REGULETTER

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05th December, World Competition Day

Agencies call upon UNCTAD to adopt the day!!

"Our competitors are our friends; our customers are the enemy" is an actual statement made by an executive of Archer Daniel Midland, in the famous case of the lysine (a feed additive) cartel, which was caught on videotape by the FBI. As the international competition community observed the Third World Competition Day on 5th of December, 2012 (dedicated to the theme, *Impact of Cartels on the Poor*), there is a need to reflect on measures to protect consumers from cartels, and sharpen enforcement measures to the extent possible.

Cartels are capable of affecting directly the daily life of the poorest of the society and in undermining the efforts of government to provide comprehensive social security to them. Cartels steal billions of dollars from businesses, taxpayers and ultimately from consumers.

The culture of competition is quite weak in many countries and consumers have limited understanding about the harmful effects of cartels. Thus, the World Competition Day (WCD) highlights the issue for greater discussions and dissemination of the beneficial effects of competition on the average consumer – either directly or indirectly. In effect, it is expected to result in greater public understanding and support on the need to crack down cartels.

To reach out to the common man with the message, 'Say No to Cartels', various stakeholders such as competition agencies, civil society organisations (CSOs), development organisations and individuals around the world – Albania, Mauritius, Botswana, Philippines, Sri Lanka, Bangladesh, Pakistan, Namibia, etc. – organised seminars, published newspaper articles and interacted with the media to celebrate the 'World Competition Day' with the purpose of creating awareness about the importance and benefit of competition by curbing Cartels. It was encouraging to note the celebration of the Day in Afghanistan by the Competition Promotion and Consumer Protection Directorate. Afghanistan is yet to adopt a competition law.

The cause has been supported in the form of a letter to UNCTAD towards formal adoption of the day by many Competition Agencies viz: Afghanistan, Namibia, Zimbabwe, Pakistan, The Gambia, Fiji; Russia, Zambia and UK; and many more countries are in the process to send a formal letter to UNCTAD. The Philippines takes the cake, by aproclamation declaring 5th December, as the National Competition Day to give due recognition to the CUTS Campaign on WCD.

Why 5th December? On this day in 1980 the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (UN Set), was adopted by the UN General Assembly at its 35th meeting. It is, therefore, important that the 5th of December be remembered and commemorated each year as the World Competition Day.

Inside this Issue

Special Articles

CUTS Centre for Competition, Investment & Economic Regulation
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Hong Kong's Two-stage Law

Hong Kong's government published an official notice announcing the entry into force of the country's Competition Ordinance, paving the way for the establishment of Hong Kong's competition authorities. The notice states that the country's Competition Commission will be established on January 18, 2013.

Initially the authority will enact the institutional provisions that govern the structure and administration of the authority and begin drafting enforcement guidelines.

Once this stage is complete, the Commission's substantive powers will enter into force. The Commission's powers include the ability to impose fines of up to 10 percent of a company's turnover for anticompetitive agreements, concerted practices or abuse of a "substantial degree" of market power. *(GCR, 23.11.12)*

CC Codifies Merger Procedures

The UK's Competition Commission (CC) has published its revised merger guidelines after closing a public consultation. It is also consulting on updated disclosure rules. The revised guidelines set out a merger review timeline.

According to the rules, the Commission will publish its provisional findings and when necessary possible remedies of about 15 weeks after the beginning of a merger review. The authority will have 24 weeks in total to carry out the inquiry. The review may be extended for "special reasons", which the Commission declined to list in the guidelines.

Among other changes, the authority will give more explanation of its approach throughout investigations and greater detail of practical aspects of handling confidential information. *(GCR, 02.11.12)*

Germany Amends Competition Law

The German Federal Parliament (Bundestag) adopted several changes to the German competition law. The new legislation still has to be passed by the second chamber of the German Parliament (Bundesrat) but the changes are expected to come into force on January 01, 2013.

Overall, the changes are less far-reaching than many of the proposals discussed during the preparatory phase of the reform. The changes, however, are significant and will have to be taken into account by companies doing business in Germany: alignment of merger control rules with EU law; increase to 40 percent of the threshold for statutory presumption of dominance; successor liability for antitrust fines; application of merger control rules in the healthcare sector; and enforcement powers of the Federal Cartel Office. *(www.jdsupra.com, 30.10.12)*

Poland in the Spotlight

Polish legislators have confirmed their commitment to change significantly the provisions of the Polish Competition Act. The proposed amendments will undoubtedly change Polish competition law substantially, by improving and strengthening the position of enterprises and enhancing legal certainty.

Furthermore, the intended increase in procedural efficiency will likely translate into a more effective system that will not only speed up the relevant processes, but will also allow the stakeholders to obtain the necessary knowledge about their legal situation, enabling them to adjust their market strategies accordingly.

Polish legislators have confirmed their commitment to change significantly the provisions of the 16 February 2007 Act on competition and consumer protection (the Competition Act), with a view to increasing the effectiveness of the current legal framework, simplifying the underlying processes and reducing the existing procedural uncertainties.

(www.jdsupra.com, 12.12.12)

MyCC & Regulators in Coordination

Malaysia's Competition Commission (MyCC) has reached an agreement with the country's telecoms regulator to jointly address antitrust issues in the sector. The decision was reached at Malaysia's second special committee on competition, which is a consultation arranged by MyCC with the country's sector regulators intended to facilitate coordination between the authorities and help coordination on competition policy across the various sectors.

Under Malaysia's Competition Act, the Malaysia Communications and Multimedia Commission and the Energy Commission are responsible for monitoring competition law issues in their respective sectors. *(GCR, 06.12.12)*

New UAE Competition Law for 2013

A new competition law will come into force in the UAE on February 23, 2013 with the aim of creating a more business-friendly environment in the country. The law consolidates and adds to existing competitive legislation, specifically defining what is considered as anticompetitive behaviour.

The law provides the framework to deal with issues of resale pricing, collusion, abuse of market position, restrictions on predatory and resale pricing, and interestingly enough the toughest penalties are for breaches of confidentiality. *(www.meed.com, 05.12.12)*

Amendments to Indian Competition Act

The Government of India introduced in Parliament the Bill to amend the Competition Act which, among other things, will require the Competition Commission to decide on corporate mergers within 180 days.

Once in place, the Bill will also allow the Competition Commission of India (CCI) chairperson to authorise 'search and seizure' to its Director General (DG) for investigations.

The amendments are aimed at fine-tuning the regulations to bring rules on par with the prevailing scenario and in light of the experiences gained over the past years. *(DNA, 10.12.12)*

Creating a Competition Culture Through Advocacy

Gideon Nkala*

This is somewhat a caricature of what competition authorities do though it is part of their wider mandate. Yes, competition agencies are about enforcement of the competition law to ensure that price fixing, collusion, abuse of dominance, cartel behaviour and other ills of competition are kept in check. The reality though is that competition agencies would be on a beaten shallow path of redundancy if they were to confine themselves to enforcement. The Botswana Competition Authority (CA) should do more than just enforce the Competition Act of 2009.

In developing countries such as Botswana, governments play a leading role in facilitating business often in the form of formulating public policies and fashioning out procedures and other institutional arrangements. In the conception of these policies and processes government's interventions in the market place may result in conditions that give rise to restrictive business or anticompetitive conduct.

Enforcement on its own would not address the ills of competition because some anti-competitive conduct creeps in through policies. In a bid to play a meaningful role, competition agencies have to be proactive by finding ways to participate and influence policy formulation that affects fair competition. A lot of good could be derived from this advocacy initiative.

There are many government policies which could be inimical to fair competition. Many of these policies may have been formulated long before the formation of a competition agency and cannot be addressed through the enforcement avenue.

One of the areas in which the business community and the public all over the developing world have complained about is public procurement. The observation from around the world is that the procurement procedures may invite collusion and corruption, thereby prevent fair competition. It is always beneficial for a competition agency to be active in advocating reforms in procurement so as to introduce market discipline.

Recently the Competition Authority, the Directorate on Corruption and Economic Crime and the Public Procurement and Asset Disposal Board signed a memorandum of understanding to tackle these issues. It is hoped that successful advocacy arising from this initiative will not only enhance the capabilities of the agencies involved but will lead to tangible savings and efficient delivery of services.

The role of a competition agency in policy making need not be confined to national policies because in some instances

The mention of competition busters brings to mind mean men and women carrying market mathematical rulers to ensure that the market playing field is level

the root of anticompetitive policies emanates from bilateral and multi-lateral trade agreements that the State signs with other States. As a consequence, the competition advocacy programme would necessarily have to go beyond national and local policies. Fortunately, in Botswana the Competition Act recognises this sacred role and has clothed the Competition Authority with such advocacy functions.

The interest of the competition agency should be to ensure that competitive markets are created other than merely buying the notion that there are some sectors that are amenable to natural monopoly.

It would seem probable that any meaningful attempt to create wealth would only be assured once avenues of competition are established even during the privatisation process. The Competition Authority and the Competition Commission can make timely market interventions and churn-out well-reasoned decisions and they would still not have fulfilled their total mandate.

If Botswana do not understand and support what the Competition Authority does, our lofty statistics and venerated achievements would not mean much. The success of a competition agency is judged by the creation of a competition culture, i.e. Botswana embracing and supporting fair competition in the market.

Whatever the competition agency does is meant to benefit the public and all parts of society including consumers, businesspeople, trade unions, educators, legal community, government, regulatory officials and the judiciary. These are important segments and should be the focus of competition advocacy.

* *Director of Communications and Advocacy, Botswana Competition Authority. The article appeared in the* Mmegi Online*, on November 07, 2012*

ABUSE OF DOMINANCE

Thomson Commitments Accepted

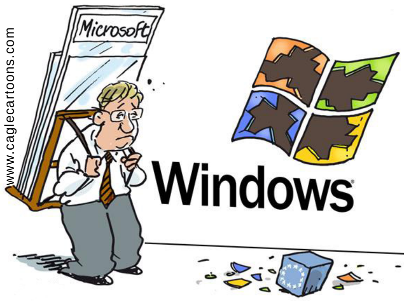
The European Commission (EC) has accepted Thomson Reuters commitments to change its financial data licences and closed an abuse of dominance investigation after making them legally binding.

DG Comp was concerned that Thomson Reuters, one of the world's largest business data providers, may be abusing its dominant position in the market for real-time financial information and hindering customers from switching to its competitors.

Thomson Reuters prohibited customers from using its unique Reuters Instrument Codes (RICs), which allow users to retrieve securities stock prices and other data, to obtain information through its rivals' datafeeds. *(www.bloomberg.com, 20.12.12)*

Microsoft to Face the Music

EU antitrust regulators charged Microsoft with breaking a promise to offer rival browsers to consumers, a step to a possible hefty fine in a long-running dispute that has already cost the software giant more than a billion euros.



The world's No. 1 software company promised three years ago to offer browser choices, in a bid to settle an EU antitrust investigation and avoid a penalty that could have been as much as 10 percent of its global turnover.

But the EU Commission said Microsoft had not fulfilled its pledge between February 2011 and July 2012. EU Competition Commissioner Joaquin Almunia said Microsoft must face the music. *(Mint, 25.10.12)*

Samsung Abusing Telecom Patents

The European Commission (EC) charged Samsung Electronics with abusing its dominant position in seeking to bar rival Apple from using a patent deemed essential to mobile phone use.

The Commission sent a "statement of objections" to the South Korean group, with its preliminary view that Samsung was not acting fairly. The filing of competition objections is the latest step in the Commission's investigation. After notifying Samsung in writing, the company will have a chance to reply and request a hearing before regulators.

If the Commission then concludes that the firm has violated the rules, it could impose a fine of up to 10 percent of the electronics firm's total annual turnover. Samsung would cooperate fully and firmly defend against any misconceived allegations.

(TH, 23.12.12)

France Punishes Rail Incumbent

The French Competition Authority fined rail incumbent for abuse of dominance. SNCF allegedly implemented several practices that "hindered or delayed" new entrants from entering the rail freight market from March 2006 onwards.

The Authority opened the investigation in 2008 and later received a complaint from competing freight provider Euro Cargo Rail in 2009. SNCF, through its SNCF Géodis subsidiary, was the sole operator in the freight market in 2006.

By 2009 other companies had entered the market, but SNCF's market share was still "very high", standing at over 75 percent in certain sectors. The agency found SNCF used confidential information gathered through its role as delegated infrastructure manager for its own commercial interests.

(www.congoo.com,18.12.12)

Abuse in Waste Sector Investigated

Italy's Antitrust Authority has opened an abuse of dominance investigation of waste collector Hera and its recycling subsidiaries HeraAmbiente and Akron. The Authority says Hera may be unlawfully abusing its monopoly and near-monopoly in the market for the collection and resale of waste in the Emilia Romagna region.

Hera controls between 70 and 100 percent of the market for recyclable paper waste in a number of provinces where it operates. The enforcer says the company may be taking advantage of its vertically integrated structure to damage its competitors in the downstream market for waste treatment.

(GCR, 14.12.12)

Belgium hits Bpost with Hefty Fines

Belgium's Competition Council has fined incumbent postal operator Bpost for abusing its dominant position. The Council says Bpost offered rebates to large clients and intermediaries who agreed to identify their mail clients, discriminating against those who refused. Such a rebate system, called "model per sender", provided for discounts of up to 50 percent of the cost of mail delivery services based on the volume of mail.

According to the Council, Bpost refused to grant the discounts to intermediaries, which collect letters from large companies, put them in envelopes, sort them by destination and later hand the mail over to Bpost for delivery. Despite the large volume of mail processed by the mail handlers, the Council says Bpost only granted discounts if the companies identified their clients. *(GCR, 11.12.12)*

AstraZeneca Appeal Dismissed

The European Court of Justice (ECJ) has upheld a €52.5mn (US$71mn) abuse of dominance fine on drug maker AstraZeneca in a landmark decision on the application of intellectual property law to competition enforcement.

The court confirmed that British-Swedish pharmaceutical company AstraZeneca illegally attempted to keep generic manufacturers of its best-selling anti-ulcer drug Losec out of the market. ECJ says AstraZeneca misled patent offices to extend Losec's patent protection and to keep its monopoly on the ulcer drugs market.

AstraZeneca is "disappointed" with the dismissal of its appeal. DG Comp says the ruling is "significant" because it clarifies issues of market definition, dominance and the concept of an abuse. *(WSJ, 06.12.12)*

CARTELS

Deutsche Bahn Sues Steel Giant

German railway operator Deutsche Bahn has sued ThyssenKrupp and other rail manufacturers for damages following a cartel decision by Germany's Federal Cartel Office. Deutsche Bahn has filed a lawsuit against the German steel maker and fellow cartelists Vossloh and Moravia Steel at Frankfurt's Regional Court. The legal action came after settlement talks collapsed.

Deutsche Bahn says it is "beyond doubt" that the cartel damaged the railway company. It says that because the Frankfurt court is bound by the findings of the authority, "the legal battle may therefore be limited to the amount of damages".

(www.thelocal.de, 20.12.12)

Sanctions Imposed on Taxi-buses

Chile's National Economic Prosecutor (FNE) has filed a complaint before the country's Competition Tribunal alleging that 10 taxi-bus companies and their trade association in the southern city of Valdivia colluded to fix fares.

The FNE says the Association of Entrepreneurs of Taxi-Bus Valdivia, which represents all taxi-bus companies operating in the city, had helped coordinate and facilitate a price fixing scheme in operation since 2008 that led to a 17 percent rise in fares that year and a further 13 percent rise three years later in 2011.

The FNE says while the fine is "not particularly high", the case is important because the services are predominantly used by passengers on low-incomes who are more affected by price increases. *(GCR, 21.12.12)*

Freight Forwarders Penalised

Switzerland's Competition Commission fined four international freight forwarders €5.1mn (US$7mn) for cartel activity. The authority opened its investigation in October 2007. It found that Deutsche Bahn/Schenker, Panalpina, Kuehne + Nagel and Agility Logistics colluded to fix the price of fuel, security and seasonal surcharges among other taxes and costs between 2003 and 2007.

The Authority agreed settlements with all the parties and the industry association Spedlogswiss, which was not fined. The fines are the latest enforcement action carried out by the Swiss authority in recent times.

(www.congoo.com, 18.12.12)

Record Fine on Screen Producers

The EC imposed the biggest antitrust penalty in its history, fining six firms including Philips, LG Electronics and Panasonic a total of US$1.92bn for running two cartels for nearly a decade.

The EC said executives from the European and Asian companies met until six years ago to fix prices and divide up markets for TV and computer monitor cathode-ray tubes, technology now mostly made obsolete by flat screens.

EU Competition Commissioner Joaquin Almunia said that these cartels for cathode-ray tubes are 'textbook cartels': they feature all the worst kinds of anticompetitive behaviour that are strictly forbidden to companies doing business in Europe.

The EU antitrust regulator imposed the biggest penalties on Philips for its role in the price fixing and carving up of markets. *(ET, 06.12.12)*

South Africa Fines Milling Cartelist

South Africa's Competition Commission has reached an €7.8mn settlement with Foodcorp, third-largest food company, over its involvement in two milling cartels. The agreement settles allegations that Foodcorp conspired to fix the price of wheat flour and maize meal between 1999 and 2007.

The sanction represents 10 percent of the affected turnover of the company's milling division in 2010 – the highest possible administrative penalty the commission can seek. Foodcorp admitted to taking part in a series of meetings with rivals in which it agreed to fix the price of maize and wheat products and create uniform price lists for wholesale, retail and general trade customers.

Foodcorp has agreed to fully cooperate with the commission in the prosecution of other cartel members and to develop and implement a compliance programme. *(GCR, 14.12.12)*

Zambia Raids Fertiliser Companies

Zambia's Competition and Consumer Protection Commission (CCPC) has carried out dawn raids at two fertiliser companies over suspicions they colluded to hinder fertiliser supply.

The CCPC raided the premises of Nyiombo and Omnia following allegations of corruption in the manner the Omnia and Nyiombo acquired fertiliser supply contracts with the Zambian government. The raids were coordinated with Zambia's Anti-Corruption Commission.

The CCPC has conducted four dawn raids since the Competition and Consumer Protection Act extended its powers in 2010, including investigations of the banking, petrol and car repair sectors. *(GCR, 01.11.12)*

Croatia Slams Bread Producers

The Croatian Competition Agency has announced fines for infringements of the Competition Act in the bread producers cartel case, the first time it has used its powers to impose fines since the Act came into force on October 01, 2010.

In July 2001, the Agency opened formal antitrust proceedings after it received an email enquiring as to the legality of an agreement on new bread prices announced at a press conference following the bakery section of the Association of Craftsmen Osijek's meeting.

The Agency established that the association and 17 bread producers active in Osijek-Baranja County had entered into a prohibited agreement by setting out a guide price for white bread. *(ILO, 18.10.12)*

FINES & PENALTIES

Penalty on Exchanging Information

Competition authorities are increasingly targeting and penalising exchanges of information that violate competition law. The Federal Cartel Office (FCO) of Germany deems exchanges of information between competing manufacturers regarding the status of proceedings in the context of annual meetings with retailers to be a severe violation of competition law.

Recently, for the third time since 2008, the FCO imposed fines for such offences. The previous fines imposed were €19mn (US$25mn) against brand name manufacturers of drug store articles and their distribution managers (in 2008), and €30mn (US$40mn) against three manufacturers of consumer goods (in 2011). *(ILO, 29.11.12)*

Macedonia Fines Drug Wholesalers

The Macedonian Competition Authority found that two drug wholesalers, Alkaloid Cons and DR Panovski, had submitted bids with prices that were identical up to two decimal places for the generic drugs Etoposide and Docetaxel.

The Authority held that the wholesalers' behaviour constituted a concerted practice. The authority decided that the wholesalers had concluded a prohibited agreement under Article 7(1) of the Law on the Protection of Competition.

The Authority also imposed fines on the wholesalers as a result of the concerted practice. For tenders regarding Etoposide, Alkaloid Cons was fined approximately €3,627 (US$4,878mn), while DR Panovski was fined approximately €1,888 (US$2,539mn). For tenders regarding Docetaxel, Alkaloid Cons was fined approximately €385,915 (US$518,984mn) and DR Panovski approximately €376,909 (US$506878mn). *(ILO, 01.11.11)*

Swiss Penalty on BMW

The Swiss Competition Commission fined German company BMW Ltd SFr156 million (US$168mn) for preventing direct and parallel imports into Switzerland. BMW was held to have foreclosed the Swiss market by prohibiting its dealers in the European Economic Area (EEA) from selling new BMW and MINI cars to Swiss customers.

The Commission ordered BMW to amend its dealers' contracts in the EEA by removing the export ban clause. It must also inform its dealers in the EEA about this contractual amendment. BMW has announced that it will appeal the commission's decision.

BMW prevented the direct and parallel import of new BMW and MINI cars into Switzerland by inserting a clause in its contracts with dealers located in the EEA providing, among other things, that the dealers shall not be permitted, neither directly nor via any third party, to deliver new BMW cars or original BMW parts to purchasers in countries outside the EEA. *(ILO, 18.10.12)*

France Punishes Online Sales Ban

The French Competition Authority has fined electronics manufacturer Bang & Olufsen for prohibiting its retailers from selling its products online. According to the authority, Denmark-based Bang & Olufsen, a company that designs and manufactures audio systems and TV sets, prohibited retailers from selling online through contract clauses.

The agency says the online sales ban restricts competition among distributors, "depriving consumers of lower prices and limiting the choice available". A ban on online sales is prohibited by competition law. Within a selective distribution system the dealers should be free to sell to all end users, also with the help of the internet.

In addition to the fine, the enforcer required Bang & Olufsen to modify its selective distribution contracts within three months, authorising its approved distributors to sell online.

(GCR, 12.12.12)

Spain Fines Antitrust Complainant

Spain's National Competition Commission (CNC) has fined an association of canned fish producers for coordinating on purchases of mussels. The investigation was triggered by a complaint over collusion in the mussel market filed by the association itself.

The Commission says the members of canned fish and shellfish association Anfaco adopted a "coordinated commercial policy" in their dealings with mussel suppliers in the northern region of Galicia.

The Authority says that in 2008 Anfaco's members agreed to refrain from competing against each other when purchasing mussel stock and agreed on common purchasing terms, which were imposed on shellfish suppliers through a temporary boycott.

(GCR, 27.11.12)

First Non-Notification Fine Issued

For the first time, Indonesia's Commission for the Supervision of Business Competition (KPPU) has punished a company for failing to notify a merger, hitting a Honda dealer with a US$477,000 fine.

The KPPU fined Honda retailer Mitra Pinasthika Mustika, a subsidiary of private equity firm Saratoga Capital, for failing to inform the authority of its acquisition of local car rental company Austindo Nusantara Jaya Rent.

According to the authority, Mitra did not deliberately withhold information on the merger, but rather it failed to immediately realise the deal exceeded Indonesia's merger control thresholds. *(www.congoo.com, 13.12.12)*

Seller Beware – How M&A became a buyer's market

Jonathan Rowley*

The last mergers and acquisitions boom, fuelled by the easy availability of credit and the growth of highly leveraged private equity funds, saw the widespread adoption of the auction as the preferred way of selling a company. For any business disposal, bankers have for years recommended auction processes, with the objective of maximising competitive tension. But the environment has changed. Gradually, over the past few years, the auction process has lost its automatic claim as the best way to sell a business.

In a typical auction, a large number of potential bidders in the first round thins down to a handful of bids that are competitive in credibility and value. These few bidders conduct detailed due diligence in a second round and then ultimately compete on price and contract. In the European auctions led by UBS in the period 2005-07, there were on average three bids in the second round. Since 2007, this has dropped to an average of two bids. For many potential bidders, even entering an auction process increasingly gives pause for thought.

In the Americas, by contrast, stronger competition for assets, coupled with legal pressures on boards to demonstrate that a process designed to maximise value has been pursued, has meant that the auction continues to be dominant. But even in the US market there is some evidence of a recent adjustment. As in Europe, banks have seen a reduced number of participants in the first round.

It is notable that the decrease in demand from bidders should happen as it becomes easier and cheaper for companies to fund acquisitions. Leverage levels among leading companies have been significantly reduced – illustratively, the gearing of the FTSE 100 is now at 1.6 times having been at 2.0 times in 2007.

What, then, has caused the change in how companies are sold?

A strong impact has been felt from the retrenching of the private equity bidder. Private equity has, on the whole, adopted a more conservative approach to leverage, but it has also shown increased reluctance to engage in the bidding process unless there is perceived to be a good probability of success and there is strong access to information. The companies that would previously have participated in auctions are also more gun-shy. Many midsized and smaller groups continue to reduce leverage levels. Above all, buyers remain cautious.

The bidders that are left participating in processes are often large groups. In our recent discussions with FTSE 100 chief executives and chief financial officers about their attitude to M&A, we found a consensus about the attractiveness of the current environment for these companies to pursue acquisitions. The reasons why were simple: balance sheets are flush, borrowing capacity is extensive and debt financing is cheap.

Sellers are still able to achieve value in a world where big buyers have more influence. Nevertheless, the timetable and due diligence process – both of which were carefully controlled by the seller in an auction environment, have become more determined by the buyer. Sellers have to rely less on projections of future returns and more on fitting in with the business model of buyers. The general insistence of buyers on longer due diligence processes has particularly assisted Asian bidders – who over recent years have become far more experienced and credible acquirers, but still find that auction dynamics can be at odds with their longer, multilayered decision-making processes.

Maybe the era of the auction will return; but it will need a return of confidence, if not exuberance, to allow the seller to adopt such a dominant role. Until then, seller beware – disposing of a business requires more thought and less muscle than it used to.

* *Joint Head, Mergers & Acquisitions, Europe, Middle East and Africa at UBS. Abridged from an article that appeared in the* Financial Times*, on October 08, 2012*

Megafon to Pay for Euroset

Megafon, the Russian mobile phone operator preparing to list in London, has agreed to pay US$1.3bn for control of Euroset, Russia's largest handset retailer. First, Megafon would acquire 25 percent of Euroset for US$590m, while Garsdale Services Investment – a holding company owned by Usmanov – would acquire another 25 percent.

Garsdale, within the next three years, would agree to sell its 25 percent stake to Megafon under an options agreement that would value the Euroset stake at US$1.3bn. The deal comes a year and a half after Euroset attempted to list in London in a US$1.3bn initial public offering that was perceived as a means for Mamut to quickly cash out of the business. *(FT, 16.10.12)*

ConAgra Foods Snaps up Ralcorp

ConAgra, the US packaged food company, acquired Ralcorp for US$5bn, betting that recession-weary US consumers will continue to seek cheaper private label options at grocery stores.

The deal marks an end to ConAgra's prolonged pursuit of Ralcorp, which rebuffed offers for more than a year, and could herald more consolidation in the private label, or store branded, segment of the food industry.

ConAgra, which makes "second tier" products such as Chef Boyardee pasta and Hunt's tomato sauce, has been trying to improve its position in the fast-growing private label category and gain more power when dealing with food retailers such as Trader Joe's and Costco. *(FT, 28.11.12)*

Carrefour Sells Colombia Arm

Carrefour, the world's second-largest retailer by sales, has sold its business in Colombia for US$2.5bn, in another retreat from an international market under new chief executive, Georges Plassat. Cencosud, Chile's leading retailer by sales secured credit with JPMorgan Chase to finance the acquisition and expected the deal to close by the end of 2012.

The acquisition represents Cencosud's latest step in its strategy of expanding abroad to cash in on regional growth. It said the deal "marks a strategic entry...into the supermarket segment in Colombia", where it already operates Easy stores.

This transaction is in line with Carrefour's new strategy of focusing on geographies and countries in which it holds or aims to develop a leading position. *(FT, 20.10.12)*

UnitedHealth to Buy Amil

UnitedHealth Group, the biggest US health insurer by revenues, is in talks to buy all or part of Amil Participacoes, a Brazilian insurance group and hospital operator. The deal for Amil would be the latest big move by a US group in the wake of the Supreme Court's upholding of the Affordable Care Act, which is reshaping medical services in the world's largest economy.

The deal with Amil would give UnitedHealth access to one of the world's most populous countries and fastest-growing economies at a time when the US health insurance market is facing sweeping changes. *(FT, 06.10.12)*

Biggest Greek Banks in Merger Talks

Greece's largest lender, National Bank of Greece SA, announced a friendly, all-share takeover bid for crosstown rival Eurobank Ergasias SA aimed at forming a bank that would dominate Greece's domestic market and rank among the largest in southeast Europe.

The deal, if completed, would be the latest in a series of mergers sweeping Greece's banking sector, which is struggling to cope with the impact of the country's debt crisis. The combined bank would have assets of US$231.3bn.

Under the deal, NBG would offer 58 new common shares for every 100 Eurobank shares, leaving NBG shareholders with 75 percent of the merged entity. *(WSJ, 05.10.12)*

Diageo Seals India Liqour Deal

Diageo (UK dinks grant) is moving into fast-growing drinks markets in emerging economies UK drinks giant Diageo is buying a majority stake in India's United Spirits group for US$2.04bn.

Diageo, whose brands include Johnnie Walker, Guinness and Smirnoff, will get a 53.4 percent share in Indian liquor baron Vijay Mallya's United Spirits. The deal will help Mallya reduce United Spirits' debts and free up funds for his embattled Kingfisher Airline.

Diageo and United Spirits initially started negotiations in 2008, but talks broke down the following year. Diageo is initially buying a 27.4 percent stake for £660m in United Spirits, whose brands include Whyte & Mackay Scotch whisky. *(BBC, 09.11.12)*

EU's Nod to Glencore/Xstrata

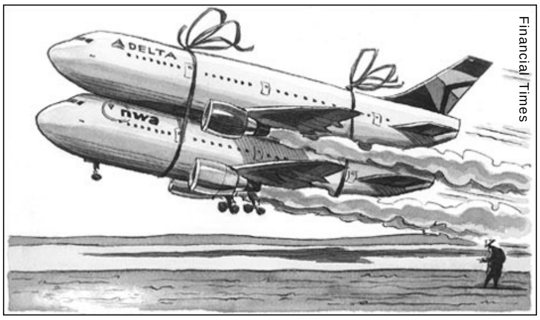
The EC cleared Glencore's US$39bn acquisition of mining company Xstrata, subject to conditions. Glencore is one of the world's largest producers and traders of commodities. Its full acquisition of Xstrata, one of the largest mining companies in the world, will create a company worth around US$90bn.

DG Comp says the merger can complete subject to Glencore making divestments in its zinc business. The company is currently the largest supplier of zinc in the EU, due to its own smelting facilities and off-take agreements with Xstrata and Nyrstar, the world's largest zinc producer.

The commission has ordered Glencore to terminate its off-take agreement for zinc with Nyrstar and sell its minority shareholding in the company. Glencore must also stop buying zinc from Nyrstar for 10 years, and not engage in any practices that could adversely affect the viability of Nyrstar as a competitor. *(BS, 22.11.12)*

Virgin Welcomes Singapore Airlines

Singapore Airlines has a 49 percent stake in Virgin Atlantic Airways, Virgin Group's flagship company. The deal is a further sign of a strategic shift by Singapore Airlines, the world's second-largest carrier by market value, as it adapts its business to cope with the growth of low-cost carriers across Asia and competition from state-backed Middle East rivals.



In doing so, Singapore Airlines has now secured a direct stake in Australia's lucrative domestic travel market that has benefited in recent years from the boom in the nation's mining and energy sectors.

The deals represent "a monumental shift" for Virgin Australia that will see a more level playing field in Australian aviation, Macquarie Group analysts said. *(FT, 31.10.12)*

Australia Clears Nestlé/Pfizer

Nestlé's proposed acquisition of Pfizer's infant food business has received conditional clearance from the Australian Competition & Consumer Commission (ACCC). The ACCC undertook extensive consultation regarding the US$11.9bn merger, as Nestlé and Pfizer are two of Australia's three largest suppliers of infant formula and toddler milk.

The ACCC says the proposed deal would see a three-to-two concentration in the sector, which would have damaged competition in a market "where barriers to entry and expansion are high".

To alleviate concerns, Nestlé offered to sell a 10-year exclusive licence for Pfizer's S-26 and SMA infant nutrition brands to an independent buyer approved by the ACCC.

(GCR, 22.11.12)

Petronas to Renew Progress Bid

Malaysian state oil firm Petronas will renew a bid for gas producer Progress Energy Resources, seeking to assure the Canadian government that the USS$6.3bn deal will benefit the country Canada blocked Petronas' bid for Progress after Industry Minister Christian Paradis said it was not likely to bring a net benefit to the country.

The Canadian government wanted to approve the deal but was afraid that would tie its hands when reviewing a much more controversial US$15.1bn bid by China's CNOOC Ltd for Nexen Inc.

Canadian officials are drawing up new guidelines for investment by foreign state-owned companies, possibly complicating Petronas' attempt to improve its offer.

(FE, 30.10.12)

NYSE Euronext/ICE Ends Era

A tie-up between NYSE Euronext and Intercontinental Exchange would create a company controlling 14 international stock exchanges and other financial holdings – and will almost certainly draw scrutiny from the world's antitrust enforcers.

The US$8.2bn deal will see the Atlanta-based Intercontinental Exchange take over NYSE Euronext – which owns the venerable New York Stock Exchange – in what would be the largest proposed financial exchange merger since the collapsed *NYSE Euronext/Deutsche Börse* deal that ultimately crumbled in the face of antitrust scrutiny.

Now, observers say the *Intercontinental* deal will almost certainly become a target for enforcers in the US and Europe. *(Reuters, 21.12.12)*

Penguin & Random House to Merge

The world's two leading English language publishers, Britian's Penguin Books and Germany's Random House, have agreed to merge. British publishing house Penguin and German media group Random House announced a merger deal that will create the biggest book publisher in the world.

The new company would be run as a joint venture known as Penguin Random House, with the tie up expected to be completed in the second half of 2013 subject to regulatory approvals.

While the German media giant Bertelsmann will own 53 percent of the joint venture, Pearson will own 47 percent. *(FE, 29.10.12)*

Hinduja Acquires Houghton

Hinduja Group firm Gulf Oil has completed its acquisition of US-based Houghton International for US$1.045bn after conclusion of necessary regulatory approvals.

The acquisition of this speciality chemical maker would make Gulf Oil the world's 9th largest lubricant company, without affecting its financials as the purchase has been made through "a step-down subsidiary structure" in the US and UK.

Houghton, a global market leader in metal working fluids, has 12 manufacturing facilities in 10 countries and sells its products in more than 75 countries. It recorded sales of US$858mn and operating profits of US$132mn in 12-month period ended September 2012. *(ET, 21.12.12)*

Orkla-Hydro in Aluminium Meger

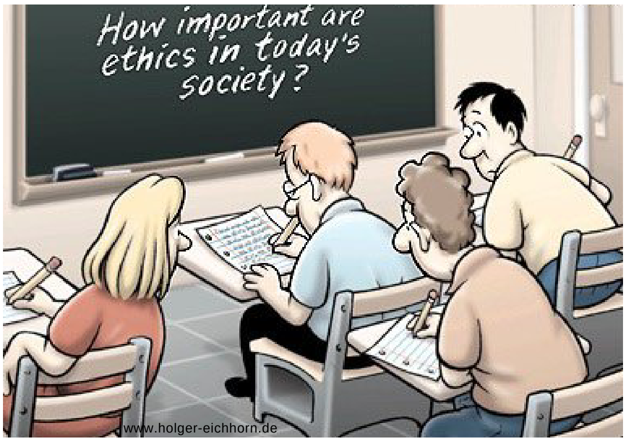
Orkla and Hydro, two of Norway's biggest companies, are merging their aluminium products businesses to create the world's largest in that segment amid massive industry overcapacity in Europe.

The new company, to be named Sapa after Orkla's current brand, will be the world leader in extruded aluminium products used in the building and car industries. The Sapa joint venture is the biggest step yet in Orkla's quest to turn itself from a conglomerate into a focused consumer goods company, the largest in the Nordic region.

As part of the deal, Orkla and Hydro will put in their businesses debt-free and both companies will receive two board seats, with the management team also equally split. *(FT, 16.10.12)*

Ethics and Integrity in Governance

John Plender*



No code can ensure leadership in the boardroom or ethical leadership

Leaders of the business and investment communities gathered at the London Stock Exchange to celebrate the 20th anniversary of the UK Corporate Governance Code and the pioneering role of Sir Adrian Cadbury's committee in launching Britain's comply or explain approach to governance. Yet there are those who wonder whether there is much to celebrate in the light of recent governance scandals.

This, I feel, is too harsh, for the code, now under the aegis of the Financial Reporting Council, played a crucial role in the professionalisation of British boards and has for that reason been a successful export to other countries. As Sir Adrian pointed out, only half the top 250 companies had audit committees back in 1992. Fewer still had nomination and remuneration committees.

There was a fundamental failure, he said, to distinguish governance, which is a responsibility of the board, from management, whose job is to turn purpose into action. And he rightly placed emphasis on how formalising the board appointment process helped dispel a clubby ethos. The subtlety of the market-oriented comply or explain formula ensured that business leaders went along with all-important proposals such as the split of the chairman and chief executive roles.

That said, the limits to the code's achievements are today painfully clear. The biggest failure concerns remuneration, where the formalisation of boardroom pay setting led to a ratchet whereby non-executives never feel that their chief executive is third or fourth quartile material and chief executives who are not primarily motivated by money nonetheless want pay that looks good in relation to their peers. The sheer complexity and flawed metrics that characterise so many incentive schemes cannot be blamed on the code. But there is no question that this is the biggest area of unfinished business in corporate governance in the English-speaking world.

Another problem lies in the poor quality of the explanations for non-compliance with the code, especially lower down the corporate scale. Too many investors operate on a comply or else basis. Perhaps the most dispiriting feature today is the number of governance failures that have taken place recently of the kind that the code is supposed to address.

If there is an area next to remuneration where governance practice needs improvement, it is internal governance below board level and the structure of incentives in the company.

Yet this raises questions about the limits of what any code can achieve. No code can ensure leadership in the boardroom or ethical leadership, although a formal nomination process provides a framework in which such goals can more readily be achieved. Nor can a code produce an ethical corporation.

Yet in the light of what has happened in banking, an ethical deficit is one of the most serious problems in corporate governance. There are also issues of integrity in the audit area. The commercialisation of the audit profession has led to an ethos at the big professional firms that puts insufficient emphasis on their public interest remit. It takes more than code requirements on conflicts of interest to overturn that culture.

It remains important to recognise that no system of governance will ever be foolproof. Because success in preventing corporate disaster is unmeasurable, the positive achievements of governance cannot be fully known. And the fact that the British code has been such a successful export suggests a marked lack of appetite around the world for heavy-handed regulation.

The need is thus for a continuing effort on the part of everyone from management to pension fund trustees to raise their game. The Cadbury committee started a process. It remains a work in progress.

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* *Senior Editorial Writer and Commentator, Financial Times. Abridged from an article that appeared in the* Financial Times*, on November 12, 2012*

Stemming FDI Decline

The Ministry of Planning and Investment of Vietnam is seeking effective measures to prevent the decline of direct foreign investment (FDI) in the country. Vietnam attracted US$10.49bn of FDI by October 2012, accounting for only 75.3 percent compared with the same period in 2011.

Of the total, 881 newly licenced projects had registered US$6.68bn, a year-on-year decrease of 36.7 percent, and 359 on-going projects expanded their investment capital of US$3.8bn, a year-on-year increase of 12.3 percent.

Do Nhat Hoang, Director of the Foreign Investment Agency, said the country's FDI inflow continued to drop in recent years. He urged the government and authorised agencies to have effective and timely measures to stop it.

(www.english.vietnamnet.vn, 08.11.12)

FDI Bill Passed in Burma

Burma's Parliament has approved a new FDI bill that removes limits on how much non-Burmese can invest in joint ventures with local partners. The new legislation incorporates most of the recommendations made by President Thein Sein, who must now sign it into law.

A majority of the 496 legislators supported all but one of the 11 proposed changes in the president's revised version of the draft bill. The changes aimed to lift limits on foreigners in both restricted and non-restricted sectors.

In the original draft law, foreign partners could only take a 49 percent stake in projects in restricted sectors such as agriculture, giving their Burmese partners a controlling interest. This was later changed to 50 percent, putting foreign and domestic investors on an equal footing.

(www.irrawaddy.org, 02.11.12)

Competition Heating in Africa

FDI in Africa is driven by foreign demand for resources and the desire to expand into new markets. Change in the dynamic African environment is often exaggerated with countries continually reassessing their growth, development and foreign strategies and considering their relative position in the African and global context to assess whether they have gained or lost due to the change.

South Africa's economy is still the largest economy on the continent, contributing around 23 percent to total African gross domestic product with only five percent of population.

Initially built on natural resource extraction, the economy has evolved from such primary activities into a manufacturing and services led economy and consequently one of the most developed countries on the African continent.

(www.accountancysa.org.za, 06.11.12)

Enhancing Economic Cooperation

Welcoming India's decision to push for financial reforms, including hiking the FDI cap in insurance sector; Australia will boost economic cooperation between the two countries, setting the tone ahead of its Prime Minister Julian Gillard's visit on October 15, 2012.

The international community, generally, has been watching the issue (FDI) with close interest. Australia is a country which has built its wealth on the back of foreign investment... we instinctively recognise the contribution that foreign investment can make to economic growth and development.

(ET, 06.10.12)

Regulation on Bilateral Investment

The European Parliament and Council adopted a regulation on bilateral investment agreements. This is a major step forward for EU investment policy and one of the most fundamental updates of trade policy after the Lisbon Treaty.

It will grant legal security to existing bilateral investment treaties concluded between our Member States and non-EU countries, as the EU is moving to replace them over time by EU-wide investment deals. This will protect EU investments abroad and allow investors legal channels to defend themselves when needed.

The new regulation establishes a legal binding of protection in order to encourage investments by nationals and companies of one country in another country. *(www.neurope.eu, 13.12.12)*

Strong FDI Growth in Indonesia

The growth of FDI in Indonesia is predicted to remain high in 2013 as the country will likely retain its economic strength amid economic problems beleaguering other competitors in attracting foreign investment to the region.

Indonesia offered huge opportunities for companies wanting to expand their output, he said, citing the country's large population of 240 million who currently remained largely dependent on imported goods to meet their needs. FDI realisation in Indonesia jumped to a new record high of US$587.41mn in the third quarter of 2012, surging 22 percent compared to 2011. *(JP, 22.11.12)*

Boosting Foreign Access to Markets

China will give foreign investors greater access to its stock and bond markets as part of a cautious reform push to open its financial system to the world. Guo Shuqing, the securities regulator, said China would increase the quotas that are allocated to foreign institutions for investing in its closely guarded capital markets.

Worried about destabilising capital flows, China has long capped the amount that foreign institutions can invest in the country's capital markets. But with the Chinese stock market among the worst performing in the world over the past three years, the regulator has been trying to attract more foreign money.

Giving foreign investors more channels to invest in China is also seen as an important part of building the renminbi into a global currency, since those holding renminbi outside China have been demanding more investment options.

(FT, 12.11.12)

Protecting Foreign Investments

Lord Peter Goldsmith*

Foreign direct investment (FDI) into India has increased rapidly from US$393mn in 1992-93 to almost US$47bn in 2011-12. With a projected GDP growth of six percent for 2012, and the government's plans to double spending on infrastructure in the coming years, the Indian economy is poised to attract significantly more foreign capital. India remains, however, a challenging place to do business.

Investors must grapple with an uncertain regulatory environment, complex tax and labour laws, rampant corruption in government, poor infrastructure and an overburdened legal system. It is important that investors entering India engage in strategic planning to ensure protection of their investments and access to legal recourse.

Dispute resolution under BITs: Bilateral investment treaties (BITs) are international agreements between two sovereign states that create reciprocal commitments in respect of protection and treatment of investments by investors of one party in the territory of the other. Provision for dispute resolution by investor-state arbitration is a key feature of most BITs. Since entering into its first BIT in 1994, India has built a significant portfolio of investment treaties.

The typical Indian BIT contains a number of guarantees to nationals of the cosignatory and provides for dispute resolution by investor state arbitration. Despite the significant number of Indian BITs and the extreme backlog of cases in the domestic courts, reports of investment arbitrations brought against India have been rare.

Examples of investors in India invoking BITs: An early example of proceedings against India is the Dabhol case, in which three US investors initiated proceedings in respect of their investment in Dabhol Power Co through Mauritian and Dutch subsidiaries. Dabhol had an exclusive sales contract with the Maharashtra State Electricity Board (MSEB). When MSEB defaulted on its payment obligations in early 2001, governments of both Maharashtra and India 0 that had acted as guarantors - refused to make the required guarantee payments.

Investors should invoke bilateral investment treaties if their investments are hurt by adverse policies

When Indian courts sanctioned attempts to enjoin commercial arbitration proceedings, investors resorted to investor state arbitration. No award was made, however, as India settled the dispute. In November 2011, White Industries Australia Ltd secured a landmark award against India relating to a contractual dispute with its Indian state-owned joint-venture partner, Coal India (CIL). White Industries had previously secured an ICC award against CIL in May 2002. CIL succeeded in having the award set aside by the Calcutta High Court that led White Industries to appeal to the Indian Supreme Court in July 2004, where the action remains pending.

Due to the inordinate delay in adjudication of its appeal, White Industries filed an investment arbitration claim against India in July 2010 to enforce its rights under the India-Australia BIT. The tribunal found that this clause in the India-Kuwait BIT could be incorporated into the India-Australia BIT by means of the latter's most-favoured nation clause, that guaranteed Australia treatment equal to the nation enjoying the most favourable treatment under an Indian BIT. Finding the delay in resolution of the enforcement proceeding a violation of the BIT, the tribunal made an award in White Industries' favour.

Strategic use of BITs to protect foreign investment: BITs offer foreign investors a powerful – yet quite underutilised – investment protection tool. Their strengths are two-fold. Firstly, BITs provide investors an immutable standard of protection laid down in a treaty as a matter of international law. Secondly, BITs guarantee investors an independent, impartial adjudication of their dispute.

The protections offered by BITs are no less important when structuring an investment. Given the chronic delays in the Indian court system, it is a critically-important development in White Industries that the tribunal held the state responsible for the actions of its courts. Investors should ensure that their chosen jurisdiction's BIT with India has an MFN clause permitting invocation of protections offered under other favourable BITs.

The ramifications of the White Industries award will not have escaped the Indian government. Now, more than ever, investors may effectively invoke BIT protections in negotiations to gain leverage *vis-a-vis* Indian authorities. Commencement of investment arbitration proceedings may itself prove sufficient incentive to favourable settlement, as happened in the Dabhol case. Investors would, therefore, be well advised to structure their investments carefully to ensure protection of their investment under a BIT.

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* *Chair of European and Asian Litigation. Abridged from an article that appeared in the* Economic Times, *on November 19, 2012*

New Coal Pricing Policy

The Government of India is giving the final touches to a new pricing policy for the coal sector, expected to roll out from April 2013, under which Coal India (CIL) will offer coal at pooled prices a weighted average of the price of imported and domestically produced coal to its consumers.

The proposed change in calculating coal prices is estimated to hike fuel tariffs by an average of 12 percent based on the current trend in global markets. The change in policy has become imperative, as CIL cannot meet the current demand for coal and relies on imports for supplying coal to power producers, which makes electricity tariffs unviable.

Under the new policy, CIL will notify prices based on the weighted average formula for every grade of coal depending on its heat content, known in industry parlance as gross calorific value (GCF).

Most of the coal produced in India has a lower GCF compared to coal from other major producers such as Indonesia and Australia. Indian coal is also of poor quality with high ash and moisture content. *(ET, 04.12.12)*

NCC Considers Spectrum Trading

The Deputy Chair and Spokesperson of the National Communications Commission (NCC) of Taiwan confirmed that the NCC plans to emulate the practice in the US and deregulate spectrum trading.

The regulations will also allow for spectrum resale by bid-winning operators when 4G mobile broadband licences are released through competitive bidding, which is expected to occur in August 2013 at the earliest.

Until now, spectrum trading has not been deregulated in Taiwan, except for the transfer of spectrum used by one mobile operator to another operator through company consolidation approved by the competent telecommunications authorities.

(ILO, 28.11.12)

Electric Industry Needs Coordination

In light of recent delays in the development of important infrastructure projects, electricity industry players in Colombia have requested more coordination between public authorities and a new regulation to resolve the different issues that slow down the development of electricity generation and transmission projects.

Recently, the construction of key generation projects has faced legal and social difficulties, resulting in delays and overruns. As far as the industry is concerned, there are legal and social difficulties in the construction of generation and transmission infrastructure projects.

The National Mining Information System has been requested to include electricity generation or transmission projects in order to coordinate mining activities with the construction of electricity infrastructure. *(ILO, 26.11.12)*

ANTAQ's Rules for Port Facilities

The National Agency for Water Transportation (ANTAQ) of Brazil published Resolution 2650, which establishes a procedure for environmental management monitoring and control in port facilities.

The monitoring will be carried out through the following tools: the Environmental Management Integrated System; the Environmental Performance Index for port facilities; and the International Maritime Organisation's Port Reception Facility Database, which has been translated and made available at ANTAQ's portal under the name GISIS/ANTAQ.

The companies in charge of port facilities must submit data reports. ANTAQ will make this information available to the public, as established by the Access to Information Act

(ILO, 05.12.12)

Competition Beats Cell Regulation

Canada's telecom regulator is going to conduct a consultation with Canadians to solicit their views on a new code for retail wireless services.

Jean-Pierre Blais Canadian Radio-television and Telecommunications Commission (CRTC) asked Canadians to help the CRTC determine what terms and conditions should be defined, to whom the code should apply, how the code should be enforced and how the effectiveness of the code should be determined.

Quebec, Newfoundland, Manitoba and Nova Scotia have all enacted new consumer-protection legislation to assist consumers to understand the terms they agree to and to restrict the ability of cellphone providers to apply large penalties for cancellation.

(FP, 15.10.12)

EU Plan to Tackle Tax Evasion

The EU Executive Commission has unveiled details of a plan to curb massive tax evasion and avoidance. The plan urges EU members to crack down on tax havens and close legal loopholes.

According to an estimate released by the EU Commission, tax dodgers incur revenue losses of around US$1.3tn every year in the 27-nation EU.

Under the plan, the EU Commission urges countries to "blacklist" so-called tax safe havens – states which aid and abet tax evasion – and "persuade" them to adopt EU taxation standards.

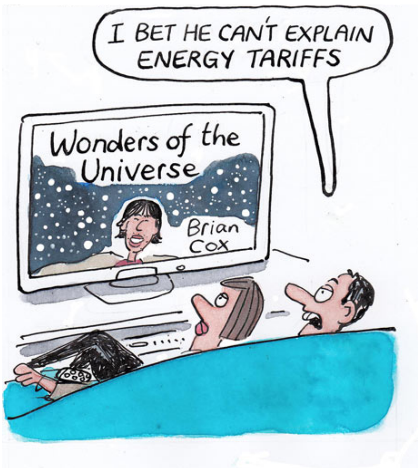
In a second recommendation, the EU Executive calls for national efforts to close legal loopholes in taxation laws that allow especially international corporations to avoid paying taxes.

In addition, so-called double taxation agreements between individual countries should be reinforced to prevent tax avoidance, the EU Commission suggested.

Other initiatives included in the action plan are a Taxpayer's Code, an EU Tax identification Number, and common guidelines to trace cross-border money flows. *(FT, 19.11.12)*

Plenty of Competition in Energy but of the Wrong Sort

John Kay*



Regulation has not only failed to relieve the problem but may actually have made it worse

David Cameron told the House of Commons that UK energy suppliers will be required to ensure that all their customers benefit from the lowest tariff. Coincidentally, Britain's energy regulator Ofgem published a document proposing simplification of retail energy tariffs. The document demonstrated that simplification will be complicated. Certainly more complicated than the prime minister's statement implied.

Many of the products we buy today are, by their nature, complicated. If you want to buy a television or a car or a computer, you are faced with a bewildering range of types, sizes and optional features.

Such complexity means some consumers will inevitably pay more than they need because they make mistakes or do not take the time to understand the options. Some complexity is unavoidable, but much of the complexity consumers experience is not.

For its consumers, energy is the simplest of products. All electricity or gas on the public network is the same. The only material difference between providers is the length of time it takes them to respond to complaints about your bill. The only persuasive claim a salesman can make is that his electricity or gas is cheaper. The time he spends trying to persuade you of this is a clue that it probably isn't. But to establish the truth may require a computer.

Much complexity has been deliberately created, to encourage consumers to pay more than they need, or expected. Or to reduce the likelihood that they will switch to another supplier. Mr Cameron's objective that people should simply be given the cheapest tariff for their needs is sound. But Ofgem's document illustrates the difficulties in making this happen.

Artificially manufactured tariff complexity is endemic in the utility and financial services sectors. Yet these are sectors with particularly active and intrusive regulators. The paradox is that regulation has not only failed to relieve the problem but may actually have made it worse. The economic model in the minds of regulators is one where competition ensures efficient outcomes if consumers are given appropriate information. Their preferred remedy is therefore to promote competition and require suppliers to provide more information.

But that economic model does not predict efficient outcomes if sellers know far more about prices and products than buyers. Such information asymmetry is inevitable. Phone companies have large departments working on pricing strategies. You have only a minute or two to review your bill.

When you shop, you mostly rely on the reputation of the supplier to give you confidence that you are not being ripped off. But in the regulated environment of utilities and financial services, there seems little to choose between the reputations of suppliers. All seem ready to push the limits of whatever regulatory rules are imposed.

The problem is less the weakness of competition than its effectiveness. Whatever one supplier does, others are forced to follow if they are to protect their markets and their returns. In the UK many banks have been caught in a scandal over the mis-selling of payment protection insurance, which covers debt repayments if the borrower becomes ill or loses their job. In the long run, all the companies involved would have been better off if they had made an agreement to stop selling PPI.

And so with energy tariffs. If the result of Ofgem's consultation is an extended set of prescriptions of how information must be displayed, companies will fulfil the letter but not the spirit of these rules. In financial services key facts documents have not proved effective in educating consumers, or prescribed interest rates in stopping bad lending practices.

Perhaps Cameron should use his position not to threaten legislation, but to persuade the small number of energy suppliers to reach an agreement on future conduct. In this way, he could help companies extricate themselves from a mire of competitive misinformation. That would benefit both suppliers and customers in the long run.

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* *Britain's Leading Economist. The article appeared in the* Financial Times, *on October 24, 2012*

US-UK Unveil Failing Banks Plan

US and UK regulators will unveil the first cross-border plans to deal with failing global banks, outlining proposals to force shareholders and creditors on both sides of the Atlantic to take losses and to ensure sufficient capital exists in the banks' headquarters to protect taxpayers.

Martin Gruenberg, Chairman, US Federal Deposit Insurance Corporation, and Paul Tucker, Deputy Governor, Bank of England, say this represents the first concrete steps to end the "too big to fail" problem of large international banks.

With Tucker leading international efforts to devise emergency resolution plans, the US-UK template for their 12 large international banks will be a template for the 16 systemically important banks (GSifis) based in other countries. *(FT, 10.12.12)*

French Banks Lobby against Reform

French banks are lobbying hard to limit an upcoming law to separate trading from retail activities – a central campaign promise of François Hollande, Socialist president.

Pierre Moscovici, French Finance Minister, said the banking reform law will be introduced before the end of 2012. This implies that France will not wait for Europe-wide reforms under consideration following the publication of the recommendations of the Liikanen panel, commissioned by the EU.

The Liikanen report recommended that banks with trading activities above a certain size, ringfence them into a legally-separate entity from the deposit-taking bank. *(FT, 24.10.12)*

UK Tightens Grip on Foreign Banks

The UK's chief financial watchdog has sharply tightened its grip on overseas banks that want to take deposits in Britain, pressuring them to open locally-regulated subsidiaries with their own access to cash and capital.

The Financial Services Authority is at the forefront of moves by global regulators to force the arms of overseas banks to have separate capital and liquidity to protect depositors and taxpayers from a bank collapse.

Since 2007, the FSA has allowed just four banks to open branches, which rely on their parent for capital, while approving 14 new subsidiaries and six new UK-only banks. Five of the subsidiaries are arms of banks that previously had branches. *(FT, 10.12.12)*

Doubts Grow on Bank Watchdog

Europe's diplomatic sprint to establish a single bank supervisor stumbled as EU finance ministers restated objections to fundamental elements of the proposal and raised doubts over reaching a deal in December.

In spite of negotiations, the discussions laid bare stark differences between several member states over a proposal that is billed as a key plank of Europe's response to the sovereign debt crisis.

A German-led bloc demanded that ministers concentrate on getting the proposal right, rather than obsessing with a fixed timetable, while Sweden said its serious concerns might only be resolved with a politically gruelling change to EU treaties. *(FT, 14.11.12)*

FSB Seeks to Tame Shadow Banking

Non-bank lending markets face unprecedented levels of government intervention under sweeping new proposals to tame "shadow banking" laid out by global regulators meeting as the Financial Stability Board.

The Basel-based regulatory group made clear on Sunday that it intends to push for tighter oversight of any part of the US$67tn sector that takes on bank-like attributes such as using short-term assets to fund longer-term lending, known as "maturity transformation".

They also intend to set global capital and liquidity standards for non-banks that could be subject to investor panics akin to a depositor run. *(FT, 19.11.12)*

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, 18.10.12)*

Merkel urges more far-reaching financial regulation

German Chancellor Angela Merkel urged the world's top economies to push ahead with further financial regulation, saying that not enough had been achieved so far. The global financial crisis has prompted an overhaul of regulation in almost every part of the financial system from over-the-counter derivatives to bank capital requirements.

The Chancellor pointed to "shadow banks", or non-bank financial institutions that are less regulated than banks, as an area where progress needed to be made. Regulators worry that as traditional banks get more heavily regulated, risky credit activities will shift to shadow banks.

The structural reforms are beginning to show effects in the individual countries, such as in Ireland and Portugal but also in Greece and Spain.

(IE, 27.10.12)

We Should Go Further Unbundling Banks

Andrew Haldane*

Structural reforms to banks are high on the agenda, with the Liikanen Group's call for European banks to separate retail from trading activities. For some, such calls are a cause for concern. Yet for investors, the concern should be that they do not go far enough.

Back in 2000, financial markets valued global banks at two or three times the book value of their equity – saying, in effect, that an investor who had placed US$1 with a bank had doubled, perhaps trebled his stake. It should have been no surprise that investors flooded in, resulting in a threefold rise in global banks' balance sheets in less than a decade, in what was perhaps the largest bank bubble in financial history.

When that bubble popped in 2007, so too did market valuations. Today, most global banks are valued at a discount – many at a small fraction – of their equity book value. Today, an investor who had placed US$1 with a bank would on average have seen that return as little as 50 cents. Once a value-creation machine, banks have become a value-destruction machine; in response, bank investors are seeking shelter and bank balance sheets have begun a crash diet.

So what has gone wrong, and what can be done? Lowly bank valuations are in part a legacy of the past and in part a prophecy about the future.

The legacy is the overhang of overvalued bank assets. There are several reasons for this. One is forbearance on past loans, which appears to be both large and latent. Quite how large and latent is unclear. Near-zero global interest rates, actually and prospectively, have encouraged forbearance by lowering the costs of prevarication. Global accounting rules have also contributed to an overvaluation of legacy assets, as they prevent banks adequately provisioning for future loan losses. International efforts to rectify this are at risk of stalling.

There is a strong case for regulators stepping in to lessen the uncertainties over valuations. That might mean calculating prudent valuations across banks' balance sheets, as the Bank of England's Financial Policy Committee recently suggested with respect to UK banks.

These prudent valuations would help in removing residual uncertainty about banks' legacy portfolios. They could thereby spur private investors to return to banks, when they might otherwise be fearful of paying for yesterday's mistakes. That would boost bank valuations and support bank lending.

The prophecy investors are making is a despondent one over the future franchise value of banks. There is no single cause of this franchise erosion. Recent mis-selling scandals have not helped. But a key concern appears to be so-called business model risk. It is not difficult to see why.

Many large universal banks are a complex portfolio of franchises. It is very difficult to value any individual component of that portfolio in the current environment. And it is almost impossible to value the portfolio as a whole. For example, in the current environment are investment banking revenues a hedge or a headache?

At present, investors are pricing for a migraine. Market prices suggest the banking whole may be worth less – than the sum of its parts. There are market-implied diseconomies of scale and scope. The problem for investors appears to be not so much too-big-to-fail as too-complex-to-price.

This was last the case in the depths of the Depression. Then, mirroring recent experience, US bank price-to-book ratios fell from above two to well below one between 1928 and 1933. This set the stage for the Glass-Steagall Act, a market-induced but regulatory-enforced unbundling of the banking portfolio.

Today, the Volcker proposals in the US, the Vickers proposals in the UK and the Liikanen proposals in Europe envisage a similar unbundling of banking portfolios. Despite the alarm some have expressed, if implemented faithfully and simply such structural solutions ought to help solve the too-complex-to-price problem, to say nothing of too-big-to-fail. Alongside efforts to strengthen macro and micro-prudential regulation, these initiatives would help mobilise bank funding and lending, just when it is most needed for the economy.

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* *Executive Director for Financial Stability Bank of England. The article appeared in the* Financial Times*, on October 02, 2012*

The Obama Administration's Strong Antitrust Record

David Balto*

Presidential campaigns are often marked by efforts to compare and contrast administrations, particularly in a year like this one when the incumbent president is seeking to associate his opponent with his unpopular predecessor. One prominent area in which there are key distinctions between President Barack Obama and the Bush administration before him is the enforcement of the nation's antitrust laws.

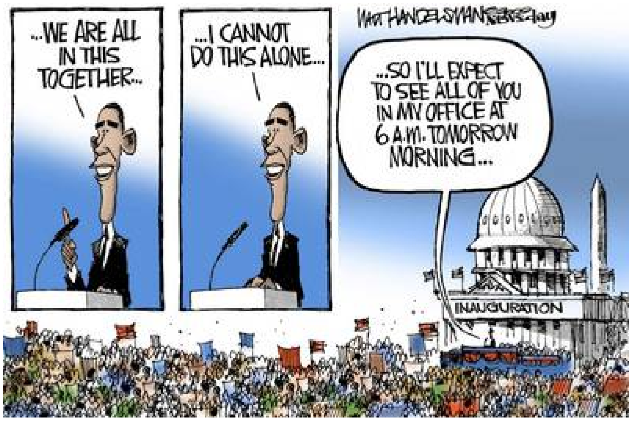
Antitrust enforcement is critical because the competition it protects is vital to the health of our free market economy. Strong competition and rivalry lower prices and increase output, and promote innovation and job growth, goals that are all the more crucial in a period of economic recovery. In a series of three posts, we will review the differences between the Obama and Bush attitudes on antitrust enforcement, as reflected by the level of activity of the Antitrust Divisions of their Departments of Justice (DoJ).

We will begin by focusing on criminal prosecution, the crown jewel of the Antitrust Division's enforcement activities. Collusive price-fixing by illegal cartels is the most pernicious activity that illicitly extracts money from the market, and has a great and detrimental impact at all levels of the economy. This is especially true for consumers, who are all too often sold lower quality products at high, unfair prices.

The Obama Antitrust Division has vigorously pursued cartels and anti-competitive behavior, conducting multiple high profile investigations over the last three and a half years with immense returns.

As recently as September 20, Taiwanese LCD screen producer AU Optronics was fined US$500mn for conspiring with several other screen manufacturers to artificially inflate prices. The fine is tied for the largest ever levied in an American antitrust case, and is a portion of the more than US$1.4bn the Antitrust Division has collected in an investigation that has targeted several other LCD producers and resulted in fines and multiple years of jail time for top executives, including three years for two of AU Optronics' leaders.

The Division under President Obama has also investigated and successfully ended a price-fixing and bid-rigging conspiracy among three Japanese auto parts manufacturers that produced over US$748mn in fines and jail time for eight executives, as well as a bid-rigging agreement in the



municipal bond investment market that yielded a total of US$525mn in penalties from JPMorgan Chase, UBS AG, and Bank of America.

The importance of the DoJ Antitrust Division's criminal enforcement activity in cases like this cannot be overstated. This is particularly true in the case of LCD panels, which are used in devices from laptops and cell phones to computer monitors and televisions, meaning that nearly every American consumer was impacted by the illegal price-fixing scheme.

Thus it is encouraging to see that the Obama administration has substantially increased activity on the criminal enforcement front over the previous administration. The Obama administration has stepped up enforcement on every metric, including average yearly fines collected, average number of cases filed and average jail days assigned. The Obama administration has also incarcerated numerous foreign nationals for their roles in price-fixing cartels for an average of 10 months, compared to 6.4 months under Bush.

While the criminal antitrust enforcement activity of the Obama administration is laudable and a clear improvement over its predecessor, the increase in the Division's efforts also reflect the fact that the kind of egregious anticompetitive behaviour demonstrated by targeted cartels is showing no signs of abating. Although the trend of increasing fines may be acting as a deterrent to a certain extent, it is crucial that we sustain a powerful enforcement system to punish this type of conduct and ensure that there are clear and powerful consequences, regardless of which party controls the White House in January.

* *Antitrust Attorney in Washington, DC. Abridged from an article that appeared in the* www.usnews.com *on October 12, 2012*

Insurers Must Learn Lessons from AIG

John Gapper*

Business is still being done in the name of insurance that bears little resemblance to it

Bob Benmosche, the amiably loud-mouthed Chief Executive of AIG, took his victory tour to London. "We are free at last," he rejoiced to his fellow bosses as the US Treasury sold the last of its AIG stake.

It is not that simple. AIG has recovered from its multibillion-dollar losses but it still casts a long shadow over the insurance industry. The second-largest US insurer has placed its peers under suspicion, encouraging regulators to treat them like banks – more tightly regulated, holding more capital.

This annoys the world's biggest insurers. "If you put higher capital requirements on insurance, you will have less insurance and lower growth," said John Fitzpatrick, Secretary General of the Geneva Association, their trade body.

Regulators have ignored similar arguments from banks in the past few years and they should discount this appeal too. Most insurance companies are smaller, sounder and safer than most banks but business is still being done in the name of insurance that has little resemblance to it. It would be foolish to forget the lesson of AIG the moment the US gets its money back.

As well as insurance it wrote credit default swaps on corporate and bank debt and lent securities to investors – activities that became toxic in the 2008 crisis. It was the most promiscuous of large insurers but not the only one to stray from its core – Swiss Re suffered big losses on default swaps.

The dangers of financial gambling being mislabelled as insurance go back a long way. The UK Parliament passed an Act in 1774 to stop people taking out life insurance policies on others – a risqué form of gambling. The Act banned the use of insurance policies "for gaming or wagering purposes".

Thanks to the abolition of Glass-Steagall in 1999, a strict division between insurance and hedging no longer exists. An insurance holding company can own securities or banking arm – indeed, AIG still guarantees US mortgages.

Insurance is a less threatening activity than banking for the financial system as a whole. Life and property insurers can miscalculate the risk of having to make payouts but they rarely face the equivalent of a run on the bank. Most policyholders can only make a claim when something happens.

Unlike banks, they also tend to become more financially stable the bigger they get since the risks run by individual policyholders are not correlated. A bank that makes many mortgage loans to homeowners in one area increases its exposure to a property crash; a life insurer that sells policies to the same people diversifies its risks.

Thus, an insurance group may genuinely be too big to fail – or too big to run a great risk of failure. Nor are insurance companies especially big compared with banks. The world's biggest 28 insurance companies are, on average, a quarter of the size of the largest 28 banks and have much smaller derivatives portfolios and are far less vulnerable to short-term funding being cut off.

The International Association of Insurance Supervisors has drafted new rules that attach relatively little importance to an insurer's size and more to what it does. It would be very hard under these rules for any pure life or property insurer, no matter how large, to count as systemically important. The insurers at risk of having to raise capital are those such as AIG, which pursue other activities under an insurance holding company.

Unlike most other insurers, which hold little capital centrally, AIG has a pool of cash that it can pass to any operations that get overstretched – when hurricane Sandy struck the US it handed US$1bn to its US property insurance arm. It may now be required to raise more.

It is an irony that other insurance companies will have to structure themselves more like AIG as a result of the 2008 crisis but it is perfectly rational. Whatever it discourages, it would not be insurance.

* *Business Columnist and Associate Editor of the Financial Times. Abridged from an article that appeared in the* Financial Times, *on December 12, 2012*

Banks make Stupid Comments on Competition Law

Stephen King*

Stephen King is amazed by how little business people know about competition laws, and merger laws in particular. And he is astounded by how this ignorance does not stop business people making comments about the law. For example:

Some of the nation's most senior investment bankers have warned the competition regulator against taking an overzealous approach to enforcing competition laws, claiming it could prevent significant economic benefits from corporate deals flowing to consumers.

Sorry? No! Unlike most jurisdictions around the world, the Australian Competition and Consumer Act allows companies to seek authorisation – a process that exactly covers this situation. So if a merger would 'substantially lessen competition', and so be illegal under the standard law, the merger parties can seek to have the merger authorised.

To do this they need to show that the 'benefits to the public' from the merger outweigh the detriment. While there is some debate about the breadth of the term 'public', precedent in Australia basically means that this is a cost-benefit analysis. So if merger parties can show that their merger passes a cost-benefit test despite 'lessening competition' they can get it approved.

Further they do not even have to go to the Australia Competition and Consumer Commission (ACCC) for this. Merger authorisations are handled by the Australian Competition Tribunal.

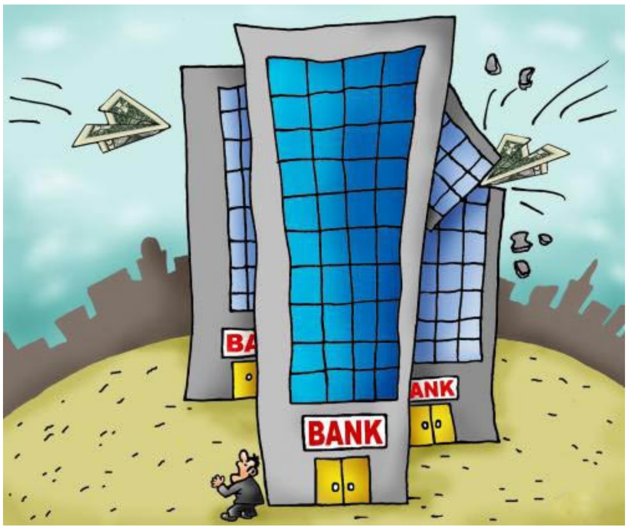
So the claim that:

... the ACCC, I think, has run an almost zealous pursuit of the competitive issue without taking into account the economic benefits of the combination.

simply means that the relevant companies have got stupid lawyers who have used the wrong bit of the law to get merger clearance. But authorisation is a transparent public process. And it looks like merger parties don't like transparency. So the last merger authorisation application was about 8 years ago, when I was mergers commissioner at the ACCC.

Or how about:

So people complain to improve their own competitive position. That was very clear in Foxtel-Austar . . . You need a very strong regulator . . . that is really smart, and one that needs a lot more outside help than it gets today in particular sectors to really understand the issues and to ensure they are not regulating just to make somebody else stronger.



Well, if a company is worried that competitors are making false claims in confidential submissions to the ACCC – and that the ACCC is incorrectly believing them – then they have a number of simple choices. First, they can appeal to the Courts. If the ACCC has based its case on false claims then its case will quickly fall apart.

Cannot wait for an appeal? Well, then use the formal clearance process in the Act. This is a public process that allows competitors' claims, and the claims of the merger parties, to be publicly debated and evaluated. Interestingly, since this process was introduced, due to exactly the sort of claims made by the banks, there have been ZERO formal merger applications.

It appears merger parties may like public scrutiny of competitors' claims, but not if this means they also face public scrutiny.

The ACCC's informal merger clearance processes are far from perfect. But it is silly for the banks and other private companies to complain about these processes when the solutions to their problems already exist – but the business community refuses to use them.

* *An American Author of Contemporary Horror, Suspense, Science Fiction and Fantasy. The opinion appeared in the* Core Economics *on October 12, 2012*

Publications

PolicyWatch


PolicyWatch
Taking India Forward in 2013

The October-December 2012 issue of PolicyWatch encapsulates 'Taking India Forward in 2013' in its cover story which states some sanity revert was seen in Indian law making process when law makers passed laws and pushed the reforms agenda. Thanks to the adroit handling of cantankerous issues and dissonance by the new Parliamentary Affairs Minister Kamal Nath. Whether, we agree with everything that the government has done well or not, we look forward to a resolute and smart government to take the growth agenda forward in 2013 as well.

A special article by Swaminathan S Anklesaria Aiyar states that overdue increases in the prices of LPG and diesel, and measures like FDI I retail have created the image of a government leaping back into action.

Another article by Nirvikar Singh says that CSR is fine but it does not preclude a firm making large profits through unethical business behaviour.

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


ECONOMIQUITY
Address Non-Tariff Barriers to Indo-Pak Trade
Virtues of a Participatory Approach

The October-December 2012 issue of Economiquity carries an article entitled, 'Address Non-Tariff Barriers to Indo-Pak Trade: *Virtues of a Participatory Approach*' in its cover story which states that the need of the hour is to bring back the focus of policymakers on economic costs and benefits of cross-border trade and limit politicisation of trade reforms that has been damaging South Asia's aspirations on regional economic integration.

A special article by Anatole Kaletsky states that outside the Eurozone, which now accounts for just 17 percent of global output and will shrink to just nine percent by 2060 according to the OECD, economic statistics are clearly improving across the world.

Another special article by R K Pachauri says that India needs to focus on domestic action for climate goals.

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; BS: Business Standard; DNA: Daily News Analysis; ET: Economic Times; FE: Financial Express; FP: Financial Post; FT: Financial Times; GCR: Global Competition Review; IE: Indian Express; ILO: International Law Office; JP: Jakarta Port; TH: The Hindu; WSJ: Wall Street Journal

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