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Special Articles

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CUTS C-CIER

World Competition Day

Need to Promote Competition Culture

Although competition policy and law issues date back to the 1890s when Canada and the US adopted competition laws, interest and awareness on competition laws on an international level remains far from satisfactory today, after more than a century. This can be achieved through the adoption of a World Competition Day (WCD). It is an initiative of International Network of Civil Society Organisations on Competition (INCSOC) secretariat by CUTS on 5th December, to ensure consumers from across the world realise the potential benefits from an effectively implemented competition regime.

A large number of countries have urged the adoption of 5th December as WCD, in order to popularise the need for developing countries to attach greater attention to the process of competition reforms as a key public policy issue. The process of competition reforms not only benefit consumers but also producers and the economy in general. The linkage is often not understood by policymakers hence organisations, such as CUTS have been leading the campaign for promoting competition globally. One of the highlights of this campaign is for the UN to declare 5th December as WCD a CUTS campaign that has now been supported by nearly 25 countries from all around the world.

Again this year (2013), WCD was celebrated across the world to realise the potential benefits from an effectively implemented competition regime. In 2013, it was found that brand-name drug manufacturers in the US were paying their competitors generic drug manufacturers, to keep their products off the market shelves. In a case that was presented before the Supreme Court, Solvay Pharmaceuticals had paid a generic drug manufacturing company named Actavis close to US$30mn each year to delay making a drug that could compete with Solvay's product, and thus, allowed the brand name company to sell their product at significantly higher prices.

This 'pay-for-delay' agreement deprived consumers of their right to choose and right to fair pricing of the product. In a country that is trying to make healthcare more accessible to disadvantaged communities, such anticompetitive business practices have become a huge impediment to reducing healthcare costs. This incident is an ideal case in point to highlight the existence of 'cartels' and their adverse impact on the poor. Thus, the theme of the year was 'Adverse Impact of Cartels on the Poor'.

Numerous competition authorities from all around the world have supported/observed the WCD in their countries and written letters to UNCTAD, requesting the formal adoption of the day, making press briefings, issuing outreach materials, organising awareness programmes etc. The culture of competition is quite weak in many countries and consumers have limited understanding about the harmful effects of cartels. In effect, it is expected to result in greater public understanding and support on the need to crack down cartels.

Law Amended in Japan

Japan's National Diet (Japan's legislature) has passed legislation amending the country's Antimonopoly Act to abolish the Fair Trade Commission's hearing procedure for appeals against infringement decisions.

The new bill removes the current appeals process, whereby the JFTC itself hears appeals against its decisions in the first instance. The process is overseen by commission-appointed examiners, who then present a draft decision to the JFTC, which takes a final decision.

If parties are still unsatisfied, they can then take the appeal to a second stage before Tokyo's High Court.

The new process means that all appeals in the first instance are now under the exclusive jurisdiction of Tokyo's District Court, removing the JFTC from the process. The district court's exclusivity in such appeals is designed to "ensure consistency in judgment and accumulation of specialised knowledge of antitrust cases", according to the JFTC.

(GCR, 11.12.13)

'Root and Branch' Review

The Australian government is to undertake a comprehensive review of competition laws and policy, the first in more than 20 years. The government said the 'root and branch' review was designed to promote investment, growth and job creation.

The competition review will examine not only the current laws but the broader competition framework, to increase productivity and efficiency in markets, drive benefits to ease cost of living pressures and raise living standards for all Australians.

This review is long overdue and will help identify microeconomic reforms and long-term improvements to build strong foundations for a more productive and competitive 21st century Australian economy.

(www.thedrum.com, 05.12.13)

Reforming Competition Law

The Hungarian government presented a bill introducing significant reform to the competition law regime in Hungary on October 18, 2013. Key changes include the prohibition of gun jumping (closing a transaction prior to merger control clearance), the shortening of the merger control review period and the introduction of a settlement procedure.

The bill is planned to enter into force on July 01, 2014. Certain provisions, which concern the organisation of the Hungarian Competition Authority (HCA), are planned to enter into force before this on January 01, 2014. The bill will be discussed by the Hungarian Parliament soon. *(Mondaq, 28.10.13)*

Will HK Competition to Have Teeth?

A Hong Kong ordinance mandating the establishment of a competition commission comes into effect in January 2014 but it is unlikely to have any real impact until 2015 – and even that is unclear.

The ordinance was passed by the Legislative Council in 2012 and a competition commission and tribunal have already been established. It will be up to the commission to draw up the rules setting out Hong Kong's antimonopoly policy.

The commission is currently recruiting and should be more or less fully staffed by spring, after which it should start to focus on providing guidance and making the law operational. As such, the legal academic believes the commission would not really become a force to be reckoned with until 2015.

(www.financeasia.com, 09.12.13)

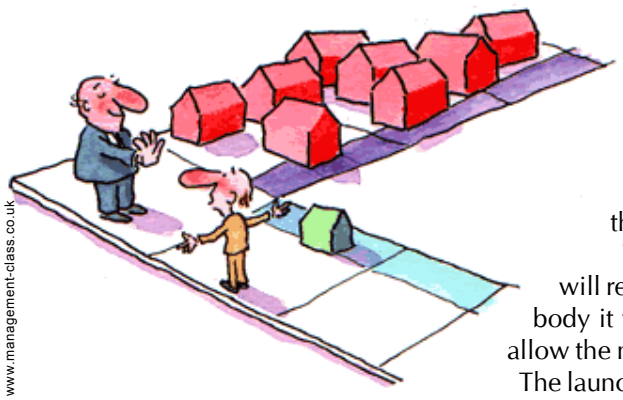
Mergers: Enforcement Proceedings

The French Competition Authority recently published new merger control guidelines. The guidelines are based on the authority's own decision-making practice over the past three years, with 700 decisions handled since 2009, and on information gained from its active involvement in the European Competition Network.

The guidelines "constitute, for the Authority, a directive which is enforceable both against and by undertakings". The new guidelines encourage undertakings to favour a faster, more flexible process, and therefore emphasise the importance of the informal pre-notification phase, which enables undertakings.

The authority addresses any potential problems related to the eligibility criteria for review of the operation or peculiarities of the companies or markets involved, or anticipate any possible competition problems. *(ILO, 26.09.13)*

UK Competition Authority in Action



www.management-class.co.uk

The UK's new unified competition body, the Competition and Markets Authority (CMA), launched today in shadow form before going live in April 2014.

The CMA will bring together the Competition Commission (CC) with the competition and certain consumer functions of the Office of Fair Trading (OFT) in order to promote competition, both within and outside the UK, for the benefit of consumers.

The CMA will not initially be taking on any casework, which will remain with the OFT and CC until April 2014, but as a shadow body it will be empowered to make the necessary preparations to allow the new authority to assume its responsibilities next year.

The launch was marked by the publication for consultation of the new authority's proposed vision, strategy and values. The CMA's overall ambition is to be consistently one of the leading competition and consumer agencies in the world. *(ILO, 17.10.13)*

The Competition Act and Construction

Stephen Bauld*

In Canada, the law relating to bid-rigging is divided between the criminal law relating to fraud and the more specialised field of competition law. Accordingly, depending upon the particular circumstances of a given case, a bid-rigging arrangement may constitute the offence of fraud under the Criminal Code, or the separate offence of bid-rigging under the Competition Act.

Most recent prosecutions have been under the Competition Act, rather than the code, therefore the Competition Act should first be considered. Canada's competition laws date from 1889 – the year before the enactment of the Sherman Antitrust Act. However, for many years, prosecutions were few and convictions rare. The current regime has been in place since 1986, when the former Combines Investigation Act was extensively amended and became the Competition Act.

Since that revision, the Act was amended in 1992, 1999, 2000 and 2002, in each case with a view towards facilitating prosecution, and also so as to address emerging issues such as deceptive telemarketing. The 2008 Conservative Party election campaign platform contained a number of commitments in relation to competition law, including the following of particular relevance here:

- An increase in the maximum penalties for cartels and bid-rigging to up to a US$25mn fine and 14 years in prison, replacing the current maximum penalties of US$10mn and five years.
- The introduction of a non-criminal track with a corresponding lower evidentiary threshold for offences such as price discrimination, promotional allowances and predatory pricing.
- The introduction of administrative monetary penalties (up to US$10mn, and US$15mn, for repeat offenders) for companies found to have breached the abuse of dominance of the Competition Act.
- Empowering the Competition Tribunal with the ability to order restitution to victims of deceptive marketing practices, including the ability to freeze assets and prevent the disposal of property to ensure that money remains available for restitution. It is not clear whether this provision would extend into the bid-rigging area.

These proposals were eventually carried forward in Bill C-10, which received Royal assent on March 12, 2009. This is based upon the law as revised by Bill C-10.

The Competition Act and the Competition Tribunal Act set out the legal and institutional framework for the competition law in Canada. The commissioner of competition

Continued concerns have come up related to the construction industry and the Competition Act

is responsible for investigating alleged anticompetitive conduct and mergers, as well as misleading advertising and other deceptive marketing practices. The commissioner also heads the Competition Bureau, which carries out investigative and advocacy work.

At the end of an investigation by the bureau, the commissioner decides whether to refer the matter to the Competition Tribunal, in the case of a non-criminal matter, or to the Attorney General of Canada in the case of a criminal matter. If the evidence is insufficient, the matter is discounted. Once a criminal matter has been referred to the attorney general, the director of public prosecutions has the independent discretion to determine whether it is in the public interest to prosecute before the courts.

In practice, contested proceedings before the courts and Competition Tribunal are rare. Most cases are resolved on a consensual basis, and there is a wide range of remedies available under the Competition Act depending on the nature and seriousness of the matter. There is also scope for filing lawsuits for the recovery of damages by private parties under the Competition Act involving criminal matters, as well as limited private enforcement before the Competition Tribunal in civil matters.

The granting of formal investigatory powers to the bureau or other independent government agency to conduct market studies is another subject of debate.

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* *Canada's Leading Expert on Government Procurement and Member, Daily Commercial News Editorial Advisory Board. The article appeared in the* Daily Commercial News *on December 17, 2013.*

ABUSE OF DOMINANCE

Gazprom on the Ropes

Brussels stepped up pressure on Gazprom in its stand-off over gas prices, as Europe's top competition enforcer warned the energy group that it is on course to face antitrust charges unless it moves to settle the case.

Joaquín Almunia, the EU Competition Commissioner, repeated for the third time in a month that his staff was drafting a charge sheet – a so-called 'statement of objections' – based on their one-year investigation of Gazprom's pricing practices.

While the EC is aiming to be ready to accuse the group of abusing its dominance by the end of 2013, the Gazprom investigation is far from a routine antitrust case. *(FT, 03.10.13)*

Brussels Attack on Pay-TV Soccer

Brussels is poised to launch a formal antitrust probe into sales of pay-TV rights to screen premium sports and Hollywood blockbusters, in a ground-breaking move that builds on a test case brought by a British pub landlady.

A formal European Commission (EC) investigation could smash open the country-by-country licensing that has dominated the sales of exclusive pay-TV content such as live football and newly-released movies.

The regulatory attack on restrictions that carve the EU market into national patches follows a European Court of Justice ruling in 2011 regarding Karen Murphy, a publican from Portsmouth who had been fined for showing football to customers using a satellite card from Greece. *(FT, 22.11.13)*

EC Accepts DB's Commitments

The European Commission (EC) accepted conditions offered by Deutsche Bahn (DB) and ended its investigation of the train company, which was accused of abusing its dominance in providing power to electric trains.

The Commission worried that the pricing system of DB Energie, DB's subsidiary, favoured companies owned by DB at the expense of rivals, particularly by offering discounts for which only DB-owned businesses were eligible.

To alleviate these concerns, DB will introduce a new pricing system in which it will market its electricity separately from its rail network market. Previously, it sold them both together. This deal will be available to DB subsidiaries and other companies equally.

(www.crai.com, 18.12.13)

Italy Opens Pharma Investigation

Italy's Competition Authority has opened an abuse of dominance investigation of pharmaceutical company Industria Chimica Emiliana (ICE) – a leading world producer of cholic acid, an ingredient in ursodeoxycholic acid (UCDA) which is used in drugs to treat liver disease.

It supplies the product to various UCDA manufacturers including its own subsidiary Prodotti Chimici e Alimentari (PCA) and an independent company, RGR. RGR complained to the authority that ICE was abusing its dominant position by increasing prices, shortening the time period in which it could pay and reducing the available quantities of cholic acid.

It claimed PCA has been trying to remove it from the market by effectively having ICE refuse to supply it and by targeting RGR's clients by offering prices. *(GCR, 18.12.13)*

France Hits EDF with Penalties

The French Competition Authority has fined energy company EDF •13.5mn for improperly promoting its own solar panel subsidiary. EDF is France's incumbent electricity producer.

The Authority says EDF abused its dominance by using its strong market position and brand image to promote its solar power supply unit EDF Energies Nouvelles, or EDF ENR.

Incumbent energy supplier EDF has a dominant position in France's domestic electricity market, supplying 95 percent of the country's households. EDF had a 'unique advantage' in the solar industry that was 'non-reproducible' by its competitors, says the authority. *(GCR, 17.12.13)*

Malaysia Issues First Abuse Fine

Malaysia's Competition Commission (MyCC) provisionally fined steel manufacturer Megasteel •1mn for abusing its dominant position. It is the first ever abuse of dominance fine issued by MyCC.

Melewar Group manufactures cold rolled coil (CRC), which is a type of flat steel product. To do this, it requires a raw material known as hot rolled coil (HRC). Other than companies that have gained government approval to import HRC from foreign companies, Malaysian companies are reliant on Megasteel, the country's monopoly supplier of HRC.

Megasteel also manufactures and sells CRC. MyCC found that Megasteel was charging unfairly high rates for HRC and then undercutting its rivals on the price of its CRC, which was squeezing competitors out of the market. *(www.lexology.com, 05.11.13)*

Ericsson Faces Competition Inquiry

The Competition Commission of India (CCI) will investigate Ericsson for alleged abuse of a dominant position as its legal battles with Indian handset maker Micromax over patents escalated.

Ericsson sued Micromax in a Delhi high court alleging that the Indian consumer electronics company infringed its patents and had refused to license Ericsson's technology on so-called fair, reasonable and non-discriminatory (Frand) terms.

Micromax, in return, brought a complaint to the CCI alleging that Ericsson sought to charge exorbitant royalty payments for its GSM mobile technology patents. Ericsson would fully co-operate with the CCI 'to reach a fair and reasonable conclusion'. *(FT, 29.11.13)*

CARTELS

ACCC Snags Bearing Manufacturer

The Australian Competition and Consumer Commission (ACCC) opened court proceedings against Japanese ball bearing manufacturer NSK over cartel activity. NSK makes ball and roller bearings, which are used in a wide variety of products such as vehicles and farm machinery. The Australian bearings market is worth more than A$300mn.

The Commission says the company colluded with at least two competitors and 'exchanged information about proposed price increases' to fix the price of bearings sold in consumer aftermarkets between 2008 and 2009. NSK has admitted to the allegations and cooperated with the ACCC's investigation. *(GCR, 13.12.13)*

Egypt Prosecutes Mobile Cartel

Egypt's Competition Authority has referred the country's three largest mobile operators to the public prosecutor over an alleged cartel agreement. Etisalat, Vodafone and Mobinil allegedly conspired to raise the prices of mobile services under the pretext of adding a stamp tax.

In October 2012 the ECA received a complaint alleging that in March 2012 the operators simultaneously added a stamp duty of •0.05 per customer. The stamp tax is usually levied on all sales and purchases of financial securities sold in Egypt, but according to the ECA the operators had previously chosen to waive the tax in an effort to attract customers.

The operators agreed to add the tax without the compulsory approval of the National Telecommunication Regulatory Authority (NTRA), but the body agreed to the increase in retrospect. *(www.4gafrica.co.za 09.12.13)*

Brazil Looks into Petrol Stations

Brazil's Administrative Council for Economic Defence (CADE) has opened an investigation of 10 petrol stations and four individuals, including a police officer, over alleged cartel activity. The investigation is based on alleged anticompetitive practices in Uberlândia, the second-largest city in the eastern state of Minas Gerais.

CADE opened the probe after receiving complaints about the petrol station and also after receiving information from the public prosecutor of Minas Gerais, which opened its own investigation in 2009.

To ensure compliance, CADE says, the alleged cartelists hampered the operations of rival petrol stations by organising demonstrations outside them to scare off business.

(www.latinlawyer.com, 03.12.13)

AirAsia Responds to MyCC

AirAsia has responded to the Malaysian Competition Commission (MyCC) over the fine imposed in September for allegedly breaching competition laws.

AirAsia Malaysia CEO Aireen Omar said that the low-cost carrier had responded to the MyCC's action, just a day after Malaysia Airlines (MAS) said it had lodged a 'written representation' with the MyCC.

The MyCC had imposed a fine of RM10mil each on MAS and AirAsia after they were found to be in breach of the market-sharing prohibition in the Competition Act 2010 during their collaboration framework of August 09, 2011. MyCC had given the airlines 30 days to argue, either orally or in writing, why they should not be fined RM10mil each. *(www.thestar.com 18.10.13)*

Probe Threatens Shipping Alliance

A probe by the EU into price fixing in the container-shipping industry makes it less likely that the world's three biggest container shippers will get regulatory clearance any time soon for a major new alliance on the busiest global trade routes.

Danish shipping group Maersk Line, France's CMA CGM and Swiss-based Mediterranean Shipping Co.– the three shippers planning the global transport tie-up that is subject to regulatory approval – are also among the 14 companies under scrutiny for anticompetitive behaviour.

Maersk and CMA CGM, respectively the world's first and third biggest container shippers, have denied they are guilty of anticompetitive behaviour and have said they would cooperate with the investigation. *(BL, 28.11.13)*

Qualcomm in NDRC Crosshairs

China's National Development and Reform Commission (NDRC) has opened an investigation of chipmaker Qualcomm over potential antitrust violations. Qualcomm confirmed the investigation, saying it is related to China's Anti-Monopoly Law.

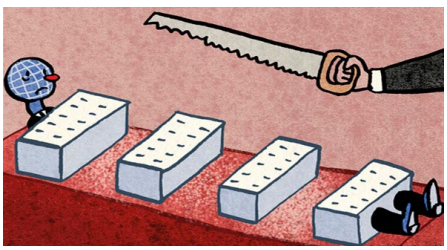
It is common practice for the NDRC to inform a company that it is being investigated but withhold information about the nature of that investigation. Qualcomm is the world's largest mobile technology chipmaker, and China is a significant market for the company.

Qualcomm will be a leading provider of 4G chipsets in China and several Chinese companies will pay royalties to Qualcomm to license its 4G technology, so a pricing investigation could lead to greater leverage for domestic Chinese companies in royalty negotiations. *(Reuters, 25.11.13)*

EU to Fine Six Global Banks

The EU antitrust regulators are set to fine six global banks including Deutsche Bank, JPMorgan and HSBC for suspected rigging of benchmark euro zone interest rates, a person familiar with the matter.

The penalties, which will also target Royal Bank of Scotland, Credit Agricole and Societe Generale, represent the first punishment meted out by Brussels in a global probe and represent another costly payout for an industry struggling to put past misdeeds behind it.



The Economist

The move comes two years after the EC raided a number of banks for suspected fixing of Euribor, a benchmark used as basis for pricing •250tn worth of financial pacts. Barclays, which alerted the EC to the suspected wrongdoing, will not be fined. *(Mint, 06.11.13)*

FINES & PENALTIES

UK Fines Pharma Market Sharing

The UK's Office of Fair Trading (OFT) fined Hamsard £380,000 after it found its subsidiary, Tomms Pharmacy, entered into an anti-competitive agreement with Lloyds Pharmacy not to supply prescription drugs to each other's care homes.

Between May and November 2011, the companies agreed that Tomms would refrain from supplying to customers in Lloyds' care home. For at least some of this period, Lloyds agreed to do the same for Tomms' care homes.

Lloyd's informed the OFT of the agreement in a leniency application and therefore qualifies for immunity from fines. Meanwhile, Hamsard's penalty was reduced from £646,000 due to its admission of guilt and co-operation with the OFT. *(GCR, 12.12.13)*

Amex to Pay for Unfair Marketing

American Express Co. has agreed to pay US$75.7mn to settle claims from US financial regulators that it used deceptive marketing practices to sell protection services to credit-card customers.

The company must pay US$59.5mn in restitution to more than 335,000 harmed customers, according to the deals announced today by the Federal Deposit Insurance Corp., Office of the Comptroller of the Currency and the Consumer Financial Protection Bureau.

The biggest credit-card issuer by customer purchases violated the law when it misrepresented the costs and benefits of its add-on products, the agencies said. *(Bloomberg, 24.12.13)*

Penalty on Electricity Sector

The Competition Protection Commission of Bulgaria imposed a penalty of •529,062 on Energy Pro Grids AD – the electricity distribution company for Northeastern Bulgaria – for disproportionate management of production capacities which were joined to its distribution grid.

The Commission found that Energo Pro (as the electricity distributor) was obliged to limit electricity production when it was ordered to do so by the electricity system operator ESO EAD (a state-owned company performing the general operational planning, coordination and control of the Bulgarian electricity system).

According to the Commission, Energo Pro's unilateral behaviour violated competition on the electricity market because it impeded certain category electricity producers from producing and selling their own electricity. Further, it indirectly harmed final consumers because they could not benefit from the competition or diversification of the electricity sources in the long term. *(ILO, 12.12.13)*

J&J-Novartis Appeal against Fines

Johnson & Johnson and Novartis are considering whether to appeal against EU antitrust fines of •16m imposed for their agreement to defer generic competition.

In a long-awaited ruling, the EC argued that J&J had paid Sandoz, the generic drugs arm of Novartis, to prevent it launching in the Netherlands a lower-cost version of fentanyl, its painkilling patch.

The co-promotion agreement, described in internal company documents as a way to share "a part of [the] cake", meant that J&J paid Sandoz more than it would have earned from sales of its rival version over 17 months from July 2005, when its patents expired.

The deal stopped once a second generic company was about to enter the market at the end of the following year. *(FT, 12.12.13)*

Jet-Etihad Deal Dissected

The Competition Commission (CCI) imposed ₹1 crore fine on Abu Dhabi-based Etihad for non-disclosure of full information in the course of seeking approval for its purchase of 24 percent stake in Jet Airways.

The ₹2,060 crore deal has been facing turbulence ever since it was announced in April 2013. Earlier, the Competition Appellate Tribunal (COMPAT) issued notices to the CCI and Jet on a plea challenging the competition watchdog's clearance.

The penalty would not have any impact on the approval for the deal given by CCI in November 2013. The competition regulator said it kept the quantum of fine low at ₹1 crore after Jet and Etihad contended that they were unaware of the requirement for certain disclosures.

(www.news.outlookindia.com, 19.12.13)

Record Fines on Hungarian Banks

Hungary's Competition Authority (HCA) fined 13 banks •31.6mn for hindering customers trying to pay back foreign currency loans, the largest penalty ever issued by the authority. The heaviest punishments were given to OTP Bank and Erste Bank, which were fined •13mn and •5.7mn respectively.

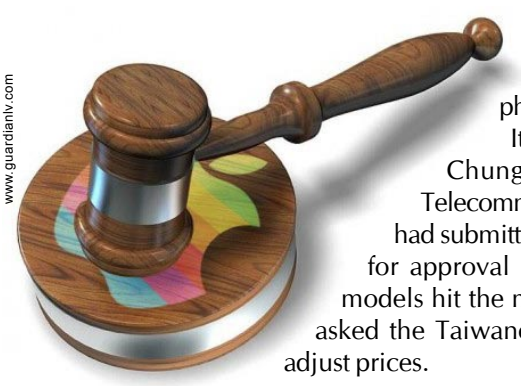
The Authority found that the banks exchanged confidential information and organised a cartel in various 'retail-risk breakfast meetings' between September 2011 and January 2012. Two sets of dawn raids were carried out at the end of 2011 and beginning of 2012.

(www.gvh.hu, 20.11.13)

Apple hit with RPM Fine

Taiwanese authorities slapped a fine of US$667,000 on US tech giant Apple for violating a fair trade law over local iPhone pricing.

The Fair Trade Commission said an Apple unit in charge of Taiwan sales had interfered in the pricing and mobile phone payment rates of three local telecom service providers, despite selling them the distribution rights to the phones.


www.guardianlv.com

It said investigations found that Chunghwa Telecom, Far Eastone Telecommunication and Taiwan Mobile had submitted their pricing plans to Apple for approval or confirmation before new models hit the market, while Apple had also asked the Taiwanese companies to change or adjust prices. *(Mint, 26.12.13)*

Brazilian Antitrust Watchdog Finally Bares its Teeth

Samantha Pearson*

Brazil's antitrust body had long been seen as a bureaucratic nuisance with little real power – it was only allowed to rule on mergers and acquisitions after they happened and, even then, its decisions were often overturned in the courts.

But an overhaul of the country's competition law in May last year has forced companies to take Cade more seriously. Its closer relationship with Brazil's judicial system also means that companies such as Telefónica may find it harder to appeal its decisions in future, lawyers say.

"Cade has been progressing over time and the law was a reflection of that," says Gesner Oliveira, a former head of Cade who runs Go Associados, a consultancy specialising in antitrust and regulation.

Antitrust concerns had long been seen as a domestic issue but, as global multinationals have turned their attention to Brazil, the government has seen the need to introduce tighter regulation.

Under the new law, companies must seek prior approval for deals from Cade – a change that also makes it easier for the regulator to collect the information it needs as the parties involved have a vested interested in speeding up the approval process.

In one of Cade's most high-profile decisions to date, it ordered Telefónica to reduce its position in the Brazilian market to its pre-2010 level, either by exiting its stake in operator Tim Participações or by finding a partner for its Vivo mobile phone business. Vivo and Tim, Telecom Italia's Brazilian unit, together control more than half of Brazil's wireless market.

Telefónica said it was considering legal action in response to Cade's decision, claiming the measures imposed by Cade were "not reasonable". Cade did not comment.

Cade's move comes after Telecom Italia's board on Friday narrowly survived a shareholder vote to oust them, brought by Findim, an investment firm headed by Marco Fossati, an Italian businessman. Central to that vote was a decision about the future of Tim Participações. Fossati said he wanted to ensure that a Brazilian sale was at a sufficiently high price. Of the people present at the shareholder meeting, 42.3 percent supported Fossati's proposal but 50.3 percent voted against it.

When Cade, Brazil's competition watchdog, ordered Telefónica to reduce its influence over the country's market, it took the company and its investors by surprise. For some, it was the first time they had even heard of Cade.

Meanwhile, Cade has also been flexing its new muscles to punish those involved in cartels in Brazil.

Brazil's notorious Nestlé-Garoto case proved to be a turning point in this respect, he says. Switzerland's Nestlé agreed to buy Brazilian chocolate company Garoto in 2002 but, after taking two years to analyse the deal, Cade decided to block it in 2004. The companies continue to contest the decision in Brazil's labyrinthine legal system to this day, in effect ignoring Cade's ruling.

While the new law brings Cade in line with antitrust practices in the US and Europe, it comes at a cost, says Pedro Dutra, a lawyer specialised in Cade in São Paulo. Given that the government is reluctant to increase Cade's funding, the antitrust body has had to shift resources away from the regulation of smaller deals.

Under the new law, Cade has a maximum period of 330 days to analyse the most complex deals – far longer than the antitrust authority takes in the US, but shorter than it has been used to. In order to free up resources for Cade to achieve these tighter deadlines, the threshold for deals that it must analyse was raised to R$750m minimum revenue for the larger company in a transaction and R$75m for the smaller party.

* *Member, Bloomberg View Editorial Board. The article appeared in the* Financial Times*, on December 23, 2013.*

Microsoft/Nokia Gets Unconditional Approval

The US Department of Justice (DoJ) has cleared without conditions Microsoft's bid to buy the handset and services business of Nokia, as well as a patent licensing agreement between the two companies that some observers said may have piqued the interest of the enforcer.

The deal was included on a list of transactions for which the pre-merger notification waiting period had expired. While the deal is clear of antitrust enforcers in the US, it remains pending in Europe.

Under the terms of the deal, Microsoft agreed to pay •3.8 for Nokia's handsets and services business and another •1.65bn for a licence to Nokia's extensive patent portfolio, which includes several standard-essential patent among the company's 30,000 utility patents on wireless and smartphone technology. *(GCR, 03.12.13)*

EC to Investigate Cement Merger

The EC accepted a request from Spain to assess under the EU Merger Regulation the proposed acquisition of Holcim's cement operations in Spain by rival Cemex.

The Commission concluded that the transaction threatens to affect competition within Spain and that the Commission is the best placed authority to assess the potential cross-border effects of the transaction. The Commission will now ask Cemex to notify the project.

Cemex' proposed acquisition of Holcim's operations in Spain and the Czech Republic does not meet the turnover thresholds set by the EU Merger Regulation for mergers that must be notified to the European Commission because they have an EU dimension. *(http://europa.eu, 18.10.13)*

CVS Announces Drug Retail Pact

CVS Caremark, the largest integrated pharmacy in the US, has announced plans to buy Apria Healthcare's infusion unit for US$2.1bn. Dechert is representing CVS while Apria has appointed Simpson Thacher & Bartlett to steer through a deal that will require antitrust approval from the US Federal Trade Commission.

CVS is the largest provider of prescription drugs in the US. It has over 7,000 stores, runs a health insurance scheme and operates around 750 health clinics. Medical-equipment provider Apria purchased Denver-based Coram for US$350mn in 2007.

Coram is one of the country's largest providers of infusion services, a prescription service in which medicine, nutrients or special fluids are injected into the body. *(GCR, 02.12.13)*

Cooper Ditches Deal with Apollo

US-based Cooper Tire & Rubber Co was terminating a proposed US$2.5bn sale to Apollo Tyres Ltd., with both sides threatening legal action over a deal plagued by obstacles from the start.

Cooper Tire said it was walking away after being informed by the Indian tyre maker that financing was no longer available for a takeover that would have been India's second biggest in the United States.

Cooper added it would pursue legal steps to protect the company. Apollo responded by saying it was 'disappointed' that Cooper had prematurely ended the agreement, and that it would pursue legal remedies of its own. *(Reuters, 11.11.13)*

Security Concerns Hinder Deals

Chinese and American authorities are increasingly worried about foreign takeovers in strategic industries, resulting in deals taking longer, being subject to more stringent conditions and sometimes being vetoed altogether.

The landscape is being further disrupted by growing disparities between the time it takes for mergers to be approved in different jurisdictions and the growth of new stakeholders, such as the public and the media, with vocal and sometimes ill-informed interests.

In response to these uncertainties, merging companies are employing 'hell or high water clauses', 'reverse break fees' and 'ticking fees' to insure against potential government intervention and buttress themselves against complications during the merger approval process. *(GCR, 14.11.13)*

Novartis Sells Blood Unit

Novartis has agreed to sell its blood diagnostics unit to the Spanish healthcare group Grifols for US$1.7bn, in the first of a series of transactions sparked by a strategic review the Swiss pharmaceutical group approved earlier in 2013.

The disposal, negotiated exclusively with Grifols rather than through a lengthier competitive auction, comes ahead of other anticipated deals designed to either strengthen or sell off Novartis' smaller divisions.

The acquisition by Grifols substantially boosts the Spanish company's strength in blood products, and follows its purchase of the US blood plasma Talecris for US$4bn in 2010. *(Reuters, 11.11.13)*

Sysco in US Foods Agreement

US foodservice giant Sysco Corporation is buying rival US Foods creating a US$65bn-turnover foodservice giant, in a deal with a total enterprise value of US$8.2bn. The transaction, is subject to customary closing conditions and regulatory approvals, including antitrust approval.

Sysco will pay approximately US$3.5bn for the equity of US Foods, comprising US$3bn of Sysco common stock and US$500mn of cash. As part of the transaction, Sysco will also assume or refinance US Foods' net debt, which is currently approximately US$4.7bn, bringing the total enterprise value to US$8.2bn.

Sysco has secured fully committed bridge financing and expects to issue permanent financing prior to closing. *(FT, 10.12.13)*

PwC Agrees to Purchase Booz

Accounting and professional-services giant PricewaterhouseCoopers agreed to buy management -consulting firm Booz & Co., in a deal that spotlight the importance of consulting to PwC's growth.

While terms were not disclosed, the transaction appears to be among the biggest deals involving an accounting firm in at least the past decade. Booz had revenue of about US$1bn in 2012.

The deal, subject to approval by Booz partners and antitrust regulators, is expected to beef up PwC's advisory business, already its fastest-growing area. It also is expected to help the firm tap into Booz's experience developing strategies for clients. PwC previously has focused on executing strategies for its clients, rather than developing them.

(FT, 31.10.13)

Solvay Buys Chemlogics

Solvay, the Belgian chemicals group, acquired US-based Chemlogics for US$1.35bn, as part of an effort to exploit the rising demand for chemical products in America's fast growing shale oil and gas industry.

The Brussels-based company said Chemlogics, which generated about US$500m in annual sales in 2012, would fit well with its existing US operation Novecare, giving it a leading portion of the US oil and gas chemical market that is worth US$8bn.

Solvay's offer represents a multiple of 10.7 times Chemlogics' last 12 months' earnings before interest, tax, depreciation and amortisation. The Belgian group will finance the deal using existing cash but added that it would also issue a •1bn hybrid bond to strengthen its balance sheet.

(FT, 08.10.13)

Should AT&T Buy Vodafone?

Vodafone Chief Executive Vittorio Colao must be tired of being asked: "What exactly is AT&T doing?"

For investors in the UK telecoms group, whether AT&T will mount a takeover bid is the only strategic question that matters, now that Vodafone has agreed the US$130bn sale of its Verizon Wireless stake. AT&T shareholders are likewise intrigued by the US group's very public interest in the European mobile telecoms market.

Both Colao and Randall Stephenson, his counterpart at AT&T, have been tight-lipped. AT&T has looked at options, according to people with knowledge of the group, even if detailed work is unlikely to begin until after Vodafone completes its Verizon stake sale in 2014.

Stephenson will need to weigh the pros and cons of what would be one of the biggest ever UK buyouts.

(FT, 03.12.13)

Vivendi takes Control of Canal Plus

Vivendi, the media and telecoms group, has taken full control of Canal Plus France from fellow French group Lagardère in a deal worth •1.02bn, ending a longstanding wrangle between the two partners over the pay-television channel.

Under an agreement reached on Monday, Vivendi will buy out the 20 percent share in Canal Plus France held by Lagardère, giving Vivendi full ownership. It is the latest in a series of restructuring moves by Vivendi to transform itself into a more streamlined media and entertainment group.

(FT, 29.10.13)

Walmart-Bharti Venture Approved

The CCI has given nod to global retail giant Walmart for purchase of Bharti group's almost 50 percent stake in their Indian joint venture for wholesale stores business.

The joint ventrue was set up to operate wholesale stores under the Best Price Modern Wholesale brand. At present, it owns 19 such wholesale cash-and-carry stores across India. It was not catering directly to retail consumers in the country.

In an order, fair trade regulator CCI said the proposed buyout of Bharti group's stake in the JV by Walmart "is not likely to have appreciable adverse effect on competition in India and therefore, the Commission hereby approves the proposed" deal.

(www.profit.ndtv.com, 16.12.13)

Bayer makes Bid for Drug Partner

Bayer has offered to pay US$2.4bn for Norway's Algeta, its partner for a new prostate cancer treatment, at a 27 percent premium to the stock's last close.

The deal would boost Bayer's drugs division by giving it outright control over Xofigo, a drug the two have developed jointly since 2009 and started selling in the US in 2013. Investors, however, bet that the German drugs and chemicals group has a fight on its hands and Algeta's Chief Financial Officer said that rival bids could not be ruled out.

Algeta shares jumped by a third in early trade to a record 349.7 Norwegian crowns, well above Bayer's bid of 336 crowns.

(FT, 27.11.13)

US/AA Gets Green Light

American Airlines and US Airways are clear to complete their merger after a New York bankruptcy court approved the carriers' settlement with the US DoJ's antitrust division.

Bankruptcy Judge Sean Lane ruled the settlement was "fair and equitable" and rejected a request for a temporary restraining order against completing the deal from San Francisco plaintiffs' lawyer Joseph Alioto.

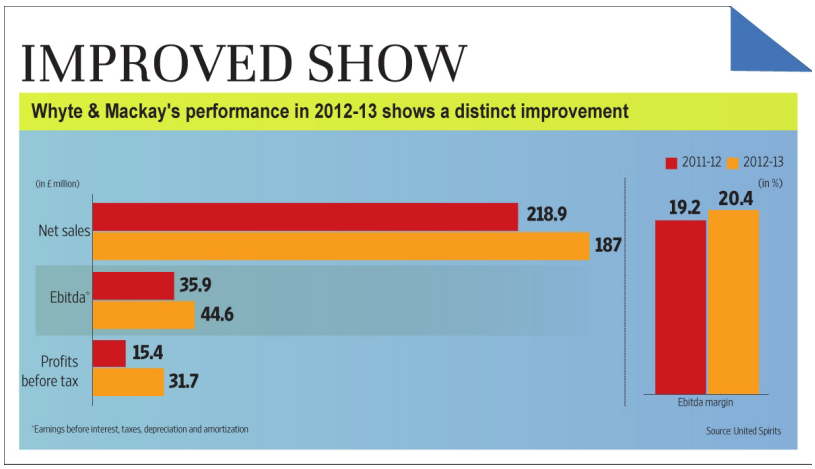
Alioto filed a lawsuit in the bankruptcy court against the merger just before the DoJ challenged the deal. Heclaims the merger is anticompetitive and harmful to consumers, and that completion of the merger should wait until his lawsuit had gone to trial and concluded.

(GCR, 28.11.13)

Anti-trust Blow for United Spirits' Whyte & Mackay Business

Mint

Whyte & Mackay is counted as one of United Spirit's valued overseas assets in the whisky business, although its acquisition had loaded United Spirits' balance-sheet with debt.



When Diageo Plc announced its acquisition of a stake in United Spirits Ltd, news reports were already hinting that Diageo may have to shed Whyte & Mackay to get approval for the deal from the UK's anti-trust authority. That was proved right after the Office of Fair Trading said that Diageo has offered to sell parts of the Whyte & Mackay business to allay fears and get approval.

But the company that owns Whyte & Mackay is United Spirits. Shareholders will wonder if this sale will benefit them because they are being forced to let go of a business to facilitate the co-promoter's acquisition.

After all, Whyte & Mackay is counted as one of United Spirit's valued overseas assets in the whisky business, although its acquisition had loaded United Spirits' balance-sheet with debt. Its performance has been improving, too, with a growing proportion of sales from branded products and a consequent improvement in profitability visible in 2012-13. Its Ebitda margin in 2012-13 rose by 1.2 percentage points to 20.4 percent, higher than the consolidated margin figure of 14.3 percent. Ebitda, or earnings before interest, taxes, depreciation and amortisation, is a measure of profitability.

A continued shift to branded products may have seen margins trend higher. Both Ebitda and sales growth will take a hit because of the sale (Whyte & Mackay accounted for 16.9 percent of consolidated sales). Two brands and certain parts of the business will be retained, however, the contribution of this residual part of the business is not known.

United Spirits is expected to net a tidy sum in cash, as the Whyte & Mackay whisky brands could fetch between £450mn and £650mn, according to an analyst quoted in a *Financial Times* news report. That figure, a range of ₹4,590 crore to ₹6,630 crore at current exchange rates, is substantial and can help considerably whittle down United Spirits' consolidated debt of ₹7,433 crore.

But even the high end of the selling price band does not represent a significant premium over the £595mn that United Spirits paid to acquire Whyte & Mackay. Not getting a sizeable premium may come as another disappointment to shareholders, on top of having to let go of the business.

They can console themselves at the fact that United Spirits' share has soared since Diageo came into the picture, and now trades at an 85 percent premium over the price Diageo paid to become a co-promoter in the company.

How United Spirits decides to use the cash from the sale – repay loans or use some of it to fund growth – can also influence shareholder response to the move. They would, of course, have been happier if they could have held on to Whyte & Mackay to sell it at a later date, if they needed to.

– *The news item appeared in the* Mint *on December 01, 2013.*

Developing and Transition Economies Absorbed more than 60 percent of Global FDI Inflows in the First Half of 2013

Global FDI inflows were an estimated US$745bn in the first half of 2013; four percent higher than the same period in 2012, with a diverging trend between developing and transition economies, and developed countries.

In the first half of 2013, flows to developed countries declined. However, this decline was more than offset by a rise in flows to developing and transition economies, which accounted for more than 60 percent of global FDI flows – a record share.

In developing and transition economies, the increase was driven by acquisitions in Central America and the Caribbean as well as record inflows into the Russian Federation. Although flows to developing Asia fell slightly, the region continues to absorb more than half of the FDI directed to developing economies as a group, and one quarter of global FDI flows.

The fall in developed countries is mainly accounted for by declines in the major host countries including the US, France and Germany. The UK remains an exception, continuing its upward trend in FDI attraction, and becoming the world's largest recipient of FDI in this period.

Cross-border mergers and acquisitions (M&As) and large retained earnings kept in foreign affiliates were a driving force behind the current global FDI growth, rather than investment in new productive assets through greenfield investment projects.

UNCTAD estimates that 2013 FDI flows will remain close to the 2012 level, despite some improvement in macroeconomic conditions in developed economies. In addition to risks related to the Euro area and the so-called "fiscal cliff" in the US, the transition to a slower growth pattern in some emerging markets and weaker consumer demand in developed countries might have a negative impact on FDI flows this year. Looking further ahead, UNCTAD forecasts that global FDI flows are poised to increase in 2014.

(Global Investment Trends Monitor, 31.10.13)

China to Simplify Approval for FDI

China will simplify its foreign direct investment approval process in order to introduce a registration-based system for foreign investment projects.

Zhang Xiaoqiang, Deputy Head, National Development and Reform Commission, said that Beijing will further enhance the role of foreign investment in its market-oriented economic development.

He said that the country will push forward opening up and better allocation of resources by fostering its competitive advantages. China will continue expanding business agreements, improving cooperative systems and fighting investment protectionism.

(www.wantchinatimes.com, 05.12.13)

US Opens Arms to Foreign Investors

Indian conglomerate Tata has placed a big bet on the US. It generates US$8bn of annual revenues in the world's biggest economy and employs more than 18,000 people in IT centres, gourmet coffee production, and steel plants across the country.

US President Barack Obama would like many more global multinationals to follow suit, but America's recent record in attracting foreign investment has been worrying.

In 2000, the US gobbled up 37 percent of the worldwide stock of inward foreign investment but by 2012, that market share had shrivelled to 17 percent. Annual inflows have almost halved from their 2008 peak.

(FT, 31.10.13)

UK Eases Limitations on Indian FDI

The UK government has pointed that it expects to talk over a increase of limitations on investment in India. UK Prime Minister David Cameron said that there should be "a conversation about beginning up the Indian economic system, making it softer to do trade here".

Cameron detailed on the insurance and banking sectors as areas he desired to push for a liberalisation of FDI in the nation. However, an easing of limitations could have a momentous impact on Indian FDI retail limitations.

Currently, Indian politicians are in the procedure of relaxing retail investment limitations and lately introduced proposals letting foreign companies to own up to 51 percent of multi-brand retail businesses.

(Mondaq, 21.10.13)

Kenya to Review FDI Policy

Kenya should overhaul the business regulatory environment to aggressively attract FDI in order to attain sustainable economic growth over the next 50 years, a World Bank report has suggested.

The Bank warned in its latest Kenya Economic Update report that short term inflows that continue to trickle in are not reliable as are shaped by investor risk aversion which may change abruptly in response to unfavourable changes in political and economic landscapes.

The capital flows through the Nairobi Securities Exchange accounted for between 50 and 60 percent of transactions. *(www.allafrica.com, 23.12.13)*

France and UK Argue over Auction on Red Tape

– Peter Spiegel, George Parker and Alex Barker

Britain and France clashed over Brussels' efforts to cut back on excessive regulations, with Paris warning on the eve of an EU summit that the push risked going too far in dismantling European social protections.

David Cameron, the UK Prime Minister, is urging more aggressive action and is travelling to Brussels with members of his "business task force" to lobby European leaders on the need to curb EU social and employment legislation.

Downing Street said Cameron's business team would brief Angela Merkel, Germany's chancellor, and five other economically liberal leaders on Friday morning; François Hollande, France's Socialist president, was among those not invited.

Plans by José Manuel Barroso, the European Commission president, to streamline EU regulations were expected to be only a small part of the two-day EU summit.

But diplomats said it could become a significant point of conflict after Britain and France circulated position papers that appeared to many as in direct confrontation.

The three-page French contribution, dated October 14 but circulated to national delegation warned the "quantitative approach" to reducing regulations was misguided and could weaken EU protections that Paris regards as critical.

"Simplification should be implemented by guaranteeing that the level of requirements in key areas such as consumer and worker protection and environment protection will not be diminished," said the French paper, obtained by the *Financial Times*.

London wants EU regulations Reduced. Paris fears threat to social safeguards

In what appeared to be a direct response, British diplomats circulated a formulation that would call on Barroso to go even further.

"The European Council stresses that the reduction of regulatory burdens should be a primary objective of all European Union institutions and their leaderships in the coming years," the suggested British amendment reads.

Cameron will be joined in Brussels by Marc Bolland, chief executive of Marks and Spencer, and Dale Murray, an angel investor, to explain their thinking in a report that called for 30 reforms that they claim could save EU businesses tens of billions of euros a year.

They will meet the leaders of Germany, Italy, the Netherlands, Estonia, Denmark and Finland on Friday along with Barroso, who argues that the commission is already radically cutting red tape. "We need to hold Brussels' feet to the fire," said one UK official.

One European diplomat called the French paper a "counterblast" to Barroso's "smart regulation" programme and suggested it could become a significant point of dispute in a summit that otherwise was expected to focus on routine reviews of telecommunications legislation and eurozone reforms.

Barroso has thus far struck a delicate balance in his so-called "Refit" plan, unveiled this month. While he has called for scrapping some regulations – such as occupational health standards for hairdressers that would have prevented them from wearing high heels to work – Barroso has insisted it would not compromise on already agreed goals in environmental or social policy.

"This commission is removing unnecessary burdens on business across all policy areas," Barroso said in his pre-summit address to the European Parliament. "This is neither about calling into question established policy goals. Nor should it be a battle of competencies between Brussels and national capitals. This is about the right dose in using existing competencies."

Barroso has faced challenges to the effort even from within the commission itself, where some of the 28 EU commissioners resisted giving up pet projects they had been championing.

The French contribution, while agreeing that regulatory simplification should "reduce the administrative and regulatory burden for companies", would achieve this through additional burdens on the commission, including expanded Brussels impact assessments and mandatory reviews of all EU standards.

– *The article appeared in the* Financial Times*, on October 24, 2013.*

Mexico Ends State Oil Monopoly

Mexico's Senate has passed a historic bill that is expected to open Mexico's energy sector to competition for the first time. State-owned Pemex is Mexico's only oil company State-owned Pemex is Mexico's only oil company

The proposal will amend three key articles in Mexico's constitution that have so far prevented private companies from competing with state-owned petroleum company Petróleos Mexicanos, commonly known as Pemex. Under the reform, foreign companies will be able to partner with Pemex in extracting and refining oil while production will remain under Mexican ownership.

Pemex is appealing against the decision, arguing that the Commission lacks the constitutional authority to regulate the oil industry. *(WSJ, 07.12.13)*

Competition Concerns at Port

Licences for terminals and docking in Dublin should be opened up to greater competition and the government should think carefully before approving port mergers or closures, Ireland's Competition Authority says in a report.

The report focuses mainly on Dublin, the largest port in the country, but considers smaller harbours such as Shannon and Cork as well. It also includes Belfast, which is the second biggest port on the island of Ireland but part of the UK.

The study contains three main recommendations. It says the duration of leases on terminals in Dublin should be substantially reduced and not necessarily automatically renewed. The leases sometimes run for more than 100 years. *(www.rte.ie, 29.11.13)*

Airline Competition at Iceland

Iceland's Competition Authority (ICA) has ordered a change in the allocation of peak time slots at the country's main airport after finding that the current arrangement favoured Icelandair, the incumbent, at the expense of low-cost rival WOW Air.

The ICA has instructed Isavia, the operator of Reykjavik's Keflavik airport, to give WOW more slots between 7am and 8am, and 4pm and 5.30pm, when demand is highest, to help it compete with Icelandair.

Isavia, however, insists that it is not responsible for allocating the slots. Fridthor Eydal, corporate communications manager at Isavia, says slots are organised by independent organisers who operate according to rules established by the EU and the International Air Transport Association. *(GCR, 05.11.13)*

Cuba Adopts New Labour Law

Cuba's Parliament approved a new labour law to better reflect the new economic reality of the island nation which is pressing ahead its reform plan.

As the government is introducing free-market reforms and encouraging private-sector enterprises and employment, the new law establishes norms to regulate such factors as hourly wages, overtime compensation, pensions and more.

The law reduces the workweek to between 40 and 44 hours, and eliminates the bureaucracy to institutionally transfer employment records.

It also introduces the concept of remunerating workers with family responsibilities, and eliminates certain disciplinary measures such as suspending the payment of wages or other compensations for up to a year. *(www.turkishweekly.net, 21.12.13)*

Pressing Ahead with Digital Agenda

Italy is widely seen as lagging behind when it comes to implementation of the digital agenda. However, while speaking at the II Italian Digital Agenda Annual Forum organised by Confindustria Digitale, Prime Minister Enrico Letta remarked that this lost ground "could still be made up" by freeing up broadband frequencies.

The spectrum may be the key to making significant progress in the implementation of the digital agenda, guaranteeing all citizens a fast connection to the network, giving businesses greater access to broadband and cloud computing, and modernising public administration.

It was revealed that four out of 10 Italians have no idea what the Internet is, even though connection to the Internet is no longer a luxury and more of a necessity. *(ILO, 11.12.13)*

Ship-to-Ship Operations Regulated

The Institute for the Environment and Renewable Resources published Normative Instruction. The new rules regulate the technical and administrative procedures for the issuance of environmental authorisation for ship-to-ship operations in Brazilian jurisdictional waters.

Used worldwide, but most often in the Gulf of Mexico, ship-to-ship operations typically involve the transfer of oil and oil products from one tanker to another. The new rules do not apply to oil transfers from production units to ships, or to ships receiving fuel. *(ILO, 30.10.13)*

Nigerian Power Facilities Turn Private

Nigeria has officially handed over legal control of 15 state-owned electricity companies to their new owners, capping a US$2.5bn privatisation process that has raised hopes of an end to years of chronic power shortages.

Africa's most populous country has one of the continent's lowest per capita power supplies, with half of the 160mn people off the grid. Daily blackouts force companies to rely on diesel-fired generators, pushing up business costs by up to 40 percent.

The government has targeted 20,000MW capacity by 2020, which it says will require an investment of US$3.5bn a year. *(FT, 01.10.13)*

Price Wars take their Toll on Operators' Bottom Line

– James Shotter

EU charge plans may add to pressure

It has been a year of big developments in Europe's most cut-throat telecoms market. Hutchison Whampoa finally succeeded in buying Orange Austria, reducing the number of mobile operators in the country from four to three. This autumn, the country completed its auction of 4G frequencies.

There had been hopes among mobile operators that Hutchison's purchase of Orange would ease the competitive pressures that have made the country such a difficult place for this industry to do business in.

Before the merger, four companies – Telekom Austria, Orange Hutchison and the Austrian subsidiary of T-Mobile – were competing for the custom of Austria's 8m inhabitants. That may have been good news for customers. Indeed, according to UKE, the Polish telecoms regulator, the amount spent each month by a typical Austrian mobile customer in 2012 was less than half the EU average.

But the consequence of these price wars is that the margins of Austria's mobile providers have been put under enormous pressure. The early indications are that the Hutchison-Orange deal is unlikely soon to usher in friendlier market conditions.

The deal left Telekom Austria with 45.5 percent of the market at the end of this year's first quarter, T-Mobile with 30.4 percent, and Hutchison with 24.1 percent.

Hutchison is determined to boost its share of the market to 30 per cent. Although it has recently been less aggressive in pushing subsidised handsets, according to Vera Sutedja, an analyst at Erste Group in Vienna, the operator has retained Orange's hugely popular •7.50 monthly tariff.

The knock-on effect of this policy has been that Telekom Austria and T-Mobile's Austrian arm have had to spend more and more to acquire and keep their customers. Telekom Austria's spending on winning customers increased 93 percent between the second quarter of 2012 and the same period this year, while T-Mobile spent 22 percent more.

"The Austrian market can support three mobile players," says Hannes Amestsreiter, Chief Executive, Telekom Austria, "but competition is still incredible tough."

It is not just their competitors that are putting Austria's telecoms companies under pressure. There is also a series of regulatory questions that are clouding the horizon, which, depending on how they are resolved, could affect the industry in the future.

The first is the EU's plan to reduce roaming charges – the extra fees paid by customers for using their mobile phones abroad.

Precisely how and when the EU's plan will take effect is not yet clear, but as things stand, Ms Sutedja reckons that it could lop •180m off Telekom Austria's revenues between 2012 and 2016.

The second is the EU's proposal to reduce the cost of fixed-line calls within the EU to the same level as long-distance domestic calls. This measure is not due to come into force until 2016, but if it were implemented in its current form, telecoms revenues would be significantly affected.

Despite the challenges, however, there are still opportunities for Austria's telecoms companies. The most promising is the chance to exploit the growth in use of mobile data, especially given that Austrian smartphone use is high by European standards.

The other silver lining for Austria's telecoms companies is that the spectrum auction – which distributed the bandwidth they need to build faster networks – did not attract any bidders beyond the three existing incumbents.

The process, which brought in more than •2bn, four times the minimum amount targeted by the Austrian government, had specifically set aside part of the spectrum for a new entrant in order to boost competition.

While users of Austria's mobile networks may be disappointed that no other bidders materialised, the telecoms companies, despite having paid more than expected, will probably be breathing a sigh of relief.

– *Switzerland and Austria Correspondent at Financial Times. Abridged from an article that appeared in* The Financial Times, *on October 30, 2013.*

Money for the Watchdogs

Top regulators and the boards of banks need to have a closer, more trusting relationship to stave off the risk of another financial crisis, according to a leading policy group – which also called for banking supervisors to be paid more.

Acknowledging that bankers earn three times more than their regulators, the report by the influential Group of 30 said that the relationship between the two needed to be overhauled and banks shift their focus away from taking short-term risks to generate bigger profits.

"Exchanges of candid and detailed views between supervisors and board directors, which could have a profoundly beneficial impact on the ways banks are run, are not in many cases taking place. This needs to change," said Jean-Claude Trichet, former President, European Central Bank. *(BL, 30.10.13)*

Watchdogs Urged to Look in Shadows

Regulators need to 'up their game' in overseeing hedge funds and shadow banks as risky pools of capital build up beyond the heavily scrutinised world of traditional banking, one of the world's top central bankers has warned.

Paul Tucker, the Bank of England's outgoing Deputy Governor, said that it would be 'absolutely disastrous' if the economic fragility of banks was recreated outside the mainstream banking sector.

He drew an explicit parallel between the current situation and 2004, when super-low rates sowed the seeds for a search for yield that culminated in the crash of 2007-09. Securities regulators around the world were not yet collecting enough information about what is going on in non-banks, Tucker said. *(FT, 18.10.13)*

20% of Biggest Banks to Shrink

One-fifth of the world's biggest banks may be broken up or sold as part of a 'radical course correction' to boost shareholder returns, according to McKinsey & Co. The number of global universal banks may drop to fewer than 10 from about 25 as they narrow their focus on products or regions.

90 global lenders are generating higher returns by following one of five distinct strategies described by McKinsey, according to the report. Global banks' return on equity climbed to 8.6 percent in 2012 from 7.9 percent a year earlier, still below the 10 percent to 12 percent average cost of equity, a measure of the minimum return required by shareholders, McKinsey said in the report. *(BL, 07.11.13)*

Banking Reform Law on Cards

The UK government's banking reform bill has been passed into law following royal assent, after the House of Lords voted in favour of the measures.

Among the Act's key reforms is the introduction of a ring-fence to separate banks' retail divisions from their investment arms. It creates new powers allowing senior bankers found guilty of reckless misconduct to be jailed for up to seven years, and could lead to reform of the current approved persons' regime for banks.

The Act implements a number of recommendations from the Parliamentary Commission on Banking Standards and the Independent Commission on Banking.

(Citywire, 18.12.13)

Anti-inflation Policy for Banks

In 2014, the Central Bank of Azerbaijan (CBA) will carry out necessary anti-inflation measures aimed at maintaining price stability. It says in a statement issued by the Central Bank of Azerbaijan on main directions of monetary and financial stability in 2014.

Overall, in 2014 the Central Bank will make every effort to preserve an effective balance in monetary policy between economic growth and price stability, as well as to regulate the degree of activity of the financial sector.

CBA also note that "a definite level of inflation in 2014 is quite acceptable objective of macroeconomic policy."

(http://news.az, 25.12.13)

RBI Proposes New Capital Rules

The Reserve Bank of India (RBI) plans to introduce increased capital requirements by 2016 for banks regarded as too big to fail, and make them subject to greater regulatory oversight.

With the economy growing at its slowest rate in a decade, India's banking system is facing rising levels of stressed loans, with US$100bn, or about 10 percent of the total, categorised as bad or restructured.

The RBI released a draft of the new guidelines, which would require banks to build reserves during periods of stability in order to weather more difficult times. *(Reuters, 09.10.13)*

Big Banks to Dismantle

Even one of the largest global banks could be taken apart safely by US government authorities if it were to fail today, according to banking regulators from the US and UK.

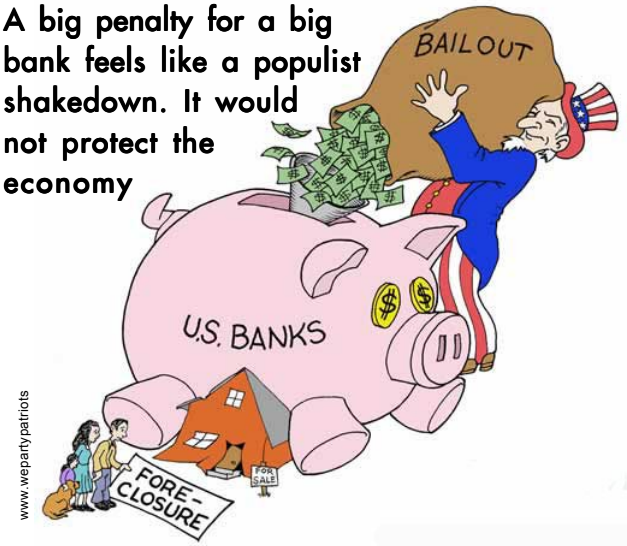
A US plan for seizing and liquidating a major bank would work if necessary, although it would be messy, according to Art Murton, a senior Federal Deposit Insurance Corp. (FDIC) official in charge of planning how to dismantle complex firms, and Bank of England Deputy Governor Paul Tucker.

The 2010 Dodd-Frank Act empowered the FDIC to seize a firm and dismantle it if regulators think it can't pass through bankruptcy without posing a significant threat to the financial system. *(BS, 13.10.13)*

How Little US$13bn Buys US

Rana Foroohar*

A big penalty for a big bank feels like a populist shakedown. It would not protect the economy



I find myself in the odd position of feeling sorry for a too-big-to-fail bank. JPMorgan Chase is reportedly ready to pay US$13bn to the US government — potentially among the largest such settlements ever. The tentative deal, which is separate from other settlements that may be made with institutional investors, centers on alleged misdeeds in the selling of mortgage-backed securities, those spliced-and-diced housing-based assets that caused the 2008 financial crisis.

It is supposed to allow JPMorgan to move beyond the sins of the crisis while also showing how tough the Department of Justice has gotten on banks, giving Main Street the warm feeling that Wall Street has finally paid for all the pain it caused.

In reality it does none of those things. In fact, this mega-settlement would be in some ways the worst possible response to the economic destruction of the crisis and the Great Recession. For starters, it does absolutely nothing to make the financial system safer. Rather than clear, sensible rules that prohibit risky behavior on the part of banks, we get enormous fines for ... what, exactly?

Aside from ensuring that no head of any major bank is ever going to want to help the government in similar situations again, the deal also has the worrisome aura of a populist shakedown. Officials appear more concerned about appeasing anger over the financial crisis than doing the harder and more politically contentious work of re-regulating the banking system properly. Remember, five years on from the crisis, only 40 percent of the rules called for by the Dodd-Frank reform law have been completed.

"The amount seems almost poll-based, as if Washington surveyed voters and asked how big would the penalty need to be for people to feel like JPMorgan paid a fair amount," says behavioral economist and finance expert Peter Atwater, who worked for JPMorgan in the late '80s and early '90s.

At the same time, the mega-settlement sends a perverse message. "If you are big enough and profitable enough, you can simply pick up the phone to the DOJ and cut a deal," says Mike Mayo, banking analyst at investment firm CLSA and author of Exile on Wall Street: One Analyst's Fight to Save the Big Banks From Themselves. "If you are ABC Community Bank somewhere in the Midwest, you don't have that option."

It's true that US$13bn is a very big number — it's about US$2bn more than Google made in profit last year and roughly triple what BP agreed to pay after the oil spill in the Gulf of Mexico. But it's also what JPMorgan earned in profit in the first two quarters of this year. It's a hit, no doubt, but it won't cause lasting pain.

Far from being a cathartic event, JPMorgan's tentative settlement just shows how badly the aftermath of the financial crisis has been handled. Thanks in part to financial-industry lobbying, the Dodd-Frank reform rules have turned into a crazy-making 2,300-page document that will have lawyers scouting for loopholes.

As Mayo puts it, "what we really needed was three pages outlining the Volcker Rule as Paul Volcker actually envisioned it" — meaning a simple separation of commercial and investment banking. That would end the too-big-to-fail problem by splitting the federally insured restaurant of deposit taking and lending from the risky casino of trading.

Of course, given the political and lobbying energy that's been poured into Dodd-Frank, that was never going to be an easy task. Just implementing the existing rules completely will take several more years. So what should happen now? If JPMorgan CEO Jamie Dimon really wants to appease the public, he should take a personal pay cut in 2013 to compensate for the billions in legal fees and fines that will dampen the bank's profit for a few quarters. (Dimon took home US$18.7mn in 2012, after his bonus was cut in half because of the London Whale debacle.)

More crucially, the government should come up with clearer rules of the road immediately. We need laws that hold financial executives personally responsible for actions that society deems harmful. And we need banking rules that make the system safer. The US$13bn in this deal buys us neither.

* *Assistant Managing Editor for Time Magazine. Abridged from an article that appeared in the* Time Magazine *on November 04, 2013.*

Why Brazil Policymakers Praised Auction with one Bidder?

Joe Leahy*

For most auctioneers, the appearance of only one buyer is usually seen as a disappointment. After all, what kind of auction is it when there is no bidding to drive up prices?

Not so in Brazil. The auction to only one bidder of what was meant to be the world's most exciting offshore oil find in years – the Libra field in the country's giant so-called "pre-salt" discoveries – was lauded by policy makers.

This is even more curious when one considers the result – a consortium of Brazil's state-owned operator Petrobras, Anglo-Dutch company Shell, France's Total and China's CNPC and Cnooc, won the "auction" with a minimum bid. Surely no cause for celebration? Wrong.

The government's enthusiastic response to the auction that was not an auction may partly have been to conceal its disappointment. But a more worrying explanation is that the government was actually pleased that the auction failed to attract much competition. It may have been relieved at the mediocre outcome.

Indeed, such results are becoming more common as the government juggles so many conflicting objectives. It is trying to reduce inflation while weakening the exchange rate. It is expanding public spending while increasing interest rates. And in the oil industry it is trying to increase state involvement while attracting the private sector. Even the government no longer seems sure about what it is really trying to achieve.

Take the Libra oilfield, for example. It is hard to understate how important this auction was for Brazil. Five years in the making, the auction was the first under a new policy regime governing the pre-salt discoveries. These fields are about the size of Britain's North Sea finds and are so named because they lie under a layer of sodium chloride below the ocean. Libra is estimated to be capable of producing about 1m barrels per day – just under half Brazil present production.

Government knows result was good for Petrobras

In spite of the pre-salt's promise, there has long been scepticism over how much private sector interest Libra would attract due to an onerous new policy regime. Under this framework, introduced as part of a wave of resource nationalism when the discoveries were announced in 2007, Petrobras has to be the sole operator of any pre-salt field.

Of 40 companies expected initially, only 11 registered for the auction, with many of the largest international private sector companies, including Exxon, Chevron, BP and Britain's BG, a big player in Brazil, staying away. This would normally have been a signal for policy makers that the framework might need rejigging but not so for Brasília, which has a hidden agenda for Petrobras.

The state-owned company is unofficially being used by the government to subsidise domestic fuel prices. The aim is to help reduce inflation in a country whose lack of railways means everything must be carried by truck. With the government facing an election next year, it must keep the lid on inflation at all costs, including at the expense of Petrobras' profits.

At the same time, however, Petrobras is carrying out the world's largest corporate investment programme, worth US$237bn in five years. It also has one of the world's biggest debt burdens to service. So the government is wary of squeezing Petrobras too much.

As it happened, the winning consortium offered the minimum, 41.5 percent. But if there had been a lot of competition, the figure could have been higher. This might have hurt Petrobras, which would have had to conform to the terms of the winning foreign bidder. Petrobras's finances are so strained it could not have afforded a bid more generous to the government.

A government celebrating the fact it made less of a profit than it could have from an auction that was not an auction? Something is amiss with policy-making in Brazil.

* *FT's Brazil Bureau Chief. Abridged from an article that appeared in* The Financial Times*, on October 24, 2013.*

Being Ethical in Business is not as Simple as 'Doing the Right Thing'

John Kay*

The man who tells us how honest he is rarely deserves our trust

"Honesty is the best policy, but he who is governed by that maxim is not an honest man." Richard Whately, Archbishop of Dublin, was a 19th-century theologian, but his observation is very relevant to a modern debate about the nature of business ethics.

The Co-operative Bank has just announced a restructuring that wipes out the value of existing equity. Over many years, the message of the bank's advertising has been its aspiration to higher standards of ethical conduct than its competitors. The devil's advocates might seize on the bank's financial problems as evidence that honesty does not pay, but that is not what happened here: the Co-op Bank failed for the usual reasons banks and businesses fail – bad lending on commercial property and the misguided acquisition of another business by a management whose ambitions exceeded its capabilities.

The bond holders will now have a controlling interest in the bank. In practice, these are mainly hedge funds specialising in distressed debt, institutions not renowned for their social and environmental commitment. The former owner of the bank, the mutual Co-operative Wholesale Society, will inject fresh capital and hold a minority stake. The Society has stated that the restructured company's articles of association will include a commitment to ethical behaviour, but it would be unwise to attach weight to this: such commitments in the mission statements of other organisations have made little impact on what they do in practice.

Worried customers can take more reassurance from the bank's recognition that it makes hard commercial sense for the new owners to continue the Co-op's policies – to support environmental projects and eschew lending to arms dealers, tobacco merchants and others engaged in supposedly "immoral" businesses.

This ethical stance has been a significant competitive advantage in attracting business from socially concerned individuals, organisations and local authorities in left-leaning areas of the country. It is likely that the profits that arise from a policy of differentiating itself from its competitors in this way exceed the profits otherwise foregone.

The slogan that good business is profitable business is superficial – an attempt to make moral dilemmas dissolve in a warm bath of goodwill. When the right thing to do is also in your own self-interest, you do not need advice from philosophers and theologians. Ethics are about what to do when good behaviour and profitable business are not necessarily the same thing.

Bishop Whately noted the difference between the honest man and the man for whom honesty is the best policy. Bankers, not bishops, deliver lectures extolling their own personal integrity; the man who repeatedly reminds us how honest he is rarely acquires, or deserves, our trust. The integrity we value is a personal or organisational characteristic, not a business strategy.

The psychologists Lara Cosmides and John Tooby have suggested we have evolved a finely honed capacity to detect such deceptions. And so the world we live in is one in which most people are honest most of the time and most people trust most people most of the time. A few exploit that situation, and we are inclined to punish their deviant behaviour even if it is not in our self-interest to do so. That is a better outcome for everyone than one in which opportunistic behaviour is the norm.

Paradoxically, the best long-run commercial strategy for the hedge funds that now own the Co-op Bank may be to recruit managers whose commitment to its ethical stance is entirely genuine, and to facilitate the resumption of control by an organisation with similar values.

If honesty is the best policy then the best policy is to be honest from conviction.

* *Britain's Leading Economist. Abridged from an article that appeared in* The Financial Times*, on November 06, 2013.*

The New Era Promoting Fair Competition in Namibia

– Andreas Thomas

The Namibian Competition Commission (NaCC) was established four years ago - six years after the Competition Act was passed in 2003. Its main mandate is to safeguard and promote fair competition across all sectors of Namibia's economy, having regulatory oversight of over 80 000 business entities. NaCC's CEO Mihe Gaomab II was entrusted to lead the Commission. He speaks to Andreas Thomas of The Southern Times about the introduction and progression of competition regime in the country.

Mihe Gaomab

Has NaCC become more effective since its inception? Do you feel its role is being recognised?

The Competition Commission has become a prominent institution in the Namibian sphere of economic influence. All businesses that merge with each other have to notify us. In fact, we have already become effective to put in place a merger regime in the country. Our effectiveness is a lot more desired now that we have put in place capacity to enforce the Competition Act, which means we want to penalise the anticompetitive behaviour.

Do NaCC has adequate manpower to successfully carry out its mandate?

We have proved that we can actually indigenise, and localise our capacity in Namibia. The Competition Commission is there to prove that. For now, the manpower is enough. Ours is a specialised field, and you also don't want to create a big institution with a lot of bureaucracy.

The NaCC has regulatory oversight over 80 000 business entities. Have you met these businesses to sensitise them about fair trade practices and compliance with competition rules? If so, what was the reaction to the competition law?

The business sector understood that we are here for a reason and they now appreciate that we are not really a regulatory bad thing, but are here to regularise and normalise the conduct in the market place.

Does the NaCC have enough teeth to effectively enforce compliance?

Actually, the Competition Commission got enough teeth and it can bark also. We made our name very credible, building a level of confidence in the economy. But the important thing that is now going forward is that while we are doing that, we have let people know there is a Competition Commission. And some businesses have stopped, but there are still some undisciplined ones. And because of that, now we are at the stage of enforcing our Act – to pursue these businesses.

How does fair competition in the Namibian business market benefit consumers?

Some businesses are involved in anticompetitive behaviour that is actually, where we come in to promote fair competition. We keep the competition space lively and ensure that players that partake in that competition space are doing so in a free and spirited fashion.

Can you point out some developments at NaCC to bring the Competition Commission in line with international best practices in terms of dealing with unfair business practices in Namibia?

We are a young maturing institution and needed to understand what others are doing with their competition laws. So, we became a member of International Competition Network, which is a network of hundreds of competition commissions all over the world, with the aim to foster competition culture in the world.

How does the Competition Commission deal with consumer-related issues?

We have come up with a research study, in terms of consumer protection, and it points that there is a need for consumer provisions. We are now trying to look at the review of the Competition Act, to put it in a certain provision that will allow us to directly protect the consumers, and those provisions could relate to competitive pricing, product choice, misleading advertising and issues of consumer advocacy.

What specific goals do you wish to accomplish during your time as the head of Namibia Competition Commission?

We need to better educate our public in a non-technical tone, better explain to them what the competition commission does and where it is going. So, that is the new ERA - the priorities for 2014.

– *Excerpts from an Interview appeared in* The Southern Times *on November 08, 2013.*

PolicyWatch

The October-December 2013 issue of PolicyWatch encapsulates 'Build a Compliance Culture' in its cover story which states that every country needs a healthy competition culture through regulation of anticompetitive practices, removal of competition impediments and awareness generation. In many competition regimes, penalties for violating firms are reduced if the said firms have compliance programmes in place; such provisions incentivise businesses to be competition-friendly.'

A special article by Nitin Desai opines that by 2050, India will be a devastated country if the deafness to environmental and resource concerns persists suggests a 10-step programme for India's economy.

Another article by A K Bhattacharya says that little thought appears to have gone into the manner in which our political leaders have formulated their ideas about what they actually mean by 'governance'.

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

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

Economiquity

The October-December 2013 issue of Economiquity carries an article entitled, 'Ending Bali on a High' which states that after months of intense negotiations in Geneva culminating in a ministerial conference, trade ministers finally delivered the Bali package. As India's Commerce Minister, Anand Sharma, said: "A historic day for the WTO. India's food security concerns are addressed." Despite intense political pressure, India stood its ground and helped the global trade community delivers a 'balanced' package incorporating a number of development issues.'

A special article by Muthukumara Mani poses a question: Does growth have to come at the price of worsened air quality and other environmental degradation?.

Another special article by Pradeep S Mehta states that the spirit of multilateralism prevailed as the World Trade Organisation's Bali Ministerial conference delivered the first ever trade liberalisation package.

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

We want to hear from you...

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

We put a lot of time and effort in taking out this newsletter and it would mean a lot to us if we could know how far this effort is paying off in terms of utility to the readers. Please take a few seconds and suggest ways for improvement on:

- Content
- Number of pages devoted to news stories
- Usefulness as an information base
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Sources

BL: The Hindu Business Line; BS: Business Standard; FT: Financial Times; GCR: Global Competition Review; ILO: International Law Office; WSJ: Wall Street Journal

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