REGULETTER

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Special Articles

'Policy Wins' for Consumer and Producer Welfare

A significant portion of income, especially of people in the low income groups, is spent on essentials, such as staple food and transportation. Evidence suggests that in developing and least developed countries (LDCs), these commodities are either over-charged or are of sub-standard quality, furthering the woes of consumers. This robs the opportunity of the poor to balance their meagre budgets. The need of having structured and comprehensive reforms that promote the introduction of market forces, thus arise.

It is in this context that the project, 'Competition Reforms in Key Markets for Enhancing Social & Economic Welfare in Developing Countries' (CREW) was initiated by CUTS International. The project aimed to assess the nature, type and impact of competition reforms in select sectors across four developing countries. For comparative purposes, competition-related reforms pertaining to two key sectors namely: staple food and bus transport were studied in Ghana, India, the Philippines and Zambia.

In the staple food sector, the project was successful in integrating the voice of key stakeholders who more often are left out from policy dialogue. In Ghana, market queens were provided a platform for stakeholder consultations leading to awareness of procurement issues in Ghana. Similarly in the Philippines, through stakeholder consultations, country partners and CUTS were able to develop an 'adjustment package' for farmers once the quantitative restriction on importation of rice is lifted in 2017.

In Zambia, stakeholders agreed to the need for having safe bus transport. A technical committee was therefore formed under the Zambia Bureau of Standards for the development of bus seat material. In Ghana, there is a need for a comprehensive framework for transport regulation including scientific fare setting, route rationalisation, etc. The proposed Road Transport Authority (RTA) by the Government of Ghana had not been operationalised. The suggestion of mobilising an 'expert group' in the interim of establishment of RTA had been welcomed by the Ministry of Transport, Ghana and is in process.

While looking at the bus transport sector in the Philippines, there are surplus of buses leading to traffic congestion in the cities. The project findings indicated the need of managing this over supply and thus a 'Land Transport Action Plan' was proposed to Land Transportation Franchising & Regulatory Board and Department of Transport and Communication. This action agenda was prepared through stakeholder consultations over three seminars jointly held by the Office for Competition and CUTS.

The overall project work in India, had contributed to upping the agenda for the need of linking competition reforms in the broader policy framework. The methodology *vis-à-vis* competition undertaken in the two sectors in India, led to the engagement of CUTS with Competition Commission of India for undertaking competition assessment of policies and legislations in the country.

These policy wins not only highlight some of the project achievements but indicate the importance of stakeholder-led approach towards policy reforms.

CUTS Centre for Competition, Investment & Economic Regulation

CUTS C-CIER

Creating Task Force

Philippine President Benigno Aquino III has formed a task force to fast-track the creation of the Philippine Competition Commission to beat the election ban on creating new posts and hiring new government employees.

The IATF was formed to ensure the timely performance of the Philippine Competition Commission's functions. These functions include the crafting of the implementing rules of the Philippine Competition Act signed into law.

The Commission was tasked to promulgate the implementing rules within 180 days from the effectivity of the law. It was also required to implement a two-year advocacy programme and organise and mobilise resources to support its operations. *(www.philstar.com, 18.02.16)*

Leading to Fair Competition

The Parliament of **Curaçao** has recently adopted a national ordinance, which should lead to fairer competition. Fair Trade Authority Curacao will have to monitor this new national ordinance.

The Minister of Economic Development, Eugene Ruggenaath has removed all doubts of the factions in parliament during the debate about the legislation and supervision, except from the faction of the opposition party MFK.

The new law counteracts calculation of margins or joint price-fixing by the companies. The abuse of monopoly position must also be addressed. The National Ordinance on competition should lead to better prices, higher quality, better service and a wider choice for consumers, according to the Ministry of Economic Development.

(http://curacaochronicle.com, 21.03.16)

In line with EU Standards

Norwegian Parliament amended its Competition Act, further aligning the country's laws with European standards. The new amendments mandated the establishment of an independent tribunal to handle appeals of mergers and fining decisions made by the country's competition authority.

They also changed the laws guiding cartel settlements and the substantive merger test – which observers say may not have huge effects on Norwegian competition enforcement.

The independent body will review merger appeals, which the Ministry of Trade, Industry and Fisheries currently settles, and appeals on the competition authority's fining decisions, which are presently subject to regular court proceedings. *(GCR, 14.03.16)*

Updating Merger Control Rules

Indian Ministry of Corporate Affairs has revised the country's merger control regime by introducing new thresholds for both mandatory notification and for exemptions that are significantly higher than the old ones.

The new rules increase the asset and turnover-based thresholds that govern whether a deal automatically must be notified to the Competition Commission of India. The new mandatory notification thresholds are 100 percent higher than those put in place at the inception of the competition regime in 2002.

More deals may fall into the exempt category, as the new rules state that where a potential target has Indian assets worth less than ₹3.5bn (US$52.53mn) or turnover in India worth less than ₹10bn (US$150.07mn), it will be exempt. *(GCR, 09.03.16)*

Following Strong Antitrust Regimes

The President of **Myanmar** announced that the Myanmar Competition Act will come into force in February 2017. Judging from the scope of the Act and the serious penalties laid out in it for any breach, it seems Myanmar aspires to follow the example of strong antitrust regimes in the region, such as Malaysia, Singapore, and beyond.

The process of establishing a Competition Commission is apparently underway and the Act made clear that this body should have some teeth.

The ambit of the Act is wide although some of the concepts need further clarification. The Act prohibits any anticompetitive agreements.

(www.mmtimes.com, 09.02.16)

Creating Awareness on Competition

As part of its ongoing mission to create awareness of the Competition Act 2010, the Competition Commission of **Pakistan** has established a road show on competition law.

According to the Commission's website, a Competition Compliance Code has been established to ascertain what companies and their employees might be doing wrong and to assist companies in establishing processes and procedures for training and monitoring their employees to ensure improved compliance with the Competition Act.

The commission aims to help companies to improve their business practices, which in turn will create fairness for all businesses to compete, innovate and become profitable, and thus help to improve the economy.

(ILO, 28.01.16)

Amending Competition Law

The **Namibian** Competition Commission (NaCC) has recently confirmed that it has submitted proposals to the Ministry of Industrialisation, Trade and SME Development relating to possible amendments to the Namibian Competition Act.

It is not known what exactly the nature and scope of the proposed amendments are, although the NaCC has indicated that the current Act, which was promulgated in 2003, is out of date and does not sufficiently cater for Namibia's context.

Furthermore, the NaCC has indicated that the amendments are aimed at increasing the NaCC's enforcement capabilities and address 'loopholes' in the current Act.

(http://africanantitrust.com, 02.03.16)

HK Competition Ordinance Impact after just two months

Guy Lougher and Frederick Good

Hong Kong's Competition Ordinance came into full effect, bringing a cross-sector competition regime that prohibits a range of anti-competitive practices in Hong Kong.

The Ordinance has two main rules: the first conduct rule, which prohibits agreements, concerted practices or decisions of associations that have the object or effect of preventing, restricting or distorting competition; and the second conduct rule that prohibits a business with a substantial degree of market power from abusing that power.

Even before the Ordinance came into full force it was evident that businesses operating in Hong Kong were looking at how they can comply with the upcoming rules.

For example, the shipping industry is taking steps to end the co-ordination of fee levels for the use of port facilities. In November 2015, five container terminal operators agreed to stop jointly setting the level of a port security charge (PSC) that is levied on port users. As a consequence terminal operators Hongkong International Terminals, Modern Terminals, Asia Container Terminals, COSCO-HIT Terminals (Hong Kong) and CSX World Terminals Hong Kong stopped accepting paper coupons that could previously be used to pay the PSC and instead began to individually issue electronic coupons.

This move was in response to concerns that the joint setting of the PSC would be viewed by the Competition Commission as price-fixing, which is considered to be serious anti-competitive conduct and a clear contravention of the Ordinance.

Concerns over existing practices

While straight agreements on prices raise obvious concerns under the Ordinance, more subtle forms of price fixing, involving the disclosure of competitively sensitive information, have also come under the spotlight. Late last year a member of the Competition Commission indicated that where businesses share information on wages this may potentially be caught by the Ordinance.

Differing views over interpretation of the Ordinance

In the financial services sector, the Hong Kong Association of Banks and the Hong Kong Monetary Authority, a government authority responsible for maintaining monetary and banking stability in Hong Kong, have issued conflicting statements. The non-statutory voluntary Code of Banking Practice used by Hong Kong banks contains provisions that risk contravening the Ordinance rules. This difference of opinion demonstrates the difficulty a business can face in deciding what is acceptable and what is not when collaborating with its competitors, particularly where there may be resultant benefits to consumers.

There is already evidence that new competition laws in Hong Kong are having concrete effects on behaviour in a number of markets, ranging from liquefied petroleum gas and precious metals to financial services and shipping

Resale price maintenance

Businesses should be aware that arrangements between firms operating at different levels of the supply chain can also be caught by the Ordinance, particularly where these arrangements affect price. For example, sports footwear manufacturer New Balance is reported to have suspended the resale price policy it regularly issued to buyers. Under the Ordinance, resale price maintenance can amount to serious anti-competitive conduct even when the arrangement is between non-competitors.

Block exemption consultation

One of the most keenly anticipated developments is how the Competition Commission will respond to an application by the Hong Kong Liner Shipping Association (HKLSA) for a block exemption order in relation to certain liner shipping agreements. The HKLSA argues that these are 'crucial in enabling carriers to provide regular, fixed day sailing schedules at rates that are not subject to severe fluctuation' and therefore lead to 'efficiencies that benefit customers…and ultimately the wider Hong Kong economy.' The Competition Commission is currently consulting on the application.

While the Ordinance has only been in full effect for two months, its impact is already being seen in a range of markets in Hong Kong. Businesses and trade associations are increasingly aware that certain practices, particularly those involving contact and collaboration between competitors, may prove problematic under the new regime.

* *Competition Law Experts at Pinsent Masons, the law firm behind Out-Law.com. Abridged from an article that appeared in* www.out-law.com, *on February 19, 2016*

China's Antitrust Regime is Ushering in a New Era

Jet Deng and Ken Dai

www.images.china.cn

China's antitrust regime busies itself with extensive legislative activities this year. The most eye-catching ones must be the proposed amendment to the Anti-Monopoly Law (AML), and in the meanwhile, the drafting of six antitrust guidelines for IPR, auto industry, fine calculation, leniency, commitment and exemption

After seven years of enforcement of the AML, all these legislative activities are launched just in the perfect timing to meet an increasing demand for a more transparent and effective antitrust regime in China, and they also signal the ushering in a new era of antitrust enforcement to which all businesses should pay close attention.

Antitrust Guidelines

According to the mandate by the Anti-monopoly Commission under the State Council, as from June 2016, the National Development and Reform Commission (NDRC) has initiated the drafting work of six guidelines, which is planned to be completed by June 2016. These drafts provide much more detailed guidance on how the antitrust authorities will assess and sanction monopolistic conducts. Below are some key guidelines:

IPR

- Typical licencing behaviours that may raise competition concern are specified. Factors for assessing these behaviours are also stated
- Licencing of standard essential patent (SEP) is still the critical part of the guidelines

Auto Industry

- Almost all potential antitrust issues are covered by the draft. The focus is still put on the relationship between auto manufacturers/ suppliers and auto dealers/ repairers and the relationship between auto manufacturers and spare parts/diagnostic equipment producers.
- Block exemption is provided for some vertical restraints. In addition, case-specific exemption may be available for some resale price maintenance (RPM) practices

Fine Calculation

- Different levels of fines are proposed. Also, there are several factors to be considered for increasing or decreasing the fines
- In addition to fines, clear guidance on how to calculate illegal gains is spelt out

Leniency

- Standard and procedure for applying for and granting of leniency are set out
- Normally only the first three applicants may receive leniency treatment
- The conditions for disqualifying the leniency applicant for receiving immunity or reduction
- The determination on the sequence of leniency applicants

Commitment

- The commitment mechanism may not apply to horizontal monopoly agreements and RPMs
- It is most likely to be adopted in the abuse of dominance cases
- The conditions and procedure of accepting the commitment are elaborated

Exemption

- Procedure for applying for exemption of monopoly agreements is provided.

Amendment to the AML

The State Council issued the 2015 Legislation Plan earlier in 2016. The proposed amendment to the AML is officially put into this plan.

Trend of China AML Development

Since the AML's enactment on 30 August 2007, three phases of development in terms of legislation and enforcement have been observed.

Phase 1 (2007-2012)

- Three antitrust authorities promulgated a number of supporting regulations respectively
- The Ministry of Commerce was the most active enforcer due to its role in merger control

Phase 2 (2013-2014)

- Several supporting regulations were promulgated to fill in China's antitrust framework
- Furthermore, enforcement was enhanced significantly, witnessing high-profile investigations across various industries and record fines

Phase 3 (2015 onwards)

- Based on the accumulated experience and having regard to the need of more transparency and predictability of the AML enforcement, extensive legislation activities have been initiated
- Enforcement has entered into a so-called 'new normal' stage. Both central antitrust authorities and their local counterparts, it is anticipated, will carry out investigations on a regular basis
- Additionally, civil antitrust lawsuits also increase

* *Authors are associated with Dacheng Law Offices. Abridged from an article that appeared in Mondaq on January 20, 2016*

ABUSE OF DOMINANCE

TripAdvisor-Amazon Probed

Watchdogs are investigating whether websites such as Amazon and TripAdvisor are doing enough to weed out fake reviews and paid-for endorsements.

The **UK** Competition and Markets Authority fears that some of the £23bn spent online each year is being wasted due to website reviews that cannot be trusted. The government regulator is looking at whether sites are doing enough to weed out fake feedback and the 'trolling' of competitors for commercial advantage.

It is examining evidence that firms pay people to post fake positive reviews on Amazon about everything from books to hi-tech devices.

There is also concern about the validity of reviews for hotels and restaurants on sites such as TripAdvisor, with evidence that some have been ruined by fake negative feedback. *(DM, 12.02.16)*

McDonald's Faces More Problems

McDonald's has been accused of abusing its market power by imposing unfair and restrictive contracts on people operating its franchise restaurants in **Europe**. A formal complaint has been made to the European Commission by a group of Italian consumers' organisations.

They accuse McDonald's of forcing franchisees to pay excessive rents and high fees. McDonald's said it shared risks and rewards with its licencees.

McDonald's said: "We are proud of our franchisees and are committed to working closely together so that they have the support they need to operate their restaurants and their businesses. *(BBC, 12.01.16)*

Gazprom under Fire

Ukraine's competition authority would fine Gazprom €3.2bn for abuse of dominance. Gazprom said it was 'surprised' by the ruling and that it 'intends to defend its rights and lawful interests'.

The penalty is for abuse of dominance in Ukraine's domestic gas transit market, but no further explanation has been given.

Gazprom delivered a €2.3bn bill to Ukraine's state-owned company, Naftogaz, saying Naftogaz contractually had to buy a minimum amount of gas or else pay a fine. Earlier in 2016, Naftogaz announced it would raise the price it charged Gazprom to transport gas to Europe using its pipes. *(GCR, 22.01.16)*

Uber Introduces Predatory Prices

India's competition enforcer has thrown out a taxi company's complaint against Uber, ruling that the smartphone-based transportation platform does not hold a dominant market position in the city of Kolkata.

The Competition Commission of India rejected an accusation by radio-taxi operator Meru Cabs that Uber abused its dominance by introducing predatory prices across its 'UberX' and 'Uber Go' radio taxi ranges.

The enforcer said that Uber did not hold a dominant position in the market for radio taxis and yellow taxis, so there was no need to examine whether its conduct was abusive. Radio taxis offer passengers pre-ordered services, while yellow taxis offer street pick-ups. *(GCR, 04.01.16)*

Google's Loses Android Appeal

A **Russian** court has upheld a decision by the Federal Antimonopoly Service (FAS) that said Google abused its dominant position in the country's market for pre-installed app stores – days after a senior competition counsel at Google criticised the enforcer for rushing through its Android investigation.

The Moscow Arbitration Court 'fully supported' and 'found legal' the FAS's decision concerning Google's abuse of dominance in the market of pre-installed app stores on the company's Android operating system for smartphones and tablets.

The ruling comes months after Russia's competition authority demanded Google end a number of practices that gave primacy to its own app store, Play, and to other Google apps, on devices running Android operating systems. *(BBC, 15.03.16)*

Pharmacy Association Squeezed

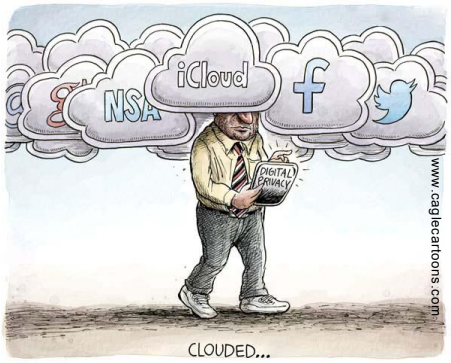
Portugal's competition authority has imposed a multimillion-euro fine on a national association of pharmacies for abusing its dominance in the markets of pharmaceutical sales data and market studies, after a complaint brought by IMS Health.

The Associação Nacional das Farmácias (ANF) and three companies in the ANF Group – led by the association and made up of companies that work with pharmacies – have been fined €10.3mn for margin squeeze.

The upstream market in the case is the sale of data collected from pharmacies across Portugal for use in market studies; the downstream market is the production of completed studies. *(GCR, 04.01.16)*

Facebook Checked for Data Abuse

Germany's Federal Cartel Office is investigating whether Facebook has abused its position in the social media market by imposing unclear and unfair privacy terms on its users, the competition watchdog announced.



The authority said it was scrutinising whether the social media giant's terms of service violate competition and data protection laws by requiring users to give up their personal data.

"Not every law infringement on the part of a dominant company is also relevant under competition law. However, in the case in question, Facebook's use of unlawful terms and conditions could represent an abusive imposition of unfair conditions on users," the enforcer said. *(ET, 04.03.16)*

PRICE FIXING

Cartel Penalties Reach Record High

Antitrust fines in the **US** and **China** surged in 2015 to record levels, but could not buoy the rest of the world, which saw global cartel penalties drop. Fines totalled US$5.28bn in 2015, a 20 percent decline from 2014, according to new research.

Subtracting the US and China, penalties fell 76 percent in the rest of the world. The highest portion of the total fines came from the US, where the Department of Justice's antitrust division levied a record US$2.85bn, more than twice its previous high and more than three times greater than in 2014.

While financial services will continue to be a focus for antitrust authorities in 2016, the latest investigations show a shift towards the digital, telecom, energy and consumer products sectors. *(FT, 14.01.16)*

Investigation in Oil Refinery

Bulgaria's competition watchdog has launched an investigation into the country's only oil refinery and seven fuel retailers over possible petrol and diesel price-fixing.

The Commission for Protection of Competition had begun investigating the Bulgarian operations of Royal Dutch Shell, OMV, Hellenic Petrolleum, Nis Petrol, Lukoil, Rompetrol and Bulgarian Petrol. Nis Petrol is majority owned by Gazprom Neft.

The investigation follows complaints by Bulgarians over high fuel costs despite a plunge in global oil prices and a request by Prime Minister Boiko Borisov that the competition authority hastens checks on the fuel sector. *(Reuters, 25.02.16)*

Poultry Cartel Scolded

Pakistan's competition authority fined a trade association for fixing prices in the poultry market, five years after the association was sanctioned for the same offence.

The Competition Commission of Pakistan imposed a fine of €870,000 against the Pakistan Poultry Association (PPA) for breaching the country's competition laws.

The poultry association published a series of advertisements in national newspapers detailing the prices of chicken meat and eggs in October 2015. By notifying the prices of poultry products under the banner of the association, PPA has taken an anticompetitive decision.

PPA's actions have the potential of influencing pricing trends in the market and manipulating the behaviour of market players. *(GCR, 04.03.16)*

Collusion in e-Commerce

A recent **European** Court of Justice (ECJ) decision confirms that automated messages can implicate the recipients in price fixing. The decision concerned an alleged cartel between travel agencies.

The case arose when web developer Eturas sent an administrator message to each member, stating that the e-commerce functionality allowing each travel agency to grant discounts would be capped at three percent. That message appeared in part of the system relating to 'information messages'.

The ECJ found that administrator messages can be the basis of illegal cartel-type conduct. Thus, it would be presumed that each travel agency had participated in price fixing where it understood the measure communicated to it; and failed to distance itself from it. *(ILO, 05.11.16)*

Chicken Distributors Charged

The Competition Commission of **Singapore** (CCS) has given poultry suppliers six weeks to respond to charges they colluded to rig the fresh chicken market.

CCS accused 13 companies of coordinating price hikes and agreeing to avoid competition for customers in the fresh chicken market. This refers to chicken imported from Malaysia and slaughtered in Singapore, instead of imported frozen meat.

The cartel activity took place during 2007-2014 and CCS began its investigation following the receipt of a complaint about the alleged conduct.

Among them, the defendants control more than 90 percent of the Singapore fresh chicken market, the competition enforcer claims. *(ILO, 08.03.16)*

Apple Smaked Down

The **US** Supreme Court declined to hear Apple's challenge to an appellate court decision that it conspired with five publishers to increase ebook prices, meaning it will have to pay US$450m as part of a settlement.

The court's decision not to hear the case leaves in place a June 2015 ruling by the New York-based second US circuit court of appeals that favoured the US Department of Justice and found Apple liable for engaging in a conspiracy that violated federal antitrust laws.

Apple, in its petition asking the high court to hear the case, said the decision by the court of appeals upholding a judge's ruling that Apple had conspired with the publishers contradicted supreme court precedent and would 'chill innovation and risk-taking'. *(TG, 07.03.16)*

Appliance Manufacturers Slammed

The **Czech** Republic's competition authority has fined one of Europe's largest home appliance manufacturers for allegedly engaging in retail price maintenance.

The Office for the Protection of Competition said that Slovenia-based Gorenje had entered into a number of agreements with its distributors, fixing the minimum retail prices of its home appliance goods.

These pricing agreements helped homogenise the retail price of Gorenje's products, ensuring the manufacturer's Gorenje and Mora brands were not sold below pre-set minimum prices. *(GCR, 08.01.16)*

Time to Overhaul Rules on Competition in Kenya

Christopher Hugh Onyango*

Supremacy tussles between Kenya's communications and competition authorities over the jurisdiction and enforcement of competition-related laws and regulations began with the amendment of the Kenya Information Communications Act 1998. Through the amendment, Parliament sought to compel the Communications Authority to consult with the Competition Authority prior to declaring a person or institution "a dominant telecommunications service provider", which appeared to erode the powers of the former.


The Economist

In 2015, the Competition Authority thwarted attempts by the Communications Authority of Kenya to declare Safaricom a dominant player in the telecommunications sector. The criteria for determination of dominant position in the two legislations vary. Whereas Section 23 of the Competition Act has an expanded scope in the definition, the latter is specific. Section 84W5 (a) of the Kenya Communications and Information Act, 1998 stipulates the threshold for market dominance in the telecommunications sector as being at least 25 per cent of the total revenue of the entire telecommunications market.

Dominance can be over-inclusive if Kenya is part of a larger market in which no Kenyan firm has power over price even if it has a large share of Kenyan sales. On the other hand, it can be under-inclusive when it exempts firms from being labelled dominant if they have less than 50 per cent of the market even if all their rivals are very small and it has considerable power over price. Hence, it should not simply be determined by a firm's absolute size or market share. These are pointers to the ambiguities and contradictions existing in the competition-related laws.

There are three types of regulations guiding production and provision of services: Economic, technical and competition-related regulations. Economic regulation involves setting prices, increasing service standards and encouraging choices, while technical regulation encompasses technical oversight; quality, safety and protection of health and the environment. Regulations ensure markets operate effectively and fairly. The common practice is that sector-specific regulatory agencies regulate economic and technical regulations, while enforcement of competition-related regulations is shared between the sector-specific regulators and the national completion authority through four main approaches.

The first is the enforcement of technical and economic regulation by a sector-specific regulator and competition enforcement exclusively left to a competition authority. The second involves the combination of technical and economic regulation in a sector-specific regulator with some competition law enforcement functions. The third approach involves the combination of technical and economic regulation and enforcement of competition laws in consultation with the competition authority through negotiated agreements. The final approach involves technical regulation organised as a standalone function for the sector regulator and includes some economic regulation within the competition authority.

The conduct of competition and related regulations requires fundamental reforms. For instance, the retail and wholesale petroleum prices are being fixed by the Energy Regulatory Commission on a monthly basis since 2010, despite being glaringly anticompetitive. The market conduct in the telecommunications raises eyebrows with one service provider dominating the sector for close to two decades and rival firms hardly making a foothold. To curb this, Parliament should strengthen Section 9(1) of the Competition Act by making it mandatory for the Competition Authority to negotiate and sign agreements to coordinate the exercise of jurisdiction over competition matters in all regulated sectors as is the practice in jurisdictions with modern competition laws such as Europe and South Africa.

Furthermore, potential mechanisms for abuse, including predatory pricing and tied selling should be included in the list in section 24(2) of the Competition Act. As the laws stand, actual results of abuse of dominance depend on whoever is establishing the existence of market power. Regulatory bodies should build partnerships amongst themselves, law enforcers and other Government agencies. This will help develop a framework for management of misunderstandings for building and championing an effective competition ecosystem in Kenya's business sector.

The ultimate objective of competition regulatory mechanisms is to provide powerful incentives for regulated firms to reduce costs and improve service quality; stimulate introduction of new products and encourage efficient investment pricing to spur private sector development. Kenya's economy yearns for modern competition laws to claim her position as a regional economic and business powerhouse.

* *Trade Policy Analyst, Kenya Institute for Public Policy Research and Analysis. Abridged from an article that appeared in* The Standard, *Kenya on January 28, 2016*

www.images.businessfinancenews.com

Green Light to FedEx-TNT Union

European Union regulators have unconditionally approved FedEx Corp.'s acquisition of Dutch parcel company TNT Express NV, ending a six-month antitrust investigation that had been one of the biggest hurdles for the nearly US$5bn deal.

The merger would allow FedEx to acquire an extensive ground network in Europe, making it a bigger player in the burgeoning e-commerce market. It is good news for FedEx, which suffered a black eye over the holidays, as it admitted that last-minute online orders and severe weather resulted in some packages arriving late.

FedEx is still awaiting approvals from several countries, most notably China and Brazil, while US regulators approved the deal in 2015. *(WSJ, 08.01.16)*

Top Baltic Competition Firms Merge

Full-service law firms Borenius and Cobalt – known as Raidle Lejins & Norcous until May 2015 – brought their Latvian operations together.

The merged firm now features two specialist competition partners: Dace Silava-Tomsone, Cobalt's joint managing partner and previous head of its competition practice, and Gatis Flinters, who previously headed Borenius' corporate group.

Silava-Tomsone said the firm is "extremely happy to see our competition team growing as a result of the merger", and added that the seven-lawyer practice group is now the largest in Latvia, where the competition bar remains relatively small.

Cobalt and Borenius have between them handled several major Latvian competition cases. *(GCR, 08.01.16)*

Asahi to Buy SABMiller Brands

Japanese beer company Asahi has tapped Allen & Overy to guide its €2.55bn acquisition of SABMiller's Peroni, Grolsch and Meantime brands – as AB InBev and SABMiller look to secure global merger clearance for their €108bn tie-up.

Asahi would buy Peroni's and Grolsch's businesses in the Netherlands, Italy and the UK, as well as London-based brewery Meantime. The deal, which would be Asahi's largest ever acquisition, is contingent on the successful completion of AB InBev's acquisition of SABMiller.

The company has a limited footprint in Europe and was chosen as the successful bidder because the deal was likely to receive smooth passage through merger clearance. *(GCR, 11.02.16)*

ADT Purchased by Apollo

US private equity firm Apollo has braved volatile merger markets to buy out home security maker ADT and merge it with another company in a deal valued at US$15bn, including debt.

Apollo would pay US$42 a share in cash to take Florida-based ADT private and combine it with Protection 1, another security company it bought in 2015 for US$1.5bn.

ADT, which makes systems from burglar alarms to CCTV cameras for homes and small businesses, has an enterprise value of US$10bn.

It would make it one of the largest leveraged buyouts in recent years, underlining reinvigorated interest by private equity investors in snapping up assets at battered valuations, following the recent fall in public markets. *(FT, 17.12.16)*

Nokia Wins Control of Alcatel

Nokia has taken control of Alcatel-Lucent after receiving approval from France's securities watchdog agency for the US$17bn deal. Nokia will hold nearly 80 percent of its former rival, and the companies will begin working 'as an operationally combined group'.

The acquisition was first announced in April 2015, and Nokia and Alcatel-Lucent have previously received approval from US and European regulators for the merger.

The companies aim to create a new European powerhouse in the telecom gear market in an effort to better compete with market leader Ericsson and Chinese firms Huawei and ZTE. *(FT, 05.01.16)*

Chinese Haier Gains Global Role

China's Haier Group agreed to buy General Electric Co's appliance business for US$5.4bn in what would be the country's biggest acquisition of an overseas electronics company.

The group's Qingdao Haier Co signed an agreement with GE and the transaction is targeted to close in mid-2016. While the boards of GE and Haier have approved the deal, it's still subject to shareholder and regulatory approval.

It also highlights Haier's global ambitions as the acquisition would help the company expand in the US, one the markets it's trying to focus on besides Europe and Japan. *(BS, 16.01.16)*

Vodacom-Neotel Abandon Tie-up

Telecommunications company Vodacom dropped its planned acquisition of Neotel's fixed-line business, citing regulatory difficulties in the nearly two years of trying to obtain competition and telecom sectoral approval.

The decision brings to a close merger plans first announced in May 2014, with Vodacom announcing plans for a full takeover of Neotel for €411mn.

Vodacom announced that even the fixed-line deal has 'lapsed due to regulatory complexities and certain conditions not being fulfilled', and that the proposed transaction 'can no longer be progressed'. *(GCR, 01.03.16)*

Cipla Acquires Generic Drug Cos.

Cipla Ltd., acquired two US generic drug companies, InvaGen Pharmaceuticals Inc., and Exelan Pharmaceuticals Inc., to increase its revenue and introduce new products for oncology and diabetes in the world's largest pharmaceutical market.

The combined revenue for the two companies for the year-ended 2015 was over US$230mn. The acquisitions will give scale to Cipla's US business as well as providing a launch pad to introduce Cipla's pipeline of products in respiratory and injectables, among others, in the coming years.

This is the second large scale acquisition in Cipla's 80 year history – the first was Cipla Medpro, South Africa. *(TH, 19.02.16)*

Blackstone-Anbang Alliance

US investment company Blackstone Group is close to selling a portfolio of American luxury hotels to China's Anbang Insurance Group. Blackstone's deal to sell its stake in Strategic Hotels & Resorts would amount to US$6.5bn.

Anbang, which once specialised in car insurance, stormed onto the international property market by acquiring New York's Waldorf Astoria Hotel for nearly US$2bn a year ago.

The Chinese group bought the luxury hotel from Hilton Worldwide Holdings, of which Blackstone is the largest shareholder. *(BS, 14.03.16)*

Samsonite Bags Luggage Rival

The decision of luggage giant Samsonite International to acquire rival US luxury bag maker Tumi in a deal estimated at US$1.8bn is set to provide a major fillip to its India operations.

While the all-cash transaction is expected to give Samsonite access to the premium end of the luggage market, the deal is expected to bring in huge cost savings in terms of logistics, sourcing, sales and marketing.

Over 40 percent of all Samsonite hard luggages are manufactured at its plant in Nashik, Maharashtra. Some of its brands include Samsonite, American Tourister, High Sierra, Hartmann, Lipault and Speck. *(BL, 04.03.16)*

Consolidation of Banks

Banco Popolare SC agreed to buy Banca Popolare di Milano Scarl in an all-stock deal that will create Italy's third-largest lender and may prompt a wave of consolidation among the country's cooperative banks.

Banco Popolare investors will own 54 percent of the combined lender. As part of the plan, Banco Popolare will tap investors for US$1.1bn, with the deal expected to be completed by the end of 2016 once the capital increase is finished.

The European Central Bank has increased pressure on Italian lenders to clean up balance sheets, consolidate through mergers and tackle an estimated €360bn of troubled and defaulted loans that are undermining lending. *(FT, 24. 03.16)*

Creating Rubber Giant

Rubber processor Halcyon Agri Corporation is set to merge with China's state-owned Sinochem International Corporation in a move that will create the world's largest listed rubber company.

Halcyon Agri will remain listed on the Singapore Exchange (SGX) once the deal has been completed, with Sinochem as the combined entity's majority shareholder.

The combined business will have 153,000ha of land in Africa and South-east Asia and 35 processing facilities across Indonesia, Thailand, Malaysia, China and Africa, with an annual processing capacity of about 1.5 million tonnes. *(ST, 29.03.16)*

Grocery Store Chains to Combine

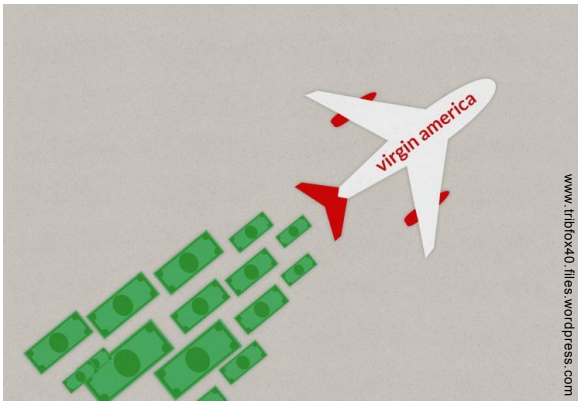
Shareholders at Dutch retail conglomerate Royal Ahold NV — which operates US supermarket chains Martin's Food Markets, Giant and Stop & Shop — overwhelmingly approved the company's proposal to merge with Belgium-based food retailer Delhaize Group, which operates Food Lion stores in the US.

The two companies announced their intention to merge into Ahold Delhaize in June 2015, creating an international retailer with more than 6,500 stores across the US and Europe.

Regulatory review of the proposed merger is underway with the US Federal Trade Commission and the Belgian Competition Authority. *(www.richmond.com, 16.03.16)*

World's Largest Carrier

Alaska Air Group Inc is nearing a deal to acquire Virgin America Inc, the ninth-largest US airline by passenger traffic, for more than US$2bn, having outbid JetBlue Airways Corp.



The acquisition would herald the first US commercial airline merger since US Airways and American Airlines combined in 2013 to form the world's largest carrier. It would boost the size of Alaska Air's home market by allowing it to expand into lucrative hubs such as San Francisco and Los Angeles.

Virgin America accounts for about 1.5 percent of US domestic flight capacity, while Alaska Air and its subsidiary Horizon Air account for 5 percent. *(BS, 03.04.16)*

A Merger Master with Staying Power

Tom Mitchell and Ralph Atkins

ChemChina's founder can win over foreign investors and Beijing

Ren Jianxin did something remarkable after announcing the biggest ever outbound acquisition by a Chinese company: he answered questions from reporters.

Judging by the opaque standards of Ren's peers, the men and women who run the country's largest state-owned enterprises, it was by no means certain he would meet journalists. Not even after ChemChina made an all-cash US$44bn offer for Syngenta, the Swiss agribusiness giant — a planned deal that if completed will vault the chemicals group into the top rank of the sector.

Less than a year earlier, when ChemChina paid €7.3bn for Italian tyremaker Pirelli, it took Ren an entire week to come out of his shell and meet the media at his company's Beijing headquarters. ChemChina's purchase would be by a large margin the biggest foreign purchase by a Chinese company. The record is held at present by Cnooc, the country's leading offshore oil company.

For now, however, Syngenta's shares remain below ChemChina's offer price. The discount suggests investors fear Ren's deal could be knocked back by a security review in the US, where Syngenta has extensive operations. It is one thing for America's amber waves of grain to sprout from Swiss seeds but quite another if the seeds are ultimately owned by a company beholden to the Chinese Communist party. It would certainly have made for an interesting talking point at this week's Iowa caucuses, held just one day before ChemChina formally revealed its bid for Syngenta.

For a man who grew up in the city of Lanzhou, a former outpost at the eastern end of the old Silk Road, becoming a global dealmaker was an unlikely outcome. Born in 1958, Mr Ren came of age during the madness of Mao Zedong's Cultural Revolution. Those formative few years, he said, taught him 'what farmers want and how they work the land'.

Many 'sent-down youth' never made it back to home, let alone to university, after Mao's death in 1976 gave the nation a chance to repair itself. Ren managed both feats, graduating from Lanzhou university and joining the ministry of chemical industry.

In 1984, he borrowed Rmb10,000 from the government to start an industrial cleaning company. Over the next two decades, his Bluestar start-up absorbed or merged with more than 100 other SoEs. Before long, he came to be known in official media as the 'king of mergers'.

Ren has run his danwei, a catch-all term for SoEs, for 32 years in a country where bosses of such businesses are transferred between companies like the poorly paid civil servants they are. More recently, some have been brought down by President Xi Jinping's take-no-prisoners war on corruption. Ren's longevity is unprecedented.

His experience in building ChemChina from the bottom up also makes him that rarest of creatures in a state sector otherwise populated by long-established monopolies: a real entrepreneur. After the group was formally established in 2004, Ren began another acquisition spree, this time overseas, snapping up agribusiness and chemical companies in Australia, France and Israel.

Ren is a visionary. He has connections and he knows how to pull strings. He has assembled a team of foreign consiglieres including Michael Koenig, a former Bayer AG director, and Ze'ev Goldberg, a former Israeli military officer and Lehman Brothers banker who advised ChemChina on the Pirelli and Syngenta deals.

Part of Ren's tried and tested pitch, to foreign politicians and acquisition targets alike, is that the group's overseas units will retain operational independence. He also pledges to protect jobs and brand integrity at companies he buys.

Political savvy and party connections partly explain his staying power. More important is his proved ability to deliver for his government masters on important policy objectives, such as food security. Syngenta owns a broad portfolio of seeds that has the potential to help China increase crop yields that are well below North American levels.

According to a former European agribusiness executive who knows Mr Ren well, ChemChina is focused on 'size and power' as it pursues its de facto government mandate to boost Chinese agricultural productivity. Ren's Syngenta purchase is therefore 'a huge deal for China'.

* *Writers are the FT's Beijing Bureau Chief, and Switzerland and Austria Correspondent, respectively. Abridged from an article appeared in the* Financial Times *on February 05, 2016*

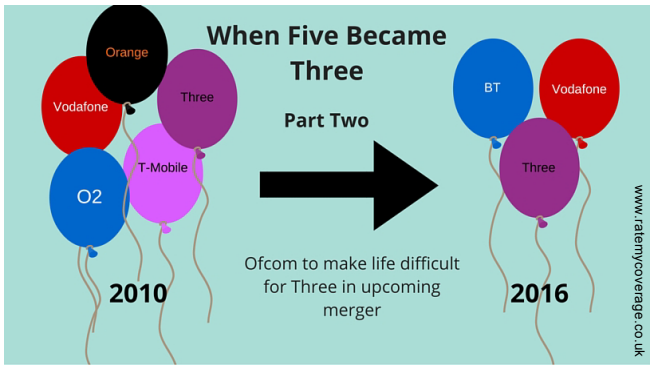
A Mobile Merger that Threatens Healthy Competition

Sharon White*

What would Herbert Hoover, the pioneering US president who excelled at engineering and economics, make of today's digital society? He would surely be impressed by the range of affordable devices we use each day, from smartphones to tablets. But I do not think he would be surprised by the economic forces that brought all this about.

Competition is the lifeblood of today's telecoms market, spurring innovation, better coverage and fair prices. As President Hoover observed: "Competition is not only the basis of protection to the consumer, but is the incentive to progress."

To see that happening today, take the UK mobile phones sector, where four networks compete for customers. Consumers have enjoyed innovative services and pricing in recent years, from unlimited internet data to free overseas calls. UK prices are among the lowest in Europe, with the cost of a typical package falling by two-thirds since 2003.



A combined Three/O_2 would shift balance of power between networks and retailers, writes Sharon White

Ofcom, the UK communications regulator, aims to maintain that progress through competition. So we are concerned that the smallest mobile network, Three proposes to become the biggest by acquiring its rival, O_2. The combined group would control more than four in 10 mobile connections.

This follows a pattern of mobile mergers in Austria, Ireland and Germany. Like those countries, the UK would be left with just three networks. Some argue that operators must consolidate in order to boost revenues, increase efficiency and widen their scale to invest.

But this is not a broken market. In 2015, UK mobile companies generated £15bn of revenue. They have been investing billions to roll out 4G technology, while maintaining cash flow margins above 12 percent. Competition, not consolidation, has driven investment.

We have put those arguments to the European Commission, which is reviewing Three and O_2's proposals, and outlined particular concerns.

First, the deal could mean higher prices for consumers and businesses. To date, Three's owner Hutchison has often acted as a 'disruptive' operator, successfully challenging established players through innovation and low prices.

We are analysing mobile prices over recent years in 25 countries. Our findings show that average prices are around 10-20 percent lower in markets with four operators and a disruptive player than in those with only three established networks. Austria's regulator says that, since the deal there, overall mobile prices have climbed 15 percent and by 30 percent for customers who only make calls and send texts.

Second, the UK's networks would face disruption. Recently, the four operators have combined their cables and masts into two networks — one used by Three and EE, the other by O_2 and Vodafone.

This works well: the four companies are still effective retail competitors, who compete independently on coverage and quality. Any merger would threaten that arrangement.

A third concern lies on the high street. Most phone contracts are still sold in shops, with independents taking a big share. A combined Three/O_2 would shift the balance of power between mobile networks and the independent retailers who help constrain the price of mobile handsets and bills.

Many of our concerns relate to competition between operators who own the networks on which mobile phones rely. Only these four companies can make your mobile signal faster, more reliable and widely available. Establishing a new mobile network might be one answer, but this would take time, and considerable investment.

While the merger is reviewed, Ofcom will keep working to promote healthy rivalry between operators. We want UK consumers and businesses to enjoy fair mobile prices and cutting-edge products for years to come. For that, we need strong competition: the basis of protection and the incentive to progress.

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* *Chief Executive, Ofcom. The article appeared in the* Financial Times, *on January 31, 2016*

Investment on Record High

China's investment in Europe and the US has reached record highs, despite the slowdown in its domestic economy.

Overall, state-owned and private businesses invested an unprecedented US$23bn in Europe — including Norway and Switzerland as well as the EU — in 2015 while investing US$15bn in the US, according to a report by Baker & McKenzie, a law firm, and Rhodium Group, a consultancy.

New investment in Europe was up 28 percent on the US$18bn registered in 2014, a smaller increase than 2014's doubling of the 2013 figure. Investment in the US was up 17 percent compared to 2014's level of US$12.8bn.

Concerns about China's economy have dragged down global financial markets, affecting prospects for the eurozone and many others. Such worries are one reason why the European Central Bank is expected to unleash a new round of economic stimulus.

(FT, 10.03.16)

Ease of Doing Business

Zimbabwean government, through the Ministry of Industry and Commerce is carrying out a study aimed at identifying and eliminating duplication of functions across regulators and on the overall licencing regime as part of efforts to improve the Ease of Doing Business in the country.

The process of reforming the business environment in Zimbabwe aims at reducing and simplifying procedures, automation of processes and review of processes and legislative framework.

The over-arching process includes reforming the investment promotion agency, Zimbabwe Investment Authority, and creating a One-Stop-Shop for business.

(www.allafrica.com, 25.03.16)

Impressive Economic Progress

Ethiopia has been doing its level best to ensure peace and stability in the region and would strengthen its role in fighting terrorism and extremism. The Ministry of Foreign Affairs has called for Swedish private companies to invest in various sectors taking advantage of the conducive investment climate in Ethiopia.

During talks with Foreign and Finance Committee of the Swedish Parliament Members, Minister Dr. Tedros Adhanom appreciated the support of the Swedish government and people to various sectors such as education, health and infrastructure, among others. The Minister also comprehended the support towards realising the Climate Resilient Green Economy Strategy.

The MPs on their part praised Ethiopia's impressive economic growth and discussed challenges facing the country. The delegation held discussion in the areas of climate change, migration and Ethiopia's role in the region as well.

(www.allafrica.com, 19.02.16)

Brighter Investment Climate

Global expectations are for foreign direct investments (FDIs) to decline in 2016 but **Malaysia** is banking on several bright spots that will provide strong linkages to domestic industries.

The Malaysian Investment Development Authority (Mida), which promotes foreign and domestic direct investments, already had RM33.8 billion worth of investments in the pipeline.

Global investment flows have risen 36 percent to a record US$1.7tn (RM6.9tn), the highest since the global financial crisis, but they are largely due to cross-border mergers and acquisitions that included major electronics industries. In the case of Malaysia, a softening in the real estate sector also impacted the numbers for 2015's performance.

(www.nst.com.my, 19.03.16)

Strives to 'Jump-Start' Growth

Indonesia has announced plans to liberalise rules on foreign investment in a number of industries, as President Joko Widodo strives to jump-start growth and draw investors to Southeast Asia's largest economy.

Facing criticism over creeping protectionism and regulatory flip-flops, the government has announced a big overhaul of the so-called 'negative investment list' – a highly sensitive catalogue of sectors in which foreign investment is limited.

A total of 35 industries were removed from the list, including film, tourism and restaurants, in what economists are referring to as a 'big bang' move that could drive efficiency and competitiveness in local industry.

(FT, 12.02.16)

Assisting in Development

The **US** Secretary of State, John Kerry said that the US government planned to invest US$600mn in Nigeria as development assistance to the country in the current financial year.

While commending the President Buhari-led administration's actions in the area of security and the attempt to diversify the economy, Kerry said that the US government was encouraged by efforts being put by the government to diversify the Nigerian economy in order to make it less dependent on a single commodity for export earnings, and that means we need to develop sustainability.

According to him, sustainable growth depends on a climate that is welcoming to investment and respectful of the environment and of workers' rights. He explained further that the US Power Africa Initiative was aimed at strengthening the energy sector, where shortage in electricity frustrated the population and impeded growth.

(http://nationalmirroronline.net, 30.03.16)

ANZ Sued for Rate-rigging

Australia's corporate regulator is suing ANZ Banking Group for alleged manipulation of the country's benchmark interbank borrowing rate, in the latest in a series of global interest rate rigging scandals.

The Australian Securities and Investments Commission accused ANZ of engaging in 'unconscionable conduct and market manipulation' to boost its profits in a test case that is likely to determine whether other big banks face similar legal actions.

Legal documents filed by the commission include dozens of recorded conversations between ANZ traders. ANZ rejected the allegations, saying it would be 'vigorously defending legal action brought by the commission'.

Australia's bank bill swap reference rate is the primary interest benchmark used in the country's financial markets to price billions of dollars of commercial loans and financial instruments issued every day. *(FT, 05.03.16)*

Multinational Profits Targeted

Multinational companies would be forced to publish a country-specific breakdown of the profits they make and the taxes they pay under plans being prepared by Brussels to counter tax avoidance.

According to **EU** officials, the European Commission is preparing a draft law to extend to other sectors a version of a set of rules that already exist for banks and the extractive industries.

The measures are in response to a growing public and political backlash in Europe against corporate tax avoidance.

Any wide-ranging push for more public transparency would likely provoke a backlash from business. It would move the EU beyond agreements reached by the OECD on preventing so-called 'base erosion and profit shifting' – the practice of exploiting mismatches in taxation rules to artificially shift profits to low tax locations. *(FT, 09.02.16)*

Impacting Corporate Compliance

Several recent critical changes within the **US** Department of Justice (DoJ) could impact corporate compliance in the US regardless of who assumes the presidency.

First, after Eric Holder resigned as attorney general amid public outcry resulting from DOJ's failure to prosecute anyone responsible for the 2008 global financial crisis, Loretta Lynch took over and immediately focused on prosecuting FIFA executives for international racketeering activities.

Three months later, Deputy Attorney General Sally Yates published 'The Yates Memorandum', outlining how DoJ will prioritise individual accountability in all future investigations into corporate fraud and other misconduct.

DoJ announced the creation of a new compliance counsel position to advise DoJ on corporate compliance programmes and whether companies should receive credit for having them.

These changes, coupled with recent enforcement actions against individual executives of food manufacturers, money services businesses, casinos, and other regulated entities, create an immediate impact on corporate compliance programmes, corporate governance, white-collar defence in government investigations or prosecutions, and all places in-between.

(www.dailybusinessreview.com, 29.03.16)

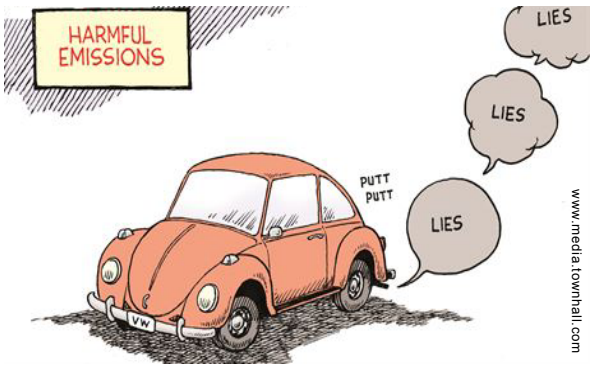
US Sues VW for 'Clean Diesel' Ads

The **US** Federal Trade Commission (FTC) voted unanimously to sue Volkswagen for alleged false advertising in connection with its ongoing Dieselgate emissions-rigging affair.

The FTC voted 4-0 to pursue legal action against Wolfsburg-based VW for advertising that its cars used 'clean diesel' technology. It would seek a court order requiring Volkswagen to compensate American consumers who bought or leased an affected vehicle between late 2008 and late 2015, as well as an injunction to prevent Volkswagen from engaging in this type of conduct again.

In similar cases, the FTC has imposed 'supervised compliance' on companies over a period of 10 years, which would add to the scrutiny and costs of business that VW will face in the United States.

According to the FTC's complaint, Volkswagen promoted its supposedly 'clean' cars through a high-profile marketing campaign that included Super Bowl ads, online social media campaigns, and print advertising, often targeting 'environmentally-conscious' consumers.



The German automaker faces potentially billions of dollars in fines in the US after admitting it equipped 580,000 cars sold in America with software that faked compliance with US emissions tests. Since admitting the deception, VW and the US Environmental Protection Agency (EPA) have been at loggerheads over a recall and solution for affected auto buyers.

The EPA rejected VW's initial proposal to recall and repair the affected autos, saying it lacked critical detail. The US DoJ is also investigating whether VW senior executives ordered the deception.

Volkswagen has repeatedly denied that the deception was ordered from above and has attributed the fraud to the work of a few mid-level rogue engineers.

The FTC is responsible for enforcing antitrust statutes that are meant to protect US consumers from deceptive and illegal advertising practices.

(www.global.handelsblatt.com, 29.03.16)

New Rules on Data Collection

The **European Union** (EU) is considering new rules to promote healthier competition among companies whose business models rely on collecting large amounts of data, the bloc's digital chief said.

"We are exploring right now what concrete measures would suit the interest of European businesses best so that they can fully benefit from the opportunities that data-driven innovation has to offer to them," the European Digital Commissioner Günther Oettinger said.

The effort includes looking for ways to mitigate the existing imbalance between data-rich and data-poor companies. Oettinger said that the data economy could make up about five percent of Europe's gross domestic product by 2020, provided we take the right measures to foster this market.

(www.nasdaq.com, 25.02.16)

Online Regulation into Effect

Foreign businesses operating in **China** fear new rules on online publication may mean further curbs, as groups from across politics, business and civil society try to understand the scope of the legislation.

The regulations are the latest step by the ruling Communist Party to rein in the Internet, seeing the web as a crucial domain for controlling public opinion and eliminating anti-Beijing sentiment. The rules say online content publishers should "promote core socialist values" and spread ideas, morals and knowledge that improve the quality of the nation and promote economic development.

The regulations, set to come into effect on March 10, will prohibit foreign ownership and joint ventures in online publishing and stipulate that all content be stored on servers in China.

(FE, 23.02.16)

'Over-the-top' Regulation on Anvil

The **Nigerian** Communications Commission is considering a framework for the regulation of over-the-top services in the Nigerian telecoms market.

Over-the-top services, otherwise known as OTT, are services carried over the networks, delivering value to customers, but without any carrier service provider being involved in planning, selling, provisioning, or servicing them. OTT services are offered through Internet communication.

In Nigeria, the most common OTT services are WhatsApp messenger, BlackBerry Messenger, Facebook, and Skype which are classified under social media applications.

In other words, telecom operators such as MTN, Etisalat, Glo, and Airtel lack direct control or influence over WhatsApp messenger, BBM, Facebook or Skype.

The growth of OTT services is encouraged by the access to 3G and 4G networks which offer mobile broadband and high speed IP data.

*(www.financial**nigeria**.com, 20.02.16)*

Air Traffic Tax Approved

Commercial passenger flights departing from **German** airports have been taxed since the implementation of the Air Traffic Tax Act in 2011. The tax is set according to the flight destination and the number of passengers transported.

The Act came into effect as a reaction to the 2008 financial crisis, particularly in order to reduce the deficit of the federal budget. According to the legislature, the Act is supposed to create incentives for environmentally friendly behaviour.

The Federal Fiscal Court of Germany approved the Federal Constitutional Court's decision, which stated that the Act is in line with the Constitution. The tax cannot be qualified as an EU-wide harmonised purchase tax, so the act does not conflict with EU law in that respect.

(ILO, 30.03.16)

Digital Convergence Initiated

After a long run of ambitious regulatory reform, the National Communications Commission (NCC) of **Taiwan** officially released its legislative proposal on five new laws to replace the existing Telecommunications Act, Terrestrial Radio and Television Act, Cable Television and Radio Act and Satellite Broadcasting Act.

The NCC says that it will change from a silo model to the horizontal-layers model used in telecommunications, traditional radio and television regulation in order to address the enhanced effect of the Internet.

The NCC clarified that the new proposal does not suggest any business separation or entity spin-off of existing telecommunications carriers and licensed operators; nor will the NCC require more licences and prior approvals for emerging communications services.

(ILO, 09.03.16)

Energy Market Remedies Set

The **UK**'s competition watchdog published a series of measures that aim to boost competition in the energy market, and to encourage customers to switch providers.

The UK's Competition and Markets Authority suggested placing price caps on all households using pre-payment meters, and have energy regulator Ofgem keep a database of customers who have been paying a standard rate for longer than three years, allowing rival suppliers to contact them.

The CMA said although competition has benefited customers who have switched to competitively priced fixed-term deals, about 70 per cent of consumers of the six largest energy companies still pay the most expensive "default" rate, or standard variable tariff.

(ILO, 10.03.16)

Renewable Energy Ventures on the Rise in Kenya

Geoffrey Kamadi*

In 2012, the British firm Tullow Oil in conjunction with Africa Oil Corporation discovered oil in Turkana – some 750km north of Nairobi. It is estimated that 600m barrels of oil are buried in this region.

According to Larmack Oyath, an energy expert working with Lartech Africa, an energy consultancy firm, these fears stem from the fact that the developed world is investing heavily in green energy technologies, to complement their overreliance on fossil fuel, thereby reducing their future demand for these types of fuel.

In addition, the fact that a steady supply of oil onto the global market appears set to persist, thereby keeping the commodity prices down in the near future, does not augur well for the industry. For one thing, the Organisation of Petroleum Exporting Countries (OPEC) and other players have been unwilling to cut back on production in order to boost prices, for fear of losing their market share.

What's more, the impending lifting of the four-decade ban on oil exports by the US and the lifting of international sanctions against Iran last month will only ensure sustained low prices. Future industry projections do not look all that appealing, not least for potential newcomers like Kenya.

But this depressing outlook on the future of oil might just be the spark needed to accelerate investments in cleaner sources of energy. Kenya is already pushing ahead with projects on this front.

Since the injection of 280MW of geothermal power into the national grid, this mode of power currently accounts for up to one-third of the national installed capacity, estimated at around 2,150MW. The Lake Turkana Wind Power (LTWP), which is the largest wind farm project on the continent capable of generating more than 300MW is set for completion at the end of 2016.

These environmentally friendly sources of energy are said to be central to the country's push to becoming a green economy.

Other ventures

Other notable renewable energy ventures currently under way in the country, albeit on a smaller scale include the generation of between 7-12MW of renewable power from an invasive plant species known as Prosopis juliflora (mesquite wood) at a cost of US$32m.

This project is supported by Power Africa, a US government initiative to bring power to more people across Africa.

www.africanbusinessmagazine.com

Technological advancements in clean energy and the plummeting value of oil are dampening prospects created by the recent fossil fuel discoveries in Kenya.

Farmers in Baringo County in mid-western Kenya have been contracted by Cummins Cogeneration Kenya Limited (CCKL) to supply the plant, thereby creating up to 2,000 jobs. CCKL is a global joint venture between Cummins Power Generation, a subsidiary of Cummins, Inc in the US and the UK-based Gentec Energy Plc, an engineering, procurement and construction contractor. Cummins Cogeneration is a pioneer in biomass-based power generation.

Biomass gasification is the incomplete combustion of biomass such as wood, agro-residue, forestry residue and municipal solid waste to generate a mixture of gases, heat and biochar. Also, the first ever on-grid biogas plant in Africa began operations in Kenya in April 2015 at Gorge Farm Energy Park in Naivasha, an hour's drive from Nairobi.

Capable of generating up to 2.2MW, the biogas plant utilises the most advanced technology known as Anaerobic Digestion (AD), which uses local organic crop waste as feedstock. Solar too is an area set for growth in the near future. With its strategic location on the equator, Kenya is exposed to a lot of sun.

The country receives more than 6kW/m2 of radiation daily, according to the Energy Regulation Commission (ERC). Solar water heating (SWH) growth is equivalent to 300,000 tonnes of oil equivalent, representing a 20 percent growth rate, according to Gachanja.

At another level, Kenya is flirting with the idea of setting up the first nuclear energy reactor in East Africa by 2025. It proposes to have four nuclear plants by 2031, each with an installed capacity of 1,000MW, which will provide power for the next 60 years.

* *Freelance Journalist based in Nairobi. Abridged from an article appeared in the* African Business Magazine, *on February 10, 2016*

New Anti-Money Laundering Rules

Governor Andrew M Cuomo announced a proposed new anti-money laundering regulation issued by the **New York** State Department of Financial Services that would apply to banks, trust companies, private bankers, savings banks, savings and loan associations, branches and agencies of foreign banking organisations, cheque cashers and money transmitters that are chartered or licenced under the New York Banking Law.

The proposed rule sets forth the minimum attributes of a robust transaction monitoring and watch list filtering programme for detecting illegal transactions.

Most notably, it requires a senior compliance officer of a regulated institution to certify annually that the institution has sufficient programmes in place to comply with the regulation – a requirement that is modelled on the certification approach of the Sarbanes-Oxley Act 2002. *(ILO, 15.01.16)*

Banking Tax Regime Changes

The **UK**'s Competition and Markets Authority has found that recent changes to the country's taxes on banks will not affect competition in the retail banking sector, although they likely will reduce tax advantages enjoyed by smaller banks that offset the sector's high entry barriers.

As of January 01, 2016, banks and building societies who meet the threshold are subjected to a supplementary corporate tax – which is set at 8 percent of the institution's banking sector profit.

The UK government has also reduced the bank levy, an annual charge based on the value of a bank's' liabilities. The levy is geared at ensuring banks contribute in a way that reflects its respective risks to the UK financial system. *(GCR, 01.03.16)*

Banks to Face Tougher Debt Limits

Global regulators are considering how to raise capital requirements for the world's biggest banks as they implement tougher debt-financing limits designed to rein in too-big-to fail lenders.

The Basel Committee on Banking Supervision already imposes higher capital ratios on the 30 largest global banks, led by JPMorgan Chase & Co. and HSBC Holdings Plc, based on the riskiness of their businesses.

The Committee is now seeking feedback on a surcharge to the so-called leverage ratio, which is based on the size of balance sheets, without consideration of risk. The charge could be made a hard minimum requirement that must not be broken, or designed as a buffer, which can be temporarily breached in times of crisis.

(Mint, 07.04.16)

New Rules for Failing Banks

The top **EU** official in charge of applying tough new rules for failing banks has rebuffed calls for the measures to be reconsidered, saying that they are an 'intended game-changer' aimed at ending the era of taxpayer bailouts.

Elke König, head of the Single Resolution Board, said that recent political anxiety about the measures in Italy, and volatile investor sentiment in the markets, was a sign people are now 'realising that the rules are really serious'.

A link between the new rules and investor sentiment has also been forged by Italy after the Central Bank Governor, Ignazio Visco, said the EU should revise the timetable for applying the rules, a point echoed by Finance Minister Pier Carlo Padoan. Italy's Prime Minister, Matteo Renzi, has also suggested a rethink is needed.

(FT, 12.02.16)

Overdraft Fees to be Capped

Regulators have warned banks they could cap charges they levy on customers who dip into an unauthorised overdraft.

The warning from the **UK** Competition and Markets Authority (CMA) came as it extended its investigation into the retail and small business banking sectors.

The inquiry was due to end in May but has now been pushed back to 12 August, after the publication in October of a provisional report that was criticised as an inadequate response to the dominance of the so-called big four.

Lloyds Banking Group, Royal Bank of Scotland, Barclays and HSBC have a 70 percent share of current accounts. Their dominance has not been cracked by challenger banks, which have taken only a five percent market share in 10 years.

As the CMA announced the three-month extension, it highlighted possible additional measures to make overdrafts fairer for customers.

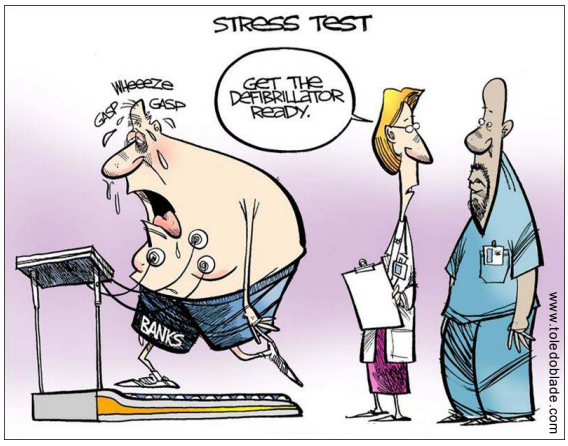
(TG, 07.03.16)

Banks Face Tougher Stress Tests

The biggest **US** banks are braced for a tougher round of stress tests from the Federal Reserve, which could crimp their plans for higher dividends and share buybacks.

The two-part exam, which became an annual event in 2011, is designed to assess whether banks have enough loss-absorbing capital to keep trading through a shock to the system similar to the collapse of investment bank Lehman Brothers in 2008.

The basic framework for 2016's test was toughened up, with the Fed assuming bigger falls in unemployment, a deeper trough in Europe and negative short-term interest rates throughout the nine-quarter planning horizon. *(FT, 22.02.16)*



An Interview with Margrethe Vestager

Margrethe Vestager became the head of the European Commission's Directorate-General for Competition in November 2014. In February 2016, ***Tom Webb*** *spoke to her about her record so far and plans for the future of DG Comp.*

You have now been in the job for more than a year; how do you feel everything has gone so far?
Obviously, I'm getting more and more experienced – not only on substance, but on the processes of the commission and of competition law enforcement.

What are the highlights from the cases you have closed? What really stands out for you?
To me, the tax cases mean a lot. They are very central when it comes to a level playing field: you can have two companies competing door by door for the same customer, with very similar products, and they have to compete on quality, service and price. But if one company basically pays very little or no tax, then obviously the playing field has been completely twisted. So far it has been very difficult for the customer, or the competitor, to see through that.

How do you interact with your fellow commissioners?
It very much depends. Because when it comes to the concrete cases, [interaction] is extremely limited. That is strictly the role of the enforcer. There are no politics in that, because we base cases on facts and evidence, and eventually they may have to stand up in court. That being said, on the insights of DG Comp, I try to contribute my experiences to the work teams I am part of.

What have your policy and enforcement priorities been since you took office? What do you expect they will be in the next 12 months or so?
It is always challenging to set priorities. We all have limited resources. With mergers, we have to do them and that's that. So then I try to see if the cases that we don't have to do are crucial for the most important sectors going forward. Those are the things I have mentioned already: energy, the digital single market, taxation, just to mention three which you'll also find in the more general commission priorities.

I had a couple of questions about recent cartel enforcement. First, 2015 was a very quiet year in terms of fines. Why is that?
I have seen the statistics. It's very hard to see what the appropriate level is, it depends very much on the timing of individual cases. Sometimes you have big cases being finalised in one year, then they get counted in statistics there but all the work was done the year before, or the year before that, or the year before that again. Some of the cases that we are handling right now are huge and complicated when it comes to antitrust. That goes without saying of the Google case and the Gazprom case, but also the Trucks cartel.

You've been public on your views about telecoms consolidation over the past year or so. Could you talk me through your views on consolidation?
Our role is to make sure we still have very competitive markets. The telecoms sector is crucial for societal development in almost every respect – business-wise but also for people to be included in society, so that they can communicate with modern devices. So I think that in every respect, the telco sector is a very important societal sector. The experience that we have is that competition thrives through a wide range of choice, a wide range of prices and through innovation.

Looking ahead, what do you want to achieve during the rest of your tenure? What would you want your legacy to be?
Not to be too abstract or too head-in-the-sky, but one of the things we really need in Europe right now is for people to have a sense of fairness. That if you really fight for it, then you may actually be able to make it. The big companies have not closed the market, the rich companies haven't just taken it for themselves; you can make something of yourself. If I can contribute to that feeling of fairness, that there is actually someone who is looking at the bigger companies and the richer companies, and those who collude and decide in back rooms what to do, then I would be very, very proud.

* *The Interview appeared in the* Journal Feature *on March 17, 2016*

Settlements Galore: How Many More?

Anurag K Agarwal*

Goldman Sachs settlement with federal prosecutors and regulators in US, to the tune of US$5bn for selling faulty mortgage securities to investors seven years back was announced. Earlier JP Morgan and Bank of America had settled for US$13bn and US$16bn respectively. These are huge sums of money and besides these humongous Wall Street firms, other firms have also settled at different points of time.

These are extremely serious issues about the state of corporate governance in large firms. Is the world being given a thought to ponder upon that one can do any wrong and get absolved of it by paying for it in hard cash? This trend is not sending the right signals to future business leaders. Some of them, after reading these stories, may really start believing that this is the accepted method of doing business, if not the right and ethical method.

Settlements as such are good for companies as they move out from the zone of uncertainty of litigation, however, for a country like the US the advantages are not much except getting a big chunk of money to the exchequer and also avoiding legal costs of fighting out the legal battle against the companies in the court of law. Legal costs in the US are often prohibitive and that's why it, at times, makes sense to settle. But, the business fraternity gets into the habit of doing something wrong intentionally and then paying a fine to settle it.

What can be said about the 'intentional' wrongdoing? Can Goldman Sachs and others take the plea that whatever they did was inadvertent and unintentional? It is very difficult for anyone to believe that marketing and selling faulty mortgage securities can be unintentional. Top companies like them employ some of the smartest executives who are expected to understand the difference between grain and chaff. The fiduciary duty of top executives is to make decisions in the interest of the company, and but no stretch of imagination they can be permitted to do anything illegal.

A question arises: how many more settlements are in the offing? A related question is about the quantum of settlement amount. These amounts are obscene by any standards, considering the fact that many big size companies' net worth is less than these amounts. How come such settlements are approved without many heads rolling?

The irony is that in spite of making wrong and illegal decisions, very few top executives get penalised. The companies live merrily after paying the fine and settling the matter. Conflict of interest by managers and directors against the company is taken seriously by the company and often more than adequate action is taken by the company against them. However, when talked about the legal enforcement, one experiences that they do not get commensurate penalty, forget about more than adequate.

After banks and consulting firms, now it is the turn of automobile companies. Winterkorn from Volkswagen got the advantage of his golden handshake and received millions of dollars even after intentionally doing something wrong – the cheating software installed in the diesel cars. He claimed that he did not know about it. But, if the CEO of a company doesn't know what is happening in the company, it is sheer dereliction of duty and abdication of responsibility. What is going to happen to Volkswagen after all the investigations? Another settlement may be on the cards.

There have been allegations made against Renault also and investigations started. GM had already settled for intentional wrongdoing. Toyota along with airbag company Takata is in trouble and may be settling very soon. This trend is seen growing and the main concern is about lessons one learns from such settlements. Legal and regulatory environment should become better and strict so that companies are prevented from adopting illegal and unethical methods to earn the extra buck.

Safety should be the top priority. Deterrent effect – whether settlement of litigation – should be such that no company even tries to take investors and consumers for a ride.

– *Professor at Indian Institute of Management. Abridged from an article that appeared on* Daily News and Analysis *on January 19, 2016*

Antitrust Regimes Derailed M&A Deals worth More than €60bn

According to the report, which analyses merger control activity for 2015 across 16 jurisdictions, a further 92 deals required remedies – 38 of which had remedies agreed during the initial review period with the remaining majority (54) being subjected to remedies following in-depth investigations. One factor keeping the number of conditional clearances relatively low is a growing preference by merging parties of agreeing to pre-emptive divestment arrangements as a way to avoid formal remedies.

From a sector perspective, telecoms and life sciences mergers accounted for the highest ratio of antitrust intervention compared to the global volume of deals in these sectors.

Antonio Bavasso, the London based Co-Head of Allen & Overy's Antitrust practice, commented: *Over the course of 2015 we have continued to see confidence to engage in strategic deals. These transactions are the ones that often raise antitrust issues and authorities have responded firmly.*

The number of mergers referred to an in-depth investigation is still low compared to the overall number of transactions in any given year. While the stakes are high for those that do require remedies or face prohibition, a positive sign is that not all in-depth investigations result in antitrust intervention.

In the UK, six out of seven in-depth cases were cleared without remedies, which may come as a surprise, given the voluntary nature of the UK regime. In China, only two decisions out of a total number of 314 resulted in remedies. This was reflected in a number of jurisdictions, where the majority of transactions were cleared unconditionally at Phase 1.

The US and EU, however, bucked the trend. In the US, 25 in-depth investigations resulted in remedies and one deal was prohibited, compared with an estimated 16 deals that were subject to in-depth investigations but ultimately received unconditional clearances. In the EU, seven out of eight transactions involving in-depth probes required remedies. This is not surprising, given the concentration of complex mega-mergers that took place in the US in 2015, and the European Commission's role to investigate the most complex, high-value transactions in Europe.

There is a significant shift underway in terms of the types of remedies imposed, with authorities becoming much more willing to accept behavioural commitments relating to the future conduct of the merging parties, such as the licensing of a brand or asset or granting access to a network. Hybrid remedies that combine both structural divestments and behavioural commitments are also becoming more common. In 2015, 37 percent of remedies following in-depth investigations involved either standalone behavioural or hybrid remedies.

Last year's record level of high-value M&A transactions was met by increased interference by antitrust regimes around the world as 20 deals, worth over €60bn, were prohibited or abandoned, according to Allen & Overy's Global Trends in Merger Control Enforcement Report.

Elaine Johnston, the New York-based Co-Head of Allen & Overy's Antitrust practice, commented: *While we're definitely seeing an increase in behavioural remedies globally, the US is the exception. The US regulators have a long-standing preference for structural remedies that require minimal long-term monitoring.*

The increasing complexity of deals is also extending the timeline of in-depth investigations to between five to eight months, and in some cases longer.

One extreme case in the US in 2015 took approximately 18 months from notification to the conclusion of trial. In the EU, some formal investigation periods stretched up to eight months but, in practice, were much longer if you take into account the initial informal discussions with the European Commission. In China, one 2015 probe reached eight months from filing, although overall timings have improved significantly on previous years.

* *The news item appeared in* www.allenovery.com *on February 11, 2016*

Publications

Economiquity

The January-March 2016 issue of Economiquity carries an article entitled, 'India's Solar Panel Dispute: A Need to Look Within' which states that the 'Make in India' initiative took a new hit when the WTO dispute settlement panel ruled that India cannot discriminate between foreign and domestic suppliers of components for solar panels used by solar power developers in India. A closer look at the case reveals that we are not allowed to discriminate.

A special article by Otaviano Canuto opines that trade has been a key driver of global growth, income convergence, and poverty reduction. Both developing countries and emerging market economies have benefited from opportunities to transfer technology from abroad and to undergo domestic structural transformation via trade integration in the last decades. Yet, more recently, concerns have been raised over whether the current pace and direction of world trade lead towards a lesser development-boosting potential.

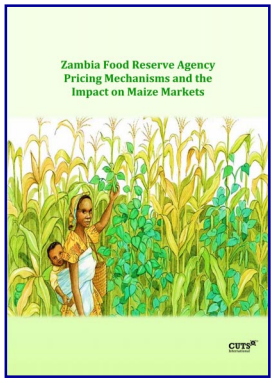
Another special article by Robert Glasser states that By tackling the environment we can also mitigate the impact of disasters, as heatwaves, droughts and floods threaten the lives of millions.


ECONOMIQUITY

India's Solar Panel Dispute: A Need to Look Within

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

Research Report



Zambia Food Reserve Agency Pricing Mechanisms and the Impact on Maize Markets

This report investigates, and provides an understanding of Food Reserve Agency (FRA)'s pricing mechanisms in the maize markets in Zambia by assessing: FRA's rationale for setting a maize floor price; the price determination process; and the floor price effect in maize markets in the country.

Analysis shows that setting a floor price in maize markets is based on welfare and political concerns, and is aimed at providing adequate production incentives and stabilising maize prices for farmers. The paper hypothesises three major factors to influence price determination by the FRA in particular years before, during and after elections and expected sales. The report found that a one percent increase in expected sales leads to a 0.5 percentage increase in FRA price and a 1.7 percentage increase in quantities purchased.

www.cuts-ccier.org/CREW/pdf/Zambia_Food_Reserve_Agency_Pricing_Mechanisms_and_the_Impact_on_Maize_Markets.pdf

We want to hear from you...

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

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

Sources

BBC: British Broadcasting Corporation; BL: The Hindu Business Line; BS: Business Standard; DM: Daily Mail; ET: Economic Times; FE: Financial Express; FT: Financial Times; GCR: Global Competition Review; ILO: International Law Office; ST: Straits Times; TG: The Guardian; TH: The Hindu; WSJ: Wall Street Journal

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