REGULETTER

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Special Articles

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

Pro-competitive Reforms in Developing Countries to Benefit Ordinary Citizens

Financial Times

In spite of the fact that The Philippines is unable to produce enough rice to meet the demand of its citizens, the country has a strict control on the volume of rice that can be imported. Whatever little volume of imported rice is available in certain pockets in the country – is sold at much less. Analyses clearly show that removal of the 'import quotas' will reduce the cost of rice for consumers. Such a food import regime clearly stifles competition in the rice market and adversely affects the ability of ordinary Filipinos to access food.

In Zambia, only public institutions/agencies are allowed to distribute fertilisers to the farming community under the Farmer Input Support Programme (FISP). Some of the loopholes of this arrangement have been its 'bad targeting' and '(un)reliability of service' (timing of supply). In spite of the Government of Zambia having invested huge sums of money on this programme, the FISP has not delivered the intended impacts, especially for small farmers. Experts have started voicing the need for a review and even overhaul of the FISP.

The above two illustrations provide an idea about certain areas in sectoral policies (in such a key sector as staple food), where introduction of pro-competitive reforms could be explored as a means for benefiting consumers and producers, in a developing country setting.

Public opinion and policymakers' attention can be facilitated on the above possibilities by developing evidence about benefits that could accrue from introduction of such pro-competitive reform measures. Such assessment would help establish how pro-competitive reforms can help consumers and producers in certain circumstances. This information will be crucial to help countries review their economic planning/economic governance processes and demonstrate conditions under which competition reforms can work in key markets.

CUTS initiated a project entitled *'Competition Reforms in Key Markets for Enhancing Social and Economic Welfare in Developing Countries'* (CREW), to contribute towards building such evidence. This project is being implemented in The Philippines, India, Ghana and Zambia, in staple food and bus transport sectors.

Apart from staple food, the project is also looking at bus transport sector. Anecdotes from countries like Ghana, Zambia & The Philippines already suggest that existence of a loose regulatory framework has reduced benefits from the privatisation process. Private participation in providing bus service could accrue better benefits if it is accompanied with the right regulatory apparatus.

Evidence of benefits of competition reforms would become easier for countries/development partners to gather – as a result of the methodology that CUTS aims to develop using the findings from four countries under the CREW project.

Law on the Verge of Change

It appears that long-awaited amendments to the Turkey's Law on the Protection of Competition (4054) may finally be on the agenda following a recent announcement by Parliament that a draft law containing the amendments has been officially added to its drafts and proposals list.

The draft law has been designed to be more compatible with the way in which the existing law is being applied. It also aims to comply further with the European Union (EU) competition law legislation on which it is closely modelled.

It adds several new dimensions and changes that promise a more efficient procedure in terms of time and resource allocation. *(ILO, 13.02.14)*

Chinese Law Sharpening its Teeth

It has taken some five years since China's modern competition regime took effect in August 2008, but by all appearances the country's courts and regulator have only recently started to give the legislation some teeth.

Indeed, it was exactly on the fifth anniversary of the anti-monopoly law's enactment that a Chinese court rendered its first judgment in favour of a plaintiff in a vertical price-fixing case.

The August 2013 decision, which involved resale price maintenance, came less than a month after the National Development and Reform Commission (NDRC), the authority responsible for price-related matters under the law, fined six baby-formula producers US$107mn for price-fixing and other anticompetitive practices.

(Mondaq, 03.02.14)

Refining Competition Regime

Amendments to the Serbian Competition Act entered into force on November 08, 2013. They aim, among other things, to enhance and refine certain substantive and procedural aspects of Serbia's competition regime, as well as to strengthen the powers and institutional capacity of the Competition Authority.

Some of these amendments are expected to have material effects on undertakings whose business is in any way affected by competition law. The most important change to the substantive aspect of competition rules concerns the concept of 'dominance'.

The amendments redefine the concept as provided in the Competition Act and set out that an undertaking is considered dominant if, due to its market power, it has the ability to operate on the relevant market to an appreciable extent independently of its actual and potential competitors, buyers, suppliers or consumers.

(www.lexology.com, 23.01.14)

UK's Class Action Rules

The UK's Competition Appeal Tribunal (CAT) unveiled draft rules setting out how it might manage the class actions that will be introduced if a bill before Parliament is passed.

The reforms create opt-out and opt-in collective actions and collective settlements for competition damages cases that don't need to follow-on from previous judgments by the enforcer. The role of the CAT will be expanded to preside over these claims.

Following the publication of the draft bill, the Department for Business Innovation and Skills asked the CAT to produce the rules so that Parliament and interested observers have some idea how the new system might operate in practice. *(GCR, 12.03.14)*

'Root and Branch' Review

The Australian government announced the final terms of reference for its 'root and branch review' of the country's competition law, and has revealed the panel overseeing the review.

The review will be a thorough and extensive examination of all aspects of Australia's Competition & Consumer Act 2010. It will identify any regulations that impede competition and reduce productivity, and ensure the act is "driving efficient, competitive and durable outcomes" in light of Australia's growing and changing economy.

Provisions and protections for small businesses will also be reviewed to ensure they are performing sufficiently to allow SMEs to compete effectively with large players. *(GCR, 27.03.14)*

Italian Merger Control Thresholds

The Italian Competition Authority has updated its merger control turnover thresholds. Effective from March 10, 2014, Section 16 (1) of Law No 287 of 10 October 1990 requires prior notification of all mergers and acquisitions where aggregate turnover in Italy of all undertakings involved is above €489mn, and aggregate turnover in Italy of the target company is above €49mn.

Recently, the Authority launched a consultation on its proposed amendments to the Italian merger control thresholds, namely: the reduction of the current second merger control threshold; and the amendment to the second threshold, whereby it would refer to the turnover of each of at least two of the parties to the transaction. *(NLR, 14.03.14)*

Mexican Antitrust Bill Prompts Fears

Mexico's Congress begins debating a 'flawed' antitrust bill that economic and legal experts warn could punish companies simply for being too successful, damaging the country's business-friendly reputation.

The bill could actually lead to less, not more, competition in Mexico, undermining investor confidence in Latin America's second-largest economy as it prepares to receive billions of dollars of investment in its newly liberalised energy sector.


Financial Times

The provision in bill to punish 'barriers to competition' is a vague concept, and one not used widely in international law. The bill would allow for the regulation of access to so-called 'essential inputs', the items needed for goods to be produced. *(FT, 19.03.14)*

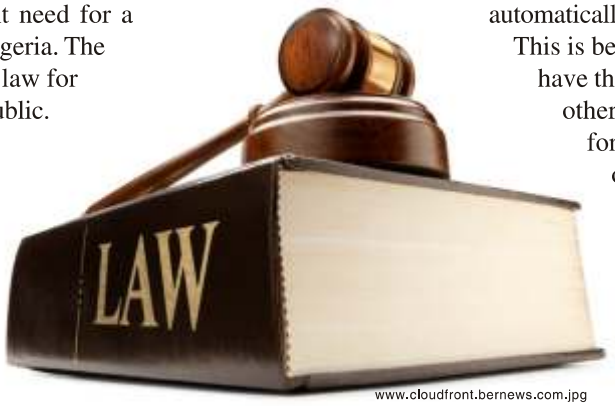
Why Nigerian Economy Needs a Competition Policy and Law?

Leonard Ugbajah*

The aim of competition policy and law is not just to ensure that there are many suppliers in the market for particular goods and services but to ensure that such suppliers play according to a set of rules that would make it difficult for any of the suppliers or the suppliers as a group to lessen or eliminate competition in the market.

The 5th of December of every year has been proposed as World Competition Day (WCD), a proposal which has been adopted and is been observed by a few countries and organisations around the world. This WCD has been proposed and is promoted by CUTS international. As the participating countries and organisations around the world marked the day with different activities aimed at raising awareness on the harmful effects of anticompetitive structures and practices in the economy, it is important to harp on the urgent need for a competition policy and law in Nigeria. The initiative to enact a competition law for Nigeria is as old as the fourth republic.

Why do we need a competition policy and law in Nigeria? The need for competition in the market for goods and services is one which has attained the status of conventional wisdom among producers and consumers alike. This competition can be in the form of lower prices, better quality products, and other value added services.



www.cloudfront.bernews.com.jpg

One hardly needs to recount the revolution that the liberalisation of the telecom sector has wrought not just in Nigeria but world over. In terms of access to, cost and variety of services available to average person today, there is no basis to compare with the days of NITEL fixed land lines or the analogue cellular phones popularly known as "nought-nine-nought".

With the removal of NITEL monopoly and the introduction of competition from the GSM operators, we saw the advent of what has continued today as a fierce competition among the operators to win more or maintain their existing subscribers.

Similarly, before the advent of the private television and radio broadcast houses, NTA, Radio Nigeria and other government owned television and radio houses were the only sources of news and TV/radio entertainment for Nigerians. Then, came DBN, AIT/RayPower, Channels Television, etc. The cable stations and pay tv also showed up in the industry. The result is increased variety for consumers, improved programming across platforms, etc.

Competition policy and law realises that the mere presence of many suppliers does not automatically result in a competitive market. This is because one of the suppliers may have the market power to undercut the other suppliers and make it difficult for them to operate in the market or out-rightly force them to close shops, and then the powerful supplier would turn to the consumers to milk them dry. This is what competition experts call abuse of market power.

Similarly, all the suppliers or most of them can come together and agree to carry on their business in such a way that they maintain artificially high prices in other to maximise their profit. They can agree to fix prices or allocate market territories to themselves or take turns to "win" the bid for contracts. These are anticompetitive agreements.

While competition policy provides the overall framework for ensuring that the economy is free from market distortions resulting from anticompetitive structures and conducts, competition law is one of the tools for achieving this objective. A competition policy seeks to mainstream the virtue of competition into all the relevant policy areas such as trade and industrial policy, investment policy, macro-economic policy, privatisation and deregulation policy, etc. It represents a government's deliberate effort to safeguard the proper functioning of the economy in a competitive manner.

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ABUSE OF DOMINANCE

Coal India Under Scrutiny Again

Three months after issuing an enormous fine to state-owned Coal India for abusing its dominance in the market for supplying coal, the Competition Commission of India (CCI) has opened a fresh investigation of the company based on an almost identical complaint.

The Commission received a complaint from chemical manufacturer Gujarat Heavy Chemicals Limited (GHCL), which makes soda ash and requires coal to run its power plant. It says Coal India's behaviour is abusive because it imposed "one-sided onerous conditions" in its coal supply agreements.

These include forcing GHCL to put in place a bank guarantee to the value of 10 percent of the supply agreement, and then making the company agree to additional abusive amendments to that agreement. *(GCR, 26.03.14)*

Music Performances Investigated

Mexico's Federal Competition Commission has launched an investigation of the behaviour of the country's four major music performances rights societies, in response to a complaint filed by the National Chamber of Restaurants alleging they are violating antitrust legislation in their dealings with restaurants.

The complaint alleges that the societies, which act as intermediaries between copyright holders and parties interested in using their works, have been requiring Mexican restaurants to pay unauthorised public performance rates and do not take into account the degree of use that different businesses make of recorded music. *(GCR, 27.03.14)*

Serbian Beer Producer Slammed

The Competition Council of Bosnia and Herzegovina issued a decision fining Serbian beer producer Apatinska pivara doo €215,000 for abuse of dominance.

Proceedings were launched pursuant to a request filed by a company located and registered in Bosnia and Herzegovina – Dejan Komerc doo, one of Apatinska pivara' distributors in the region.

The Council concluded that Apatinska pivara had abused its dominant position and committed infringement by limiting the number of distributors on the market.

This led to a distortion of competition, as some distributors faced more stringent conditions for market entry or even complete foreclosure.

(ILO, 13.03.14)

Ketchup Producer Penalised

The Competition Commission of Pakistan recently issued an inquiry report regarding a complaint filed by National Foods Limited (NFL) against Shangrila Limited (SPL).

NFL alleged that SPL had made the claim that its Shangrila tomato ketchup was "Pakistan's number one tomato ketchup" in its print and billboard marketing campaigns.

NFL alleged that SPL had no reasonable basis to make such a claim and was disseminating false and misleading information to consumers regarding the character, properties or quality of its product, which could harm NFL's business interests.

(www.lawreform.us, 09.01.14)

Hefty Penalty on Energy Firm

The Competition Protection Commission of Bulgaria fined Energy Pro Grids AD – the electricity distribution company for Northeastern Bulgaria for abuse of dominant position.

According to the Commission, Energy Pro Grids the only licensor of electricity distribution in Northeastern Bulgaria, as it owns the electricity distribution grid in the region.

The grid infrastructure qualifies as an essential facility because access to the grid is a precondition for entering the renewable energy electricity market. The Commission concluded that Energy Pro Grids holds the dominant position in the region.

Further, the Commission found that Energy Pro Grids had unjustifiably not fulfilled the legal requirements for each phase of the interconnection procedure to the grid in respect of the solar energy producer which submitted the complaint against it.

(www.ceeinsight.net, 27.01.14)

Guidelines on Excessive Pricing

The Antitrust Authority of Israel published its Draft Guidelines on the Prohibition on Excessive Pricing by a Monopoly. These draft guidelines reflect a significant change in the authority's interpretation of Section 29A(b)(1) of the Restrictive Trade Practices Law 1988, which deals with the abuse of a monopoly position and prohibits any monopoly from charging unfair prices.

The antitrust commissioner stated for the first time that charging excessive prices is deemed unfair pricing, and subsequently that this practice is deemed an abuse of a monopoly position, in violation of Section 29A(b)(1) of the law.

(www.acc.com, 30.01.14)

Qualcomm Accused of Overcharging

China's anti-monopoly regulator said Qualcomm Inc. was suspected of overcharging and abusing its market position, allegations which could see the US chip giant hit with record fines of more than US$1bn.

The National Development and Reform Commission (NDRC) also said it was in talks with another US technology firm, InterDigital Inc, about a possible settlement to a separate anti-monopoly probe as the regulator focuses on the rapidly evolving information technology market.

In its first public statements about the Qualcomm investigation, the watchdog said it began making enquiries after receiving complaints that the San Diego-based company was charging higher prices in China than it does in other countries. *(Reuters, 19.02.14)*

CARTELS

Banks in Forex Manipulation Probe

The Swiss Competition regulator named eight global banks it is investigating for possible manipulation of foreign exchange rates.

The move is the latest twist in an investigation by regulators in the US, Europe and Asia on whether major banks colluded to manipulate the trillion-dollar foreign exchange market.

The Swiss Competition Commission for the first time named the banks it was scrutinising. It cited the two largest Swiss banks, UBS and Credit Suisse, along with Zurich Cantonal Bank, Julius Baer and JP Morgan Chase, Citigroup, Barclays Bank and Royal Bank of Scotland Group.

The alleged coordination, might include the exchange of confidential information, transactions with other market participants at agreed price levels and coordinated actions to influence a foreign exchange benchmark. *(BL, 31.03.14)*

Whirlpool-Panasonic Punished

Mexico's Federal Economic Competition Commission has unanimously voted to fine four refrigerator companies €12.1 for anticompetitive practices, its first sanction of an international cartel that was sparked by a leniency application.

The Authority says its investigation shows conclusively that multinationals Whirlpool, Tecumseh Brazil, ACC and Panasonic established illegal agreements to fix the price of refrigerant compressors imported into Mexico between 2004 and 2008.

To do this, the companies communicated among themselves mainly in the last quarter of each year to coordinate price increases and strategies they would implement in the following year. *(GCR, 12.03.14)*

NCA: Appeals the Asphalt Case

Norway's Competition Authority (NCA) is contesting a court decision that reduced the fine it imposed on road builder NCC for its part in an asphalt cartel.

Oslo's District Court slashed NCC's penalty from €16.7mn – the highest sanction in the enforcer's history – to €4.8mn. It also ruled that NCC's Swedish parent company, NCC AB, was not liable for the infringement.

The authority is appealing against the judgment in its entirety, whereas in relation to NCC the appeal is limited to the application of the law and the low level of the fine.

The case will be heard at the Borgarting Court of Appeal, Norway's second highest court after the Supreme Court. *(www.article.wn.com, 20.03.14)*

Airlines Agreed on Freight Rate

Switzerland's Competition Authority fined 11 airlines for fixing the freight market a decade ago, with Air France-KLM hit with the highest penalty.

Between 2000-2005 several airlines agreed on certain elements of the price for air freight transport. The investigation of the Competition Authority revealed that the airlines agreed on freight rates, fuel surcharges, war risk surcharges, customs clearance surcharges for the US and the commissioning of surcharges.

Such behaviour constituted a "serious infringement" of anti-cartel laws, it underlined. The 11 carriers were fined a total of US$12mn.

(http://zeenews.india.com, 10.01.14)

Ofgem to Spark off 'big six' Inquiry

UK's biggest electricity and gas suppliers are expected to be referred to the new competition authority. UK's energy watchdog is widely expected to refer the "big six" gas and electricity providers for a full-scale competition probe that could lead to a radical overhaul of the sector.

Ofgem is likely to announce plans to call in the new Competition and Markets Authority when it publishes its "state of the market" report, which could see the major players face the threat of a break-up.

It would mark the first full-scale competition probe into the energy market and would see the UK's biggest suppliers come under an unprecedented level of scrutiny. *(TG, 27.03.14)*

Ranbaxy-Teva Settle on Collusion

The New York Attorney General and the US units of Ranbaxy Laboratories Ltd and Teva Pharmaceutical Industries Ltd have settled claims that an agreement between the two drugmakers unlawfully restricted competition.

Shares of both companies rose after they agreed to pay US$150,000 each to the state of New York and refrain from similar agreements in the future as part of the settlement.

The settlement ends an investigation into an agreement the companies signed in 2010 to sell a generic version of Pfizer Inc's cholesterol drug Lipitor in the US, while not challenging each other's exclusivity rights on other generic drugs.

(Reuters, 19.02.14)

EU Hits Car Parts' Cartels

The European Commission (EC) fined automotive suppliers almost €1bn for colluding and fixing the prices of ball bearings, the latest in Brussels' far-reaching probe into cartels across the industry.

www.lyimg.com

Sweden's SKF, the world's largest ball bearing manufacturer, and Germany's Schaeffler were among five companies hit by a combined €953.3m fine, as the EC warned of more penalties to come.

More than 20 car parts producers have been fined a total of more than US$2bn in a US probe into price-fixing in the industry, while the EU is currently probing suspected cartelisation among air bag, seatbelt, steering-wheel and other producers, in an investigation covering as many as 70 manufacturers.

(FT, 20.03.14)

FINES & PENALTIES

Korea Targets Railway Bid Rigging

Hyundai Engineering, Samsung C&T, POSCO and Daelim Industrial are among 12 construction companies fined €27mn by Korea's Fair Trade Commission (KFTC) for bid rigging on a large railway project.

The tenders were split into eight parts, and the KFTC mentioned that the 12 companies met covertly and exchanged information to determine who would win seven of the eight separate sections. The companies that did not win were still required to enter false bids to maintain the veneer of a competitive bidding process.

Samsung and Hyundai were fined the most at €3.7mn each, and Daelim Industrial was fined €3.6mn. POSCO received a €3.5mn fine. *(GCR, 25.03.14)*

Telco Breaches Competition Rules

Telefonica has been fined a total of €500,000 for what Spain's telecoms regulator called two 'very serious' breaches of competition laws.

As Spain's largest telco, Telefonica is obliged to inform the CNMC of any price changes at least one month before they take effect. However, the CNMC found that Telefonica was offering the packages on sale through its website before it had notified the watchdog.

From this communication, CNMC can control the prices, offers, discounts, or promotions [from Telefonica] and ensure that alternative operators can compete on equal terms, without any breaches of industry regulations occurring.

The CMNC's judgement said Telefonica's "failure to comply with the precautionary measures taken by the CNMC is considered a 'very serious' offence". *(www.zdnet.com, 11.02.14)*

Competition Law Violators Face Fine

The violators of the competition law in Saudi Arabia will face a fine of up to US$2.7mn following an amendment passed by the Council of Ministers. Repeated violators of the law would face a double fine.

According to the amendment, anyone who violates the law shall be fined a maximum of 10 percent of the total value of sales. "If the violation is repeated following the issuance of the verdict, the (monitoring) committee may temporarily stop the firm's activity for a maximum period of one month or revoke the license altogether," the law said.

The violator, in all cases, shall be asked to refund all the gains made as a result of the offence, it added.

(www.tradearabia.com, 04.02.14)

Supermarket Chain Fined

NorgesGruppen, Norway's largest supermarket chain, is considering a legal appeal after it was hit with a fine for allegedly violating the country's competition laws.

The state's competition authority claims that NorgesGruppen violated regulations when it began to operate 22 of 24 newly purchased ICA Maxi stores in April 2012, without having received approval from the regulatory body.

The Competition Authority, or as its known in Norway, Konkurransetilsynet, issued NorgesGruppen with a fine of €3.2mn. The intention of the law is for the state to evaluate such transactions before they are put into practice, "so that we can halt activity that hinders competition. It's important that these rules are upheld."

(www.freshplaza.com, 26.02.14)

Merck Charged for Infringement

The French Competition Authority fined Schering-Plough, now owned by Merck, US$21mn over what it called a smear campaign against generic competition to Subutex, its drug for opioid addiction.

It also handed out a fine of €414,000 to parent Merck and another of €318,000 to British supplier Reckitt Benckiser for anticompetitive behaviour in staging the campaign in late 2005. Policy and Medicine previously discussed the French regulatory environment in other posts.

The authority said that Schering-Plough, colluded with its supplier, the consumer-products maker Reckitt Benckiser Group PLC to elbow out of the market Arrow Group's generic version of Subutex.

(www.policymed.com, 17.01.14)

Scrutiny on Airport Agencies

Spain's Competition Authority (CNMC) has fined the country's airport agency (AENA) and eleven rent-a-car companies for market rigging.

The body has ruled that AENA and the fined firms incurred anticompetitive practices, contrary to Article 1 of the Spanish Competition Act and in breach of Article 101 of the Treaty on the Functioning of the EU.

As a result, AENA and AENA Aeropuertos face a €901.518 fine, as Europcar, Atesa, Hertz España, Canary Islands, Special Prices Auto Reisen, Sixt, Top Cars Auto Reisen, Autos Cabrera Medina, Coral Car, Payless Car and Owners Cars will have to pay €32.2mn in total. *(www.02b.com, 09.01.14)*

Regulation for Monetary Fines

In one of the most significant developments in the Turkish competition law regime in recent months, the Competition Authority has released its Draft Regulation on Administrative Monetary Fines for Infringement of the Law on the Protection of Competition for public consultation.


www.cdn2.hubspot.net

The draft regulation is set to replace the existing Regulation on Monetary Fines for Restrictive Agreements, Concerted Practices, Decisions and Abuse of Dominance.

Like the existing regulation, the draft regulation provides for a two-stage fine calculation procedure. Once the Competition Board has established an infringement, it must first determine the base level of the fine. The base level can then be increased or decreased by reference to mitigating or aggravating factors. *(ILO, 27.02.14)*

How the Google-EC Competition Deal Harms Europe?

Rather than enforcing European competition law against systemic abuses of dominance by the single most dominant company in Europe, this political deal surrenders inexplicable concessions, including defining Google's 90 percent share as not dominant, claiming its multiple abuses of dominance are legal and implying Google did nothing wrong.

Simply put, this expedient settlement imagines Europeans are better off captive to an unfettered dominant Google than holding Europe's leading corporate scofflaw to account. This deal's tagline should be, "Europe Online Powered by Google."

Rather than prohibiting abuses of dominance under EU law, this settlement ensures that Google will become much more dominant over the next five years. No company, including Google, really thinks this deal's labeling of search results will result in any material difference in marketplace outcomes.

The worst part of this deal is it throws Europeans under the bus. The fountainhead of all of Google's market and political power in Europe flows from its 90 percent dominance of Internet search and search advertising, and its unfettered ability to discriminate and self-deal to dominate more and more online markets like mobile, mapping, etc.

This Google-driven deal wholly evades accountability to EU competition law. If Googleopoly can negotiate a "get out of jail free" card for systematically abusing its exceptional dominance, what political message does that send to the rest of the European Commission that is trying to hold Google accountable for gross violations of data protection, tax, and copyright law?

The privacy authorities of Germany, France, U.K., Italy, Spain, and the Netherlands are all furiously trying to get dominant, data-voracious, Google to obey European privacy law and respect EU data protection sovereignty. This sweetheart settlement suggests that Google's lobbyists have more political influence with the EC than these countries do as members.

Europeans are very upset about pervasive NSA spying. They hoped potential revocation of the US-EU data protection safe harbor could be a lever to get privacy disrespecting US firms like Google to better protect EU data. Now they must worry the EC-Google privacy-evasion fix is in here as well.

European tax officials are indignant with dominant Google's aggressive tax stance that the company does not owe any taxes on Google's advertising profits from tracking Europeans' private behaviour. Google's shameless position

is they should owe no EU taxes, not even on profits made from its now-sanctioned abuses of dominance.

In a nutshell, Google takes Europeans private data without authorization, profits from it handsomely, but should owe no European taxes for this partially ill-gotten gain in Europe. Game, set, match to Google's EC lobbyists. Last but not least, many European content creators have long accused Google of profiting from the use of their copyrighted material without permission or compensation.

Tellingly, after several years of refusing to compensate Belgian media for profiting off the theft of their content, Google conveniently agreed to a multi-million Euro payment to the EC Brussels-based media at the exact time it knew that the Brussels-based EC antitrust investigation was coming to a head. At a minimum, Google's self-serving timing created the public perception of trying to buy favorable coverage and political support for a Google-favorable, settlement deal – which is what they got.

True or not, Google's Belgian content settlement creates the perception of a quid pro quo that Google's vast EC lobbying operation helps those that help them. In the short term, this expedient deal most meets the political needs and schedule of the Directorate General for Competition.

However, it does so at the expense of what's best in the long term for Europeans. That's because it makes the jobs harder for all the other directorates and countries that still have the difficult responsibility of getting Google to respect EU rule of law and European sovereignty going forward.

When Google predictably ignores Europeans' legal concerns in the future, they can thank the Directorate General for Competition for throwing them under the bus.

In sum, the biggest problem with this expedient Google-EU settlement, which allows Google's leadership to boast they have done nothing wrong, is that it affirms the view that Google is so politically well-connected that it is largely untouchable, and effectively above the law in the EU.

– *The news item appeared in The Daily Caller, on February 10, 2014*

Actavis Buys Forest Laboratories

Actavis Plc, the world's second-largest generic drugmaker by market value, agreed to buy Forest Laboratories Inc. for about US$25bn to increase its focus on branded medicines.

Actavis was the most active buyer of drug companies over the past three years, making US$14.4bn of purchases. The company depends on mergers and acquisitions to sustain earnings growth, since developing drugs through research and development is so costly.

Financial Times

With a purchase of Forest, Actavis will add the Alzheimer's drug Namenda and blood-pressure pill Bystolic to its product line-up. The acquisition will add to earnings immediately. *(Mint, 19.02.14)*

L'Oreal Inks Sale to Nestle

L'Oreal signed the share purchase agreement selling to Nestle its holding in dermatology joint venture Galderma, a key step to completing its deal to buy back shares from the Swiss food giant.

L'Oreal would buy back for €6.5bn an eight percent stake held by Nestle in the French cosmetics group, loosening a 40-year partnership and allowing both firms to boost earnings per share.

The deal hinged on the sale to Nestle of L'Oreal's holding in their Galderma joint venture which will leave Nestle with 100 percent of Galderma.

This share purchase agreement was signed, but completion of the sale remains conditional to approval by the competition authorities.

(Reuters, 24.03.14)

Publicis and Omnicom Face Delays

Delays in obtaining antitrust clearance from China for the US$35bn Publicis and Omnicom merger, among other complications, are pushing the expected closing date for the deal back about nine months to the third quarter in 2014.

The transaction, which will create the largest advertising and communications company in the world by revenues, has received the green light in all jurisdictions except China.

In antitrust terms, the combined market share in media buying was expected to raise more concerns than the advertising and marketing side, where barriers are low. The merger was expected to face its toughest challenge in the Americas, where the combined media buying power of the two companies is estimated at a larger than 40 percent share. *(FT, 12.02.14)*

Suntory to Pay for Beam

The Japanese whiskey company Suntory has agreed to pay US$13.6bn for Beam Inc., the company that produces Jim Beam, Maker's Mark and many other lines of bourbon and non-bourbon liquors.

Suntory is a privately held Japanese company, which was founded 115 years ago and opened Japan's first distillery in 1923. The company's chairman, Nobutada Saji, is one of the country's richest men, and the company owns restaurants, fitness clubs and golf ranges in addition to its liquor holdings.

Beam is one of those brands that pegs its identity on its very Americanness, and has a customer base that very much buys into the mythology of bourbon as a great American beverage.

(FT, 14.01.14)

IBM Sells Intel Server Business

IBM will sell its lower-end server business to Lenovo for US$2.3bn. Under the terms of the agreement, Lenovo will acquire IBM's x86 server portfolio, while IBM retains its System z mainframes, Power Systems, Storage Systems, Power-based Flex servers, and PureApplication and PureData appliances.

Lenovo will offer employment to roughly 7,500 IBM employees associated with that part of Big Blue's server operations.

In addition to owning the rights to the hardware and software, Lenovo will also inherit related customer-service and maintenance operations, following an extended period in which IBM will 'provide maintenance delivery on Lenovo's behalf' in order to facilitate the transition. *(FT, 25.01.14)*

Tata in Talks over China Tie-up

Tata Motors is conducting talks in China over potential tie-ups in the world's biggest car market, in a sign that the Indian carmaker is looking to turn round its flagging fortunes through international growth.

India's largest carmaker by sales owns Jaguar Land Rover of the UK, which entered the Chinese market for the first time in 2012 through a joint venture with Chery Automobile, the privately owned car group.

But Tata Motor's domestic Indian operations, which produce less expensive cars and trucks for consumers in emerging economies, presently has no presence in China.

Any tie-up between Tata and a Chinese player would mark a significant international expansion for the struggling Indian group, while also signalling deeper industry links between the car sectors in Asia's two largest emerging economies.

(FT, 07.03.14)

Australia Eyes Privatisation Wave

Australian utility AGL Energy has agreed to buy the state-owned power company Macquarie Generation for A$1.5bn (US$1.4bn), in a deal that is expected to spark a A$100bn sale of government-owned assets.

The disposal by the New South Wales government comes after the ruling federal Liberal-National coalition encouraged cash-strapped states to sell assets to raise money to invest in new infrastructure.

The Abbott government is also considering the privatisation of some federally owned assets, including Medibank Private, a health insurer worth up to A$4bn. *(FT, 13.02.14)*

Cooper Scraps Deal with Apollo

With just 48 hours before the closure of the US$2.3bn (₹14,500-crore) merger deal deadline between Apollo Tyres and Cooper Tire & Rubber, the US tyre maker has decided to terminate the merger agreement with India's secondlargest tyre maker.

Cooper Tire cited that Apollo Tyres had notified that it had failed to find financing for the transaction, whereas its Indian counterpart expressed disappointment over Cooper prematurely attempting to spike the deal.

The Indian tyre maker said it was left with no other option, but to pursue legal actions against Cooper Tire. Cooper's lack of control over its largest subsidiary and contractual financial reporting obligations has considerably complicated the situation, claimed the Indian company. *(ET, 01.01.14)*

Babcock Wins Nuclear Contract

The £7bn job of decommissioning Britain's oldest nuclear power plants has been won jointly by UK defence specialist Babcock and US engineer Fluor.

The contract, awarded to Fluor and Babcock's civil nuclear division, Cavendish Nuclear, covers Britain's 10 reactors as well two old research sites in Oxfordshire and Dorset, and employs about 3,000 workers. The work is one of the largest and most sensitive public sector contracts to be awarded in the UK.

The deal marks a significant win for Babcock, which is keen to extend the company's reach in civil decommissioning, with other opportunities available in France, Japan and Canada. Shares in Babcock rose as much as seven percent in early trading. *(FT, 31.03.14)*

Bouygues Stake in Vivendi's SFR

Bouygues, the French conglomerate, has raised the stakes in a fierce bidding war for Vivendi's SFR telecoms unit, raising the cash part of its offer by €1.85bn and bringing in France's state fund as a shareholder in the proposed merger.

The construction and telecoms group said that its new offer for the country's second-biggest mobile operator by subscribers valued SFR at €16.3bn, including €13.15bn in cash.

Many analysts had raised concerns over the potentially long and complicated examination of a Bouygues-SFR tie-up by the country's competition authorities. *(FT, 20.03.14)*

Vodafone Confirms Cable Purchase

Vodafone has announced plans to buy broadband and pay-TV company Ono, marking the company's second investment in the cable market in a year.

The €7.2bn acquisition will require notification to and approval by the European Commission. But observers say it is unlikely to raise significant antitrust concerns as the companies have limited market overlaps.

Ono operates Spain's largest next-generation network, a type of telecoms network that handles multiple types of traffic, such as voice, data, and multimedia. UK-based Vodafone is Spain's second-largest mobile operator behind Telefonica. It accounts for 26 per cent of the mobile telecoms market. *(GCR, 18.03.14)*

Nasdaq-OMX Builds up Tech Sales

Nasdaq OMX has agreed to sell its trading systems to the Bangladesh bourse in a sign that the US group is ramping up technology sales to exchanges in Asia as they modernise to boost turnover.

The deal brings to 18 the number of exchanges in Asia that use Nasdaq technology, either for equities and derivatives trading or for clearing, or for both.

Asia's exchanges, long used to offering mostly equities trading, are starting to diversify into derivatives as demand grows among local and foreign traders for more sophisticated products.

Bursa Malaysia and the Stock Exchange of Thailand have been promoting equities and futures trading to locals, while upgrading systems to attract foreign traders, including so-called high-frequency traders. *(FT, 23.03.14)*

House of Fraser Heads to China

A Chinese conglomerate controlled by a wealthy retail entrepreneur is in talks to buy House of Fraser for more than £450m. Sanpower is controlled by Yuan Yafei, its multimillionaire founder and former Chinese government official, who has built a business spanning real estate, retail and technology.

Sanpower owns one of China's oldest and largest stores – the Nanjing Xinjiekou department store, which was established in August 1952 and was the first ever company in Nanjing to be publicly listed.

This would be the first major investment in the UK retail sector by the group. A spokesman for Sanpower confirmed that talks were ongoing. *(FT, 30.03.14)*

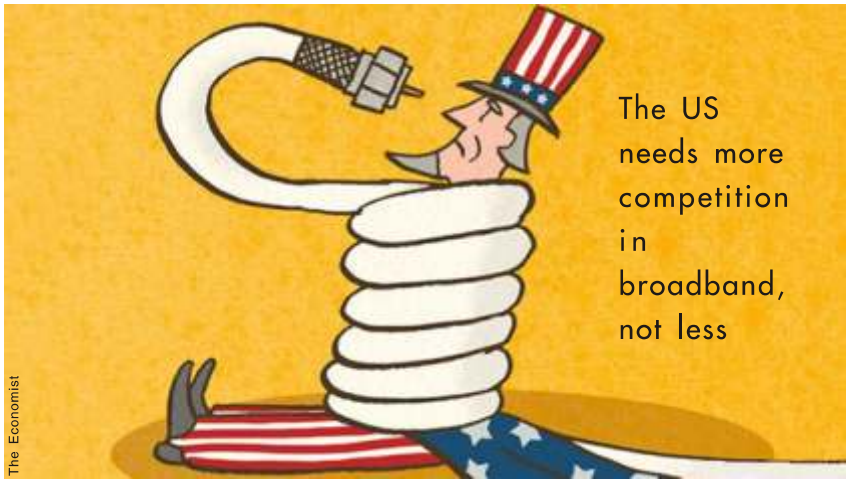
Facebook to Acquire WhatsApp

Facebook Inc will buy fast-growing mobile-messaging startup WhatsApp for US$19bn in cash and stock in a landmark deal that places the world's largest social network closer to the heart of mobile communications and may bring younger users into the fold.

The transaction involves US$4bn in cash, US$12bn in stock and US$3bn in restricted stock that vests over several years. The WhatsApp deal is worth more than Facebook raised in its own IPO and underscores the social network's determination to win the market for messaging.

Founded by a Ukrainian immigrant who dropped out of college, Jan Koum, and a Stanford alumnus, Brian Acton, WhatsApp is a Silicon Valley startup fairy tale, rocketing to 450 million users in five years and adding another million daily. *(BS, 21.02.14)*

Ma Bell Should Toll for Comcast's Deal



The Economist

America may be the birthplace of the internet. But when it comes to web access, US consumers get a startlingly poorer deal than those on offer in many later-adopting countries.

Over the past decade, while broadband speeds have accelerated and costs tumbled elsewhere in the world, the US has limped along behind. On network speed the US ranks just 16th out of the nations of the OECD, with an average of 27 megabits per second. Japan and the Netherlands are four times as fast. A megabit of capacity costs more than twice as much in the US as it does in the UK.

There is nothing inevitable about this slide. It is the product of inadequate regulation. Myopic politicians and lax rule makers have permitted the stealthy assembly of a market structure that bears more than a passing resemblance to the old "Ma Bell" telephone system that was dismantled by antitrust fiat in 1984.

Notionally competing companies have been allowed to carve up the nation, stitching together a patchwork of local monopolies. Relieved of the need to innovate or provide service to win custom, incumbents have sat back. The consumer has been quietly skinned.

Now, a deal threatens to unpick all but the final competitive figleaf. Comcast, the number one cable provider, has unveiled a plan to merge with the number two, Time Warner Cable. Together this combine would reach about 30m homes, and secure market-leading positions in the ISP, home phone and video markets.

To win regulatory consent for the prize, the partners propose to divest 3m of Time Warner's 11m customers. This is the equivalent of a multimillionaire leaving a $100 tip in a restaurant. Too often the Federal Communications Commission has let itself be bought off by such pourboires. This time it should steel itself to say no.

True, one can argue that the local market structure is already so anti-competitive as to make the merger only a marginal negative for consumers. But there are two reasons to stand firm. One is the reduction in contingent competition that would result from merging the top two players. Comcast, for instance, would no longer be constrained by the worry that Time Warner might tiptoe on to its turf at some point. The second is the creation of a giant with a greater ability to cross-subsidise local markets to stub out or inhibit new entrants in a sector already blighted by weak innovation.

But blocking the deal would not cure the underlying malaise. The FCC should view this transaction as a wake-up call and go further.

The US broadband market needs a shake-up. Phone companies such as Verizon do serve the same homes as cable companies. But they do not always compete with conspicuous vigour.

For instance, Verizon has an agreement with cable providers to cross-sell products where their networks do not overlap. The political skill with which cable companies have defended their turf has been matched only by the susceptibility of municipalities to lobbying.

Two things are needed to make the market work better. There should be tougher regulation of pricing and service quality in areas where competition is inadequate. Measures are needed to encourage new entrants. Since many of the problems have to do with archaic local laws, this may mean requiring incumbents to open up their infrastructure.

The bigger question is whether the FCC is up to the job. The regulator often seems squeezed between the politically astute cable companies and their friends on Capitol Hill. In November President Barack Obama appointed a new head of the FCC – a political ally, ex-fundraiser and former cable industry lobbyist. How Tom Wheeler handles this deal will say much about his independence – and about Obama's objectives in appointing him.

– *The news item appeared in the* Financial Times*, on February 14, 2014*

South Africa Top FDI Recipient

FDI flows to Africa increased nearly seven percent to an estimated US$56bn in 2013, nearly a fifth of which went to top recipient South Africa, a United Nations report said.

Africa, along with Latin America and the Caribbean, helped drive FDI inflows to developing economies to a new high of US$759bn in 2013. That was more than half of global FDI.

Sub-Saharan Africa's robust economic growth, which the International Monetary Fund (IMF) expects to increase to 6.1 percent in 2014 from 5.1 percent in 2013, has made it an attractive destination for investors.

South Africa's performance has lagged the rest of the region, however, with the IMF forecasting growth of 2.8 percent in the continent's biggest economy in 2014, an increase from 1.8 percent in 2013. *(Reuters, 28.01.14)*

Cuba's Investment Law on Anvil

Cuba's National Assembly approved a new foreign investment law that aims to bring badly needed capital to the communist economy by offering steep tax cuts and promising a climate of investment security.

The new law halves the profits tax from 30 to 15 percent and exempts investors from paying it for eight years, though it also appears to withhold many of the tax benefits from companies that are 100 percent foreign-owned.

Those incentives are reserved for joint ventures with the Cuban state and investments linking foreign and Cuban companies.

Analysts and Cuban-based diplomats have expressed scepticism over the law, uncertain whether the one-party state has undergone a genuine change of heart and truly wants to attract foreign investors on international terms. *(Reuters, 29.03.14)*

Thai Investment in Peril

More than US$15bn of planned foreign and domestic investment in Thailand is on hold because of political turmoil that threatens to intensify broader industrial trends pushing exporters towards other southeast Asian countries.

About 400 project proposals by companies aiming to expand in Southeast Asia's traditional manufacturing hub are frozen because a prolonged showdown between the government and protesters has stopped Thailand's Board of Investment from meeting since October 2013.

The backlog highlights the economic damage Thailand is suffering from a four-month-old crisis that is paralysing government and playing out as foreign investors from Japan and elsewhere outsource production to cheaper neighbouring states.

(FT, 10.03.14)

New Rules on FDI in China

Most foreign direct investment (FDI) projects will be treated the same as their domestic counterparts with regard to governmental approval requirements under new rules passed by China's State Council.

The move substantially relaxes rules on foreign investments in China. The new rules were passed on December 13, 2013, and took effect the day they were issued.

The new rules are included in a "Catalogue of Investment Projects Approved by Government (2013)" and an official interpretation released by the NDRC. The 2013 Catalogue replaced a similar catalogue issued by the State Council in 2004.

(www.lexology.com, 21.01.14)

State-Led Investment

Mariana Mazzucato*

A confident government recognises fully that the business sector might 'talk' about tax but 'walks' to where new technological and market opportunities are – and that this is strongly correlated with areas characterised by major public sector investments.

Did Pfizer recently leave Sandwich, Kent (UK), to go to Boston in the US due to the latter's lower tax and lower regulation? Or was it due to the fact that the public sector National Institutes of Health have been spending close to US$30.9bn per year in the US funding the knowledge base on which private pharma firms thrive?

In economics, the 'crowding-out' hypothesis is used to analyse the possibility that higher state spending reduces private investment, since both compete for the same pool of savings (through borrowing), which might result in higher interest rates that reduces the willingness of private firms to borrow and, hence, invest.

While Keynesian analysis has argued against this possibility during periods of underutilised capacity, the point is that even in the boom – when in theory there is full capacity utilisation – there are in practice many parts of the risk landscape where private business fears treading and government leads the way.


www.opportunistmagazine.com

In fact, the spending that led to the internet occurred mainly during boom times – as was the government spending that lead to the nanotechnology industry.

* *From "The Entrepreneurial State: Debunking Public vs Private Sector Myths". Excerpts appeared in The Economic Times, on March 17, 2014*

Governance Watchdog Accused of Bad Governance

– Caroline Liinanki* and Sophia Grene**

The governance of the UN Principles for Responsible Investment initiative is being called into question

Quis custodiet ipsos custodes? Who watches the watchmen? Arbiters of behaviour or morality are notoriously prone to falling foul of their own codes, so perhaps it comes as no surprise that the UN Principles for Responsible Investment (PRI) initiative, set up to promote sustainable investment, is in a bit of a pickle over governance issues.

Although there is no disagreement with the principles, and nobody questions the good faith of those involved, concerns around the organisation's governance have reached such a pitch that eight Danish pension funds, all among the original founding signatories of the initiative, recused themselves from the group until matters improve.

There are two areas of concern. First, the governance of the body is complex, giving rise to a sense that the transparency and accountability the initiative is trying to promote is lacking in its own structure.

The PRI originally aimed to sign up asset owners (largely pension funds and insurers), but is now made up of three categories of signatory: asset owners, asset managers and service providers. An advisory council of 16 is elected by all members and is comprised of UN representatives, asset owners and others. Only the chairman and the asset-owning council members appoint an association board of at least seven, which should be dominated by asset owners.

Previous structural changes were announced as a fait accompli in 2010, which angered a number of Nordic members, including the Danish funds that have since left the group.

"It is pretty simple," says Ole Buhl, Head of Responsible Investments at ATP, Denmark's largest pension fund. "The original constitution was suddenly changed and maybe not changed in the way it was supposed to change. We want to get things back to how it was."

Fiona Reynolds, the PRI's Managing Director, says lessons have been learned and signatories will be fully consulted about any future changes. "It grew really quickly and probably did not keep pace with the changes and what it needed internally to really do what people expect of it," says Reynolds. Sudden expansion can be challenging to deal with for any organisation, and the PRI may have over-reached itself, admits Reynolds.

The rapid growth is partly due to the organisation's success in getting industry members to sign up to the principles, and partly to the steady flow of income since contributions became mandatory for members, in proportion to their assets under management. Since those assets amount to roughly US$34tn between its 1,240 or so members, this constitutes a significant income stream.

The second area of unease is the balance of power between the different categories of signatory. Some asset owners who signed up early are unhappy, as they feel they have been sidelined. Other voices caution that the balance should not be too asymmetrical.

The two-tier structure means members cannot directly appoint the association board, which is a source of grievance for some, particularly those who feel the asset owners should be more central to the organisation.

"This is an organisation where the only thing you are allowed to do is to vote for a candidate for the advisory council," says Buhl. "On top of that, there is no transparency of the council or the board. If you have representative democracy, it is important that you can see what they do."

The governance review is likely to tilt the balance of power back in favour of the asset owners, according to Melvin. "It is not that it would revert to full control by the asset owners, but the balance would probably shift back," he says.

Although Wong is predisposed to agree with the primacy of asset owners, given his past experience as a partner in Governance for Owners, an activist investment firm, he does have a general warning.

"I would caution all organisations: be careful about conveying the inherent superiority of one group. This may lead to entrenchment of privilege or a belief in their own superiority."

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* *Editor, Nordic region pensions and investment news, Financial Times*

** *FTfm Reporter*

– *Abridged from an article that appeared in the* Financial Times *on February 03, 2014*

Aircraft Age Restrictions

The Regulation on Commercial Air Transportation (SHY-6A), the secondary legislation governing the Turkish aviation industry, has recently been changed. The revised regulation was published in the Official Gazette on November 16, 2013.

Alongside the introduction of the new regulation, it appears that the Civil Aviation Authority intends to renew all aircraft fleets and will be intolerant of grounding for any reason. The new regulation raises a number of concerns for operators, including in relation to fleet age limitations.

The authority no longer allows aircraft used for passenger transportation purposes to be older than 15 years, dating from the first registration date with the Civil Aircraft Registry. The limit for freight transportation purposes is 25 years.

(ILO, 08.01.14)

4G Deployment Targeted

The National Communications Commission (NCC) of Taiwan completed the competitive bidding process for the licenCing of mobile broadband services. Six operators – Chunghwa Telecom, Taiwan Mobile, FarEasTone, Asia Pacific Telecom, Ambit Microsystems Corporation and Taiwan Star – won the bids.

The NCC issued its establishment permits to all six operators, five of which applied to the NCC for system installation permits by March 13, 2014.

However, operators which have submitted their operation plans to the NCC for review have expressed their discontent during press interview about the NCC's cumbersome review procedure.

They are afraid that long-term evolution services will probably not be available in Taiwan until the end of 2014. *(ILO, 26.03.14)*

Passing the National Health Bill

The Nigerian Senate has passed the National Health Bill after several months of delays and postponements. The bill, which was first passed by the 6th National Assembly in 2011, was not assented to by President Goodluck Jonathan at the time due to the reservations of some healthcare professionals and civil society groups on some of its provisions, especially on tissue and organ transplants.

Its revised version seeks to provide the framework for the regulation of the nation's health sector. The bill will, among other things, stipulate how kidney and other body organ transplants can be done in the country. It will also regulate the use of blood and blood products.

(http://sunnewsonline.com, 08.03.14)

Namibia Zoom in on Retail Pricing

Consumers will be relieved to learn that the Namibia Competition Commission has announced plans to take on the retail sector in an effort to ensure that consumers are not over charged for items such as poultry, meat, dairy products, and cement.

The Commission also wants to ensure that members of the public understand their rights, as well as the avenues of recourse available to them and the protections granted in the competition policies and laws of Namibia.

Currently, the Commission does not explicitly monitor retail prices, but can look and may decide to investigate complaints pertaining to excessive pricing. *(NE, 29.01.14)*

Supply Obligation for Electricity

The Energy Agency of Denmark recently released a legislative proposal introducing a general supply obligation for all electricity retailers that provide electricity to household consumers. If enacted, the supply obligation would enter into force on October 01, 2015.

The supply obligation aims to guarantee all household consumers the legal right to be supplied with electricity at reasonable, transparent and non-discriminatory prices, in accordance with the EU Electricity Directive.

The obligation is limited to companies that provide electricity to household consumers. Companies that exclusively supply business customers will not be subject to the obligation.

(ILO, 30.03.14)

UK Considers Consumer Rights Bill

The highly anticipated Consumer Rights Bill was recently introduced in the Parliament, marking a significant step in the development of consumer rights law. The bill has already reached the committee stage in the House of Commons, which is evidence of how quickly the government wants to see it become law.

The main focus of the bill is to consolidate existing laws relating to consumer protection and sale of goods law. However, it also introduces significant innovations in respect of digital content, private law class actions for competition law breaches and the remedies available to consumer law enforcers. *(ILO, 17.02.14)*

EU to Scrap Roaming Charges

As European Union lawmakers expressed their support to scrap roaming charges, the union of 28 European member states is all set to regulate free mobile roaming in the EU.

The member states voted in Brussels to drive the package through in time for the European elections in May 2015, to come into force as soon as July 01, 2014. They expect the death of roaming charges to typically wipe 2pc off mobile operators' revenues, after several years of tightening regulations designed to put an end to shockingly high bills for holiday makers and business travellers.

Roaming has fast become a top priority for operators and telco industry as a whole. As strategies for alternative ways of dealing with roaming fees are debated and created, an 'open Europe' is quickly becoming a reality and action needs to be taken now.

(www.blog.tonsetelecom.com, 10.03.14)

The New Age of Crony Capitalism

As the regime of Viktor Yanukovych collapsed in Ukraine, protesters against it could be found outside One Hyde Park, a luxury development in west London. Their target was Rinat Akhmetov, Ukraine's richest man and a backer of the old regime. "Discipline your pet", they chanted.

Ukraine's troubled state has long been dominated by its oligarchs. But across the emerging world the relationship between politics and business has become fraught. India's election in April and May will in part be a plebiscite on a decade of crony capitalism. Turkey's Prime Minister is engulfed by scandals involving construction firms.

Political connections have made many people hugely rich in recent years. But crony capitalism may be waning

On March 05, 2014, China's President, Xi Jinping, vowed to act 'without mercy' against corruption in an effort to placate public anger. In 2013 182,000 officials were punished for disciplinary violations, an increase of 40,000 over 2011.

As in America at the turn of the 20th century, a new middle class is flexing its muscles, this time on a global scale. People want politicians who don't line their pockets, and tycoons who compete without favours. A revolution to save capitalism from the capitalists is under way.

The Kind of Rents Estate Agents Can Only Dream of

'Rent-seeking' is what economists call a special type of money-making: the sort made possible by political connections. This can range from outright graft to a lack of competition, poor regulation and the transfer of public assets to firms at bargain prices.

Well-placed people have made their fortunes this way ever since rulers had enough power to issue profitable licences, permits and contracts to their cronies. In the emerging world, the past quarter-century has been great for rent-seekers. Soaring property prices have enriched developers who rely on approvals for projects.

The commodities boom has inflated the value of oilfields and mines, which are invariably intertwined with the state. Some privatisations have let tycoons milk monopolies or get assets cheaply. The links between politics and wealth are plainly visible in China, where a third of billionaires are party members.

Capitalism based on rent-seeking is not just unfair, but also bad for long-term growth. Competition is repressed: Mexicans pay too much for their phones. Dynamic new firms are stifled by better-connected incumbents. And if linked to the financing of politics, rent-heavy capitalism sets a tone at the top that can let petty graft flourish. When ministers are on the take, why should not underpaid junior officials be?

The Economist has built an index to gauge the extent of crony capitalism across countries and over time. It identifies sectors which are particularly dependent on government and tracks the wealth of billionaires in those sectors relative to the size of the economy. It does not purport to establish that particular countries are particularly corrupt, but shows the scale of fortunes being created in economic sectors that are most susceptible to cronyism.

Wanted: Emerging-Market – Roosevelts

Yet this may be a high-water mark for rent-seekers, for three reasons. First, rules are ignored less freely than they used to be. Governments seeking to make their countries rich and keep people happy know they need to make markets work better and bolster the institutions that regulate them.

Second, the financial incentives for businesses may be changing. The share of billionaire wealth from rent-rich industries in emerging markets is now falling, from a peak of 76 percent in 2008 to 58 percent today. This is partly a natural progression. As economies get richer, infrastructure and commodities become less dominant.

The last reason for optimism is that the incentives for politicians have changed, too. Growth has slowed sharply, making reforms that open the economy vital. Countries with governments that are reforming and trying to tackle vested interests, such as Mexico, have been better insulated from the jitters in the financial markets.

Governments need to be more assiduous in regulating monopolies, in promoting competition, in ensuring that public tenders and asset sales are transparent and in prosecuting bribe-takers. The boom that created a new class of tycoon has also created its nemesis, a new, educated, urban, taxpaying middle class that is pushing for change. That is something autocrats and elected leaders ignore at their peril.

* *Abridged from a news item appeared in* The Indian Express *on March 20, 2014*

EU to Accept Visa Fee Cap

The EU's antitrust regulator will accept Visa Europe's offer to cap its credit card fees for retailers, two people familiar with the matter said, as the EU strives to cut the cost of paying with plastic and boost online commerce.

The EC says such fees for using credit and debit cards cost businesses across Europe US$13.7bn a year. The charges are an important money spinner for banks.

Visa Europe, Europe's largest card payments' company which is owned and operated by more than 3,000 European financial institutions, proposed cutting the charges levied on retailers to 0.3 percent of the value of each transaction in 2013.

(Reuters, 14.02.14)

Regulating Monetary Policy

Azerbaijan will effectively regulate its mid-term monetary policy in 2014. Elman Rustamov made the statement in a meeting in Baku with a delegation from the IMF headed by head of the IMF mission to Azerbaijan Raja Almarzoqi.

Rustamov said finding the optimal balance between the objectives of growth of bank assets and stability, synchronisation of monetary and macro-prudential policy, formation of a framework for counter-cyclical banking supervision, and regulation of the financial sector to prevent it from overheating are particularly important.

The Central Bank of Azerbaijan (CBA) head also informed the guests about the economic growth of Azerbaijan, macroeconomic stability, development of the non-oil sector, diversification of the economy, the monetary policy of the CBA, the development of the country's banking sector, and other issues.

(www.azernews.az, 05.03.14)

Over-the-Counter Derivatives

Canada will give banking regulators more power to oversee derivatives trading as part of a series of steps to shield the nation's financial industry.

The government will amend the Bank Act to create 'explicit regulation-making authority' over banks that trade standard derivatives. The move may broaden the powers of the Office of the Superintendent of Financial Institutions, which currently regulates some aspects of derivatives trading.

Canada is trying to prevent improper trading in the nation's financial markets and reduce risk in its housing market and banking industry, which has already been ranked the world's soundest by the World Economic Forum.

(http://www.bloomberg.com, 12.02.14)

Banks Face Tougher Regulations

Growth in Ecuador's banking sector will likely continue to be affected in 2014, as President Rafael Correa's administration looks to pass stricter regulations following a series of other rule changes that have been implemented since he took office.

According to data from Private Banking Association of Ecuador, the nation's banks had return on equity of 10.15 percent in 2013, compared with 12.79 percent in 2012, 18.91 percent in 2011 and 14.32 percent in 2010.

The government has also prohibited financial institutions from collecting debts on a mortgage that have gone into default by seizing other properties owned by the mortgage holder. *(WSJ, 24.01.14)*

Let Weak Banks Fail

The eurozone's new chief banking regulator has warned that some of the region's lenders have no future and should be allowed to die, heralding a far tougher approach to supervision across the currency bloc.

Danièle Nouy, head of the euro area's new banking overseer, the Single Supervisory Mechanism, also signalled that she wanted to weaken the link between governments and the bloc's banks, demanding that lenders hold capital against their sovereign assets.

Nouy agreed with Mario Draghi, the president of the European Central Bank (ECB), that to be credible, the ECB's upcoming health check of the region's biggest lenders would have to fail some institutions. *(FT, 10.02.14)*

Warning on 'Too Big to Fail'

The world's largest banks still receive implicit public subsidies worth as much as US$590bn because of their status as "too big to fail" and the assumption of a government bailout if they get into trouble, the IMF.

The warning, to be included in the fund's twice-yearly Global Financial Stability Report, highlights the failure of post-financial crisis reforms to solve the problem of too-big-to-fail despite a vigorous lobbying campaign by the largest banks claiming it is no longer an issue.

The IMF report showed that in the event of another financial crisis and in the absence of new reforms, taxpayers could still be liable for hundreds of billions of dollars of support for banks.

(FT, 31.03.14)

China Moves on Banking Reforms

China would allow, for the first time, the setting up of five private banks on a trial basis, and also move to liberalise deposit rates in the next two years, as regulators grapple with the rising pressure on the banking sector from a newly booming online finance industry.

The Head of the China Banking Regulatory Commission, Shang Fulin said that the banks would be subject to the 'same regulation and supervision' as existing state-run banks, but would be focused more on small and medium-sized enterprises (SMEs).

The Economist

SMEs have complained of the struggle to obtain financing from the major banks, which tend to lend preferentially to other state-owned enterprises — an increasing source of frustration for entrepreneurs here. *(BL, 11.03.14)*

How the Banking Union Plan Will Work

Alex Barker*

A deal has finally been signed in the most tangible single reform since the economic crisis

The EU has engineered the final political compromise for its banking union, the most ambitious integration project since the creation of the single currency and the bloc's flagship reform to address its financial crisis.

Is banking union now complete?

With the deal, the structure is now pretty much set. Eurozone governments will no longer be the sole masters of their big domestic banks; they will be policed centrally and if they are failing they can be shut down against the home state's wishes, using funds from a common €55bn pot. The pooling of power and money is a political sea-change agreed within just two years. But it is a messy first stab that critics see as underfunded, too complex and riven with national safeguards.

How does this relate to the eurozone debt crisis?

It is the most tangible single reform to emerge from the convulsions of 2011 and 2012. It is also the eurozone's best hope of dispelling concerns over hidden problems in the financial sector. The teeth of the European Central Bank, the new central supervisor, are already being felt in its health check of big eurozone banks. But casualties from the tests would not be customers for the new resolution regime – it woould not be ready in time. For at least the next year, bank crises will be handled with national tools.

Did Germany secure the safeguards it wanted?

For six months or more, the banking union talks have largely turned on the strength of will of one man: Wolfgang Schäuble, the German finance minister. His resolute concerns over cost sharing and centralisation definitively shaped the final outcome. His price for this included ensuring EU finance ministers – not Brussels – could have the final say on a bank being shut.

Schäuble also demanded voting safeguards to ensure big countries still had a big say when common resolution funds were used. And ambitious ideas to back-up the fund were batted away.

But did the European parliament secure any concessions from Germany?

On funding, a crowd of lawmakers and officials stood waiting for Schäuble to accept the compromise proposed. Berlin had insisted that the pace of pooling resources should be as fast as the schedule for contributions, which are spread over eight years. The control member states have on decision making was also reduced, partly through giving a bigger role to the European Commission.

How does the process to wind down a bank work?

Decisions must pass through a convoluted maze of committees. From start to finish, more than 100 officials, supervisors and eurocrats could have a formal vote on the closure of a single bank. That is supposed to happen over a weekend. Advocates argue that the revised system balances powers so the resolution board at the heart of it as independent as possible.

Is the resolution fund adequately funded?

Closing banks is expensive. Even if it were fully mutualised, the fund is vulnerable to being overwhelmed, especially during the eight year transition to its full strength. In 2020, for instance, the common funds would amount to around €20bn. That might cover eventual recapitalisation needs, especially given the stricter new rules forcing losses on bank creditors. But providing liquidity to fund an orderly resolution is another matter: in the Dexia failure, almost €80bn in state guarantees was required.

Will they be discussing reforms to the reforms soon enough?

Probably. Once big concessions are made in Brussels, the path to more centralisation is smoother. But there are clear limits to what can be done in this case. Germany demanded that the mutualisation of the fund was set out in a side deal, a pact between member states. It gives Germany and others an insurance policy, should a majority decide to agree rules it does not want. This pact was seen as illegal by the European parliament, but it relaxed its objections to facilitate a deal.

* *EU Correspondent for the Financial Times. Abridged from an article that appeared in the* Financial Times*, on March 21, 2014*

MyCC: Cultivating Healthy Competition

Ronnie Teo*

Competition cultivates innovation, and encourages players to stand out by enhancing values of their products or adapt prices to attract customers. Consumers, in turn, benefit from a wider range of products, leading to more choices for all.

However, it occurs once too often when industry players collude to, for example, set a floor price for products or services. Sometimes, leading players also abuse their dominating position in the market to manipulate prices for a gain in their favour. Thus, it is necessary for a coherent approach to address these anticompetitive moves as the lack of it results in an inability to address many related issues from industrial policies, regulatory issues as well as trade matters.

This is where the Malaysian Competition Commission (MyCC) steps in, as an independent body established under the Competition Commission Act 2010 to enforce the Competition Act 2010. Its main role is to protect the competitive process for the benefit of businesses, consumers and the economy.

Competition is a necessary essence of business, a trait traced back to the origin of life as living organisms fight to survive.

Proactive moves

The Competition Commission Act 2010 came into force on January 2012 with the intent of enhancing consumer welfare, business practices and economic development. It aims to identify cases of anticompetitive agreements between enterprises and abuse of dominant position. MyCC is also empowered to conduct a review into any market in determining whether there are any distortions to the competitive process, publishing its findings and recommendations upon conclusion of said review.

Cultivating more awareness

Additionally, MyCC is undertaking several endeavours to increase awareness and educate the public on the importance of complying with the Competition Act 2010. One of which is the launch of its guidebook entitled 'Competition Act 2010: A guide for business'. The guidebook cites various cases from other jurisdictions to help businesses understand what the law is about.

What's in store ahead?

A long and arduous road is ahead. It appears that the MyCC remains very committed in its efforts to maintain healthy competition amongst players. This will serve well to enhance Malaysia's image and attractiveness as a place for doing business.

Recent cases by MyCC

Interim Measures on Ice Manufacturers

MyCC issued proposed Interim Measures against the 26 tube ice manufacturers on a possible infringement of 4(2)(a) of the Competition Act. It has reasonable grounds to believe that the 26 ice manufacturers' collective decision to increase the price of edible tube ice has the effect of distorting competition in any market for ice in Peninsular Malaysia.

Decision on Megasteel

MyCC issued its Proposed Decision on Megasteel, as the Commission found it infringing the Competition Act 2010 by abusing its dominant position. It finds that Megasteel's practice of charging or imposing a price for its Hot Rolled Coil that is disproportionate to the selling price of its Cold Rolled Coil, amounts to a margin squeeze that produces anticompetitive effects in the market.

Directions to PMLOA

MyCC issued final directions further to the proposed Interim Measures it dealt under Section 35(4) of the Competition Act 2010 against the Pan-Malaysia Lorry Owners Association (PMLOA), its members and related lorry enterprises.

Depot Gate Charges

MyCC, in response to complaints filed by the Federation of Malaysian Manufacturers and the Federation of Malaysian Freight Forwarders on the raising of depot gate charges (DGC) in Penang, states that it has not discussed with any parties nor given any consent on any new systems that led to rates revision of the DGC.

Grants BEO for Liner Shipping Agreements

MyCC grants Block Exemption Order (BEO) for liner shipping agreements in respect of Vessel Sharing Agreements and Voluntary Discussion Agreements made within Malaysia or that has an effect on the liner shipping services in Malaysia.

Unique Case Study: Aviation

In 2013, MAS and AirAsia were presented a fine each by MyCC for their short-lived share swap which was found to have distorted the domestic aviation service. MyCC said both airlines had infringed Section 4(2)(b) of the Competition Act 2010 by sharing their markets in their eight-month pact.

* *Feature Writer (Business), Borneo Post. Abridged from an article that appeared in* The Borneo Post *on January 26, 2014*

Why Auto Dealers are Terrified of Electric Vehicles?

Elon Musk*

www.upload.wikimedia.org

New Jersey became the latest state to erect a regulatory barrier around the motor industry in the face of a new retail model from electric vehicle ground-breaker Tesla. The auto dealer will not be the only incumbent industry and monopoly to face disruption from the likes of Tesla

Under pressure from the New Jersey auto dealer lobby to protect its monopoly, the New Jersey Motor Vehicle Commission, composed of political appointees of the Governor, ended the right to purchase vehicles at a manufacturer store within the state. Governor Christie promised that this would be put to a vote of the elected state legislature, which is the appropriate way to change the law. When it became apparent to the auto dealer lobby that this approach would not succeed, they cut a backroom deal with the Governor to circumvent the legislative process and pass a regulation that is fundamentally contrary to the intent of the law.

It is worth examining the history of these laws to understand why they exist, as the auto dealer franchise laws were originally put in place for a just cause and are now being twisted to an unjust purpose. The franchisees then further invested a lot of their money and time in building up the dealerships. The franchisees rightly sought protection from their state legislatures, which resulted in the laws on the books today throughout the US.

The intent was simply to prevent a fair and longstanding deal between an existing auto company and its dealers from being broken, not to prevent a new company that has no franchisees from selling directly to consumers. In most states, the laws are reasonable and clear. When all auto companies sold through franchises, this did not really matter. However, when Tesla came along as a new company with no existing franchisees, the auto dealers, who possess vastly more resources and influence than Tesla, nonetheless sought to force us to sell through them.

The reason that we did not choose to do this is that the auto dealers have a fundamental conflict of interest between promoting gasoline cars, which constitute virtually all of their revenue, and electric cars, which constitute virtually none. Moreover, it is much harder to sell a new technology car from a new company when people are so used to the old. Inevitably, they revert to selling what's easy and it is game over for the new company.

An even bigger conflict of interest with auto dealers is that they make most of their profit from service, but electric cars require much less service than gasoline cars. There are no oil, spark plug or fuel filter changes, no tune-ups and no smog checks needed for an electric car. Also, all Tesla Model S vehicles are capable of over-the-air updates to upgrade the software, just like your phone or computer, so no visit to the service centre is required for that either.

Why Did They Claim That This Change Was Necessary?

The rationale given for the regulation change that requires auto companies to sell through dealers is that it ensures 'consumer protection'. There are other ways to assess the premise that auto dealers take better care of customers than Tesla does. Consumer Reports conducts an annual survey of 1.1 million subscribers, which factors in quality, reliability and consumer satisfaction. The Tesla Model S was the top overall pick of any vehicle in the world, scoring 99 out of 100. This is the highest score any car has ever received.

Going Forward

Some reassurances are also in order. Until at least April 01, 2014 everything is business as usual for Tesla in New Jersey. It should also be noted that this regulation deals only with sales, so our service centres will not be affected. Our stores will transition to being galleries, where you can see the car and ask questions of our staff, but we will not be able to discuss price or complete a sale in the store.

Most importantly, one will still be able to order vehicles from New Jersey for delivery in New Jersey on TeslaMotors.com website. Finally, we would like to thank the many people who showed up in Trenton to support Tesla and speak out against the MVC's back-door tactics in passing this regulation change without public consultation or due process. It was an amazing response at very short notice and much appreciated.

* *Tesla Founder. Abridged from an article that appeared in the* Renew Economy*, on March 17, 2014*

Narrow 'Public Interest' Can Harm the Common Good

Justin Balkin* and Michael Mbikiwa**

In South Africa's competition law, public interest factors can be used to permit an anticompetitive merger, or to prohibit a pro-competitive merger. The inclusion of a public interest test has long been the subject of controversy.

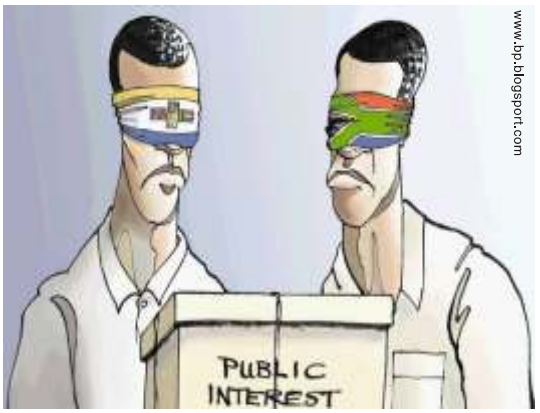
The fundamental principle of competition regulation is the enhancement of consumer welfare through the competitive process. This assumes that rivalry between competitors achieves benefit to consumers through lower prices, expanded output and enhanced innovation. This, of course, ultimately benefits the broad "public interest".

But this is not the sense in which "public interest" is used in the Competition Act. The list of public interest factors in the act includes: the impact of the merger on a particular industrial sector or region; employment; the ability of small businesses or firms controlled by historically disadvantaged persons to become competitive; and the ability of national industries to compete abroad.

There is good reason for the inclusion of the public interest criteria in the Competition Act, particularly in a developing economy such as ours, where industrial policy has an important role, in which unemployment is rife, and in which the distribution of wealth and ownership is so unequal.

The competition authorities' public interest mandate is not divorced from their competition analysis: the factors are analysed in a holistic inquiry, in which the competition assessment has relevance to the question of justification in respect of the public interest inquiry. But section 12A provides no guidance on balancing the competition and public interest assessments, other than requiring that countervailing public interest grounds be "substantial" before they are a valid basis to prohibit a merger or impose conditions.

In recent years the competition authorities have given undue prominence to public interest considerations in their analysis of mergers, particularly where the public interest concern is employment.



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Two interrelated questions arise. First, are the competition regulators the correct authorities to determine public interest issues, such as employment? If so, have they applied the "substantiality" test correctly? Are the competition authorities the correct forum? What is crucial is to ensure that public interest concerns enter the competition fray only when they are substantial. Two recent examples of conditions aimed at protecting employment are noteworthy.

In AON Glenrand, the merging parties estimated the retrenchment of a maximum of 220 of 1,500 employees due to a duplication of roles. Asked to reconsider, the Competition Tribunal narrowed this to 24 employees, earning between R15,000 and R30,000, and prohibited the retrenchment of any employees earning below R15,000, for two years.

In Glencore Xstrata, the tribunal approved the transaction subject to the condition that no more than 80 retrenchments of semiskilled and unskilled workers took place within 90 days of the last antitrust approval date, and a maximum of 100 retrenchments as a result of the merger forever.

Were the public interest concerns in these decisions "substantial"? The answer turns on whether substantiality is assessed in the context of each transaction or whether it is assessed in the context of the economy as a whole.

The question whether the competition authorities provide the correct forum for the ventilation of public interest issues is bound up with the question whether the correct test is applied. That is to say, the competition authorities are the appropriate forum to consider public interest issues provided they apply the correct test, thus limiting themselves to public interest concerns that are substantial.

(1 South African Rand = US$0.0938550)

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Abridged from an article that appeared in the Business Day*, on March 31, 2014*

Economiquity

The January-March 2014 issue of Economiquity carries an article entitled, 'Why FTAs are Vital for India?' which states that the direction of global trade is set to change as mega agreements like the Trans-Pacific Partnership (TPP) and Trans-Atlantic Trade and Investment Partnership (TTIP) come into force. They have the potential to adversely affect excluded countries such as India by diverting trade and investment away from them and weakening their positions in global value chains.

A special article by Klaus Schwab says that in a charged social and political context, reviving economic growth is crucial. But here will it come from?

Another special article by James Politi and Shawn Donnan states that two proposed deals to liberalise global trade depend on the outcome of a bitter battle in the US.

Broadly, it covers Economic Issues; Trade Winds; Development Dimensions and Environment & Economics. It also contains articles of well-known researchers and policy influencers.

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

Why do Countries Adopt a New Competition Law?

(Second Laws-Volume II)

CUTS initiated the second phase of the research study covering few (not the same) countries from the first volume of different sizes and levels of economic development across the world. The country essays were contributed voluntarily by various CUTS friends/partners/fellows. Volume I resulted the book 'Evolution of Competition Laws and their Enforcement: A Political Economy Perspective' published by Routledge in December 2011. The plan is to come out with the publication in 2014, similar to Volume–I.

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

BL: The Hindu Business Line; BS: Business Standard; ET: Economic Times; FT: Financial Times; GCR: Global Competition Review; ILO: International Law Office; NE: New Era; NLR: National Law Review; TG: The Guardian; WSJ: Wall Street Journal

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