought to address concerns surrounding possible collusion in the market as Invicta's operating division and High Power were both involved in distributing construction equipment.

(ILO, 21.03.13)

Regulator Plan Challenged

Spain is battling to head off a legal challenge from the EU against proposals by Madrid to merge the country's competition and market watchdogs into a single "super-regulator".

Brussels has warned Madrid repeatedly that the plan risks weakening independent regulators and could undermine competition in key sectors of the economy.

Now, the European Commission is poised to launch a legal challenge against Madrid for infringing EU law. The proposal to create a sprawling National Commission for Markets and Competition was tabled by the government in 2012. *(FT, 25.02.13)*

New Era of Big Mergers

A recent spate of mega-mergers is leading some on Wall Street to declare the era of big deals is back. Large transactions involving household-name companies have led to major fees for top investment bankers and banner headlines in the financial pages.

Though "not all mergers are anti-competitive," Diana Moss, an Economist and Vice President of the American Antitrust Institute said, big deals deserve close attention, especially as "we've come to see a huge amount of consolidation in key industries that really pose quality and reliability issues for American consumers."

(www.huffingtonpost.com, 15.02.13)

STMicro-Ericsson to end joint venture

Financial Express

STMicroelectronics and Ericsson will close their lossmaking chip manufacturing joint venture at a cost of 1,600 jobs after failing to find a buyer for the Switzerland-based business.

ST-Ericsson, which has not made an annual profit since the joint venture was created in 2008, has struggled in a fiercely competitive market that includes low-cost rivals from Asia and more innovative European technology groups.

STMicroelectronics and Ericsson will be forced to cover about US$1bn of shutdown and restructuring costs between them. Ericsson will retain about 1,800 of the joint venture's total workforce of 4,450, with most based in Sweden, Germany, India and China, as well as a product line of 4G modem chips used in smartphones. *(FT, 19.01.13)*

DoJ Greenlights Penguin/Random

The US Department of Justice's (DoJ) antitrust division has cleared the merger between Penguin and Random House, without conditions. The division approved the merger, which will reduce the number of the world's large English-language publishing houses from six to five.

Pearson and Bertelsmann, the owners of Penguin and Random House, announced they would join their book publishing businesses in October. The DoJ's decision is the first antitrust approval granted to the deal, which is facing scrutiny from Canada's Competition Bureau and the EC.

(www.insidecounsel.com, 15.02.13)

Confidence on Upswing, Mergers Make Comeback

Peter Lattman

The mega-merger is back. For the corporate takeover business, the last half-decade was a fallow period. Wall Street deal makers and chief executives, brought low by the global financial crisis, lacked the confidence to strike the audacious multibillion-dollar acquisitions that had defined previous market booms.

Cycles, however, turn, and in the opening weeks of 2013, merger activity has suddenly roared back to life. Berkshire Hathaway, the conglomerate run by Warren E. Buffett, said it had teamed up with Brazilian investors to buy the ketchup maker H. J. Heinz for about US$23bn. And American Airlines and US Airways agreed to merge in a deal valued at US$11bn.

Those transactions come a week after a planned US$24bn buyout of the computer company Dell by its founder, Michael S Dell, and private equity backers. And Liberty Global, the company controlled by the billionaire media magnate John C. Malone, struck a US$16bn deal to buy the British cable business Virgin Media.

Still, bankers and lawyers remain circumspect, warning that it is still too early to declare a mergers-and-acquisitions boom like those during the junk bond craze of 1989, the dot-com bubble of 1999 and the leveraged buyout bonanza of 2007. They also say that it is important to pay heed to the excesses that developed during these moments of merger mania, which all ended badly.

A number of clouds that hovered over the markets in 2012 have also been removed, eliminating the uncertainty that hampered deal making. Mergers and acquisitions activity in 2012 remained tepid as companies took a wait-and-see approach over the outcome of the presidential election and negotiations over the fiscal cliff. The problems in Europe, which began in earnest in 2011, shut down a lot of potential transactions, but the region has since stabilized.

A central reason for the return of big transactions is the mountain of cash on corporate balance sheets. After the financial crisis, companies hunkered down, laying off employees and cutting costs. As a result, they generated savings. Today, corporations in the S.& P. 500 are sitting on more than $1 trillion in cash. With interest rates near zero, that money is earning very little in bank accounts, so executives are looking to put it to work by acquiring businesses.

The banks, of course, are major beneficiaries of megadeals, earning big fees from both advising on the transactions and lending money to finance them. Mergers and acquisitions in the US total $158.7 billion so far this year, according to Thomson Reuters data, more than double the amount in the same period last year. JPMorgan, for example, has benefited from the surge, advising on four big deals in recent weeks, including the Dell bid and Comcast's $16.7 billion offer for the rest of NBCUniversal that it did not already own.

A Central reason for the return of big transactions is the mountain of cash on corporate balance sheets

Buffett declared that the banks had repaired their businesses and no longer posed a threat to the economy. While Wall Street has an air of giddiness over the year's start, most deal makers temper their comments about the current environment with warnings about undisciplined behaviour like overpaying for deals and borrowing too much to pay for them.

Though private equity firms were battered by the financial crisis, they made it through the downturn on relatively solid ground. Many of their megadeals, like Hilton, looked destined for bankruptcy after the markets collapsed, but they have since recovered. The deals have benefited from an improving economy, as well as robust lending markets that allowed companies to push back the large amounts of debt that were to have come due in the next few years.

Even Buffett made a mistake on Energy Future Holdings, having invested US$2bn in the company's bonds. He admitted to shareholders last year that the investment was a blunder and would most likely be wiped out. "In tennis parlance," Buffett wrote, "this was a major unforced error."

– *Michael J. de la Merced contributed to reporting. Abridged from an article that appeared in the* New York Times, *on February 14, 2013*

FDI in China Falls

Foreign direct investment (FDI) into China fell in 2012 for the first time since the depths of the global financial crisis in 2009 as the Chinese economy expanded at its slowest pace in 13 years and rising labour costs made other investment destinations more attractive.

Total FDI into the country was US$111.7bn in 2012, 3.7 percent lower than 2011, according to figures released by China's Ministry of Commerce. Meanwhile, outbound Chinese direct investment jumped 28.6 percent from a year earlier to a record US$77.2bn.

Spurred on by the government, Chinese companies are looking to invest in a wide range of sectors abroad. At current growth rates, outbound Chinese investment could exceed inbound foreign investment for the first time in 2013. *(FT, 16.01.13)*

India Needs to Grab More FDI

India appears to be losing, as global investors balk at its unfortunate mix of slowing growth and red tape. David Cameron wraps up his second trade mission to India which, in spite of rows over bribery allegations involving the UK-based AgustaWestland and criticisms of Britain's visa policy, appears to have enhanced the two countries' trading prospects.

In public, India's elite has welcomed the British prime minister's calls for a commercial 'special partnership'. In private, however, these advances are all too often greeted with a mildly disinterested shrug.

But if such nonchalance was a mistake during India's recent boom years, it is even more so today – not least because the country's need for FDI is now much more pressing than its leaders care to admit. *(FT, 19.02.13)*

UK Losing Allure for Investors

The UK is set to lose out to Germany and Poland as an investment destination in 2013, according to a survey of global investors' spending intentions.

An analysis of the investment attitudes of 500 international decision makers by Ernst & Young, the professional services firm, finds that 35 percent favour Germany as a destination for large investments in Europe, followed by 10 percent for Poland. The UK, in third place, was favoured by 8 percent.

The UK remains Europe's top destination for FDI in terms of the number of projects, based on E&Y's figures from 2011. However, the firm warns that it could lose its crown to Germany within two years unless action is taken. *(FT, 01.01.13)*

Vietnam Expects Big Jump in FDI

The Vietnamese government, encouraged by US$280mn of inflows in January, says it expects a big increase in FDI in 2013. The January FDI registration included US$202.9mn in the processing industries, US$50mn in the real estate sector and about US$14mn in scientific and technological projects.

Among the investors, Japan ranked at the top with a total of US$157.7mn, followed by Thailand with US$54.2mn and France with US$20mn. During the economic difficulties of the past three years, the government was able to initiate policies that helped the country become the second largest FDI recipient in Southeast Asia in 2012 because of its attractive labour costs and newly competitive business environment. *(www.upi.com, 18.02.13)*

New Investment Policy Unveiled

The Investment Policy for 2013 and an Investment Strategy 2013-17 were unveiled at the meeting of the Board of Investment, chaired by Prime Minister Raja Pervez Ashraf. Under the new policy, 'all restrictions on minimum investments' have been removed.

Discussing the two new investment policy documents, the prime minister said: "It was ironic that Pakistan despite having one of the best investment policies on paper, has failed to attract foreign investments."

He emphasised the need for simplification of existing procedures to attract foreign investment into the country. After thorough discussion, it was resolved that the draft Investment Policy 2013 and Investment Strategy 2013-2017 would be sent to the cabinet for approval. *(TD, 07.02.13)*

Zimbabwe Miss Out on FDI

The World Bank has painted a gloomy picture of Zimbabwe's economic prospects in 2013 saying the country is not likely to benefit from the rebound forecast for other sub Saharan African (SSA) countries.

World Bank Senior Economist Nadia Piffaretti said African economies were expected to grow at an average of five percent in 2013. FDI into the SSA region are expected to reach US$91bn.

Pifarretti said Zimbabwe was not taking advantage of the global boom in mining as the sector was still recovering. The growth rates for 2009, 2010 and 2011 were 5.4, 9.6 and 10.6 percent respectively. *(ND, 08.02.13)*

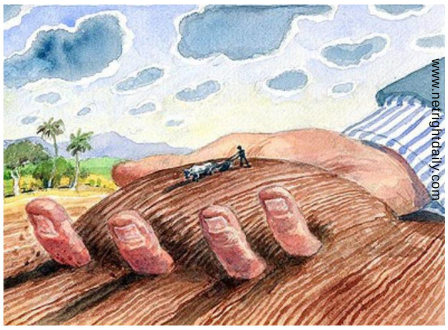
Nigeria Review Investment Policies

Inaugurating the taskforce in Abuja, Aganga said that the review would cover investment policy; investment promotion and facilitation; trade policy; competition policy; and corporate governance.

He disclosed that the taskforce would be guided by the Organisation for Economic Cooperation and Development and the Growth and Employment in States – a UK's Department For International Development-funded programme.

He said that Africa was being regarded as the last investment frontier globally and that Nigeria was a key player in terms of investment opportunities. The review would be used as a model, based on the successful implementation of the programme. *(www. en.starafrica.com, 26.03.13)*

Uganda: New Land Policy in the Offing



Kampala has a deficit of 100,000 housing units. In a bid to sort out Uganda's messy bands subsector, a Land policy with far-reaching implications was approved.

The new policy, meant to provide a framework on how land will be managed and used in Uganda for the next 30 years, has called for an amendment to the Land Act, to restrict foreign nationals' interests in land.

The new policy will also see government introduce a new legal regime to regulate the booming real estate sector. Until recently, the real estate sector has been one of the fast-growing sectors in the economy but its sustainability would rest on a clearly formulated legal regime. *(www.allafrica.com, 12.02.13)*

EU in Talks on Telecoms Unification

Europe's top telecoms executives are discussing the creation of a pan-European infrastructure network to unite the continent's fragmented national markets, following a prompt from Brussels to consider radical options.

The idea of pooling telecoms infrastructure emerged at a private meeting between Joaquín Almunia, EU competition chief, and bosses of the Europe's biggest groups, including Deutsche Telekom, France Telecom, Telecom Italia and Telefónica.

Establishing an EU-wide network-sharing agreement would be fraught with financial and technological obstacles, given the myriad differences in infrastructure and national rules. It could also yield consumer benefits, such as single pricing for telecoms and internet services across Europe.

(FT, 09.01.13 & FE, 10.01.13)

New Policy to Limit Fuel Subsidy

Indonesian President Susilo Bambang Yudhoyono announced that the government would soon introduce a new economic policy to curb the ballooning fuel subsidy that for years has been mostly enjoyed by the rich instead of the poor.

The President said that if such a measure was taken, the fuel subsidy amount would be significantly reduced within the next two years so that more government revenue could be used to finance development.

According to the President, at present, the fuel subsidy mostly benefits the rich or those who own cars rather than the poor because the subsidy provision is based on commodities, rather than on recipients.

(JP, 14.03.13)

Online Security Bill Finalised

Large tech companies such as Facebook, Google and Microsoft will have to notify security breaches to national cyber-crime authorities or risk sanctions under proposed new legislation.

Brussels is finalising a bill that will force the bloc's 27 member states to set up local cyber security agencies to ensure tech companies, as well as key infrastructure and energy groups, implement high standards of security on their online networks.

The move, however, opens a new front – after privacy concerns and stricter data protection requirements – in the tussle between EU regulators and internet companies, which have privately lobbied against the proposed law. *(FT, 19.01.13)*

Consumer Fights Pension Lobby

The pensions industry may be fighting to keep occupational schemes outside the scope of a major European directive because inclusion would shine a light on poor past performance, a consumer group has claimed.

Under the EU's Packaged Retail Investment Products (Prips) directive, investors would have to be given a key information document (Kid) outlining, among other things, the past performance of the product.

The Association of British Insurers has said occupational pensions should be excluded from the remit of Prips 'to avoid any negative disruption to pension saving' in the EU, particularly in the UK where a need for individuals to receive documentation prior to joining a scheme could undermine the ongoing 'auto-enrolment' of workers into company schemes. *(FT, 14.01.13)*

Threat to Virginia's Port Plan

A political backlash in the US state of Virginia is threatening to derail privatisation proposals for a major port, highlighting the barriers facing private investments in US infrastructure.

A bill tabled by Chris Jones, a Republican delegate to Virginia's General Assembly, would bar Virginia from considering unsolicited bids to privatise port operations. This would prevent Virginia from accepting either of two current proposals to privatise Hampton Roads, the state's main port and the US east coast's third-busiest container port.

The threat to the process comes as two bidders to take over the port's cargo handling prepare for their first formal meetings with the Virginia Ports Authority. *(FT, 04.02.13)*

Dispatch Rules for Electric System

The Mexican Federal Commission for Regulatory Improvement published on its website the draft of the new Dispatch and Operation Rules of the National Electric System, which the Federal Electricity Commission's National Centre for Energy Control also intends to publish.

The dispatch rules will supersede those that were previously in effect. They include: a new chapter establishing specific rules for renewable energy and efficient cogeneration facilities; and details about the procedures that the Federal Electricity Commission, power generation permit holders and generation facilities connected to the National Electric System must follow in connection with the dispatch of their respective facilities. *(ILO, 28.01.13)*

FDA Reform Can Lift US Economy

Tomas J Philipson* and Andrew von Eschenbach**

Without a growing economy that creates more high-paying jobs, both President Barack Obama and congressional Republicans face the unpalatable prospect of much higher taxes or reductions to popular programmes (or both). Growth is the best way to cut this Gordian knot.

One place to start is by lowering unnecessary barriers facing innovative US companies that are trying to bring new products to market, particularly in the biopharmaceutical sector. Less sensitive to the business cycle, with jobs that pay about double the average private-sector salary, biopharma is a leading US exporter.

Clinical trials account for a large share of industry research and development costs, with Phase 3 trials accounting for about 25 percent and requiring around three years for completion. Doing away with these will expedite clearances and earn more revenue

The inefficiency which the report identifies is outdated regulation. The inability of the Food and Drug Administration (FDA) to keep pace with changes in medical science threatens both economic prosperity and public health. The drug-approval process is glacial: It takes about 12 years and US$1.2bn to develop a single new drug that is approved by the FDA.

Clinical Trials

The FDA regulates the quality and safety of medical products, only granting marketing approval after increasingly laborious, expensive, three-phase clinical trials. Phase 1 trials involve a few dozen patients and focus on safety; Phase 2 trials are larger and look for evidence on optimal dosage and effectiveness; Phase 3 trials are focused exclusively on effectiveness.

For medicines that make it to market, the long process delays sales and shortens effective patent life, severely damping the industry's incentive to invest in new treatments.

First, because of their restrictive design and the way the FDA interprets their results, Phase 3 trials often fail to recognise the unique benefits that medicines can offer to smaller groups of patients than those required in trials.

Second, post-market surveillance can and should reduce dependence on pre-market drug screening in Phase 3 trials. Third, reducing reliance on Phase 3 trials is unlikely to introduce an offsetting harm induced by more dangerous drugs, since evidence supporting safety is produced in earlier phases.

Global Pressure

Finally, enormous global pressures for cost control have insurers demanding real-world evidence about product quality and effectiveness.

Reducing Phase 3 requirements would be particularly effective for some chronic diseases such as obesity, where options are often few, and the FDA typically requires large Phase 3 trials to catch rare side effects (which patients often are willing to endure anyway).

Under our proposed system, the drug could have come to market after promising early-stage research in targeted patients, with appropriate post-marketing studies required. Payers and patients would be the ultimate judge about the quality of the product, and companies could learn from the experience to develop superior products if needed.

Gradually replacing or reducing dependence on Phase 3 trials with smaller, faster adaptive trials and post-market surveillance would have a positive impact on medical innovation and the U.S. economy — and meet the council's goal of doubling medical innovation.

Faster Approvals

Here's how: consider that the profit margins for innovative drug development are about 10 percent greater than their costs. Based on data from the widely cited Tufts Centre for the Study of Drug Development, doing away with Phase 3 trials would reduce development costs by 25 percent. Doing the arithmetic, if the profit margin was 10 percent before, lowering costs by 25 percent increases the profit margin to 47 percent above costs.

In the absence of Phase 3 trials, revenue would start coming in about three years earlier. This raises the present value of revenue by about an additional 10 percent, boosting returns further. The benefits to patients and the economy from this innovative surge would probably be enormous. The US biopharmaceutical industry makes up about 2 percent of the national economy.

---

* *Daniel Levin Chair of Public Policy Studies at the University of Chicago and Member, Project FDA, Manhattan Institute*
** *President of Samaritan Health Initiatives, a consulting practice and Member, Project FDA, Manhattan Institute*
Abridged from an article that appeared in the Financial Express, *on March 02, 2013*

Financials Can't Regulate Self

Nobel price winner and former World Bank economist Joseph Stiglitz does not believe that financial systems can self-regulate. According to Stiglitz, financial systems even in advanced economies are largely imperfect and need to be constantly under regulatory vigil.

"Restrictions on the size and ranges of bank activities and the interconnectedness of banks would not only increase systemic stability, it would also enhance competitiveness," he said.

Citing the bust of derivatives market that set off the financial crisis and the latest scandal in fixing of the London Interbank Offered Rate, Stiglitz said that markets are imperfect and non-transparent. Shadow banking system which includes investment banking, non-banking finance companies must be tightly regulated as the impact on the financial stability from shadow banks has increased. *(FE, 05.01.13)*

EU to Set Tough Bank Pay Curbs

The most stringent curbs on bankers' pay since the 2008 financial crisis are to be imposed by the EU, as Britain faces defeat in Brussels over an issue dear to the City of London.

Talks on EU reforms to make banks safer are entering a potentially decisive week with London heavily outgunned after almost a year of backroom diplomacy to blunt a bonus crackdown pushed by the European Parliament.

France is now backing Parliament's demand for strict limits on bonuses that exceed salary, and a clear majority, which now crucially includes Germany, want to compromise so that the bonus dispute does not hold up reforms of bank capital rules. *(FT, 18.02.13)*

Myanmar to Open Foreign Banks

Foreign banks could soon be allowed to own up to 80 percent of a joint venture with local Myanmar banks. Foreign banks could enter Myanmar with majority-owned joint ventures with local banks as early as April after President Thein Sein launched a phased cabinet reshuffle to support what he calls his "third wave" of reforms.

The government issued detailed regulations on foreign investment, following Parliament's passage of the new foreign investment law in late 2012. But detailed banking and finance reforms would be outlined in a new law on central bank independence, to be debated in Parliament, and in regulations now being drafted. The passage of the law could see leadership changes at the Central Bank of Myanmar. *(FT, 07.02.13)*

Fed: Lack of Unity by Regulators

US regulators have warned the world's largest banks not to assume countries will work together to avoid the catastrophic failure of a financial group amid mounting concerns about the progress of global regulatory reform efforts.

The guidance to institutions preparing "living wills" to ensure a more orderly wind-down of a future Lehman Brothers comes as the Financial Stability Board, a group of central bankers and regulators, to discuss the resolution regime.

New versions of the living wills, or resolution plans, are due to be filed in the summer. The Federal Reserve and Federal Deposit Insurance Corporation have told banks not to repeat what they did in the first round last year, and not count on regulators to co-operate.

(FE, 29.01.13 & FT, 28.01.13)

India Urges US-style Bankruptcy

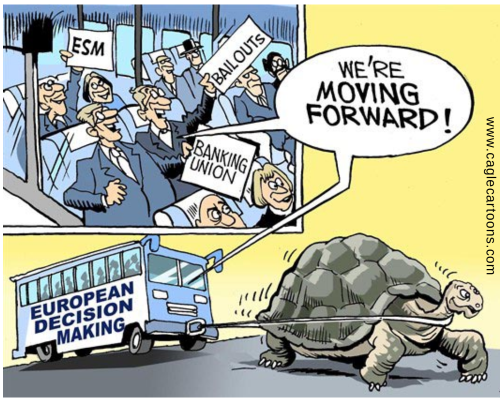
Indian regulators should introduce a US-style "Chapter 11" bankruptcy law to help recover bad debts and end long-running disputes with borrowers. Aditya Puri, Chief Executive of HDFC Bank, India's largest private sector bank by market capitalisation, said that the country's laws provided few options when the businesses of his bank's corporate customers were no longer viable.

India's banking system has grappled in recent years with a number of high-profile businesses struggling to stay afloat, including Kingfisher Airlines , which has estimated debts of US$2.5bn, and Suzlon, the renewable energy producer.

America's legal code allows companies unable to service debt to reorganise themselves under bankruptcy protections, for instance by cutting salaries or pensions, while continuing in business.

India's banking system has no similar provision, though it operates a corporate debt restructuring cell, where banks negotiate with heavily indebted companies. *(FT, 18.03.13)*

EU Takes Step Toward Bank Supervisor



The creation of a single supervisor for European banks moved a step closer when European lawmakers struck a deal with member states on the structure of the new agency.

The deal leaves in place most of the main points agreed on by European Union finance ministers in December for how the supervisor should function. The setting up of a supervisor is aimed to tighten oversight of the euro zone's 6,000 banks and to prevent a repeat of the financial crises that have hit the likes of Spain, Greece and Cyprus. Non-euro-zone members can also sign up.

Under a deal reached by euro-zone leaders last June, once the supervisor is fully set up by mid-2014, the European Stability Mechanism, the region's bailout fund, can start directly recapitalising regional banks. That could break the link between the sovereign and bank crises that some countries are facing. *(WSJ, 19.03.13)*

A Fine against RBS will not Fix Libor

Costas Lapavitsas* and Alexis Stenfors**

Authorities are striving to prevent individual or institutional wrongdoing when the real problem is the Libor-setting process

Royal Bank of Scotland has been landed by US and UK regulators with a £390m fine for manipulating the London interbank offered rate, hard on the heels of fines for Barclays and UBS. Several other banks will follow. The scandal appears to be one of the biggest in the history of finance.

Collusion among banks, and between banks and money market brokers, has been commonplace. The Barclays case revealed potential incentives to under or over-report Libor compared with the rate at which they actually lend to one another.

First, because the daily payments on Libor-indexed derivatives portfolios depend on the level of Libor, manipulation allows banks to draw profits on them.

Second, banks can avoid the stigma attached to signalling a relatively high funding cost. The UBS case showed that manipulation occurred on a vast and systematic scale.

This should be of little surprise. Bank manipulation of Libor is an outcome of the rate-setting process and has little to do with "bad culture". Libor-fixing banks are profit maximisers that wish to look good compared with peers. The fixing process affords them the means and opportunities to achieve their aim by submitting deceptive rates. Incentives to deceive have become stronger because of the phenomenal growth of derivatives markets in recent years.

A congenial environment has been created for systematic collusion. Banks make deceptively low Libor "bids" not because they necessarily intend to deceive directly but because they expect other banks to do the same. Since banks are not required to trade at the rate quoted, the result is that Libor systematically undershoots the true money market rate. The trimming process, where the highest and lowest quotes are omitted, is entirely inadequate as a safeguard.

Consequently, manipulation results in a wealth transfer across society in favour of banks. Equally serious is the impact on monetary policy. As long as Libor undershoots the actual money market rate, the central bank is conducting policy on the wrong basis, with significant costs.

Authorities on both sides of the Atlantic have not fully recognised the systemic nature of the problem so their response is likely to be ineffectual. Regulators are striving to prevent individual or institutional wrongdoing when the problem is the fixing process. The Wheatley report, prepared by the UK Financial Services Authority, and endorsed with equal haste by policymakers, is typical of this trend.

First, it proposes practical reforms in the setting process. Libor will no longer be overseen by the British Bankers' Association, the lobby group; individuals closely linked to the Libor-setting process will have to be authorised by the FSA; and the number of maturities and currencies for which Libor is used as a reference will be reduced drastically.

Beyond these minor changes, the report proposes two reforms relating to bank behaviour. First, frequent spot checks will be carried out to ensure Libor quotes are linked to rates actually used in transactions. Second, individual quotes by banks are to remain "secret" for three months to avoid the race to the bottom as a result of Libor stigma.

Is this enough to repair Libor? No. Banks will still not be required to trade at the submitted Libor quotes, and underbidding is likely to continue. Taking a small loss on an actual money market trade would make sense in order to profit from a large underlying derivatives position. Equally worrying is that the proposal to keep bids secret for three months will make Libor even less transparent.

What, then, can be done? Libor-fixing is an institutionalised private meeting of banks that ends up serving their interests. The answer is public intervention in the rate-setting process, whether through the central bank or otherwise. That is the real policy solution.

* *Professor, School of Oriental and African Studies*
** *A PhD Student and Former Trader*
Abridged from an article that appeared in the Financial Times, *on February 07, 2013*

From Boycotts to Business Briefs

Louise Lucas

A strange alchemy is under way. As big business stakes claims to being more charitable, charities are becoming more business-minded – and employing rather uncharitable language to whip multinationals into shape.

Thus while organisations such as BP, GlaxoSmithKline, Unilever or Clifford Chance promote their role in creating a fairer world – "We passionately believe in the power of the private sector to improve people's lives?.?.?." they and others wrote recently in a letter to the Financial Times – charities have been busy exposing corporate failings elsewhere in lengthy reports that compile forensic detail.

Top food and drink companies were blasted by Oxfam for "a veil of secrecy [that] hides human costs"; and Associated British Foods came under fire from ActionAid for exploiting loopholes to avoid paying taxes that it claimed would have sent 48,000 Zambian children to school.

There is a long history of non-governmental organisations policing corporations – think Barclays Bank in South Africa in the apartheid era, or BP in Nigeria – but it is "definitely increasing" says Robert Blood, founder of Sigwatch, which tracks and analyses activist campaigns for NGOs. And the tactics have changed.

Acting as corporate watchdog may seem a long way off for pleasant, cardigan-wearing ladies selling second-hand clothes in Oxfam shops on behalf of African babies, but charities have realised that companies could play big role in the eradication of poverty in emerging markets.

Oxfam's Behind the Brands report on the world's top 10 food and drink companies, was "at least a couple of years" in the making and followed a similar report on banks in the Netherlands. The research, done in conjunction with domestic charities in local countries, is a continuing effort, and the report changes online if the policies of the companies featured change.

Charities are increasing pressure on companies over issues such as tax and supply chains

In total, about 10-15 percent of Oxfam's spending on poverty goes on campaigning work, which includes research, policy and advocacy, and public campaigning.

ActionAid UK, which spent just 0.2 percent of its total income scrutinising corporate behaviour last year, claims big bang for its bucks. In 2010 it published a report accusing SABMiller, the world'snumber two brewer by sales, of adopting a "complex system of tax havens to siphon profits out of subsidiaries in developing countries".

While SABMiller swiftly denied the accusations, ActionAid says the report helped spur 21 African tax authorities to create a new treaty in 2012, giving them information-sharing powers to tackle tax avoidance together.

ActionAid, like Oxfam, believes consumers have become more concerned about poor behaviour by corporations. Thanks at least in part to the financial crisis.

Nestlé, no stranger to being challenged by NGOs on issues ranging from baby milk to palm oil, ran into a row in Ethiopia in 2002 when it – legitimately – claimed compensation over a plant that had been nationalised in the 1970s. Oxfam pointed the finger; Nestlé dropped its additional charges.

Also in Ethiopia, Starbucks' marketing fell afoul of Oxfam when it opposed the government's efforts to trademark the names of local coffee bean varieties such as Sidamo and Harrar. It did not want to shell out for the right to use the Ethiopian names in selling coffee, but following an Oxfam media campaign, Starbucks backed down.

The crucial difference with past campaigns is that the aim is to change regulatory structures as well as company policies and there is less call for the kind of boycotts that charities famously called for against Nestlé in response to the sales of baby formula in the developing world.

Sometimes, rather than triggering change, a charity report triggers a tit-for-tat row over misinterpretation or accuracy of facts. ABF, for example, was criticised by both the ActionAid and Oxfam reports for poor corporate citizenship, but rejected the points.

NGOs like Oxfam and Christian Aid are going for the one source of power that is still left, and that's corporations. It is fascinating, not least because NGOs are waking up to the fact that large corporations are their ally, not enemy.

– *Abridged from an article that appeared in the* Financial Times, *on March 18, 2013*

A Radical Tilt at Governance Failures

John Plender

www.images.theage.com.au

The corporation has become less of a commitment mechanism, more of a control device

It would not be difficult to reach agreement on the proposition that the regulatory response to the financial crisis has been inadequate. Few, on the other hand, would go as far as Colin Mayer, Professor of Management Studies at Oxford's Saïd Business School, in suggesting that it is wrong-headed from top to bottom and that the Anglo-Saxon capital market model of governance is little short of a catastrophe. Yet in his latest book Mayer puts his finger on so many serious flaws in the way the US and UK systems work that he deserves a hearing.[1]

His starting point concerns the role of the corporation. While accepting that it is a protean organisational form with a huge capacity for good, he worries that while it feeds, houses, educates and transports us, the corporation also exploits, pollutes, poisons and impoverishes. Where previously the actions of companies could be devastating for their customers, suppliers and investors, they now have the ability to destroy economies, communities and species.

Part of the problem he identifies stems from a change in the structure of ownership, which has caused the corporation to become a rent-extraction vehicle for shorter-term shareholders. That is to say, by threatening interventions such as takeovers and hedge fund activism, they can hold all other stakeholders, including longer-term shareholders, to ransom. Management thus becomes more obsessed with narrowly defined financial performance than longer-term business success.

In the UK in particular, shareholders have considerable control rights over management. It is much easier to vote out a board of directors than it is in the US. Yet the converse of control is commitment, and one of the strengths inherent in the separate legal personality of the corporation is that it can commit in ways its owners cannot.

Mayer argues that the British financial system systematically extinguishes any sense of commitment, whether of investors to companies, executives to employees, employees to firms, firms to communities or this generation to any subsequent or past one.

The corporation has thus become less of a commitment mechanism, more of a control device that is increasingly devoid of principles. Mayer believes it needs more protection from its owners. Yet the policy response to the crisis has been to seek a better alignment of directors' interests with those of shareholders by improving their appointment, training, induction, commitment and independence, giving greater authority to risk officers, auditors and risk committees, and strengthening the relation of directors' incentives to corporate performance.

Mayer makes a telling point when he says that conventional economics does not recognise the fundamental role of commitment in all aspects of our commercial as well as social lives and the way in which institutions contribute to the creation and preservation of commitment. It does not appreciate the ways in which choice, competition and liquidity undermine commitment or the fact that institutions are not simply mechanisms for reducing transaction costs, but a means precisely to establish and enhance commitment at the expense of choice, competition and liquidity.

Whether Mayer's solution to these problems will convince remains to be seen. He favours boards of trustees acting on behalf of designated stakeholders of the organisation and as custodians of the firm's values. Models he cites include India's Tata Group and the British Broadcasting Corporation. The idea would rule out shareholders pursuing attractive opportunities that come only at the expense of others.

Public policy everywhere is a mess – look at the eurozone, at US fiscal policy or at Japan's response to its 22-year-old crisis. Nor am I convinced that all the tenets of conventional corporate governance are barmy. Yet this book is wonderfully provocative even if it overstates its case. I shall give it a second read.

1 Firm Commitment: Why the corporation is failing us and how to restore trust in it, Oxford University Press

– *Abridged from an article that appeared in the* Financial Times*, on March 24, 2013*

Regulation Needs to Strike a Balance Over Innovation

John Authers

The years leading up to the crisis saw a ferment of financial innovation. This helped stoke both a boom and a bust. Now, the financial industry complains that over-regulation could stifle innovation in future But many regulators think that would be no bad thing.

Former Federal Reserve Governor Paul Volcker, arguably the world's foremost financial curmudgeon, once commented that the most important innovation he had seen in finance was the humble automated teller machine.

Telling bankers to "wake up" to the negative consequences of innovations such as credit default swaps and collateralised debt obligations he said: "I wish somebody would give me some shred of evidence linking financial innovation with a benefit to the economy

Research by Thorsten Beck of Tilburg University of the Netherlands measured innovation by looking at the share that research and development spending made up of financial institutions' budgets, using data from 32 countries in the years from 1996 to 2006, the decade before the crisis.

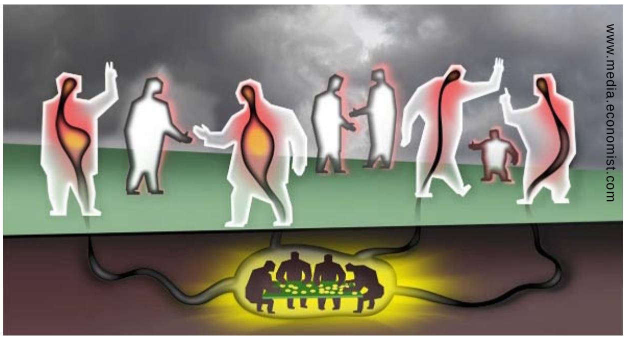
> Is innovation a good thing? Normally it is one of those things, like virtue, spinach or motherhood that are deemed good almost by definition. But there is an exception for the world of financial services.

Generally R&D intensity will be lower as industries grow more mature or become "ex-growth". And on this scale, financial services looked like a mature business, with R&D less important in adding value than in services or manufacturing.

However, R&D intensity doubled over the period, showing that financial groups were spending more in an attempt to innovate. This innovation was driving results. Higher expenditure on R&D was directly related to higher off-balance sheet items, and also with the offer of international syndicated credit facilities.

Those that spent the most on trying to innovate were the most active in pursuing globalisation, but also in trying to put the world financial system where its regulators could not see it. This is not surprising.

Banks grew startlingly more profitable during their phase of intense innovation, extending credit to far more individuals thanks to changes in risk management. But the risk management systems eventually failed, and it transpired that it would have been better not to have lent to those individuals in the first place. Thus it was the banks that had spent most on innovation that suffered the greatest falls in profits post-crisis.



As Beck puts it, the research reveals both that innovation can stoke economic growth, and that it leads to greater fragility in the financial system. The growth of complex derivatives, in particular, fuelled overconfidence. If people truly believed they could put a number on risk and control it, they were more likely to go too far.

There are parallels with road safety. It is not a bad idea to design a new fast car. Powerful cars make their drivers feel all-powerful. That is why there are laws to give drivers an incentive not to drive too fast, and why they are unerringly enforced.

The same needs to be true of the financial innovations. Those using a new financial tool must know that there are limits, and a price to be paid for crossing them. Regulation also needs to note that much innovation has the effect of splitting principals from agents.

Regulation needs to acknowledge this. It also needs to get out of the way of genuine innovation. Beck points to the example of m-Pesa, a Kenyan payment network operated over mobile phones, which is exciting increasing attention around the world. More than half of Kenyans have used the service, and the country has more m-Pesa agents than bank branches.

The technology has the potential to split the payment system away from banks altogether, opening new vistas for how the financial services industry could be run and regulated. This looks like an example of positive innovation, and regulators allowed it to take root before beginning to impose rules. That seems right.

Financial innovation, the evidence shows, spurs both economic growth and financial fragility. It cannot be thwarted, but it must be regulated.

– *Abridged from an article that appeared in the* Financial Times, *on March 18, 2013*

PolicyWatch


PolicyWatch

Re-inforce People's Trust to Restore Growth

The January-March 2013 issue of PolicyWatch encapsulates 'Re-inforce People's Trust to Restore Growth' in its cover story which states that people are losing their faith and confidence, and worse, do not trust the polity or the bureaucracy or business. Poor leadership is the root cause of all problems. The situation can be salvaged, if only the government decides to reinforce trust and confidence, and takes action rather than indulge in silly narrative and find fault with credible institutions.

A special article by Sudipto Mundle states that recent policy activity – like on retail FDI – promises that government is getting back to business. Another article by Arun Maira says that Local, lateral and learning are three lessons from, abroad that can overhaul our pitiful public governance.

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

To access the newsletter online, please click on the following link: www.cuts-ccier.org/pw-index.htm


Economiquity

Indo-Pak Trade Needs a Push

Economiquity

The January-March 2013 issue of Economiquity carries an article entitled, 'Indo-Pak Trade Needs a Push' in its cover story which states that last two years have witnessed a number of promising developments on commercial relations between India and Pakistan. Recent developments show that Pakistan has provided *de facto* MFN status to India. The Indian establishment should look at it as a deferred success of its diplomatic efforts.

A special article by Anders Aslund states a successful stabilisation programme must appear financially sustainable so that it can restore confidence among creditors, businesses, and people.

Another special article by Sophia Murphy and Timothy A Wise says that Global leaders squandered 2012, but prospects for resolving the food crisis in 2013 seem better.

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

We want to hear from you...

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

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

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

Sources

FCCA: Finnish Competition and Consumer Authority FE: Financial Express; FT: Financial Times; GCR: Global Competition Review; IE: Indian Express; ILO: International Law Office; JP: Jakarta Post; ND: News Day; TD: The Dawn; WSJ: Wall Street Journal

Published by **CUTS Centre for Competition, Investment & Economic Regulation (CUTS CCIER)**
D-217, Bhaskar Marg, Bani Park, Jaipur 302016, India
Ph: +91.141.2282821, Fax: +91.141.2282485, Email: c-cier@cuts.org, Website: www.cuts-ccier.org
Printed by: Jaipur Printers P. Ltd., M.I. Road, Jaipur 302001, India.

The news/stories in this Newsletter are compressed from several newspapers. The sources given are to be used as a reference for further information, and do not indicate the literal transcript of a particular news/story.