REGULETTER

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Special Articles

What Would a India-US Free Trade Agreement Look Like?

If India has to realise the imperative of creating new jobs, the country's manufacturing base needs to be expanded with a clear trade strategy in mind. The world economy is on the upswing, offering better potential for India's exports. Faced with a WTO losing its animal spirits, India needs bilateral trade deals with countries with big markets such as the US.

Speaking at the Davos summit on the global response to increasing protectionism, Prime Minister Narendra Modi *inter alia* lamented the fact that no bilateral or multilateral trade negotiations are going on. Agreements on trade help with nil or lower tariffs and predictability of rules.

US Ambassador to India, Ambassador Kenneth Juster expressed his 'aspiration' to create a vision for an eventual free trade agreement between the two largest democracies of the world.


The Wire

Juster also said that since the signing of the civil nuclear deal in 2008, this FTA could be another possible signature initiative for furthering ties with India. While this is understandably a long-shot, in order to create such a vision, we need to have a clear roadmap lined up with a number of confidence-building measures. At least two of these are important in the current context.

Domestic regulatory environment

The domestic regulatory environment – standards, intellectual property, public procurement policies – play an important role in determining international trade. There is need for improvement in the predictability of domestic regulatory environment in the US. Both countries should, therefore, work together to improve their domestic regulatory environment in specific areas to boost the confidence of their companies to trade with each other. Other than enhancing the volume of bilateral trade, this will also help bilateral investment flows.

Partnership at the multilateral level

India and the US working together for institutional reforms of the multilateral trading system will not only strengthen this body but will also act as a significant confidence-building measure for enhancing bilateral ties. As articulated by ambassador Juster "… the true value of our partnership is that it can better enable each of us to positively influence global affairs …"

Therefore, we need to understand the underlying thoughts in Juster's address, which resonates perfectly with the overall thinking of modern-day economic diplomacy. First, economic diplomacy starts with trade and ends with trade and investment. And second, making trade possible and making trade happen are two different things.

Through grounded research, extensive stakeholder consultations in both countries, including taking into account strategic, security and political aspects of our bilateral ties and those in the Indo-Pacific region, we need to take specific confidence-building measures to create a vision for this free trade agreement.

CUTS Centre for Competition, Investment & Economic Regulation
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Principles on Procedural Fairness

The International Competition Network (ICN) held its 17th Annual Conference, hosted by the Competition Commission of **India**, on March 21-23, 2018 in which nearly 500 delegates from more than 70 jurisdictions participated.

The Agency Effectiveness Working Group produced new recommendations on due process in competition law enforcement. The FTC-led project developed Guiding Principles for procedural fairness, recommendations for internal agency practices that support sound decision making, and implementation tips for good agency enforcement process.

The working group introduced new video training modules on merger remedies and enforcement cooperation as part of the ICN's online interactive educational centre for competition authorities from around the world.

(www.ftc.gov, 23.03.18)

Law to Promote Competitiveness

Angolan Parliament unanimously approved the Proposed Law on Competition, which aims to promote the competitiveness of various economic agents and the efficiency in the allocation of factors of production and distribution of goods and services.

The Bill establishes the creation of the Competition Regulatory Authority, which shall prevent and punish the actions of economic agents that are not in compliance with the rules and principles of competition.

The proposed Competition Law aims to introduce, for the first time in the Angolan legal system, a system of defence, through a law that integrates principles and rules of sound competition, morality and ethics.

(http://cdn1.portalangop.co.ao, 20.03.18)

Reforms to Merger Control Regime

The Department for Business, Energy and Industrial Strategy (BEIS) announced that it was introducing reforms to the existing **UK** merger control regime to strengthen the government's power to scrutinise mergers on the grounds of national security. This is the first significant amendment to the UK merger control regime since the Enterprise Act 2002 came into force.

These changes take place in a context of heightened concern about national security issues, in particular in the high tech sector, the approach of Brexit, and that fact that similar regimes exist in several other countries.

However, there are concerns among business and practitioners that the new regime should not add to red tape for transactions, particularly where there is no likelihood of national security issues arising.

(www.eversheds-sutherland.com, 17.03.18)

Amendments to Competition Act

The process by which the Competition Commission of **Singapore** (CCS) gives confidential advice to businesses planning to merge has now been codified, under amendments to the Competition Act passed in the Parliament.

Senior Minister of State for Trade and Industry Koh Poh Koon replied that the CCS has the power to review any merger which may result in a substantial lessening of competition in any market in Singapore.

The new Section 55A applies in situations where information about a merger is not yet in the public domain. In the spirit of confidentiality, the CCS will base its assessment of such anticipated mergers on information provided by the merging entities.

(TST, 20.03.18)

Protecting Consumer Rights

The **Nigerian** National Assembly recently passed the Federal Competition and Consumer Protection Bill which is aimed at promoting a competitive market and protecting consumer rights.

The Bill applies to all businesses and all commercial activities within, or having effect within Nigeria and extends to undertakings in which the Federal, State or Local Government or any of their agencies have a controlling stake.

A general fine imposed by this Bill for offences committed by companies is an amount up to 10 percent of the company's annual turnover in the preceding business year. There are also indications that the updated version of the Bill imposes a tax of 0.5 percent of after-tax profits on all companies in Nigeria payable to the Competition Commission.

(http://pwcnigeria.typepad.com, 26.02.18)

Chinese Antitrust Authorities to Merge

The **Chinese** legislature decided on a major restructuring of governmental agencies – with a profound impact on antitrust enforcement in the country.

As far as antitrust is concerned, the focus lies on the new super market regulator – the State Administration for Market Supervision (SAMS) which will assume the functions of the existing State Administration for Industry and Commerce (SAIC), the Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) and the China Food and Drug Administration (CFDA). It is also tasked to supervise the restructured State Intellectual Property Office (SIPO).

The three existing antitrust enforcement units within the National Development and Reform Commission (NDRC), SAIC, and the Ministry of Commerce (MOFCOM) will all be transferred to SAMS, which is anticipated to merge them into a single antitrust bureau.

(www.antitrustconnect.com, 21.03.18)

China's Antitrust Regime Comes of Age

Henny Sender*

Regulators in China will shortly rule whether the US$18bn purchase of Toshiba's semiconductor chip operations by a group led by Bain Capital and South Korean chipmaker SK Hynix violates Chinese antitrust rules.

The decision will mark the latest show of power by Chinese regulators, with competition rules increasingly becoming a key lever for Beijing to influence global industries in which its so-called 'national champions' take part.

The role of national regulators has become a key factor for cross-border mergers and acquisitions, with sensitivities heightened after the Committee on Foreign Investment in the United States, which reviews national security implications, moved to block the takeover of Qualcomm by Singapore-based Broadcom. The now-pulled deal would also have gone before China's authorities, which have become no less stringent in their protection of national interests.

For example, Bayer gained conditional approval from China's Commerce Ministry for its US$62.5bn acquisition of Monsanto, but only after granting 'fair, reasonable and non-discriminatory access' to digital agriculture offerings in China to Chinese developers of farm management software.

With the next decision likely to be on Toshiba, analysts say that China's 10-year-old antitrust regime has grown to match those in the US and Europe for impact on competition. In doing so, they argue, China will also have achieved a second, more intangible goal to further national economic and development interests.

With the Toshiba deal, if Beijing determines that the transaction has the potential to lead to arbitrary or discriminatory behaviour it can impose conditions on the new owners in exchange for its sign-off.

China now ranks with the US and Europe as a major hurdle for companies considering global M&A

China's National People's Congress passed a plan to merge China's three competition authorities under a single body likely to be called the State Administration for Market Supervision. This was taken by local advisers as a sign of further strengthening of competition policy in China since the agency will report directly to the State Council.

Technology has been a major focus for the Chinese government. In February 2015, China's National Development and Reform Commission levied a fine of almost US$975m on Qualcomm, the heaviest ever in China. This followed complaints from the Mobile China Alliance, which represents the mobile phone industry, and the Internet Society of China.

The NDRC investigation concluded that Qualcomm abused its dominant position in regard to certain technologies and that some of the US company's practices involved excessive pricing in return for access to patents and the bundling of essential patents and less vital ones.

Similarly, the Ministry of Commerce (Mofcom) approval in 2012 of Google's purchase of Motorola Mobility was conditional on Google's commitment to license its Android operating system free of charge and a pledge not to discriminate among handset makers.

"In this case, it is possible that Mofcom was concerned that Google would be able to harm economic development, (by the adverse impact on) Chinese handset manufacturers post transaction, thereby hampering a major Chinese industry," lawyers at Jones Day noted in reviewing that approval.

However, experts now expect that antitrust authorities could turn their sights nearer home given the growing strength, and in some cases dominance, of tech-based based groups. Disputes and arguments around abuse of market power are likely to increasingly involve local firms on both sides lobbying to score points against their rivals.

For example, both the NDRC, the most powerful of the three entities that dealt with antitrust issues in the past, and the Ministry of Commerce are beginning to look at access to platforms, such as Alibaba's powerful ecommerce operations.

Toshiba will be the next test for China's antitrust regime, with its lengthy deliberations having already caused the deal to be delayed. Cynics note that now that Toshiba is recovering, the Chinese leverage on the outcome of that transaction is likely to have diminished. Still, antitrust advisers will scour the eventual ruling for clues to evolving policy regarding future cross-border M&A, whether China is a direct participant or not.

* *Chief Correspondent, International Finance, Financial Times, based in Hong Kong. Abridged from an article that appeared in the* Financial Times*, on April 04, 2018*

Eight Trends in Competition Law in 2018

Leana Engelbrecht

The Competition Amendment Bill (2017) has been published in the Government Gazette for comments. The Bill identifies five priorities in terms of competition law amendments, with the first priority being the strengthening of provisions of the current Competition Act that relate to prohibited practices and mergers. Secondly, the impact of anti-competitive conduct on small businesses and businesses owned by historically disadvantaged persons is given more attention. Thirdly, the Bill addresses market inquiries, strengthening the actions that can be taken to address features and conduct that prevent, restrict or distort competition.

Further, the Bill highlights the necessity to promote the alignment of competition-related processes with other public policies in South Africa. Lastly, alongside their increased powers, the administrative efficacy of the competition regulatory authorities is also addressed by the Bill.

As the South African Competition Amendment Bill seeks to give competition authorities bigger teeth, so we are likely to see greater enforcement and an impact on commercial dealings in the year to come.

Healthcare inquiry finally finalised

The Competition Commission was expected to release its report on the health market inquiry in December. The Commission launched the inquiry in 2014 to address concerns regarding the functioning of private healthcare in South Africa. A further extension to the deadline for the publication of the Inquiry's report was published earlier in December and the Commission is anticipated to finalise this inquiry by August 31, 2018.

Continued market inquiries

The Competition Commission has launched several market inquiries in identified priority sectors in the past few years. It has undertaken inquiries in the grocery retail, private healthcare, LPG, data services and public passenger transport sectors, among others. Notably, the proposed amendments include a provision that will require the Commission to complete market inquiries within an 18-month period.

More unique enforcement approaches

The Competition Commission recently released a draft competition code of conduct for the automotive sector to deal with concerns regarding anti-competitive conduct as well as transformation in the sector. The code of conduct is only binding on its signatories and does not constitute an industry-wide enforcement guideline.

Stronger crack-down on employment impact of mergers

The competition authorities of South Africa have always taken their mandate to protect the public interest as an objective in addition to ensuring the competitive functioning of South African market. It is well known that any loss of employment as a result of a transaction will be scrutinised and merging parties will only be permitted to engage in merger-related retrenchments if it is absolutely necessary.

Prohibition of mergers that may result in co-ordination

The Competition Commission continues to be inclined to prohibit any merger that, in its view, may result in coordination between competing firms due to consolidation in the industry. In conducting this part of its merger assessment, the Competition Commission will consider, *inter alia*, the number of players in the market and the number of players that will remain in the market post-merger, any history of collusion in the relevant markets and the risk of possible future coordination due to the change in the structure of the market.

International trend - prosecution for not providing accurate and complete information during merger approval processes

While the Competition Commission has not yet sought to prosecute any firms for not providing complete or accurate information in mergers, internationally there is a prevalent trend of antitrust regulators prosecuting firms on this basis. In South Africa, the Commission's current modus operandi when it is not provided with complete or accurate information is to take a diplomatic and collaborative approach and to ask for the information and, in rare cases, issue a certificate of incomplete filing.

International trend - the development of the new innovation theory of harm

The European Commission has developed a non-product-specific innovation theory of harm to justify the prohibition of mergers. The EU Commission suggests that mergers involving innovators in concentrated industries with high barriers to entry, and in industries with no history of innovation outside of the sector, might result in a reduction of the number of new innovative products being developed and should thus be viewed as anti-competitive.

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* *Senior Associate, Competition Practice at Baker McKenzie. Abridged from an article that appeared in* www.bizcommunity.com on January 12, 2018

ABUSE OF DOMINANCE

Bezeq Abused Telecoms Leadership

Israel's anti-competition regulator charged Bezeq Israel Telecom with abusing its position as the dominant player in the country's telecoms sector, saying its monopoly over infrastructure may harm the supply of telecoms services.

Bezeq is one of two companies providing telecoms infrastructure nationwide, although Bezeq is the main player. A 2012 reform created a wholesale market and required Bezeq to lease its lines to smaller competitors.

The authority said the suspected abuse by Bezeq involved blocking and obstructing competitors who wished to deploy a line-based communications network over the Bezeq infrastructure.

(Reuters, 08.03.18)

Breaking up of Safaricom Ditched

Kenya's telecoms regulator has ditched a proposal to break Safaricom up into separate telecoms and financial services businesses due to its dominant size.

The smaller operators have long argued that Safaricom enjoys a dominant position because it accounts for 90 percent of revenues in areas such as voice calls and text messages.

Safaricom rejects the claims of dominance and it has in the past accused the regulator of being preoccupied by helping its smaller rivals rather than focusing on consumers. *(BD, 03.01.18)*

Private Damages Directive

The anticipated amendments to the **Bulgarian** Protection of Competition Act (PCA) implementing Directive 2014/104/EU on the rules governing actions for damages for competition law infringements have finally been promulgated on January 03, 2018.

The new rules concern actions for damages resulting from violations of antitrust rules. Damages incurred from unfair competition and abuses of stronger bargaining position remain outside of the scope of these amendments.

As a general rule, applicable to all breaches of competition rules, individuals and legal entities that have incurred damages are entitled to compensation, even if the victims were not direct targets of the violation.

(Lexology, 26.01.18)

Excessive Pricing by CD Pharma

The **Danish** Competition Authority found that CD Pharma, a pharmaceutical distributor, abused its dominant position on the Danish market for the sale of oxytocin, a peptide hormone used as medication to facilitate childbirth.

CD Pharma had allegedly increased by 2,000 percent the price for Syntocinon, which contains oxytocin, after Amgros, a wholesale buyer for hospitals, had turned to it because it could no longer rely on parallel trader Orifarm, its established supplier of oxytocin, whose own sources of supply had dried up.

As the exclusive distributor for Denmark of Syntocinon, CD Pharma had no sourcing problems. CD Pharma had not been able to offer an objective justification for the price increase.

(www.en.kfst.dk, 31.01.18)

Broadcaster Fined for Abuse

beIN Media Group rejects the US$22.7mn fine set by the **Egyptian** Competition Authority and upheld by the Cairo economic court.

The Egyptian Competition Authority (ECA) argues the Qatari company had abused its position when transmitting its coverage of the main African football competitions. Rather than transmit the coverage on Egypt's Nilesat satellite, viewers were required to point their dishes at Qatar's Suhail Sat satellite.

beIN said the 'unfounded allegations' have no basis in competition law and the regulator was acting without authority.

(www.broadbandtvnews.com, 15.03.18)

MyCC's First Abuse Case Upheld

The **Malaysia** Competition Appeal Tribunal (CAT) upheld the infringement decision by the Malaysia Competition Commission (MyCC) in June 2016, which marked MyCC's first abuse of dominance case since its establishment in 2012.

The CAT upheld MyCC's financial penalty of £420,000 and further increased this by £760,000 taking the total fine to £1.2mn. The increased penalty reflects the accumulated daily penalty for the continuation of the infringing conduct in the period from the date of MyCC's decision to the date of the CAT's judgment.

In Malaysia, online foreign workers permit renewal applications can only be processed if the foreign worker's employer purchases three mandatory insurance policies.

(Lexology, 17.01.18)

Apple-Google to Face Legal Action

France is taking Google and Apple to court over 'abusive' app developer practices and could impose millions of euros in penalties. Finance Minister Bruno Le Maire expected the Paris commercial court to impose sanctions that would likely cost Google and Apple millions of euros.

The Minister denounced the prices and contractual terms imposed by the Internet giants on the nation's developers. Maire reiterated that his government was working to establish international rules obliging digital giants to pay taxes wherever they operate.

They were expected to reach an agreement by the end of 2018 and apply it across Europe at the beginning of 2019, he added. *(Reuters, 14.03.18)*

PRICE FIXING

Coffee Producer Face Penalties

The **South African** Competition Tribunal announced that Secret River Trading (trading as Caffeluxe) had admitted to fixing the prices of coffee capsules to retail customers.

The nation's Competition Commission said it had emerged that Caffeluxe threatened to not supply to wholesaler Global Coffee after a discount it made to Checkers Stores in 2014, if Global Coffee did not increase its price to the agreed shelf price.

The Commission said, "In terms of an agreement in effect between 2013 and May 2014, Global Coffee was precluded from undercutting Caffeluxe when selling coffee capsules to grocery retail outlets." Caffeluxe will pay an administrative penalty of US$63,789, payable in tranches. *(ANA, 25.03.18)*

Honda Faces CCI Probe

The Competition Commission of **India** (CCI) ordered an investigation against Honda Motorcycle and Scooter India (HMSI) for various anti-competitive provisions in its agreement with dealers.

It was alleged that HMSI had perpetuated tie-in arrangements, imposed resale price maintenance and maintained a discount control mechanism through the standard form of dealership agreement.

After finding *prima-facie* evidence of competition norm violations, the watchdog has decided to carry out a detailed probe against the company. *(ET, 15.03.18)*

Railroad Investigation Closed

Mexico's antitrust watchdog has closed an investigation into a possible lack of competition in interconnection services among the country's principal railroad operators.

The investigation, carried out by the Federal Commission for Economic Competition (Cofece), investigated whether Groupo Mexico, and Kansas City Southern of Mexico who controls 73.3 percent of the country's railroads, could potentially set prices without competitors having the ability to negotiate rates.

"The market definition proposed by the authority in its preliminary ruling, and based on which it concluded that there were no conditions of competition, is not duly accredited and supported in the file," said Cofece in its resolution. *(WSJ, 08.03.18)*

Takata Charged with Price Fixing

South African competition watchdog charged Takata Corp with price fixing in another blow to the Japanese auto safety products maker currently in the throes of a massive airbag scandal.

The Competition Commission said Takata worked with other firms to fix prices, divide the market and collude in their bidding for four different seat belts and airbags contracts with three automakers.

The case, which has been referred to the Competition Tribunal for prosecution, comes almost a year after Takata launched a recall of about 125 million vehicles worldwide due to faulty airbags. *(Reuters, 14.03.18)*

Aerial Imaging Cos. Under Lens

According to **South Korea's** antitrust watchdog, it has levied a combined US$10.1mn in fines on 14 aerial imaging companies for allegedly rigging bids for mapping projects.

Geospatial Information Technology Co. and 13 others are accused of colluding to win 37 bids placed by the National Geographic Information Institute (NGII) to take aerial shots, which were used to make maps, according to the Korean Fair Trade Commission (KFTC). The bids were made between 2009 and 2013.

The KFTC agreed to split the bids and help each other win their respective contracts, with others supposedly taking part in the process, with the aim of keeping bid prices within a set range. *(CPI, 18.03.18)*

Banks Violated Antitrust Laws

Japanese regulators said Bank of America Merrill Lynch and Deutsche Bank had violated antitrust laws in the alleged fixing of bond prices, reported Reuters.

Japan's Fair Trade Commission (JFTC) found that London-based traders for the banks in 2012 had exchanged information and agreed on prices on US-dollar bonds issued by the European Investment Bank.

Tsuyoshi Okumura, a senior investigator for the JFTC's International Antitrust Investigation Bureau, said this violated Japan's anti-monopoly laws because a Japanese bank, Bank of Tokyo Mitsubishi UFJ, was the purchaser of the bonds. *(Reuters, 29.03.18)*

Visa Fights Antitrust Charges

www.PYMNTS.com

Visa is fighting back against accusations that it charges tourists excessive fees when they use their cards in the **European Union**. Visa will present its case against the antitrust charges in front of senior European Commission officials and national competition officials.

If the company loses the case, it could face a substantial fine — up to 10 percent of its global turnover. Six months ago, the EC said that the fees charged to retailers who accept Visa cards issued outside the EU could lead to higher prices for consumer goods and services.

With the EU looking to cut these costs and improve cross-border trade, the case against Visa is a crucial one. In addition, most retailers see these fees as a hidden cost for customers. *(CPI, 27.02.18)*

The Case for Ending Amazon's Dominance

Tim Harford*

Antitrust authorities should not be making life easy for incumbents

It should not be difficult to love Amazon. To consumers, it offers choice and convenience. Countless internet ventures have relied on its cheap, flexible cloud computing services to start and scale up. Amazon makes titans such as Walmart work hard for their revenue, offers a shopping search engine that is Google's only serious rival, raises the bar for television networks and sells tablet computers at a price to make Apple loyalists stop and think.

Amazon is also giving the US economy what it needs. Two economists, Germán Gutiérrez and Thomas Philippon, have argued that corporate America is underinvesting. One reason is that companies are impatiently funnelling cash to investors and executives rather than take a long-term view.

If that is a worrisome state of affairs – and it should be – then Amazon is the shining counterexample. The online retailer's strategy is driven not by short-term profit but by investment, innovation and growth. If only there were a few more companies like Amazon, capitalism would be in a happier spot. But there's the rub: there are not more companies like it. It's unique, and an increasingly terrifying force in online commerce. Should regulators act? If so, how?

It's worth first disposing of a bad argument: that Amazon must be challenged because it makes life miserable for its competitors, some of which are plucky mom-and-pop operations. However emotionally appealing this might seem, it should not be the business of regulators to prop up such businesses.

Regulators have a tendency to slip into the role of protecting incumbents with surprising ease. Marc Levinson's history of container shipping, The Box, describes Malcom McLean – the entrepreneur behind containerisation, a risk-taking visionary reminiscent of Amazon's founder Jeff Bezos. When McLean tried to expand his operations, one of his largest obstacles was the Interstate Commerce Commission in the US, which regulated US railways from 1887 and interstate trucking from 1935. It's worth first disposing of a bad argument: that Amazon must be challenged because it makes life miserable for its competitors, some of which are plucky mom-and-pop operations

The ICC, writes Levinson, had to approve each new route, every new commodity and any new price schedule. When McLean wanted to start a trucking route at a low price, he had to hire lawyers and argue his case at the ICC, while his

competitors protested bitterly – "unfair and destructive", said the railways. He did not always get his way.

Antitrust authorities should not be in the business of making life easy for incumbents. What, then, should they do? There are two schools of thought. One is to focus on consumers' interest in quality, variety and price. This has been the standard approach in US antitrust policy for several decades. Since Amazon makes slim profits and charges low prices, it raises few antitrust questions.

The narrowing in antitrust thinking is described by Lina Khan in a much-read article, "Amazon's Antitrust Paradox". Khan berates modern antitrust thinking for its "hostility to false positives", arguing that it has become incapable of saying anything insightful about modern tech companies.

Unlike Khan, I share modern antitrust's hostility to false positives; there is a real cost to cumbersome and unnecessary meddling in a dynamic and rapidly evolving marketplace. US president Donald Trump's history of publicly attacking Mr Bezos is worth pondering too: do we really want the US government to have more discretion as to who is targeted, and why?

Antitrust authorities face a difficult balancing act. Regulate Amazon and you may snuff out the innovation that we all say we want more of. Punish it for success and you send a strange message to entrepreneurs and investors. Ignore it and you risk leaving vital services in the hands of an invincible monopolist.

There are no easy options, but it is time to look for a way to split Amazon into two independent companies, each with the strength to grow and invest. If Amazon is such a wonderful company, wouldn't two Amazons be even better?

* *English Economist and Journalist. Abridged from an article that appeared in the* Financial Times*, on January 20, 2018*

Greenlight to Bayer-Monsanto Deal

Bayer has received the green light from the EU to buy Monsanto, after promising to sell off substantial parts of its business, clearing a major hurdle to the last of a trio of mega-mergers consolidating the global agrochemical industry.

The German company promised to sell some of its herbicide and seeds businesses to rival BASF to alleviate the watchdog's concerns that the tie up with the giant American agribusiness would cut competition in the EU and lead to higher prices, lower quality, a cut in choice and less product innovation. Bayer will also licence BASF its digital farming portfolio.

(FT, 21.03.18)

Foxconn Snaps up Belkin

The Taiwanese company known best for manufacturing iPhones, Foxconn, will soon be the company behind some of the best known routers and other computer accessories. A subsidiary of Foxconn, Foxconn Interconnect Technology would acquire Belkin, which also owns the brands Linksys and Wemo.

Belkin, based in California, has been around for 35 years and is known today for creating an array of computer and phone accessories, including wireless chargers, laptop docks, and phone cases. Belkin purchased Linksys, which is well known for its home routers, in 2013. And it's been running a smart home system called Wemo for more than five years now.

Foxconn will pay $866 million in cash to acquire Belkin. It has pledged to build a US$10bn factory in Wisconsin, which could help it stay on the administration's good side.

(FT, 26.03.18)

Consumer Healthcare Venture

GlaxoSmithKline is buying Novartis out of their consumer healthcare joint venture for US$13bn, taking full control of products including Sensodyne toothpaste, Panadol headache tablets, muscle gel Voltaren, and Nicotinell patches.

Consumer remedies sold over the counter have lower margins than prescription drugs, but they are typically very well-known and durable brands with loyal customers.

The proposed transaction addresses one of our key capital allocation priorities and will allow GSK shareholders to capture the full value of one of the world's leading consumer healthcare businesses. *(WSJ, 27.03.18)*

Bristol-Myers Ink Cancer Drug Deal

Bristol-Myers Squibb will pay Nektar Therapeutics US$1bn to develop a cancer immunotherapy treatment – one of the largest deals ever inked for a single drug's development.

Nektar will test its experimental drug, NKTR-214, in combination with Bristol-Myers' best-selling cancer drugs Opdivo and Yervoy. Research will focus on 20 cancer indications across nine different tumor types, ranging from melanoma to lung cancers.

Through the deal, Nektar is eligible to achieve an additional US$1.78bn in regulatory and sales milestone payments from Bristol-Myers. If the FDA approves NKTR-214, Nektar and Bristol-Myers would split global profits by 65 and 35 percent, respectively.

(www.beckershospitalreview.com, 14.02.18)

General Dynamics to Acquire CSRA

General Dynamics and entered into a definitive agreement under which General Dynamics will acquire all outstanding shares of CSRA for US$40.75 in cash. The transaction is valued at US$9.6bn, including the assumption of US$2.8bn in CSRA debt.

The acquisition of CSRA represents a significant strategic step in expanding the capabilities and customer base of GDIT. CSRA's management team has created an outstanding provider of innovative, next-generation IT solutions with industry-leading margins.

The combination enables GDIT to grow revenue and profits at an accelerated rate. It will allow us to deliver even more innovative, leading-edge solutions to our customers.

(FT, 13.02.18)

Vodafone Eyes Liberty Global

Vodafone, one of the world's largest mobile operators, is in talks to buy large parts of John Malone's European cable group Liberty Global in a deal that may exceed €14bn in value and bolster the UK group's footprint across the continent.

Telecom companies are looking to bundle mobile and broadband services, and a combination would allow Vodafone's mobile businesses to compliment Liberty's strong fixed-line operations across Europe.

Vodafone owns wireless networks throughout Europe, including Italy, Germany and the UK, where it is the country's second-largest provider.

(FT, 02.02.18)

Banking & Insurance to Combine

China will merge its banking and insurance regulators in a long-awaited move to streamline and tighten oversight of the financial system in the world's second-biggest economy.

China will also transfer some of the banking and insurance regulators' roles to the central bank. Its financial system has become increasingly tough to regulate due to its sheer breadth.

It has grown rapidly in size and complexity, emerging as one of the world's largest with financial assets at nearly 470 percent of gross domestic product, according to the International Monetary Fund. *(Reuters, 13.03.18)*

Nod for Airtel-Tigo Rwanda

Telecom operator Bharti Airtel Ltd received regulatory approval to acquire Tigo Rwanda – a subsidiary of Luxembourg-based Millicom International Cellular SA.

With this acquisition, Airtel Rwanda operations will become Ebitda positive (operating profit), making whole of Airtel's Africa business profitable at the operations level.

The merged entity will have the largest customer base in Rwanda with 5.9 million subscribers. The combined networks of the two companies will serve customers with voice and data services, global roaming and mobile banking services and also have Rwanda's largest sales and distribution network. Airtel has operations across 16 countries, which include 14 in Africa.

(ET, 23.01.18)

Broadcom to End Bid for Qualcomm

Singapore-based Broadcom Ltd is planning to scrap its bid for Qualcomm Inc after US President Donald Trump blocked the chipmaker's proposed acquisition on national security grounds.

Broadcom will continue with its plan to redomicile to the US, a move that will cost it about US$500mn a year under a higher tax rate.

Being based in the US as opposed to Singapore will allow Broadcom to make what it believes will be acquisitions of US companies that will not fall within the jurisdiction of the Committee on Foreign Investment in the US, which scrutinises deals for potential national security concerns.

(Reuters, 13.03.18)

India Saw Record M&A deals

Corporate India announced merger and acquisition (M&A) deals worth US$1,893mn in February 2018, registering a 40 percent increase in value terms over the year-ago period was driven by big-ticket transactions.

According to assurance, tax and advisory firm Grant Thornton, there were 40 M&A transactions worth US$1,893mn in February, while in the corresponding period a year ago there were 32 such deals worth US$1,354mn.

This increase in M&A deal value in February was driven by big-ticket consolidation that saw four deals valued over US$100mn contributing to 79 percent of the total M&A values.

Energy, telecom, banking & IT sectors dominated the deal activity in terms of deal values capturing 92 percent, while start-ups sector dominated the deal volumes with 25 percent. *(IE, 16.03.18)*

Luxottica-Essilor Tie-up

European and US competition regulators approved the US$58bn merger of Italian eyewear maker Luxottica and French lens manufacturer Essilor, sending shares in both companies higher.

The proposed tie-up between Luxottica, which owns brands including Ray-Ban and Oakley, and Essilor, which sells lenses under the Varilux brand, is aimed at taking advantage of expected strong demand for prescription spectacles and sunglasses as populations age globally.

Rivals and some opticians have voiced concern that the merged entity might persuade opticians to buy eye wear and lenses as a package.

(Reuters, 01.03.18)

Creating Global Leader in Rail

The maker of France's iconic TGV trains Alstom and German industrial leader Siemens signed an agreement on creating a global leader in the rail industry.

The Business Combination Agreement (BCA) sets the terms of combining Alstom with Siemens' mobility business, including its rail traction drive business, after the two firms unveiled their plans in 2017.

Siemens will control 50 percent of Alstom immediately but will be blocked from taking a bigger than 50.5 percent stake for the four coming years.

The merger will create the world's top firm for rail signalisation and the number two for building train carriages, which should help the firms face rising Chinese competition. It is expected to be completed by the end of 2018. *(CPI, 25.03.18)*

Axa Acquires XL Group

Insurance giant Axa is to splash out US$15.3bn on acquiring Bermuda-based XL Group, which specialises in property and casualty claims.

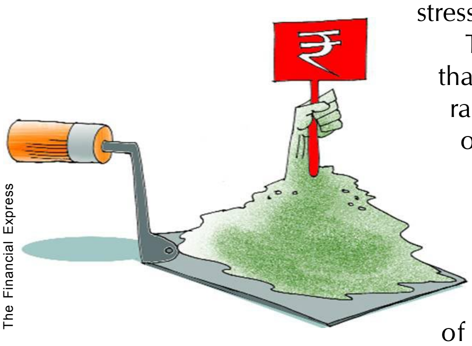
The combination will create the biggest property and casualty commercial lines insurer based on gross written premiums, with total revenues of €48bn.

XL has a strong presence in North America, Europe, Lloyd's and Asia-Pacific and generated US$15bn of gross written premiums in 2017.

This transaction is a unique strategic opportunity for AXA to shift its business profile from predominantly life and savings business to predominantly property and casualty business. *(www.independent.ie, 05.03.18)*

UltraTech's Takeover of Binani Cement

UltraTech Cement has received Competition Commission of India (CCI) approval to acquire Binani Cement. The company was declared the second-highest bidder, behind Dalmia Bharat Cement, in the bidding for the stressed asset.



The Financial Express

The Aditya Birla Group claimed that a lot of apprehensions had been raised by the resolution professional on it being able to obtain CCI clearance on its bid for Binani Cement, whereas the regulator had cleared the deal.

UltraTech was rated the H2 (second highest) bidder instead of H1 (highest bidder), for this reason. The CCI clearance validates UltraTech's contention that they were wrongly and unjustifiably rated H2 instead of H1. *(ET, 29.03.18)*

Mergers of Old-Media Titans Miss the Point

Rana Foroohar*

The Financial Times

It is the monopoly power of big tech that policymakers should worry about

It is rather amazing that two huge US companies looking to cut an US$85bn merger are looking like underdogs. But as AT&T and Time Warner go head to head with the US government over the legality of their proposed tie-up, that is precisely what they appear to be.

Makan Delrahim, the Department of Justice's antitrust head, plans to argue that telecoms powerhouse AT&T should be prevented from buying media company Time Warner because the two companies together will have monopoly powers that would result in higher cable prices for American consumers.

The corporations themselves, of course, argue the opposite. They claim the merger is necessary to stave off competitive pressure from bigger fish – Google, Facebook, Amazon and Netflix.

Whichever way the AT&T-Time Warner case goes, it will do little to solve these problems, because it will not address the main issue: US competition policy today is fundamentally unsuited to the digital economy.

It is time to rethink antitrust policy and the definition not only of consumer welfare, but of welfare itself.

For decades now, American antitrust policy has centred around notions of 'consumer welfare'. The key question about any given merger is whether it will make things better or worse for consumers. The definition of 'better' has traditionally been defined by pricing. If consumer costs look likely to go down, a merger will go through.

And yet the digital world is one in which data, not dollars, are the currency. Consumers receive services such as search, e-commerce and video streaming cheaply, or even for free.

US digital advertising surpassed TV advertising in 2016, making it even tougher for companies like Time Warner to keep subscription fees low. Google and Facebook took 84 percent of that digital advertising market last year. No wonder more than 22 million US cable customers have cut the cord as of 2017 — up 33 percent from 2016. If someone has monopoly power in this world, it is not the legacy media players.

The tech platform companies argue that none of this is a problem, because the result is great for customers: they receive seamlessly delivered, cheap, high-quality programming.

Applying this definition of consumer welfare to our digital economy will ensure more, not less, concentration of corporate power. That is a problem for people like me who believe that monopoly power is an obstacle to shared economic growth.

It is time to rethink antitrust policy and the definition not only of consumer welfare, but of welfare itself.

The conversation is already brewing, thanks to people like Barry Lynn, a former policy wonk at the New America Foundation, a think-tank. He argues for a return to an earlier approach to competition policy. Before the 1980s, US antitrust law held that too much economic power created too much political power – and that was inherently bad for consumers and society. It allowed big companies to create an uneven political playing field.

This view implies a much broader notion of economic welfare, shifting the lens from the individual to the entire ecosystem. Walmart or Amazon, for example, might lower prices for consumers, but their size also allows them to squeeze their supply chains. That in turn could result in fewer start-ups and thus less job creation.

That definition of welfare is harder to quantify, but it is already used by the US Federal Reserve, which under the Community Reinvestment Act of 1977 is obliged to look after the overall economic development of communities. Since 2008, the Boston, Chicago and San Francisco Feds have all vigorously supported this goal, seeking to connect borrowers and lenders and support entrepreneurs.

While the justice department is right to focus on corporate power, the Trump administration is picking the wrong target. Mergers between old media giants are beside the point in a digital world.

* *Global Business Columnist and an Associate Editor at the Financial Times. Abridged from an article that appeared in the* Financial Times, *on March 19, 2018*

Should the Big Four Accountancy Firms Be Split Up?

Two experts debate how best to reform auditing

Yes – Separating audit from consulting would prevent conflicts of interest

Natasha Landell-Mills*

Auditors are failing investors. The situation has become so dire that head of the UK's accounting watchdog said it was time to consider forcing audit firms to divest their substantial and lucrative consulting work.

This shift from the Financial Reporting Council, which opposed the idea six years ago, is welcome. But breaking up the Big Four accountancy firms can only be a first step. Lasting reform depends on auditors working for shareholders, not management.

Auditors are supposed to underpin trust in financial markets. Major stock markets require listed companies to hire auditors to verify their accounts, providing reassurance to shareholders that material matters have been inspected and their capital is protected. In the UK, auditors must certify that the published numbers give a "true and fair view" of circumstances and income; that they have been prepared in accordance with accounting standards; and that they comply with company law.

But audit is failing to meet investors' expectations. The dominance of the Big Four in large company audits is another concern: when large and powerful firms are able to crowd out high quality competitors, the damage is lasting. Taken together, these failures have resulted in a dysfunctional audit market that needs a broad revamp.

Auditors should provide meaningful disclosures about the risks they uncover. They need to verify that company accounts do not overstate performance and capital and that unrealised profits are disclosed.

Engagement between shareholders and audit committees and auditors should become the norm, not the exception. Shareholders need to scrutinise accounting and audit performance, and use their votes to remove auditors or audit committee directors where performance is substandard.

Finally, the accounting watchdogs must be far more robust on audit quality and impose meaningful sanctions. Even the best intentioned will struggle against a broken system.

The Financial Times

No – Lopping off advisory services would hurt performance

Jim Peterson**

The recent spate of large-scale corporate accounting scandals is deeply worrying and raises a familiar question: "Where were the auditors?" But the correct answer does not involve breaking up the four professional services firms that dominate auditing, writes Jim Peterson.

Forcing Deloitte, EY, KPMG and PwC to shed their non-audit businesses would neither add competition nor boost smaller competitors. Lopping off the Big Four's consulting and advisory services would degrade their performance, weaken them financially, and hamper their ability to meet the needs of their clients and the capital markets.

Although the UK regulator is raising competition concerns, the root problem is global. The growth of the Big Four, operating in more than 100 countries, reflects their multinational clients' needs for breadth of geographic presence and specialised industry expertise.

The suggestion that competition and choice would be increased by splitting up the Big Four is doubly unrealistic. Forcing them to spin off their non-auditing business would not create any new auditors.

A split by industry sector would be no better. Each sector would still be served by just four big firms. If each firm were split in half, the two smaller firms would struggle to amass the expertise, personnel and capital necessary to provide the level of service that big companies expect.

The enthusiasm for cutting up the Big Four also fails to recognise how the world is changing. The rise of artificial intelligence, blockchain and robotics is reshaping the way information is gathered and verified. Auditors will need more – rather than less – expertise.

Auditors should be held accountable for their mistakes, but these issues are too complex for simplistic solutions. Rather than a quick amputation, we need a full-scale re-engineering of the current model with all of its parts.

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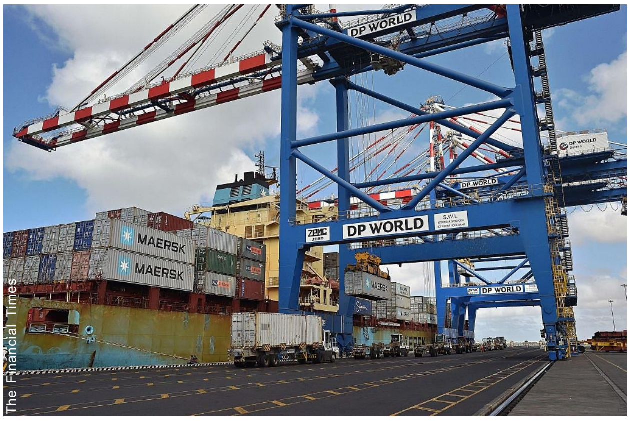
* *Head of Stewardship, Asset Manager Sarasin & Partners*

** *Author of 'Count Down: The Past, Present and Uncertain Future of the Big Four Accounting Firms'*

African Governments take a Tough Stand Against Foreign Investors

David Pilling*



In February 2018, police and bailiffs entered the Gabon offices of Veolia, a French water and energy group, with news that the government was seizing the company's assets. Veolia reacted angrily, saying the expropriation would make multinational companies think twice about long-term investments in Africa.

A few days later, 2,500 miles across the continent, Djibouti's president announced that his government was terminating the concession of DP World, a Dubai ports operator, to run the Doraleh container terminal. DP World, too, cried "seizure", saying it would sue Djibouti for damages.

These are not entirely isolated incidents. In several countries, African governments have been taking a tougher stand towards foreign investors. Tanzania's president, John Magufuli, has launched a broadside against Acacia Mining of the UK, accusing it of ripping off the country by routinely under-declaring the amount of gold it exports.

More broadly, he is demanding that companies smelt and refine ore in Tanzania, something the British company says makes no economic sense. Acacia reported a US$700m loss in 2017 after writing down the value of its Tanzanian assets. It vehemently denies the accusation of under-reporting ore concentrate and is now considering selling out to a Chinese competitor.

In the Democratic Republic of Congo, not an easy place to do business at the best of times, the government is determined to squeeze more out of mining companies. Emboldened by soaring global demand for cobalt, an essential component of electric car batteries of which Congo is the major supplier, it wants to raise royalties on the raw material.

Whenever sovereign governments sign contracts with private operators there is potential for discord. Public-private partnerships are hard to get right even in advanced and well-regulated countries such as the UK, as the recent collapse of Carillion, a construction company, shows. How much harder, then, in nations where the institutional framework is weak and accountability often lacking.

There is nothing wrong with governments seeking a better deal. It is certainly right to strive to keep more value-added in the country and jettison the purely extractive relationships that too often persist. Nana Akufo-Addo, Ghana's president, spoke for a continent when he told Emmanuel Macron, his French counterpart, that African countries wanted to rely on their own wealth – not foreign aid – to lift themselves from poverty. That means keeping more of it in the country in the first place, a goal that demands better policies, less corruption, and striking savvier deals with foreign investors.

Public-private partnerships are proving to be a recipe for discord

None of this is to say that the latest disputes are clear-cut. In Gabon, there has been a long-held conviction that Veolia operates high-handedly and implements lower environmental standards than it would do at home. Veolia strongly denies the accusation, saying its water provision meets World Health Organization standards and surpasses those required by Gabon. The government, it intimates, is playing populist politics by attacking an easy French target.

Outsourcing contracts pose problems for both sides. Strike too generous a deal and the public will rightly complain, particularly if the service is bad or tariffs high. Too stringent a deal can have the opposite effect, driving the contractor out of the country or even out of business. In some cases, the state may be acting justly. In others, it may simply be trying it on. For foreign companies, there is a rule of thumb. Even in weak jurisdictions, they need to strike a fair deal. Anything less and it will come back to bite them.

* *Asia Editor, Financial Times. Abridged from an article that appeared in the* Financial Times *on March 08, 2018*

Liberalising Aviation in Africa

Nearly two dozen **African** countries launched a single aviation market, a potential boon for the industry in a region where it is hampered by government protectionism, high taxes and stringent regulation.

The Single African Air Transport Market would facilitate the free movement of flights between African countries by liberalising frequencies, fares and capacities, breaking down barriers that have in the past increased costs.

It is an updated version of the Yamoussoukro Decision that was signed in 1999 to open up intra-African aviation routes. That agreement failed and compared to other continents air travel in Africa is expensive, restricted and dependent on bilateral deals.

(Reuters, 29.01.18)

Ofcom to Begin 5G Auction

The **UK's** telecom regulator Ofcom has confirmed plans to start its 4G and 5G wireless spectrum auction. The auction will see Ofcom offer up 40Mhz of frequency in the 2.3GHz band (which will be immediately available for 4G services) and 150MHz in the 3.5GHz band (which will be used for 5G services).

Ofcom has confirmed that the auction will run for 'a number of weeks', after which it will be able to confirm which of the six bidding operators – BT-owned EE, O2, Three, Vodafone Hull-based ISP Connexin and Airspan Spectrum Holdings – have been successful. *(CPI, 13.03.18)*

Renewable Energy Subsidies

The Minister of Economic Affairs and Climate of **Netherlands** announced that the new government has reserved €12bn to grant subsidies in 2018 for the production of renewable energy under the Renewable Energy Grant Scheme (SDE+).

The SDE+ subsidies, which will be made available to applicants in two €6 billion tranches, aim to accelerate the development and use of sustainable energy production technologies.

The SDE+ programme is one of the various measures taken by the new government to meet its ambitious climate goals. These are set out in the government's coalition agreement for 2017 to 2021, titled Confidence in the Future, under which the Netherlands aims to have reduced its CO_2 emissions by no less than 49 percent by 2030.

(ILO, 12.03.18)

Medical Malpractice Law Enacted

The Law on rules regarding the safety of treatments and patients and medical malpractice was approved in **Italy** on March 17 2017.

In addition to setting out the legal scope for the safety of medical treatments and patients, the law provides the scope for imposing an effective risk management policy on healthcare personnel and prescribes risk allocation standards in the case of damages arising from medical treatments.

The law aims to clarify liability for healthcare organisations and professionals, with the exception of cases where agreements are reached with patients directly; and build an efficient protection system for at-risk patients through the introduction of effective and mandatory insurance policies. *(ILO, 21.02.18)*

Major Port Authorities Bill

The **Indian** Cabinet approved amendments to the Major Port Authorities Bill, 2016 which will allow the port authorities to create specific master plan for development of infrastructure.

The Cabinet chaired by Prime Minister Narendra Modi has approved the incorporation of the official amendments to the bill, which is pending in Parliament. The Amendments are based on the recommendations of the Department-related Parliamentary Standing Committee, the release said.

The board of each major port, as per the proposed amendment, would "be entitled to create specific master plan in respect of any development or infrastructure established or proposed to be established within the port limits and the land appurtenant thereto and such master plan shall be independent of any local or state government regulations of any authority whatsoever". *(IE, 08.02.18)*

Net Neutrality Repeal in Effect

The **US** Federal Communication Commission (FCC) officially repealed the landmark Obama-era 'net neutrality' rules by publishing the order to the National Register, the official journal of US federal government regulations.

The reversal is a hallmark victory for FCC Chairman Ajit Pai, whose tenure has seen him strongly advocate for reduced regulation in lockstep with President Trump.

The Republican-led FCC voted 3-2 to overturn rules barring service providers from blocking, slowing access to or charging more for certain content.

The White House Office of Management and Budget still must sign off on some aspects of the FCC reversal before it takes legal effect.

(Reuters, 22.02.18)

Returning the UK's Privatised Services to the Public

Jonathan Ford* and Gill Plimmer**

Labour's plan for renationalisation is popular but how costly –and effective – would it be?

When Jeremy Corbyn first floated the idea of renationalising Britain's privatised public services during his campaign for the Labour party leadership three years ago, it was dismissed as the eccentric mumblings of a paleo-socialist ideologue.

The coal, electricity and water boards had a dismal record of under-investment and poor performance when previously in public hands.

The first fight a Labour government would face involves compensation. Not every nationalisation would require the government to pay off private investors. For instance, the train operating companies, which operate passenger services on the UK's 20 rail franchises, enjoy those rights for a limited term under contract. A government could just wait for the franchises to fall due, and scoop the operations back into public hands.

The same may also apply to private finance contracts near the ends of their terms, and which Labour has said may be allowed to run their course.

But industries such as water and electricity, where licences are either long term or perpetual, would involve compulsory takeovers, for which compensation would need to be paid upfront. Here the debate revolves around what investors could expect for their shares.

The water industry cites a report showing that water in England is cheaper than in a number of countries where ownership is either mixed or in state hands. But critics say a number of factors can account for different water prices.

British rail franchises were initially almost all won by private sector companies. But in recent years they have often been outbid for franchises by state-owned foreign entities, such as Deutsche Bahn and SNCF of France.

A recent report by the Social Market Foundation think-tank, sponsored by the water industry, argues that the compensation costs would be excessive.

It believes the state would have to follow market conventions and pay a takeover premium for the equity of target companies to avoid short-changing savers, disrupting the market for UK assets and potentially crimping inward investment at a time when Brexit means Britain's doors should remain firmly open.

Nationalisation supporters also claim that market norms would be irrelevant in cases of compulsory acquisitions. It is an argument supported by the City law firm Linklaters, which, at an investors conference last year held by rating agency Moody's, said parliament could set the level of compensation, so long as there was an electoral mandate for action.

Clearly, if nationalised utilities performed much worse, then the cost-of-capital advantage would dissipate. Profits would fall and, if the policy were sufficiently large and mishandled, public borrowing costs could go up, too.

Yet the idea of superior private sector efficiency also has its critics. "Those who defend privatisation make claims about the superior efficiency of private over public ownership models," says Dieter Helm, a Professor of Energy Policy at Oxford University and a longstanding Analyst of British utilities. However, he argues that many of these rest mainly on assertion, rather than hard evidence or fact.

Britain's railways are partly renationalised already with the infrastructure operator Network Rail, which controls 2,500 stations as well as tracks, tunnels and level crossings, already in the hands of the public sector and its £46bn debt on the government balance sheet.

Prof Helm argues that both sides of the debate are too hung up on the question of ownership. Just as Margaret Thatcher thought private capital and competition would promote efficiency in underperforming public assets, so the left believes public spirited officials can replace what it sees as private greed.

Ultimately Prof Helm argues that what is needed is strong long-term investment and management, backed by sensible regulation, regardless of whether the family silver is in public or private hands. "Neither nationalisation nor privatisation, nor monopoly nor competition, solves any of these," he says.

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* *City Editor and **Reporter, Financial Times respectively. Abridged from an article that appeared in the* Financial Times *on February 26, 2018*

Single Presence Banking Policy

The new Financial Services Authority (OJK) Regulation on the Single Presence Policy in **Indonesian** Banking was issued by the OJK. The single presence policy aims to ensure that a single entity does not simultaneously hold a controlling interest in more than one bank. Regulation provides that, in principle, a party may be the controlling shareholder of one bank only.

Therefore, a controlling shareholder of more than one bank must merge or consolidate its controlled banks; establish a bank holding company; or establish a holding function.

The third option above must be completed within six months of the acquisition of a controlling interest in another bank. However, the first two options must be completed within one year and are governed by the following provisions of the OJK Circular.

(ILO, 23.02.18)

Financial Technology Law Passed

Mexico's lower house of Congress approved a bill to regulate the fast-growing financial technology sector, including crowdfunding and cryptocurrency firms, putting it among a small group of countries to establish regulation for the industry.

Regulators will soon begin crafting so-called secondary laws, which will determine key details for companies in the sector.

The law will give fintech companies greater regulatory certainty around issues such as crowdfunding, payment methods and rules surrounding cryptocurrencies such as bitcoin.

The law permits open banking, or the sharing of user information by financial institutions through public application programming interfaces (APIs). *(Reuters, 02.03.18)*

Europe Halfway to Healthier Banks

The European Commission and the European Central Bank announced new rules on how banks should treat dud loans. The good news is that the changes will help make European banks more resilient in the future. The bad news is that the eurozone banking system remains insufficiently equipped to deal with a new crisis.

European banks are still struggling with the aftermath of the financial crisis and the ensuing recession. Unlike their US rivals, many European lenders chose not to sufficiently write down their non-performing loans, since this would have required raising significant amounts of new capital.

The US banks took a different route: They tackled the problem head on, helped by the Troubled Asset Relief Programme (TARP) whereby the government spent more than US$400bn to stabilise the financial system.

(www.businesstimes.com.sg , 21.03.18)

Easing New Rules on Bank Capital

Global regulators plan to revise rules determining the minimum amount of capital banks must set aside to cover risk from trading stocks, bonds, derivatives and currencies.

The alterations are expected to make it easier for banks to apply the rules when they come into effect in January 2022, the Basel Committee, made up of banking regulators from the world's main financial centers.

The changes are expected to slightly lower the capital hit on banks. Market risks account for a small percentage of a bank's total capital buffer, though it can be far higher for some of the world's biggest trading banks.

The rules from 2016, known as the Fundamental Review of the Trading Book, form part of the Basel III accord agreed by the Group of 20 Economies in the aftermath of the 2007-09 financial crisis that left taxpayers bailing out banks which were found to be dramatically undercapitalised.

(Reuters, 22.03.18)

Cryptocurrency Regulation Considered

Following the growing popularity of crypto currencies and blockchain technology in general, the **UK** Treasury Committee has launched an inquiry to assess the potential risks and benefits that Bitcoin and other crypto currencies could bring to individuals, businesses, and the government.

The UK government will also look into the possible impact that regulations may have on blockchain technology. The government wants to make sure that innovation is not hampered, while protecting the interests of investors and business enterprises.

Recently, the UK Prime Minister Theresa May warned that she might take serious action against crypto currencies. However, the tone of the UK government has considerably changed as several countries are drafting friendly legislations favoring blockchain technology related investments that will contribute to innovation and jobs in the future. *(CPI, 25.02.18)*

Should the US Ease Regulation on its Big Banks?

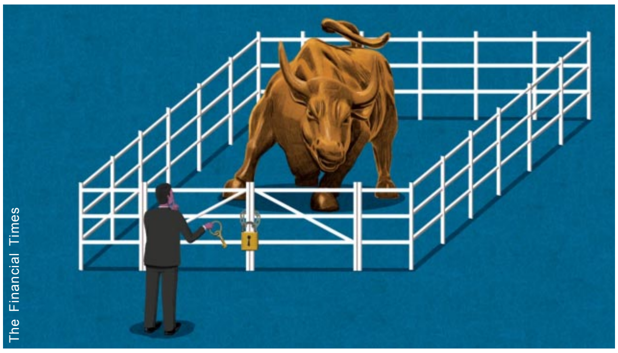
Yes – Freeing up lenders to provide more credit would boost the economy

Hal Scott*

Ten years after the start of the financial crisis, US policymakers are beginning to deal with the stiff regulatory reaction that it spawned, writes Hal Scott. The US Senate will take up the first bipartisan effort to rein in the impact of the Dodd-Frank financial reform bill on smaller banks within weeks. But that should be just one step in reform.

The bill would exempt banks with less than US$100bn in assets from the Federal Reserve's annual stress tests and the Federal Deposit Insurance Corporation's annual living wills requirement that each bank explain how it could be safely wound down in a crisis.

However, the legislation would not eliminate the burdens those requirements create for banks with more than US$100bn in assets. These 37 banks account for more than 75 percent of US banking assets. What they can or cannot do is critical to the economy. Bank regulators and supervisors do not need to wait for legislation — there are a few simple steps they could take to free these big banks up to provide more credit to the economy.



The Fed's stress tests are effectively the binding constraint on bank capital and thus lending. They require banks to prove they could survive extreme adverse scenarios while still complying with global capital requirements. The process has two major deficiencies.

First, the Fed's adverse scenarios are extreme to the point of incredulity. The second problem is that the Fed's stress tests depend on secret government financial models to predict bank losses.

A more transparent process for setting liquidity and capital standards is critical. The Treasury Department has proposed opening up the stress tests and living wills process to public comment. The Fed, FDIC and other bank regulators should act on those recommendations. Meaningful banking reform depends on strong leadership at the helm of each of the bank regulators.

No – Stringent rules make the system safer and protect the taxpayer

Lisa Donner**

Pressure is building to water down the Dodd-Frank reforms that Congress passed after the near-disintegration of the financial system in 2008, writes Lisa Donner. President Donald Trump's regulatory appointees have signalled plans to reduce capital ratios, revisit measures banning risky trading with taxpayer-backed funds, and reduce consumer protections. And the US Senate will soon take up a new bill on the subject.

The influence that money buys is creating a massive shift away from the moderate reforms made in and around Dodd-Frank, which were making the system safer and helping consumers and investors keep billions of dollars each year that an already profitable industry would otherwise siphon off.

US watchdogs have also laid a course for deregulation. The Fed wants to loosen rules capping leverage for the largest Wall Street banks and water down rules that aim to fence off taxpayer-backed funds from proprietary trading. The Department of Labor is undoing a rule requiring those who give advice on retirement savings to put their clients' best interests first. And Trump's head of the Consumer Financial Protection Bureau is halting enforcement cases and delaying regulations in a bid to dismantle the agency from within.

There is no fundamental trade-off between sound regulation of the financial system and shared prosperity. Quite the opposite. Even as tighter bank capital and liquidity requirements were phased in after the crisis, bank credit to the private sector has surged to new heights as a percentage of global output. If large banks are not forced to hold more capital against potential losses, the public would likely find itself on the hook again if one ran into trouble.

Disinterested observers overwhelmingly agree that the changes made with Dodd-Frank have made the system more stable and given consumers and borrowers some much-needed protection. Lawmakers and regulators must not let industry lobbying, political spending and inside influence imperil the welfare of everybody else.

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* *Professor of International Financial Systems, Harvard Law School and Director, Committee on Capital Markets Regulation*

** *Executive Director, Americans for Financial Reform.*

Abridged from an article that appeared in the Financial Times on March 01, 2018

Public-Private Partnerships Have to Change to be Effective

Martin Wolf*

The Labour party has pledged to nationalise contracts arranged under the UK government's private finance initiative. If it wants support, it can turn to a recent report from the National Audit Office (NAO), which investigates the rationale for PFI and finds it wanting. If done in the right way and for the right reasons, PFI is not a bad idea. Unfortunately, this has not happened. That has to change.

The UK has more than 700 operational PFI deals, with a capital value of about £60bn. The annual charges for these deals amounted to £10.3bn in 2016-17. Even if no new deals were launched, future charges will amount to £199bn. Over the past 20 years, investment under the PFI has averaged about £3bn a year. That is significant, but small relative to government investment, which now amounts to around £50bn a year. Partly in response to criticism, the number and value of PFI projects has also fallen sharply.

Yet this experiment, which originated with a change in Treasury rules in 1989 and continued under subsequent governments, is interesting. It is not unreasonable for government to contract for services from private suppliers. It is certainly reasonable for the UK and other governments to attempt to learn from this influential experiment.

The Treasury makes three arguments for PFI contracts. First, given the binding contract, the private sector has a stronger incentive to build assets to budget than government departments. Second, the private owner of the assets has an incentive to curb running costs. Finally, the assets should be better maintained in the private sector.

The NAO finds, in response, that even though the private owner has an incentive to deliver the construction to budget, which makes the cost more certain, this does not mean it will make the cost as low as possible. Bidders may instead charge higher prices, to cover unforeseen costs. This is particularly likely where the asset is a complex one.

The audit office also sees 'no evidence' that assets are operated more efficiently. Some services may be more expensive, perhaps due to higher standards.

Finally, the NAO says that standards of maintenance are higher in PFI projects. This seems to be because departments reduce maintenance spending, under budgetary squeezes. Under PFI, this is more difficult. One can argue that it is desirable for government to have such flexibility. Yet one can also argue that the government needs to be tied to the mast. It needs to be deprived of the ability to let essential maintenance be unduly postponed.

Yet there is a reason for PFI that is politically important and wrong. This is that PFI is off the government's balance sheet, or at least not included in conventional numbers for public debt. This, however, is an example of what the Office for Budget Responsibility and the International Monetary Fund rightly call a 'fiscal illusion'. A PFI contract creates a long-term contractual liability, just as government borrowing does.

Where does this leave PFI? If the government can specify and monitor the contract, can be confident that the private sector will deliver, cannot find a superior organisational form and wants to bind itself to delivering the service over the term of the contract, then it can make good sense. The argument that the government should finance itself through direct borrowing, because it can borrow more cheaply, is flawed: the government's discount rate needs to include the implicit call on the taxpayer. This leaves a restricted case for PFI, but a far from worthless one. However, PFI must not be used simply to shift a liability off the balance sheet. That is a swindle and, as such, quite disgraceful.

* *Associate Editor and Chief Economics Commentator, Financial Times. Abridged from an article that appeared in the* Financial Times *on January 26, 2018*

Curbing the 'Curse of Bigness' is a Political Priority

James Kirkup*

The Financial Express

Unchallenged incumbency in markets is no good for consumers

In the US, it is called the New Brandeis Movement, after Louis Brandeis, the Supreme Court justice who curbed monopoly power and lamented the 'curse of bigness' among corporations in the early 20th century. It has yet to acquire a name in Europe, but it should, because it goes to the heart of whether markets serve the public, and could just save those markets from public anger and populist politicians.

This is a new school of thought based on old ideas. It suggests that some markets are increasingly dominated by small groups of incumbents with big market shares and bigger advantages over smaller challenger companies and, especially, over customers. That bigness, often reinforced by technology and data, can boost both profits and grievances.

Unchallenged incumbency is, in a narrow sense, good for shareholders, who enjoy rising dividends and values inflated by buybacks. It is less good for the economy, where big, comfortable companies can underspend on investment and innovation. And it hurts consumers. Research by the Social Market Foundation shows that eight out of 10 UK consumer markets are now 'concentrated', dominated by small groups of big incumbents.

Some consumers have it worse than others. Big companies know more than ever about customers, and can tailor prices and products accordingly. To entice footloose, market-savvy switchers, prices for new customers are cut. Overall margins are maintained by piling higher prices on to "loyal" buyers. Some of them are genuinely loyal, but others are, by dint of age, illness, incapacity or misfortune, prone to inertia and so vulnerable to exploitation.

Most thinking about personalised price discrimination has focused on the global tech groups able to practise it with the greatest precision. But it is happening in more conventional markets too, and regulators are struggling to keep up with big companies reluctant to share their valuable troves of data.

Classical textbook economics says that more precise pricing just means greater efficiency. A growing real world counter-argument is that ever-wider differences between consumers' experiences create problems of unfairness that need to be addressed. Enlightened businesses understand this. One big UK insurer has, unannounced, capped the ratio between prices for new customers and those paid by existing ones. The rationale was that the sense of injustice created by excessive differentials was ultimately bad for the business and for all businesses. If that company can see the need, politicians and regulators should be looking harder at big companies' growing ability to price discriminate.

This thinking does not belong to either the left or right of politics. It is for anyone who believes markets are the best way of creating wealth, but also knows markets need a proper social and legal framework to be fair and sustainable. In the US, it is not just Congressional Democrats thinking about antitrust laws — at least one Republican senator is paying close attention, too.

Some of the implications of this new understanding of markets will be new policies and political engagement with issues of competition and concentration: any politician who wants to lead will now need to develop a view of "bigness" and the courage to address its consequences, even if that means tough conversations with influential businesses. Stephen Littlechild, a former UK energy market regulator, has suggested forcing the "big six" companies that dominate the UK domestic market to give up some of their market share to challengers.

All market economies need regulators with the resources and mandates to deal with more cases, and to match the resources big incumbents can deploy in defence of their size. That is especially true in Britain. Outside the EU, the UK will need its own competition regime. That means giving the Competition and Markets Authority and other regulators not just a new rule book, but bigger budgets. Escaping the curse of bigness in 21st-century markets will need big ideas, big leaders and big regulators.

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* *Director of the Social Market Foundation, a think-tank. Abridged from an article that appeared in the* Financial Times *on January 16, 2018*

We Need a New Way to Assess the Impact of Investment Managers

Anne Richards*

The role of investment management in society is evolving. It is abundantly clear that delivering good financial returns for customers over the long run is necessary and important, but is not in itself enough.

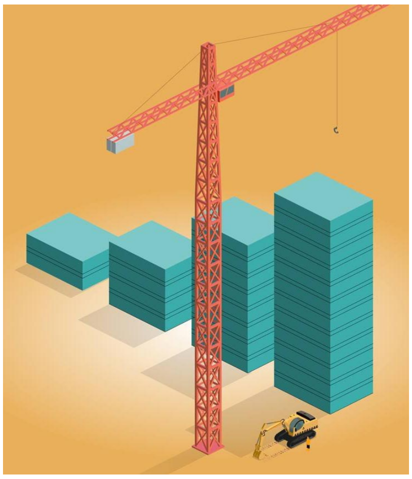
There are three main expectations that society has of investment managers: good performance at a fair price; effective aggregation and allocation of capital across our investments; and effective stewardship of those investments. We are thus called upon to invest with a wider purpose than just a narrow, financial lens.

Our industry faces a challenge though. Do we have the right incentives in place to achieve the broader societal benefits that we have the potential — and the responsibility — to deliver? Regulation has tried to encourage the 'right' behaviour in investment managers through a raft of new measures.

However well-intended it might be though, regulation can go only so far. It is up to us, as an industry, to catalyse a shift in our own behaviour. We must move past a preoccupation with purely financial metrics for success and demonstrate how we can invest appropriately to meet the wider expectations society places on us.

I therefore believe that now is the time to develop a new set of long-term performance measures for investment funds.

Clearly, risk-weighted financial returns will remain an essential measure of performance. But this is no longer sufficient. We also need to encapsulate a breadth of non-financial metrics to capture the wider responsibilities placed on us and acknowledge the broader impact our investments have.



M&G's CEO calls for a scorecard approach that goes beyond financial metrics

How could we do this? I would like to propose a new, standardised scorecard for measuring the performance of funds that could incorporate a range of metrics, including some or all of the following — environmental impact, carbon footprint, supply chain sustainability, social impact, and diversity and inclusion.

These could, for example, align with the UN's Sustainable Development Goals, which cover five broad, interlocking pillars — people, planet, prosperity, peace and partnership.

Every fund, active or passive, could be scored against each of these metrics according to how they are invested. These scores should be standardised, just as financial performance is today, so that prospective investors can compare funds easily. Existing investors could then work out the broader impact of their fund and how it compares with peers.

There will be naysayers who will argue that returns are all that investors care about, and that is certainly true for some savers. It is also true that the primary objective of those managing investments will continue to be to deliver financial returns for savers, to help them to achieve their long-term goals and needs.

But it is increasingly evident that many people are looking to achieve more than just a benchmark-beating return with the money they invest.

Demand for funds that incorporate ESG — environmental, social and governance — factors in their investment approaches is strong and growing across all major asset classes. By November 2017, almost €350bn was being managed in responsible investment funds in Europe — up more than a fifth on a year earlier.

This trend shows that investors care about more than financial returns, and the industry needs to meet this demand. Developing a new scorecard is an opportunity for investment managers to grasp the nettle, and invest for good.

No one fund management company can do this alone. It needs to be a cross-industry initiative, perhaps in conjunction with exchanges or index providers as well as investment consultants and those who rate funds, so we can build a standard view of any portfolio footprint. Technology such as AI and machine learning may well help facilitate this.

We all know that what is measured matters. We need to make sure that we measure what matters. Moving to a balanced scorecard will be a positive step in that direction.

* *Chief Executive, M&G. The article appeared in* The Financial Times *on April 05, 2018*

Publication

Policy Watch

The January-March 2018 issue of the newsletter carries a cover story entitled, 'Trade in an Increasingly Protectionist World' which states that in order to tackle the global challenge of increasingly protectionist tendencies and design right policies for promoting domestic industries in India, there should be convergence between trade and industrial policy.

It also encompasses a feature dubbed, 'Telecom Policy must Focus on Quality' mentioning that since the last decade, India's telecom market has witnessed technology transitions, such as fixed-line to mobile, 2G to 3G, and 3G to 4G networks, with a roadmap for 5G in the pipeline. A Special Article by former Member of Planning Commission Arun Maira states that innovative mechanisms and institutions are needed to reconcile the profit motive of capitalism with democratic human rights. In addition, the newsletter encapsulates news and articles on various sectors, such as Trade and Economics, Governance and Reforms, Infrastructure, Education, Health, Competition, etc.

This newsletter can be accessed at: http://www.cuts-ccier.org/pw-index.htm

UNCTAD's Investment Policy Monitor

22 countries took 32 investment policy measures in the review period (November 2017 - February 2018). The share of investment restrictions and regulations increased to 29 percent. Compared to the annual figures in recent years, this records the highest ratio since 2010.

Newly adopted restrictive investment policies include a tightening of investment screening procedures, measures to protect national security and the disapproval of some foreign takeovers. Other restrictions relate to local content requirements and preferences for local suppliers in public procurement procedures.

At the same time, some countries improved entry conditions for foreign investment. Among the most noteworthy measures are liberalisation steps in a couple of industries, the simplification of administrative procedures and new privatisation.

The reporting period also saw a significant corporate tax reform in one country. Regarding international investment treaties, the Monitor finds that two bilateral investment treaties and six treaties with investment provisions were signed, bringing the total number of international investment agreements (IIAs) to over 3320.

In line with UNCTAD's Roadmap for IIA Reform, all new IIAs contain several reform features, giving particular attention to the preservation of the right to regulate by clarifying key protection standards and refining investor-State dispute provisions. Countries are also starting to move towards the second phase of IIA reform, modernising the existing stock of old-generation treaties.

Several negotiations for mega-regional agreements continue. Depending on how future mega-regional treaties will interact with overlapping pre-existing ones, this can help modernise today's stock of old-generation treaties.

http://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=1706

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

ANA: African News Agency; BD: Business Daily; CPI: Competition Policy International; ET: Economic Times; FT: The Financial Times; IE: Indian Express; ILO: International Law Office; TST: The Straits Times; WSJ: Wall Street Journal

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