# REGULETTER

*A Quarterly Newsletter*

CUTS International 1983 30 2012

Volume 13, July-September 2012


# When even bread-makers are cartelising

## Inside this Issue



## Special Articles



Bread manufacturers in South Africa in the recent past gathered together to fix prices and allocate territories to the disadvantage of the public. They were caught by the competition authority and penalised. Bread is the staple food of the rich and the poor, and like salt which is consumed by all and sundry. One of the first-ever cases taken up by the Peruvian competition authority when it began its operations in 1990s was to break up a bread cartel and thus earn applauses from the poor.


In July 2012, a large number of competition authorities gathered in a conference at Geneva under the auspices of the UNCTAD. They did not speak about conspiring against consumers but how to protect them from colluding businesses, and to find ways of how to deal with a large number of anticompetitive practices which result in their exploitation. This would include running an international campaign in December, 2012, so as to educate consumers about the pernicious effects of cartels.

The fixing of a price of a product harms the whole society. The bread cases are living examples of how an unjust economy can further impoverish poor consumers, and destroy opportunities for small businesses especially those that serve the poor.

In Peru, other than tackling bakers, the competition authority, INDECOPI, initiated a *suo motu* investigation in the poultry market. During the enquiry, it was revealed that the defendants entered into a series of anticompetitive agreements to curb overproduction of live chicken. INDECOPI imposed fines of up to US$1mn and ordered criminal prosecution of cartel members. "Cartels are a crime" was the slogan of Brazil`s Anti Cartels Enforcement Day on October 08, 2008, when huge amount of outreach was done by the Ministry of Justice to raise awareness about cartels throughout the country.

These issues were discussed during the UNCTAD's 12th Intergovernmental Experts Group meeting organised in July 2012 to review the progress of the UN Set on Competition Policy. On December 05, 1980, the UN adopted the international standard for competition laws under what is called the UN Set of Multilateral Principles and Rules for the Control of Restrictive Business Practices, better known in the international community as the UN Set on Competition Policy. This Set has guided a large number of developing countries to draft and adopt new competition laws.

During the review conference, a proposal was mooted to observe December 05 as the World Competition Day (WCD) by the International Network of Civil Society on Competition, an international coalition of 164 competition practitioners, CSOs, researchers and legislators spread across 66 countries. Large number of delegates at the conference supported the idea and agreed to celebrate the WCD in their own countries. The assembly also agreed that the Day be used to raise awareness and rally common people around the issue of cartels which have been causing serious harm to poor consumers and the economy.


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## Guidelines for Competition Law Breaches

The Office of fair Trading (OFT), UK published new guidance on how it will set penalties for breaches of competition law. The guidance will allow the OFT to continue to set substantial penalties to deter anticompetitive activity while ensuring that penalties are proportionate in the specific circumstances of individual cases. The new guidance sees the maximum starting point for penalty calculations increase to 30 percent of relevant turnover, from 10 percent.

It brings the OFT in line with the approach of the EC and many European competition authorities. The guidance introduces a new step in the calculation of penalties. The OFT will consider specifically whether a penalty is proportionate 'in the round'. Previously proportionality was considered when applying the other steps of the calculation. This change is intended to ensure that; overall, penalties are not disproportionate or excessive in the particular circumstances of the case.

*(OFT Press Release, 10.09.12)*

### US Signs MoU with India

The US antitrust authorities have signed a memorandum of understanding (MoU) with India's Competition Commission (CCI). The agreement was signed by India's Ambassador to the US on behalf of India's Ministry of Corporate Affairs and Ashok Chawla, Chairman of the CCI.

This MoU will enhance that relationship in the years ahead, as we work together to ensure that markets are open and competitive, by identifying and remedying anticompetitive behaviour.

The agreement is voluntary, and focuses on enhancing cooperation and communication between the authorities. This includes sharing non-confidential information when investigating related mergers, and consulting on enforcement policy.

*(GCR, 28.09.12)*

### Portugal in Line with EU

The new Portuguese Competition Act came into force on July 08, 2012. It represents a comprehensive reworking of the rules of the Competition Act 2003. Some of the changes seek to give the statute greater autonomy in relation to other branches of law, such as administrative law and the law on misdemeanours. In other areas the reform aims to align Portugal's competition system with the EU regime in both substantive and procedural matters.

The Competition Authority's investigatory and fact-finding powers have been significantly increased, whereas the rights and prerogatives of undertakings and individuals have been strictly curtailed. *(ILO, 26.07.12)*

### New Legislation on the Anvil

Businesses that are found guilty of price fixing and other practices that are anticompetitive will face more severe penalties. The new Irish legislation which aims to tackle white collar crime and ensure that consumers are not ripped off increases fines for breaches of competition law.

Depending on the gravity of the breach, offenders will now face prison terms of up to 10 years and fines of up to •5m (US$6.4m). The new measures also make it easier for the Irish Competition Authority to secure convictions against companies that flout competition laws.

Minister for Enterprise and Innovation Richard Bruton says the new powers will ensure more transparency in the Irish economy.

*(IE, 03.07.12)*

### Stricter Rules for Consumer Goods

The Ministry of Employment and the Economy of Finland published for comment a draft bill that would amend the Competition Act. The bill would introduce a sector-specific threshold for dominance in the consumer goods retail market, which would directly affect the two main operators in that sector.

The Finnish government has a programme for promoting healthy competition in the domestic market. The Competition Authority conducted a sector inquiry into the consumer goods retail sector, which it published at the beginning of 2012. This brought to light several practices that some suppliers claim to be unreasonable and exclusionary. *(ILO, 27.09.12)*

### Hong Kong Enacts Competition Law

The Competition Ordinance in Hong Kong was finally passed on June 14, 2012 after more than 10 years of public consultation and intense legislative council debates. The law which introduces a general prohibition on cartel behaviour and other anticompetitive conduct, as opposed to industry specific anticompetitive rules, is expected to have a significant impact on businesses that are used to a free market economy in Hong Kong.

Although it will take at least another year or two for the new law to come into effect, businesses should be familiar with the new prohibitions and exemptions and take steps to review their existing practices and conduct during the transitional period so as to avoid possible breaches in the future.

*(www.hg.org, 12.09.12)*

### Finland to Merge Authorities

Finland's government has submitted a proposal to merge the competition and consumer protection authorities by January 2013 to the country's parliament. Under the plan, the Competition Authority will merge with Finland's two consumer protection authorities to create the Competition and Consumer Protection Agency.

According to the government, the agency's consumer protection powers and competition enforcement remit will remain separate and each will have restricted access to information held by the other. The merger could improve market analysis and bring financial savings. *(GCR, 18.09.12)*

# Competition Policy is the Panacea for Namibia's Low Level of Competitiveness

Mihe Gaomab II*

Competition policy is known to assist in promoting competitiveness by ensuring a proper working-market competitive process. In order to maintain their position in the market and keep rivals in check, it is only logical that Namibian firms are compelled to constantly improve, bringing in new equipment and producing products which are competitive and offering a wide range of choice for consumers.

The Namibian Competition Commission (NaCC) aims to fulfil the role as the market regulator to administer and fully implement the Competition Act. What breeds competitiveness is policy and regulatory consistency around the set of factors, policies and institutions that determine the level of productivity in a country which in turn set a nation's recognised standards of living.

The NaCC fulfills the role of micro-economic stability consistent with macro-economic stability, fostered by the Ministry of Finance and its statutory bodies such as Bank of Namibia, NAMFISA, Ministry of Finance and the National Planning Commission.

**Competition is defined in a market driven economy such as Namibia as the struggle among supplying firms to obtain buyers' support for their goods and services. Competition is rivalry among business entities usually in the same relevant market. Such rivalry can take many different forms; such as price, quantity levels, innovation and product range**

When relating competitiveness to the work of the Commission on competition policy and law, it is possible for the economic actors to collude and decide not to compete. An industry which is not competing is not likely to be successful on the international market because when faced with fierce competition from competitive markets, they would not have any competitive and comparative advantage. The Commission has a role to play to stop such collusive conduct and to ensure that an industry is not highly concentrated. Most Namibian industries and sectors are highly concentrated and therefore the threat of abuse of dominance or possibility of collusion is very real.

The role of the Commission is to ensure that the merger does not lead to substantial lessening of competition. Together with the sectoral regulators such as the Tourism Board, Communications Regulatory Authority of Namibia, Electricity Control Board, Namibian Standards Institute, and the Anti-corruption Commission, the Commission aims to ensure that there are competitive markets in the sectors and industries in order to counter anticompetitive conduct and ensure efficient market outcomes which are innovative and ready to receive any new technology, services and realised smooth entry and exit of market players.

So, as the Commission pursues fair competition, it in fact creates an enabling environment for factors of competitiveness to manifest themselves, leading to productivity and sustained national economic development. It is thus envisaged that with well working competitiveness markets, the economy would see lower prices, better quality goods, new product ranges and innovation in production and distribution, leading to a socio-economic and consumer welfare as defined in the Competition Act.

In conclusion, the Commission continues to play its role to regulate businesses in a proper and facilitative fashion without compromising the mandate provided to it by the Competition Act of 2003. These have implications for the competition policy to be fine-tuned to trade, investment and industrialisation policies and efforts in an economy in Namibia as spearheaded by the Ministry of Trade and Industry and towards economic transformation, as envisioned in NDP4 and Vision 2030, as driven by the National Planning Commission.

Competition policy and law therefore provides the capacity for businesses to become competitive by proper regulation of the businesses and the markets of Namibia, and ensuring that businesses do not engage in anti-competitive practices or mergers with the ultimate end goal of consumer welfare towards the broader economic development.

* *Chief Executive Officer and Secretary, Namibia Competition Commission.*

## ABUSE OF DOMINANCE

### EC takes Tech Groups to Task

America's tech giants are suffering a bruising time at the hands of Europe's top competition authority. First Joaquin Almunia, the EU Competition Commissioner, scolded Microsoft for failing to implement a settlement pledge to offer all Windows users a choice of web browser. Microsoft quickly apologised for the "technical error".

More worrying for Microsoft is that the EC probe will cover concerns about the Windows 8 operating system, a flagship product to be released in the autumn. Mobile services are the new frontier of the software business, a trend Almunia recognised in the demands he made on Google in tense antitrust settlement talks. He will decide whether to pursue a settlement or hit Google with formal charges for allegedly abusing its dominant position. *(FT, 21.07.12)*

### Visa Inter-bank Fees in EU Crosshairs

Visa Europe has received a fresh antitrust complaint for overcharging retailers for credit card transactions, in Brussels' latest salvo against card fees that allegedly violate competition rules. Joaquín Almunia, the EU's Competition Commissioner, served the card payment group with an updated so-called "statement of objections" after it refused to voluntarily halve its credit card fees.

The Commission action comes after an important legal victory against MasterCard in which the EU's second-highest court endorsed the conclusion that "interchange fees" hurt competition and inflate prices.

Brussels antitrust enforcers have fought Visa and MasterCard for more than a decade, with mixed success. The Commission is now also examining legislative options to cut fee levels, require more transparency or open access to competitors. *(FT, 01.08.12)*

### CCP Find Flaws in Urea Price Hike

The Competition Commission of Pakistan (CCP) has found two groups of the fertiliser sector involved in 'collective dominance' of the market that resulted in 86 percent increase in the commodity price in just one year.

The CCP investigated the reasonability behind the price of a 50kg urea bag increasing from ₹850 per bag in December 2010 to ₹1,580 per bag in October 2011 and discovered abuse of dominant position by two players collectively holding 84 percent of the total current capacity of the industry.

These market leaders increased the commodity prices to double their profits. Besides, the subsidy given by the government was not completely passed on to the consumers. *(TN, 27.06.12)*

### Telkom Fights Competition Ruling

Telkom SA Ltd. (TKG) was fined 449 million rand (US$55mn) for abusing its dominance in South African telecommunications between 1999 and 2004, less than the 3.25 billion rand (US$0.37bn) the South African Competition Commission had sought.

The Competition Tribunal "concluded that Telkom leveraged its upstream monopoly in the facilities market to advantage its own subsidiary in the competitive value added network market. Telkom's conduct caused harm to both competitors and consumers alike and impeded competition and innovation in the dynamic VANS market.

Telkom says it will appeal the fine handed down to it by the Competition Tribunal in August for abusing its dominance in the telecommunications market between 1999 and 2004. *(SACT, 20.09.12)*

### Pfizer Patent Abuse Fine Quashed

Italy's Regional Administrative Tribunal for Lazio has annulled a •10.6mn (US$13.5mn) fine imposed by the Antitrust Authority on Pfizer for allegedly excluding generic drug makers from the market.

The Italian Authority fined Pfizer in January, saying the company abused its dominant position to artificially extend the patent protection of its anti-glaucoma drug Xalatan and keep generic rivals out of the market.

The Tribunal, however, accepted Pfizer's complaint that the reasoning for rejecting the commitments was "logically and procedurally" wrong. It says the Authority wrongly held that Pfizer's patent filings were aimed at excluding generic competitors from the market. *(GCR, 05.09.12)*

## EU Targets Gazprom

The EC has opened formal proceedings to investigate whether Gazprom, the Russian producer and supplier of natural gas, might be hindering competition in Central and Eastern European gas markets, in breach of EU antitrust rules. EC has concerns that Gazprom may be abusing its dominant market position in upstream gas supply markets in Central and Eastern European member states, in breach of Article 102 of the TFEU.


The EC is investigating three suspected anticompetitive practices in Central and Eastern Europe. First, Gazprom may have divided gas markets by hindering the free flow of gas across member states. Second, Gazprom may have prevented the diversification of supply of gas. Finally, Gazprom may have imposed unfair prices on its customers by linking the price of gas to oil prices. *(EC Press Release, 04.09.12)*

### No Evidence of 'Big Four' Collusion

The UK's Competition Commission found no evidence of "tacit collusion" in its ongoing investigation of the country's auditing market, despite indications that the market appeared to be facilitating this behaviour.

Whilst many of the market conditions conducive to tacit collusion in relation to market share appear to be satisfied, it does not currently have the further evidence necessary to establish that there has been tacit coordination.

The Commission is investigating whether the UK's "Big Four" auditing companies represent an oligopoly in the UK's large company auditing market. *(GCR, 25.09.12)*

## CARTELS

### Online Booking Investigated

The Office of Fair Trading (OFT), UK accused InterContinental Hotels Group (IHG) and two of the largest online travel agents, Booking.com and Expedia of anticompetitive behaviour. The OFT alleges that the parties struck deals to restrict the ability of the websites to offer discounted rooms.

They allegedly engaged in vertical price fixing, whereby a price is fixed by a supplier and the retailer cannot go below it. The rest of the travel industry will be closely watching the case, which was triggered by a complaint by Skoosh.com, a small online agent.

IHG denied the charge and said its legal team was preparing to respond. Booking.com denied the allegations and said it would contest them "vigorously". *(FT, 01.08.12)*

### Sour on Sweet Price Exchange

The German Anti-cartel Authority fined Haribo, best known for its fruity gummy bear sweets, and one of its employees have been ordered to pay about •2.4m (US$3.06m). Staff from the company regularly met up with officials from three other sweet producers in 2006 and 2007 to informally exchange details on talks with retailers on discounts.

Such behaviour still impaired competition even if it was not a question of "hardcore arrangements about prices, branches, customers or quotas". Apart from Haribo, the office only named the German subsidiary of chocolate maker Mars, which had alerted authorities and was thus not fined. *(FT, 02.08.12)*

### Intel Appeals EU Antitrust Fine

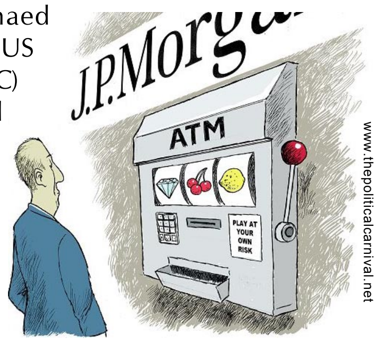
Intel presented an array of arguments to the EU General Court against a massive US$1.33bn fine imposed by Europe's antitrust regulators. In 2009, the EC fined Intel for using rebates to block rivals. The EC says that between 2002 and 2005, Dell, Hewlett-Packard, NEC, Lenovo and Media Saturn Holding all received financial incentives from Intel not to buy computer chips from its rivals.

Intel's lawyer, Nicholas Green, told the court that the Commission's analysis was "simplistic" and failed to meet the burden of proof. But the EC argues that the condition that customers buy at least 95 percent of chips for personal computers from Intel was detrimental to Intel's main rival AMD.

The antitrust fine was the EU's biggest and represented about 4 percent of Intel's annual turnover in 2008. The Commission can impose fines of up to 10 percent of turnover. Intel is seeking to have the fine annulled or substantially reduced.

*(www.itworld.com, 06.07.12)*

## JPMorgan in US Power Market Probe




JPMorgan Chase has been subpoenaed twice in the past three months by the US Federal Energy Regulatory Commission (FERC) to probe whether the bank has manipulated power markets in California and the Midwest region. The electricity probe involves whether JPMorgan's bidding strategies extracted "inflated" or "excessive" payments from two wholesale power markets serving California and several Midwest states.

"Any such improper payments to generators are ultimately borne by the households, businesses and government entities that are the end consumers of electricity," FERC Attorney Thomas Olson wrote in papers filed in a US federal court. JPMorgan mentioned the investigation in its latest quarterly financial report but provided few details. *(FT, 04.07.12)*

### Spain Hits Cartel with Penalties

Spain's competition authority, the *ComisiónNacional de la Competencia* (CNC), has imposed fines on seven companies involved in the reinforced concrete and geotechnical tensioning industries which it accuses of acting as a cartel for at least 14 years.

The cartel was exposed after geotechnical engineer Dywidag, which develops post-tensioning, geotechnical and stay cable systems for the construction and mining industries, approached the regulator in April 2010 with an application for leniency.

CNC said the cartel violated the country's competition act by sharing out contracts and customers in the field of post-tensioned systems and geotechnical tensioning. The cartel companies are accused of holding regular meetings to agree the distribution of potential contracts and to track sharing arrangements and quotas. *(www.khl.com; 17.08.12)*

### Landmark AU Optronics Sentence

AU Optronics Corporation, a Taiwan-based liquid crystal display (LCD) producer, was sentenced in US District Court in San Francisco to pay a US$500mn criminal fine for its participation in a five-year conspiracy to fix the prices of thin-film transistor LCD panels sold worldwide, the Department of Justice announced.

Its American subsidiary and two former top executives were also sentenced. The two executives were sentenced to serve prison time and to pay criminal fines for their roles in the conspiracy. The US$500mn fines matches the largest fine imposed against a company for violating the US antitrust laws.

*(DoJ Press Release, 20.09.12)*

### Air Cargo Antitrust Conspiracy

The Korean Competition Bureau fined Korean Air Lines Co., Ltd. (Korean Air) US$5.5mn for its participation in an air cargo price-fixing cartel between April 22, 2002 and February 14, 2006 in violation of the competition Act.

To date, the Bureau's air cargo investigation has resulted in seven convictions and fines of over US$22.6mn. Cargolux, Air France, KLM, Martinair, Qantas, and British Airways have pleaded guilty to fixing air cargo surcharges for shipments on certain routes from Canada. The Bureau's investigation into the alleged conduct of other air cargo carriers continues.

*(CCB, 19.07.12)*

## FINES & PENALTIES

### Brazil to Issue Guidance on Fines

Brazil's newly reformed competition agency will issue regulations to standardise the levels of fines handed to companies willing to admit wrongdoing and settle an antitrust investigation. Carlos Ragazzo, Superintendent, Brazilian Council for Economic Defence (CADE) says the agency is drafting settlement guidance after being hit with harsh criticisms of its processes earlier in 2012.

Practitioners have said publicly that the current Brazilian settlement system is at times opaque and confusing, with little apparent uniformity in the levels of fines issued to settling companies. The agency is looking back at its procedures when reaching past settlement agreements to help decide how CADE should approach such deals in the future.

The internal discussions at CADE include what kind of reductions should be given to companies that settle antitrust charges early, and what kind of cooperation settling companies should be required to provide to secure those reductions. *(GCR, 23.07.12)*

### Kingfisher's Non-compliance Fine

India's Competition Appellate Tribunal (COMPAT) has overturned a fine issued by the Competition Commission of India (CCI) to Kingfisher Airlines for alleged non-compliance. Kingfisher was penalised for allegedly failing to supply information requested in connection with an investigation of the company's alliance with Jet Airways.

The company appealed against the fine to COMPAT, and in May 2011 it set aside the CCI's order and remanded the case back to the Commission for reconsideration. The Tribunal found that the letters sent to Kingfisher were not reminders, as the CCI argued, to send the requested information, but notices of extension to the deadline by which Kingfisher needed to submit the data.

"The CCI failed to distinguish between 'failure to comply' and 'belated compliance", COMPAT "In a given case, when the compliance is to be done within a particular time and it is not done, there is failure. But when the time is extended, the failure does not occur till the extended time occurs." *(GCR, 04.09.12)*

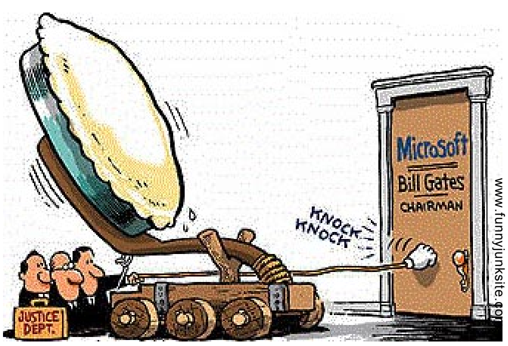
### Non-Notified Mergers Punished

Four companies have received penalties totalling 1.3 million kroner (US$216,889) for failing to inform Norway's Competition Authority about acquisitions. The Authority fined four companies in the auditing, power, construction and retail markets between 250,000 and 350,000 kroner (US$42,102-US$59,964) each for completing mergers before notifying the authority.

The Authority punished Swiss retailer Valora for buying cosmetics distributor Engelschiøn Marwell Hauge in autumn 2010 and power company Lyse Energi for acquiring a unit of rival Skagerak Fibernett in the spring of 2011. They received the highest fines. *(GCR, 06.07.12)*

## Microsoft Loses EU Antitrust Appeal

A European court upheld a billion-dollar EU fine against Microsoft but reduced the penalty by tens of millions of euros. The General Court, the European Union's second highest, dismissed Microsoft's bid to annul the penalty but cut the US software giant's fine by •39mn to •860mn (US$1.07bn).




The fine was imposed by the European Commission (EC) in 2008 after Microsoft failed to comply with an order to share product information with rivals so that their software can work with the ubiquitous Windows operating system. The court, in a statement, said it "essentially upholds the Commission's decision imposing a periodic penalty payment on Microsoft for failing to allow its competitors access to interoperability information on reasonable terms." *(FT, 28.06.12)*

### Hyundai Slammed in Korea

Korea's Fair Trade Commission (KFTC) fined Hyundai's car parts unit, 2.3 billion won (US$2mn) for abusing its superior bargaining position. The Commission says Hyundai Mobis, which makes vehicle parts such as car-supporting frameworks for manufacturers Hyundai Motors and Kia Motors, forced its subcontractors to accept unfairly low prices.

Hyundai and Kia are Korea's largest car makers. The Commission says the practice of imposing unfairly low prices violates Korea's Subcontracting Act. The authority imposed the fine in July 2012. Hyundai Mobis also agreed to refund its 12 subcontractors 1.6 billion won (US$1.4mn) for price cuts between 2008 and 2011 deemed unlawful by the KFTC. *(GCR, 30.08.12)*

### Korea Punishes Bid-rigging Builders

The KFTC fined two companies 1.5 billion (US$1.3mn) won for rigging bids related to the construction of a welfare facility for elderly people. The companies were supposed to compete on price and design to win construction rights for the 22.7 billion won (US$24.75mn) project. But according to the Authority, Taeyoung asked Byucksan to be a "complementary bidder".

Taeyoung also allegedly introduced its rival to the same design company it was using and designated the amounts to be bid. The authority says there was only 9 million won (US$8.038) between the final amounts offered.

As it allegedly initiated the collusion, Taeyoung was fined 1.2 billion won (US$10,51,370) while Byucksan received a sanction of 293 million won (US$2,62,846). *(GCR, 04.08.12)*

# Why Do Businesses Fix Prices?

John M. Connor* and Robert H. Lande**

Cartels usually raise prices more than 20 percent on average, although of course the exact amount varies greatly from one product to another. This increases the profits that the colluding firms make, often dramatically. Typically, the members of a cartel control a large share of their industry, so they don't have to worry very much about firms who are not in the cartel or outsiders undercutting their price increases.

**Businesses form price-fixing cartels because market conditions allow the cartel to be profitable and because they judge the chances of paying large fines to be low.**

Cartels are illegal in India, as is true in nearly every nation in the world. For example, the Competition Commission of India (CCI) recently imposed a collective fine of more than US$1.1bn on firms that fixed the prices of cement, which raised the costs of building homes, offices, and factories. The firms deny that they violated the law and said they will appeal the fine.

In light of the possibility of such large fines, why do firms fix prices? Quite simply, the rewards from fixing prices usually are very large relative to the penalties that are imposed if they are caught and convicted. Because cartels operate in secret, most are not caught and convicted of violating the law.

Many experts believe that there is only a 20 percent chance that the businesses will be caught and convicted of price fixing. Under these circumstances, these firms would be rational to engage in a simple cost/benefit analysis. First, they start with their expected 1 billion rupees in profit. Second, with a 20 percent chance of getting caught and convicted, the risk-adjusted chance of paying a 2-billion rupee fine drops to only 400 million rupees (2 billion rupees x 0.2 = 400 million rupees). Because the "benefits" of 1 billion rupees is greater than the anticipated "costs" of 400 million rupees, the firms involved quickly would conclude that it would be rational for them to fix prices and take a chance that they will get caught.

For India, what are the actual odds of getting caught and convicted, relative to the expected rewards and probable fines that would be imposed? Unfortunately, India's competition law is too recent for experts to gather the necessary facts.

We have, however, performed this calculation for the US, a country that made price fixing strictly illegal 122 years ago. The data we assembled and analysed for the US shows that that price fixing is, on average, a rational strategy for US firms to engage in. This is true even though the US imposes a large number of sanctions on firms caught fixing prices, rigging bids, or engaging in similar behavior.

We studied a sample of 75 recent cartels that operated in the US and internationally. We found that their median overcharge was approximately 19 percent of their sales. We also found that they were sanctioned almost the exact same amount - a median sanction of approximately 17 percent of their sales. Note that if they were *certain* of being caught, forming most cartels would be a close call, because the benefits (19 percent) are only slightly larger than the costs (17 percent).

What makes it so tempting to fix prices in the US is that there is much less than 100 percent chance of being caught and convicted. Indeed, we found that, historically, cartels in the US faced only a 20 to 24 percent chance of being discovered and convicted. Thus the "costs" of being punished are reduced to an expected 4 percent, not 17 percent. Indeed, US sanctions imposed on cartels would have had to be at least three times higher to truly discourage most firms from colluding.

Sadly, we found that 73 of the 75 cartels we studied were sanctioned much less than the optimal amount. Only 2 of the cartels actually were sanctioned enough to deprive them of their illegal profits and also to send a proper signal not to do it again. For the other 73 firms, however, the small sanctions that were imposed on them in effect told them that they should attempt to fix prices again.

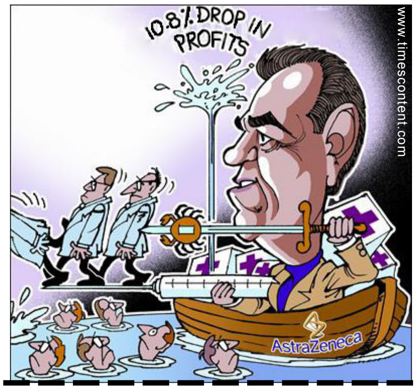
We urge analysts in India to attempt to acquire the necessary data for a large number of cartels – including information on the profitability of Indian cartels and the sizes of the sanctions that were imposed on these cartels – and to undertake an analysis similar to the one that we performed for the US. We strongly suspect that the results would be the same. We believe that it is as rational for businesses in India to fix prices as it is for firms in the US to do this.

* Emeritus Professor, Purdue University, Indiana
** Venable Professor of Law, University of Baltimore

# Astrazeneca Hungry for More Deals

AstraZeneca has the cash and appetite for more new acquisitions, the Acting Head, Anglo-Swedish Pharmaceutical Group said, after finalising his innovative US$7bn joint purchase of Amylin with Bristol-Myers Squibb (BMS). AstraZeneca will pay just half the takeover costs in the Amylin deal and fold the biotech business into its existing diabetes joint venture with BMS.

At AstraZeneca's suggestion, the acquisition is believed to have been structured with BMS taking the lead role partly to ease antitrust approvals for the absorption of Amylin with a single buyer. AstraZeneca will pay US$3.4bn to BMS and is likely to pay a further US$135m to re-establish its 50-50 governance rights over the joint venture. *(FT, 03.07.12)*




## Nod to Glencore-Xstrata Deal

The Australian Competition and Consumer Commission (ACCC) has approved Glencore's acquisition of Xstrata, the first competition authority to announce clearance of the merger. The deal, which will combine the two mining giants creating a company worth US$90bn, is "unlikely to cause a substantial lessening of competition" in the Australian market.

The Authority says in a statement: "The merged entity would have a relatively low share of global production and would compete against a number of remaining substantial competitors".

It says that its investigation of the deal showed that "any impact in global markets would have minimal impact on Australian users of those products or end-consumers." *(GCR, 05.07.12)*

## Dell's Quest Software Buyout

Dell will buy the US software firm Quest for US$2.4bn as it expands its software business to offset falling demand for personal computers. Under the terms of the deal, Dell will pay US$28 per share, outbidding rival Insight Venture Partners.

The deal is expected to be closed later in 2012 but needs to be approved by Quest shareholders. Dell said the acquisition would help secure its position in the more lucrative software business.

Dell, one of the world's leading PC manufacturers, ended weeks of speculation over the identity of a mystery bidder that had challenged Insight. Quest, which makes software to help companies run their own computer systems, had initially agreed to be bought by the investment firm for US$23 per share, or US$2bn. *(ET, 04.07.12)*

## Sun Pharma Acquires Rest of Taro

Sun Pharmaceuticals Industries, India's largest drugmaker by market capitalisation, agreed to buy out the remaining public shareholders of Taro Pharmaceutical Industries, gaining complete control of the US-listed drugmaker it began pursuing in 2007.

Sun already owns 66 percent of Taro's ordinary shares and 100 percent of Taro's founders shares, representing 77.5 percent of voting rights. To gain complete control, Sun will pay US$39.50 in cash per share for the remaining shares, or about US$580m, valuing Taro at about US$1.75bn.

Sun first attempted to acquire Taro in 2007, offering to buy the company outright shortly after it delisted from the Nasdaq after being forced to restate earnings. In 2010, Sun acquired a controlling stake in the company. That paved the way for Sun to gain complete control. *(FT, 14.08.12)*

## Infosys Acquires Zurich Firm

Infosys announced the acquisition of Zurich-based Lodestone Holding AG, a leading management consultancy firm, for US$345mn, which is expected to strengthen the company's consulting capabilities.

The Swiss company will bring in more than 200 clients from across several industry segments, including manufacturing, automotive and life sciences, to Infosys' existing pool of over 700 clients. With this, the combined consulting practice based on the SAP programme, is expected to bring in revenues of more than US$1bn.

For the acquisition process that is expected to be completed by October 2012, Infosys will pay two-thirds of the amount immediately while the rest is to be paid after three years. *(BL, 11.09.12)*

## Samsung Grabs CSR for Mobile Biz

Samsung Electronics is buying the mobile technology development business of CSR, the struggling UK chipmaker, in a US$310m deal that marks the latest salvo in the smartphone industry's patent war. Samsung and Apple have been locked in a series of courtroom battles around the world over intellectual property rights, with each seeking to block sales of the other's products over alleged patent infringements.

Samsung will pay US$310m in cash for CSR's mobile business, the companies announced. This will give Samsung control of the UK group's development operations in WiFi and Bluetooth connectivity components, as well as in chips giving access to satellite positioning systems. The South Korean group will take on 310 of CSR's employees. *(FT, 18.07.12)*

## Linde to Pay for Lincare Holdings

German industrial gas giant Linde would acquire US domestic respiratory care company Lincare Holdings Inc. for US$4.6bn. The two signed a merger agreement according to which Linde will acquire all outstanding shares of Lincare via a tender offer.

The acquisition would further expand Linde's healthcare activities by bolstering its footprint in the valuable US homecare market. However, the company has had its eye on Lincare for some time having identified healthcare as a key area for investment due to its fast growth and high margins. The two parties share historical roots.

Lincare, formerly known as Linde Homecare Medical Systems, was part of Linde until it was acquired by Union Carbide in 1917. It was later carved out of Union Carbide in 1987. *(FT, 03.07.12)*

### Volkswagen Takes Porsche's Control

Volkswagen Group's decision to take full control of Porsche Automobil Holding SE's carmaking business is seen as positive by analysts. VW has agreed to buy the remaining 50.1 percent of Porsche SE's automotive business that it does not already own for US$5.54bn, ending a seven-year takeover saga that divided two of Germany's most powerful families.

The agreement means Volkswagen can now fully fold the Porsche automaking business into its stable of brands, which range from Audi and Bentley sedans to Skoda and Seat volume models and Ducati motorbikes.

It leaves Porsche SE, which is controlled by the Piech-Porsche family, still owning 50.7 percent of VW's common stock.

*(www.autoweek.com. 05.07.12)*

### Maple-TMX Takeover Approved

Canada's top regulators approved the takeover of the country's biggest stock exchange operator by a group of Canadian financial firms, pushing a protracted process tantalisingly close to the finish line. Maple Acquisition Corp and TMX said their protracted US$3.8bn deal had been cleared by the national Competition Bureau, Quebec's Autorité des Marchés Financiers and the Ontario Securities Commission after Maple bowed to a regulatory request for board changes.

The deal would see the enlarged group owned by its biggest customers, while also taking control of Alpha Group, Canada's largest independent electronic trading platform, and the country's main securities clearing house. *(FT, 05.07.12)*

### Anglo-Lafarge get UK Clearance

The UK's Competition Commission has given final approval to the proposed £1.8 billion joint venture between construction companies Anglo American and Lafarge. The Authority is satisfied with the commitments offered by the companies to alleviate concerns that the deal would "damage competition in certain markets for construction materials".

Lafarge and Anglo American, which owns the Tarmac company in the UK, are two of the country's largest suppliers of construction materials. Through the joint venture, the companies plan to combine their operations that produce materials used for constructing roads and buildings.

In May 2012, the Commission called for divestments to clear the deal. Lafarge and Anglo American responded by agreeing to sell several assets relating to the production of cement, ready-mix concrete, aggregates and asphalt. *(GCR, 30.07.12)*

### Orkla Scoops up Rieber

Orkla has bolstered its position as the Nordic region's biggest consumer goods company by buying rival Norwegian group Rieber & Søn for NKr6.1bn (US$1bn). The move is part of the Oslo-based conglomerate's attempts to turn itself into a pure-play consumer goods company while shedding itself of industrial, technology and financial assets that it has built up in its 100-year history.

Orkla – whose current brands include Stabburet in Norway, Abba Seafoods in Sweden and Beauvais in Denmark – gains access to new sectors and countries through the acquisition. Rieber is the dominant maker of soups, sauces and casserole mixes in Norway through its Toro brand. *(FT, 21.08.12)*

### Itaú-BMG in Loans Joint Venture

Itaú Unibanco Holding , Brazil's largest private-sector lender, formed a US$493mn joint venture with smaller rival Banco BMG to offer payroll-deductible loans, the fastest-growing personal loan segment in Latin America's largest economy.

This transaction is another step by Itaú-Unibanco to consolidate its strategy of operating with lower-risk assets with smaller spreads. Loans overdue by more than 90 days in Brazil hit a record high in May of 6 percent as the sharp economic slowdown put pressure on the country's consumers, who traditionally buy everything from socks to plastic surgery on credit.

Aside from giving Itaú access to more banking customers in Brazil, the BMG deal will also provide it with more experience of a sector of the banking industry that has largely been the domain of smaller banks. *(FT, 11.07.12)*

### TelstraClear Sold to Vodafone

Vodafone New Zealand is planning to acquire TelstraClear's voice- and data-based services, network infrastructure and New Zealand customer base for NZ$840m (US$686m). TelstraClear is the New Zealand subsidiary of the Australian telecommunications firm Telstra Corporation.

David Thodey, CEO of Telstra, said the deal is a natural one, bringing together TelstraClear's fixed telecommunications and data products and corporate client base with Vodafone New Zealand's wireless offering and retail customer base. Telstra will continue to service trans-Tasman customers on a longer-term basis through an agreement with Vodafone New Zealand. *(FT, 13.07.12)*

## BAE-EADS to Create Aeronautical Giant

BAE Systems, the British defense contractor, and the Airbus-owner EADS are in talks to merge both companies. The newly-formed giant may overtake the sales of Boeing. The announced deal is to be the biggest merger since 2000 and "offers the prospect of significant benefits for customers and shareholders of both companies".


At the end of the mega-merger the BAE systems would own 40 percent and EADS the resting 60 percent of the new company.

BAE Systems has almost no business except the defense industry and the merger should protect the company from shrinking defense budgets. EADS provides aerospace and defense operations in France, Germany and Spain.

*(www.wbponline.com, 14.09.12)*

# A Universal-EMI Merger Could Rescue the Music Business

Patrick Zelnik*


For 12 years at Impala, an association representing independent record labels in Europe, I have fought concentration in the music industry. However, as Universal Music awaits regulators' verdict on its £1.2bn bid for EMI's recorded music division, I think it could be just what the sector needs.

Universal Music's bid was met by disbelief. The Vivendi subsidiary is the largest player in the industry and an astute competitor. Everything it does is watched with concern and envy. And yet, as I contemplate EMI's fall from grace and the way it was ravished by private equity, I can see that in the right circumstances this merger could create a more competitive industry, while offering stability to EMI's artists.

**The industry must act to bring back a generation that stopped paying for content since it was seen as expensive and boring**

How could that be? Since 2000, there have been three investigations by the European Commission, two court cases, one blocked merger, another merger approved after much litigation, two large publishing acquisitions – and yet the market has collapsed. The industry has lost more than half of its revenue. EMI was seized by its bankers, other big companies cut staff and artists and the independents are, with few exceptions, fighting for their lives.

Compared with Apple, Google and Facebook, all music companies are small and independents minuscule. These digital giants need to redouble their efforts to create affordable offerings that fairly remunerate artists, record companies and other rights holders, while respecting artistic integrity. Music entrepreneurs, small or big, need to recoup their investments and make profits, or cultural diversity will become cultural uniformity. Music, film and television are to internet players what the piano stool is to the piano: inseparable. And the music industry must act to bring back a generation that stopped paying for content because legal ways to do so were seen as expensive or boring.

This can be done if the Universal/EMI deal serves as a model, giving entrepreneurial platforms access to label repertoires on a non-discriminatory, transparent basis – in return for a commitment to direct traffic towards legal and affordable services. None of this should deprive Universal of power in the digital marketplace. A combined Universal/EMI can play a huge role.

Moreover, we can use Universal's acquisition as a model to create online competition that reflects music retailing when it was healthy. Emulating this online could give a huge boost to digital sales, streaming options and choice.

For the deal to aid growth and competitio n, however, Universal should commit to the following. First, to transparent, non-discriminatory, easy licencing to new platforms which should encompass Universal, EMI and independents representing the majority of the market.

Second, Universal should make targeted, surgical divestitures to independents instead of to hedge funds, private equity or pension funds. Independents reinvest their profits better in signing new artists and developing new genres, and are instrumental in musical and technological innovation that is the lifeblood of music. Third, there should be direct financial support for industry groups that aid in levelling the playing field between small and large labels, so that the innovations of entrepreneurial labels are quickly adopted by the rest of the industry.

Today, we can change this. I call on regulators to bring Universal and the independents to the table to redress competition concerns and show the world they are capable of vision in transforming troubled industries.

* *Co-president of Impala and President of Naïve Records. Abridged from an article that appeared in the* Financial Times*, on July 17, 2012*

# Corporate Values are not just a Calculation

John Kay*

GlaxoSmithKline, the pharmaceutical group, was fined US$3bn for abusive practices in marketing drugs in the US. Royal Bank of Scotland and its subsidiaries failed to process their customers' transactions. Both companies must have been relieved that Bob Diamond and Barclays successfully dominated the headlines. And these events follow BP's disaster in 2010.


**If we are ever to have confidence in these companies, we want them to pursue these objectives, not because they are good policy, but because such goals are integral to the companies' identity**

Conspiring to rig interest rates is probably fraudulent; failing to report the side effects of a drug is severely reprehensible but probably not illegal; cutting corners on an oil installation is negligent; systems failure in a computer system seems like bad luck. The degrees of culpability vary as do the incidents themselves. But is there a common underlying cause?

All four companies made decisions that benefited them in the short term but came back to haunt them. And yet to describe the problem as short-termism, though true, is not to get quite to the heart of the problem.

Some commentators have suggested that the US$3bn fine on GSK was less than the profits the company made from its misconduct. BP clearly made a bad call, but we say that with hindsight. On the strong balance of probabilities, the well would have been fine and the consequential damage was far larger than could reasonably have been expected. What would we think of GSK, or BP, if we discovered that the companies had weighed the costs and benefits and decided to go ahead anyway with doctors' spa weekends and cutting corners on the rig installation?

Not much, because the Ford Motor Company was pilloried for acting in this way. The Pinto is notorious as one of the worst cars Ford ever made. But it is more notorious still for its exploding fuel tank. Ford knew how to fix the problem at a cost of US$11 per car.

But they estimated that only 180 people would die, and if you value life at US$200,000 per head, it is cheaper to let accidents happen.

The calculation is beyond parody or contempt. And yet while it is easy to say that safety, or human life, is priceless, in the real world trade-offs have to be made. Every cheap car could be made safer, but then it would cease to be a cheap car, and people who take a modest risk every time they leave the house would not be able to benefit.

But as soon as that calculation was disclosed, Ford's case was lost: both in the court where the relatives of a Pinto victim were suing the company, and in the court of public opinion. Not because we think the value of life is actually US$500,000 – the level at which the calculation breaks even – or because we think the discount rate used is too high, but because we find unacceptable the instrumentality of making the calculation at all.

We detest what it tells us about the values of the company. In Ford's case this is unfair because, as the company tried vainly to persuade the court, the cost-benefit analysis was not its own idea: the analysis was a requirement of the National Highway Transportation Safety Agency, which was staffed by young enthusiasts for cost-benefit analysis.

That points to the real issue at GSK, RBS, Barclays and BP. We are not interested in whether these companies made good or bad calculations. We are interested in what these incidents tell us about the values of the companies concerned. We need to be able to trust pharmaceutical companies. We expect banks to be run and populated by honest people, to keep our money safe, and to give us our money back when we need it. We want oil companies to have a strong culture of engineering professionalism and commitment to health and safety.

If we are ever to have confidence in these companies, we want them to pursue these objectives, not because they are good policy, but because such goals are integral to the companies' identity. Otherwise their literal or figurative licences to operate will be in jeopardy. The common mistake of all these businesses was to raise doubts about their values in the instrumental search for earnings.

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* *Visiting Professor, London School of Economics, UK. Abridged from an article that appeared in the* Financial Times*, on July 10, 2012*

### Russia Updates Privatisation Plans

Russia's government presented a new version of its long-delayed privatisation programme, announcing plans to sell US$9.31bn worth of assets this year, including stakes in the biggest lender Sberbank and the diamond miner Alrosa.

Dmitri Medvedev, the Russian Prime Minister, announced at a cabinet meeting that a new four-year timetable had been approved that would see these two sales and others go ahead while delaying the privatisation of energy group Rosneft. The government had planned to sell 15 percent of Rosneft in 2012 but it has pushed back the deadline for the sale to 2016.

The latest amendments to the privatisation programme follow a series of delays and mixed messages from the new government. *(FT, 08.06.12)*

### Brazil Launches US$66bn Stimulus

Dilma Rousseff, Brazil's President launched a (US$65.6bn) stimulus package to spur investment in the country's infrastructure and build up ailing investor confidence in the second largest emerging market economy.

Rousseff said the government would sell concessions in nine highways and 12 railways. Among the initiatives, the government will sell rights for private companies to operate 7,500 km of roads and 10,000 km of railways.

Bret Rosen, Senior Credit Strategist for Latin America at Standard Chartered, said the move was a step in the right direction, but added: "the easy thing is making the announcements…the track record is pretty poor on infrastructure. Economists have warned that the measures would have little short-term impact. *(FT, 16.08.12)*

### Japan Intensifies Investment

When floodwaters swamped JVC Kenwood's plant in Thailand in October 2011, the Japanese manufacturer of car stereos and camcorders brought production back to Yokosuka, south of Tokyo, while the Thai facilities were drained and disinfected.

"We had no choice but to relocate," says Nobuo Ochiai, Senior Vice-President in charge of Global Production and Procurement, noting that the company had preserved a "core" of technical staff in Japan.

JVC Kenwood is an extreme case, with an overseas production ratio of about 90 percent of sales. But it is not alone. For years, Japan's industrial base has been steadily scooped out from the inside, as executives choose to take advantage of lower costs, cheaper currencies and stronger demand elsewhere. *(FT, 30.08.12)*

## China Eases Taxes for Foreign Companies

China is easing withholding tax for foreign companies by up to 50 percent to encourage more overseas investment. The move will also apply to dividends paid by Chinese listed companies to foreign shareholders through the Qualified Foreign Institutional Investor scheme.

In both cases, the lower tax rates will apply only to companies and shareholders based in countries, such as the UK, that have double taxation agreements with China. The changes could save companies billions of dollars' worth of tax payments, which might initially lead them to repatriate more profits, but ultimately should provide incentives for more investments, according to experts at KPMG.


The bigger picture is that because of the economic situation globally over the past couple of years, China sees the need to create a friendlier environment for foreign investors. *(FT, 16.07.12)*

### Coke Ups Indian Investment

The Coca-Cola Co announced a further US$3bn in investment in India over the next eight years as the world's biggest soft drinks maker seeks to expand in a country where its flagship brand trails rival Pepsi. The beverages giant said it, along with its partners, will invest US$5bn in India by 2020 on various activities, including setting up of new bottling plants.

The investment, along with its partners, will go on increasing bottling lines, adding new bottling plants, enhancing backend chain infrastructure as well as marketing by the company. "We've increased the investment here because we think, there's potential here to stay ahead of the curve," Muhtar Kent, Coca-Cola Chairman and CEO said. *(FT, 27.06.12)*

### France: Top Choice for Investors

France is still the number one choice for Brits buying property abroad, according to the latest overseas property 'hot spots' report compiled by Conti. The country is top of the list for the fourth year running, accounting for a huge 45 percent of mortgage enquiries received so far this year. This is the country's biggest share achieved to date, and compares with 39 percent in 2011, and just 15 percent back in 2008.

Clare Nessling, Conti's operations director, said: "Buyers have increasingly been sticking to locations they know and trust, which is why France and Spain are out on their own at the moment, and Portugal is starting to rise in popularity again too.

*(II, 19.09.12)*

### India 3rd Destination for FDI

India is the third most favoured destination for global companies after China and the US, a United Nations report said, while predicting that investment inflows could increase by more than 20 percent in 2012 and 2013.

"Foreign direct investment (FDI) flows into India rose 30 percent to nearly US$32bn in 2011, which will go up by 20-25 percent in 2012 and by about 20 percent in 2013, if the present trend continues," said Nagesh Kumar, Chief Economist, United Nations Economic and Social Commission for Asia and the Pacific. *(LM, 06.07.12)*

# Protect the Virtue of Exchange Traded Funds

John Gapper*

**They are among the biggest and most useful innovations for the retail investor since the advent of mutual funds. But it is time for those investors to look a little more closely at exchange traded funds.**

The industry itself is reconsidering. After a race to get on board the exchange traded funds (ETF) bandwagon, a quarter of the funds listed in the US have failed to attract enough cash to be viable. The shakeout of the US$1.7tn industry, which is still pulling billions away from traditional mutual funds, is solidly under way.

Retail investors have faith in ETFs, and in many ways they are right. They are flexible instruments that allow them to invest in indices such as the S&P 500 and the FTSE 100 more cheaply than alternatives. Instead of the complexities of trading in stocks and bonds, or the expense of actively-managed funds, they can track the market efficiently.

Yet the funds also appeal to institutions and professionals and are used for other purposes – to short the market, or to hedge and trade in opaque ways. Most of the time, the two groups can coexist happily, but the potential for trouble is growing along with the industry.

"ETFs democratise investing – retail investors come together with the biggest and smartest institutions in one product, and are treated fairly and the same. It is cheaper to pay a fee of one-third of a percent to a passive ETF than to invest in expensive actively-managed funds, many of which underperform the same indices anyway. ETFs cost less than passive mutual funds and, unlike mutual funds, investors can buy or sell shares in the trading day.

This is a mixed blessing – the "temptation effect" could encourage investors to trade in and out of ETFs constantly, reducing their long-term investment returns. One study by Vanguard found that 62 percent of its retail ETF investors tend to "buy and hold" compared with 84 per cent of mutual fund investors.

From plain ETFs such as State Street's huge SPDR US fund, which follows the Standard & Poor's 500 and has US$107bn in assets, the sector has produced a myriad of funds – 4,600 at the last count. Small ones track esoteric indices and industries, using various baskets of securities.

The big three ETF managers – BlackRock, State Street and Vanguard – want to protect their franchises by drawing a line between "physical" ETFs and newfangled derivatives, some of which are leveraged. They would like more transparency and clearer labels.


But even plain ETFs have pitfalls for retail investors. For one thing, US institutions and retail investors are not actually treated equally – ETFs in the US only trade blocks of securities with approved institutions, while retail investors only obtain shares through brokers.

In this two-tier market, retail investors tend to buy and hold ETFs while traders and market-makers move in and out of funds rapidly for many different reasons. ETFs, for example, have become the primary vehicle for institutions to short markets: it is easier to trade in one index fund than to borrow many different securities.

That need not be a problem for retail investors itself – indeed, it can be an advantage. A lot of trading in an ETF tends to narrow the spreads at which its shares are offered and thus lower the ultimate costs for individuals. Market-makers also tend to seize on gaps that open up between the value of an ETF and its underlying index, and eliminate them through arbitrage.

But things do not always work in favour of the ordinary investor. Moody's cited one case earlier in 2012 in which the value of one bond ETF was heavily reduced by one investor trading a single US$780m block of shares. That single incident led Moody's to warn asset managers about the "irregular use" of ETFs.

The irony is that ETFs generally have a good record and have so far been friends to retail investors. It is important for their virtues not to be sacrificed to the other uses traders find for them.

* *Business Columnist and Associate Editor, Financial Times. Abridged from an article that appeared in the* Financial Times*, on September 05, 2012*

### Verizon Spectrum Deal Approved

The US Federal Communications Commission (FCC) has approved four separate deals that will transfer wireless spectrum to Verizon Wireless, including the US$3.9bn deal between Verizon and a group of cable operators.

The approved deals will allow Verizon to get nearly 20 megahertz of Advanced Wireless Service spectrum from Spectrum Co, a joint venture that includes cable operators Comcast, Time Warner Cable, and Bright House, as well as AWS spectrum from cable operator Cox Communications.

Under the terms of the agreement with the FCC, Verizon will be required to divest some of its wireless spectrum, including some that it already conditionally offered to sell to T-Mobile USA, The Deutsche Telekom mobile unit. The FCC has put some conditions on the approval of the license transfers, including roaming requirements on all AWS spectrum involved in the transfer as well as a requirement to report to the FCC the state of DSL broadband competition. *(FT, 17.08.12)*

### Nigeria Releases DISCOs Bidders

Nigeria announced the preferred bidders for five state power generation plants, part of plans to privatise the country's electricity sector to boost growth in Africa's second-largest economy. Despite holding the world's seventh largest gas reserves, Nigeria only produces about 4,000 megawatts of electricity for its 160m people.

In 2010, President Goodluck Jonathan announced plans to break up the state power company and sell it off as 11 distribution and six generation companies. He has promised a marked improvement in power output in 2013. *(FT, 25.09.12)*

### Developments in Oil & Gas

Argentinian President Cristina Fernández presented a bill to the national legislature to expropriate Argentina's largest oil and gas company, YPF. She issued a decree which allowed the government to take temporary control of the company. On May 03, 2012 the bill was passed by the legislature, providing for the expropriation of a controlling stake in YPF.

Through the YPF Expropriation Act (Law 26,741) Argentina expropriated 51 percent of YPF's shares that were owned by Spanish-based multinational Repsol. The remaining 49 percent – owned by Repsol, the Petersen Group and individual owners of publicly traded YPF securities – has not been affected by the expropriation. In addition to the expropriation of YPF's shares, the act also deals with Argentina's long-term hydrocarbons policy. *(ILO, 02.07.12)*

### European Air Traffic Treaty Signed

Federal Minister of Transport Peter Ramsauer and his Swiss counterpart, Federal Councillor Doris Leuthard, signed the state agreement on air transport operations at Zurich airport between Germany and Switzerland. The federal state government of Baden-Württemberg and the district commissioners of the region had also been involved in the negotiations.

On July 02, 2012, the draft state agreement was initialled by the lead negotiators. The Federal Cabinet approved the signing on August 22, 2012. After the agreement has been signed, it must be ratified by the parliaments of the two countries. *(www.bmvbs.de, 04.09.12)*

## Indian National Telecom Policy Issued

The Indian Department of Telecommunications recently issued the 2012 National Telecommunications Policy through an office memorandum dated June 13, 2012. Previous policies issued by the department include the 1999 New Telecommunications Policy and the 1994 National Telecommunications Policy. The department also issued the 2004 Broadband Policy.

Although the 2012 policy does not itself change the existing law, it sets out the objectives and strategies that the government intends to adopt when introducing changes to the law or reforms within the telecommunications sector. Furthermore, it sets out the overall direction that the government is expected to take in regulating the sector. *(ILO, 25.07.12)*

### Certainty for Medical Insurance

The National Insurance and Bonding Commission amended Section 5.1.24 of the Unified Insurance Ruling related to medical expense insurance. The amendment provides clearer guidelines for insurers to follow in regard to their medical expense insurance products. It expressly requires insurers to draft policies with clarity and legal certainty for the insured.

According to this amendment, payment from insurers for coverage over the duration of the insurance policy will be limited to one of the following, whichever comes first: the agreed insured amount; expenses incurred during the benefit period agreed under the policy; or the recovery of the insured's health. *(ILO, 31.07.12)*

### Investigative Body for Maritime

A new law was passed on June 02, 2012 that establishes an investigative body for maritime casualties. The legislation brings with it certain obligations and criminal penalties for those involved in maritime incidents. Ships flying the Belgian flag and all ships calling at Belgian ports will finance the new institution, the *Federale instantie voor Onderzoek van Scheepvaartongevallen* (FOSO).

FOSO was established to implement EU Directive 2009/18/EC which is intended to reduce the number of marine casualties and incidents by ensuring investigation and analysis of the causes of marine casualties. An investigation by FOSO will be mandatory where there is a "severe marine casualty". *(ILO, 08.08.12)*

# Seven Ways to Clean Up Our Banking 'Cesspit'

Martin Wolf*

The Libor scandal has nailed the coffin of the banks' reputations shut. After a huge financial crisis and a long list of scandals, banks are now viewed as incompetent profiteers run by spivs. Here are my seven suggestions of how best to respond.

First, accept that misbehaviour is going to happen, particularly where so much money is at stake. It is good that the public reacts strongly, since that will discourage managerial insouciance. But let us be realistic: bankers are in this for the money and, like it or not, always will be.

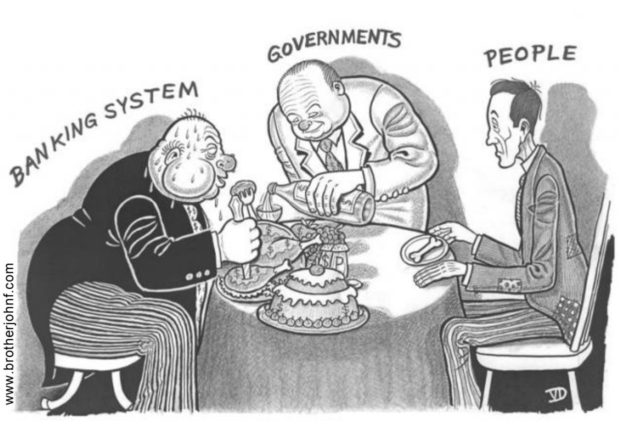
Second, there are ways of lowering the risk of such a scandal being repeated: heavy penalties are one, more transparency another. Data for actual transactions should be used. Transparency is no panacea for the ills of banking. But it would help.Third, banks need far more equity. This, too, is relevant to the Libor scandal.

**What is needed is a push towards substantially lower leverage and significantly greater transparency. Not least, I would do everything I can to eliminate the idea that the state stands behind investment banking.That is an insane idea**

Fourth, more equity cannot mean 100 percent equity. I accept that leverage of 33 to one, as now officially proposed, is frighteningly high. But I cannot see why the right answer should be no leverage at all. Fifth, in setting these equity requirements, it is essential to recognise that so-called "risk-weighted" assets can and will be gamed by both banks and regulators.

Sixth, the case for implementing all the recommendations of the Independent Commission on Banking, of which I was a member, is now even stronger. In particular, it remains vital that banks be easily resolved, in the event of mishap: ringfencing of the retail banks, where continuity of service is essential, should facilitate this. In brief, banks need a large margin of safety, at all times.

The ringfencing of retail banking should also reduce its contamination by the short-term trading culture of investment banking. This is one reason why the government should reconsider its decision to let retail banks provide "simple" derivatives. But do not be naive about this: retail banks can both misbehave and fail.




Indeed, a question the UK must now face is whether a sound model of retail banking exists, given today's low interest rates. I would argue that the painful history of scandals in retail banking, including the brutal treatment of unauthorised overdrafts and the misselling of "payment protection insurance", reflects the absence of sound charging for the costs of providing banking services.

Finally, I see no more persuasive a case for full separation of retail from investment banking than before the scandal, provided funding of the latter is separated from the deposit base of the former. Retail banks must also retain adequate equity.

Of course, with higher capital requirements and the loss of both captive deposits and the implicit subsidy from governments, the cost of funds to investment banking would rise. But that would surely be healthy. If the pay of bankers were also aligned more closely with the interests of junior creditors, many of the more irresponsible forms of risk-taking should in time disappear.

It is understandable that recent scandals have enraged the public. But rage is always a dangerous basis for policy. Where I would go further is towards substantially lower leverage and significantly greater transparency. Not least, I would do everything I can to eliminate the idea that the state stands behind investment banking. That is an insane idea. This is one reason why the ringfence is vital.

We cannot hope for miracles. But we can make bankers more useful and less dangerous. Focus on that.

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* *Associate Editor and Chief Economic Commentator, Financial Times. Abridged from an article that appeared in the* Financial Times*, on July 12, 2012*

## Curb 'Too Big to Fail' Insurers

Regulators are planning to require insurers deemed "too big to fail" to set out how they propose to reduce the risks they pose to the financial system within 18 months of being given the label.


Insurers designated "systemically important" would need to draw up so-called systemic risk reduction plans, which could lead to restrictions on activities, such as financial derivatives, that are outside their core business. Institutions that meet the criteria will also be required, like banks, to prepare so-called living wills within the same timeframe.

Regulators are trying to prevent a repeat of the failure of AIG, which had been considered one of the strongest insurers but which the US government had to rescue during the 2008 financial crisis.

*(FT, 31.07.12)*

### A Unique Financial Transaction Act

The Hungarian Parliament adopted the Act on Financial Transaction Fees (116/2012), which becomes effective from January 01, 2013. The Act designates the levied contribution as a fee, but this characterisation is highly questionable, as the contribution does not represent a reimbursement of costs or consideration for a service rendered by the state.

The financial transaction tax is payable by banks and other providers of payment services with a head office or branch in Hungary. It is payable in connection with two types of financial transaction: payment services, such as fund transfers, collections or cash payments to or from payment accounts or through the post office; andissuing bills and accepting deposits by the Magyar Nemzeti Bank for a term no longer than two weeks. *(ILO, 31.08.12)*

### Mexico to Implement Basel III

Basel III, the most recent of these amendments, seeks to change the rules for common equity and the method for calculating statutory capital reserves that all banks must have, and also creates the concept of a 'capital conservation buffer'.

The Basel Committee on Banking Supervision has set January 01, 2013 as the date on which Basel III will become effective.

However, Mexico intends to implement its guidelines during the second semester of 2012 for the following reasons: generally speaking, banks have the required solvency to implement Basel III; and early implementation does not imply a significant regulatory cost, due to the favourable conditions prevailing in the Mexican banking system.

*(ILO, 20.07.12)*

### Banks Face Hit from Ringfencing

Europe's big banks could be forced to ringfence trading assets under a plan emerging as the consensus recommendation of an EU-wide review of the structure of banking. Until the Liikanen review is due to be completed, people close to the project said a clear majority was emerging in favour of a combination of the US and UK approach to structural reform of banks – taking elements of both the Volcker and Vickers rules.

The central tenet of the US Volcker rule is a ban on so-called proprietary trading – activity that involves betting the bank's own money. Britain's Vickers commission concluded that retail banking activities should be ringfenced from universal banks' investment banking operations.

Under the plan to ringfence trading activities, any bank that exceeded a threshold of trading assets as a proportion of total assets – which could be set as low as five percent – would be obliged to establish a separately capitalised subsidiary to house that activity. *(FT, 10.09.12)*

### Fan-Fred Rejects Mortgage Loan

The Federal Housing Finance Agency (FHFA) announced that after several months of mounting pressure from the Obama administrator and lawmakers that the mortgage giants it regulates, Fannie Mae and Freddie Mac, will not lower the mortgage principal of underwater home owners. Its decision quickly drew criticism.

The FHFA insists that through its own analysis it has concluded that reducing the mortgage principal of struggling home owners will not help prevent foreclosures nor save taxpayers money in bailout money to the GSEs.

The Obama administration says it disagrees with the FHFA's decision. Treasury Secretary Tim Geithner was quick to argue that a reduction of struggling borrowers' loan balances by the FHFA could save taxpayers up to US$1bn.

*(www.realtormag.realtor.org, 01.08.12)*

### Libor Structure & Governance Unfit

Libor benchmark interest ratesare no longer "fit for purpose" and must be changed or replaced,Britain's regulator said as he set out proposals torestore their credibility. The initial review by the Financial Services Authority isthe first concrete step to reforming Libor after a rigging

scandal that has implicated global banks and hurt the reputationof regulators on both sides of the Atlantic.

The London Interbank Offered Rate, known as Libor, setsprices for everything from credit card payments to complexderivatives, but its credibility has been damaged since itemerged that it had been manipulated by the big banks that set it.

Wheatley's review was ordered after British bank Barclayswas fined more than US$450mn for rigging Libor.Lenders such as Royal Bank of Scotland also face fines.Wheatley makes clear alternativebenchmarks to Libor should be used in some cases while thecalculation of the rates themselves needs to be done differently to make it harder to fiddle.

*(BS, 10.08.12)*

# Little White Lies

Rishab Kumar*

I may not agree with what you have to say, but I will defend unto death your right to say it" — even if what you say is a blatant lie. The quoted statement is the classic representation of free speech philosophy propagated by Voltaire in the 18th century.

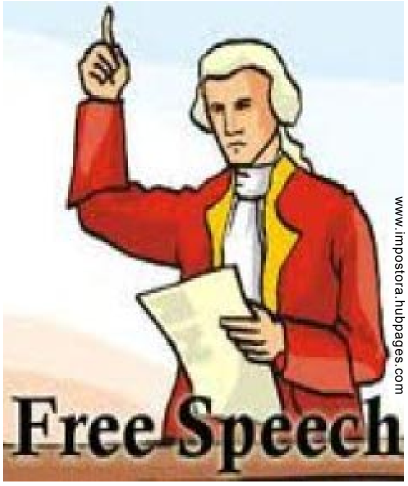
The extension, a fierce defence of an individual's rights, is a reflection of US vs Alvarez, a recent US Supreme Court decision where the court held that an individual's right to lie is protected by the freedom of speech clause in the First Amendment to the US Constitution.

"Lying was his habit." Xavier Alvarez, the respondent in the case, lied when he said that he played hockey for the Detroit Red Wings and that he once married a starlet from Mexico. But when he lied in announcing he held the Congressional Medal of Honour, he ventured onto new ground, for that lie violated a federal criminal statute, the Stolen Valour Act of 2005.

Alvarez was a board member of Three Valley Water District Board, a government entity in California. At a board meeting in 2007, he introduced himself as: "I'm a retired marine of 25 years. I retired in the year 2001. Back in 1987, I was awarded the Congressional Medal of Honour. I got wounded many times by the same guy."

None of this was true. But, none of these statements was made with a view to gain any benefit, commercial or otherwise. It was merely an attempt to gain esteem. Alvarez was prosecuted under the Stolen Valour Act, which aims to prevent people from lying about military honours.

However, the court held that, so long as there was no other unlawful benefit,




**US Supreme Court upholds the right to lie as part of the freedom of speech**

Alvarez had a constitutionally protected right to make such statements and any law that prevented him from doing so was unconstitutional.

The court's reasoning was as follows. The First Amendment grants an almost absolute right to free speech and content-based restrictions on this right have been permitted only for a few historic categories of speech. These include incitement, obscenity, defamation, speech integral to criminal conduct, so-called "fighting words", child pornography, fraud, etc. Crucially absent from these limited categories is any general exception for false statements. As the Stolen Valour Act targets falsity and nothing more, the court found the act unconstitutional.

Here, it may be interesting to note the difference between US and Indian law on freedom of speech. The US First Amendment enacts an absolute prohibition against Congress making any laws that curb free speech, so that a heavy burden lies on anyone transgressing the right to justify such transgression. The clause itself contains no exceptions and the only restrictions on this absolute right have had to be evolved by judicial decisions.

The position in India is different. The right itself is more limited. The right to freedom of speech, contained in Article 19(1)(a) of the Constitution, itself contains limitations in Article 19(2). Laws imposing reasonable restrictions on freedom of speech are permitted by the Constitution (albeit for certain purposes only), and whether any such law is constitutional is only a matter of construction.

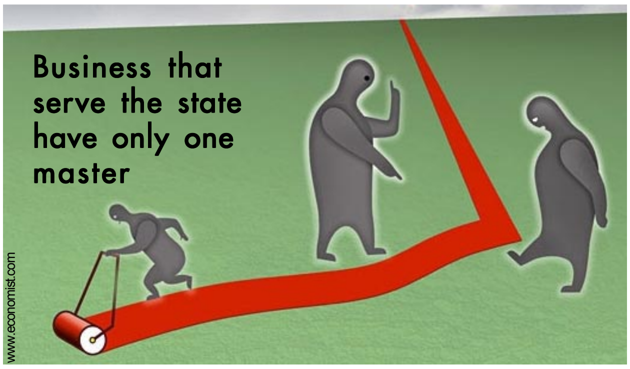
The difference between the two countries in their approaches to freedom of speech is ironically captured by the first amendments to the two constitutions. While the First Amendment to the US Constitution enacted the landmark prohibition against imposing restrictions on free speech, the First Amendment to the Indian Constitution amended Article 19(2) and actually expanded the restrictions on free speech.

Readers will be aware that this judgment comes at a time when India has shown itself as an increasingly intolerant society; whether it's Salman Rushdie being prevented from speaking at the Jaipur Literary Festival, or prescribed dress codes for tourists in Kashmir. Freedoms are not easily won and this case should serve as a contrast and an instructive reminder that even the smallest freedoms must be protected fiercely as a matter of principle.

* *An Advocate and LLM Candidate, Columbia University, US. Abridged from an article that appeared in the* Indian Express*, on July 17, 2012*

# Bonfire of Regulators and their Champions

Luke Johnson*




I used to think the most dangerous enemies of free enterprise were bureaucrats, union bosses and socialists. Now I'm not so sure. Perhaps an even greater threat to open markets and invention are those business owners who exploit regulation to prey on entrepreneurs.

How about the many companies that thrive on the back of health and safety, employment, planning, environment, building or transport laws? They work alongside government agencies to suffocate small companies with training, manuals, forms, tests and costs that divert money and management time from serving customers. Each new rule provides these suppliers with more lucrative work – and entrepreneurs have no choice but to buy, or they get fined or shut down.

Businesses that serve the state have only one master, so instead of offering lower prices or greater efficiencies, they become adept at bidding and gaming the tender system. As government crowds out the private sector, taking an ever larger slice of the economy, it perverts the very principles of capitalism. Cronyism and pressure groups dominate, rather than supply based on quality, service and price.

I include the financiers and farmers who exploit the taxpayer in the US by producing biofuels instead of food. This diversion of agricultural land has helped to push up the price of many commodities, but enriched those who take advantage of misguided green subsidies. These vested interests lobby hard to protect distortions that deliver energy inefficiently and contribute to famine.

Politicians, civil servants and their co-conspirators – lawyers – justify their existence by endlessly passing new legislation that restricts free trade. They are aided in this task by parasites who subcontract to government, exploiting monopolies, grabbing licences and restricting new rivals. There is always some spurious rationale for fresh edicts – harmonisation, protecting consumers, preventing abuses and so forth. The effect of such interventions is often stifled competition and unintended consequences that damage the public.

As government has become bigger, it polices every area of commercial activity ever more intimately. There are more than 650 regulatory bodies in Britain, each making the entrepreneur's life just a little harder, and many levying fees on the business they regulate so they can argue the cost is not borne by the taxpayer. But the costs are passed on to consumers in higher prices, so we all pay one way or another.

Regulations tend to help big companies. They act as barriers to small newcomers. Be it broadcasting, pharmaceuticals, banking or insurance, my experience has been that the rules favour incumbents. Established businesses have permissions and licences that newcomers might struggle to obtain, they have connections to regulators and they also often capture the very watchdogs that are meant to oversee them.

This big business establishment resists innovations because they might undermine their oligopoly, margins or special privileges. And regulators move too slowly to keep up with new technology and changing behaviour: just look at the confusion across the media industry. For example, lax supervision of the internet means traditional media businesses are disadvantaged.

But technology does help smash obstacles and allow start-ups to crash the party. Government procurement is at least now more transparent, which is helping to expose cosy deals.

Meanwhile, the debt crisis is forcing governments to cut their spending, so there is less crowding out of the private sector and thus a chance of real choice. Moreover, most experts accept that to remain competitive the west must cut regulation and boost entrepreneurship to create jobs.

The regulators will fight for their livelihoods, however, and those organisations that implicitly win under regulation will whisper in ministers' ears. Some regulations are necessary, but too many are gold-plated to suit favoured parties. Regulators by their nature proliferate and develop a morbidly symbiotic relationship with certain businesses that stifles choice, innovation, job creation and competitiveness.

Political leaders who want to foster world-beating companies must act decisively and, as with any transformation, slash off the gangrenous limbs without mercy.

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* *Runs Risk Capital Partners, a Private Equity Firm, and is Chairman, StartUp Britain. Abridged from an article that appeared in the* Financial Times, *on June 27, 2012*

# Action Needed on Regulating the Regulators

Didier Cossin*

The quality of corporate governance has been deeply questioned around the world, with large reputational hits such as the BP Macondo field explosion and SanLu's milk scandal in China and New Zealand, among many others.

But there has been less attention until now on the governance of the markets themselves and that of their regulatory bodies. Market dysfunctions attract attention, but little is said about the governance that leads to these dysfunctions.

Good governance entails the separation of executive and supervisory power. This should apply to regulatory bodies too. Indeed, deficient governance of regulators is the main driver of regulatory distrust today. Who regulates the regulator? Regulatory governance should be improved swiftly.

Hubris warnings abound – the mergers and acquisitions of exchanges across the world and their high valuations, the explosion of high frequency trades, dark pools and other ways to circumvent exchanges – such as contracts for difference. Or the growth of poorly regulated, poorly informed over-the-counter markets. Or the impact of poorly regulated rating agencies. Or the slow reaction to the problems inherent in the determination of the Libor rate. These trends lead to bad information, poor price discovery and impede liquidity, damaging some of the key attributes of well-functioning markets. Naturally, the financial industry tends to profit from regulatory weaknesses and gains a disproportionate advantage. Swift regulatory action should mean markets operate successfully without these distortions.

There are obvious cases to learn from: the May 6 2010 flash crash, the Knight Capital failure, the Buffett 2011 IBM investment. What are the lessons? The


**Little is said about the governance that leads to market dysfunctions**

Securities and Exchange Commission/ Commodity Futures Trading Commission response to the flash crash was slow and evasive with a weak report issued on September 30 2010. In the Knight Capital case, many suspect that the regulator's arm cannot extend to internal IT errors, a limitation that can be compared to an airline regulator's inability to clamp down on an airline with operational problems.

Can we trust market regulation is enacted at its best? Financial issues have been somehow less strongly enforced than life and death issues as in the aviation industry. And the SEC does not always have a history of benchmarking positively to the Federal Aviation Administration, nor is the evaluation process of commissioners clear. It is not obvious that financial issues matter less to people's well-being and should be less well regulated than life and death issues in airlines. So, what can be done?

Some voices, often linked to those advantaged by weaker regulation, claim there is little that can be done: regulators are always lagging, unsophisticated and poorly equipped. That was the case in the oil industry, when the Macondo field was excluded from traditional regulatory requirements and the Minerals Management Service of the US Interior Department had grown close to oil players it was supposed to supervise.

In weak regulatory regimes such as markets (when the OTC sector is included), what we need first and foremost is better regulatory governance.

Better governance requires the same basic qualities everywhere: strength and independence, with hard-working, dedicated, diverse, expert and focused individuals that supervise the executives themselves. Strong group dynamics at board level are vital to achieve conflicted consensus (i.e. a diversity of opinions that richly merge into a group position). So are adequate structures (eg, committees) and processes (including nomination and evaluation processes).

Many regulators today do not have a board, or do not have clear supervision. There is no clear distinction between decision makers, meaning those we would call executives, and those overseeing these executives. The SEC is an example of this blurring of roles. But many market authorities and central banks are not much different. How can we then ensure strong governance, which relies on a simple process of supervision and support?

It is time to investigate regulators around the world for the quality of their governance.

* *Director, IMD Global Board Centre, Professor of Finance and Governance at IMD, the Business School. Abridged from an article that appeared in the* Financial Times*, on September 24, 2012*

## PolicyWatch

The July-September 2012 issue of PolicyWatch encapsulates 'Equity is Good for Growth' in its cover story which states that competition policy promotes economic equity and democracy, which is a building block for political democracy. While macro reforms have to be followed, micro reforms with effective meso-level institutions are as important to ensure that markets function well. In fact, the poor suffer more when markets do not function well. Businesses benefit from competition reform, so do the poor, as it leads to more equitable growth.

A special article by Gulzar Natarajan states that India's implementation deficit is a micro-governance failure — an inability to successfully execute even apparently well-conceived development initiatives due to multiple weaknesses and deficiencies at the last mile of implementation.

Another article by Sumant Sinha says that all of us have the responsibility to do our bit to take our country back from the corrupt who have taken control.

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

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



## Economiquity

The July-September 2012 issue of Economiquity carries an article entitled, 'Is Multilateralism in Crisis?: *A possible way forward on trade multilateralism'* in its cover story which states that for trade multilateralism to work better and gain strength, the Doha Round should be concluded by the next WTO Ministerial Conference to be held in Bali, Indonesia in December 2013. The emerging powers will have to take more leadership role in raising their ambitions from trade multilateralism.

A special article by Alan Beattie states that One of the most important battles in trade is not between the US and China. It is between arbitrary import restrictions and the set of global rules and judgments that restrain them. Free traders should be hoping fervently that the latter prevail.

Another special article by Vidya Ram says that a consensus around a financial transactions tax is slowly coming into being.

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

## Compendium on Competition Regimes

Competition Regimes in the World: A Civil Society Report (www.competitionregimes.com) was an attempt to map out competition regimes around the world and covers 119 countries. Most of the countries covered in this volume had competition legislation, while some in the process of adopting one. It contained essays on the countries by a large number of activists, scholars, experts and practitioners, whose names appear as authors in the corresponding chapters.

The final version of this report was released by CUTS in June 2006, and was an improvement over the advance copy that was released at the UN Conference on Competition Policy in Antalya (Turkey) in November, 2005.

Since 2006, there have been various developments in the competition legislations across the world, therefore CUTS plans to revisit and update the report both in content and also in scope tentatively by mid-2013.

### Sources

BBC: British Broadcasting Corporation; BL: The Hindu Business Line; BS: Business Standard; CCB: Canadian Competition Bureau; DoJ: Department of Justice; EC: European Commission; ET: Economic Times; FT: Financial Times; GCR: Global Competition Review; OFT: Office of Fair Trading; IE: Irish Examiner; II: Investment International; ILO: International Law Office; LM: Live Mint; SACT: South African Competition Tribunal; TN: The News

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

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