REGULETTER

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CUTS International

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Special Articles

CUTS Centre for Competition, Investment & Economic Regulation
CUTS C-CIER

WORLD COMPETITION DAY

Promoting Fair Competition in Public Procurement

Canada became the first country to adopt a Competition Law in 1890. Later, countries such as US and European Union also adopted competition law. With the advent of globalisation and international trade, countries felt the need to understand competition policy and law and related issues. The need was also felt to introduce an institution which played a central role in coordinating and generating awareness.


www.img.dailymail.co.uk

To ensure that consumers from across the world realise the potential benefits from an effectively implemented competition regime and play their role in making competition regimes work worldwide, it is critical that focus on competition policy and law issues at an international level be strengthened. This can be achieved through the adoption of a World Competition Day (WCD). The 5th of December 1980, saw the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (UN Set), which had been approved by the UN Conference on Restrictive Business Practices, therefore, CUTS International is leading a campaign on celebrating 5th of December as the WCD.

With the aim of raising global awareness regarding the promotion of fair competition in the market, an international campaign on WCD has come to its sixth year of marking success with large number of countries joining hands together to urge the adoption of 5th December as WCD. The theme for present year is 'Competition Issues in Public Procurement' as supporters believed that an agenda for proper functioning of public procurement would enhance the economy of any country by generating demand and consumption.

A well-functioning procurement system indicates procuring best possible goods and services at the lowest price. Hence, healthy competition amongst suppliers helps this objective. However, competition concerns in public procurement can be seen from both the demand side, i.e. from the procurer and supply side. In 2015, African countries reported loss of about US$148bn per annum due to corruption associated with public procurement. Also in Spain, cartelisation in paper envelops for 33 years and absence of necessary competitive environment caused a loss of about €47.5bn.

About 23 competition authorities have been supporting and observing the WCD in their countries. Countries have celebrated 5th December by organising seminars, conferences for raising awareness about the need for WCD. Press releases were issued in National and International newspapers with the aim to create awareness about how competition distortions can hamper fair public procurement procedures while negatively affecting economic growth. CUTS is delighted to receive such a positive response from several competition agencies and civil society organisations globally to ensure that public procurement activities yield cost effective services and reflect commensurate value for money.

Creating a Level Playing Field

The full implementation of the ordinance aims to curb anticompetitive behaviour and bring the benefits of a level-playing field to **Hong Kong** consumers, businesses and the wider economy.

The Hong Kong government has introduced the competition regulations in stages since the enactment of the Ordinance in 2012 and the subsequent establishment of the Hong Kong Competition Commission and Competition Tribunal in 2013.

Now that the ordinance is fully in place, the Commission is ready to accept applications from businesses to confirm whether certain conduct or arrangements are exempt or excluded from the ordinance, it said.

Most agreements will only be covered by the law if the combined turnover of the organisations involved comes to more than HK$200mn (US$26mn).

(www.out-law.com, 17.12.15)

Focussing on Consumer Welfare

The Global Antitrust Institute at George Mason University School of Law has made a host of recommendations that would bring **China**'s anti-monopoly law in line with western standards.

In its recommendations, the institute suggested deleting from the law references to non-competition goals, such as the 'promoting the healthy development of the socialist market economy'. The institute said competition policy is most effective when it focuses on competition and consumer welfare, rather than multiple and often conflicting goals.

The antitrust institute also recommended scrapping exemptions for state-owned enterprises, arguing such privileges and immunities can distort competition between state- and privately owned rivals.

The antitrust institute proposed a number of other amendments; it said China should recognise that vertical restraints are generally procompetitive – and thus should be analysed under an effects-based approach, and urged the state to reconsider its definition of a 'market dominant position.

(GCR, 14.12.15)

Relevance of Competition Reforms

"There must be realism about the limits of competition policy's power to help developing countries meet the United Nations' sustainable development goals", Pradeep Mehta, Secretary General of CUTS International said during the 4th Annual Biennial Conference organised by CUTS at **Nairobi** on December 12-13, 2015.

Mehta stated that the eradication of poverty and hunger are two of the goals that have the most to gain from the effective implementation of competition law. It is a challenge for the whole competition community to identify the relevance of competition reforms to help governments meet their sustainable development goals.

He said that by linking competition to the goals, competition advocates can illustrate tangible benefits to the abstract concept of competition reform, which can help them fight their case when faced with sceptical policymakers and tight budgets. *(GCR, 15.12.15)*

MoU on Competition Policy Signed

Heads of Competition authorities from **Brazil, Russia, India, China** and **South Africa** (BRICS) signed a memorandum of understanding to co-operate in the field of competition policy.

The conclusion follows a four-day BRICS International Competition Conference held in Durban, KwaZulu-Natal. The four competition authorities have committed to work together to improve competition law and policy enforcement.

The conference shed light on competition policy and its effectiveness as a tool to assist countries to deal with economic challenges. Academics urged competition regulators to pull up their socks as those who infringe competition law are becoming more efficient. *(www.sabc.co.za, 13.11.15)*

Adopting 'Twin Measures'

Philippines President Benigno Aquino III signed into law two landmark measures which will play critical role in advancing Philippines' readiness for the ASEAN Economic Integration. The Philippines has finally waived its cabotage laws.

The Twin Measures are: The Philippine Competition Act, which opens competition on its commercial waterways; and the Foreign Ships Co-Loading Act, which amends the 50-year-old Cabotage law to allow foreign ships carrying imported cargo and cargo to be exported out of the country the ability to dock in multiple ports.

The twin measures are aimed at decreasing transportation costs, and to allow foreign operators to ship domestic cargoes within Philippines sovereign territories. Foreign carriers will now be able to compete on an equal level with the few local players that have dominated the market, which is likely to improve efficiency. *(Mondaq, 08.10.15)*

Markets in line with Vision 2030

The **Namibian** Competition Commission (NaCC) launched its five-year strategic plan, which will run from 2015 to 2020, and is a necessary condition that enables the NaCC to develop and effectively execute its mandate.

The 2015-2020 strategic plan will be in place to ensure effective enforcement of the Competition Act as a contribution to creating competitive markets in line with Vision 2030. It is also aimed at expanding the scope of competition regulation and strengthening the quality of life.

Enhancing competition advocacy toward the fulfilment of sound competition principles and practices as well as conducting action-oriented research on competition in support of evidence-based competition regulation and policy are also some of the highlights within the new strategic plan.

(www.namibian.com, 08.12.15)

A Big Year is About to Start for Competition Law in Africa

Lucinda Verster*

In South Africa, the partial implementation of the Competition Amendment Act is expected in 2016. Two new amendments of importance are those that involve complex monopolies and the criminalisation of cartel conduct.

Complex monopolies are where at least 75 percent of goods or services are supplied by five or fewer companies. These companies act in a conscious or co-ordinated manner without agreement and this has the effect of preventing or lessening competition, unless a company shows otherwise.

Economic Development Minister Ebrahim Patel said that his department will explore the possibility of consolidating regulators to balance the specialist expertise of sector regulators with the broader economic and legal capacity that the competition authorities have built up over the years.

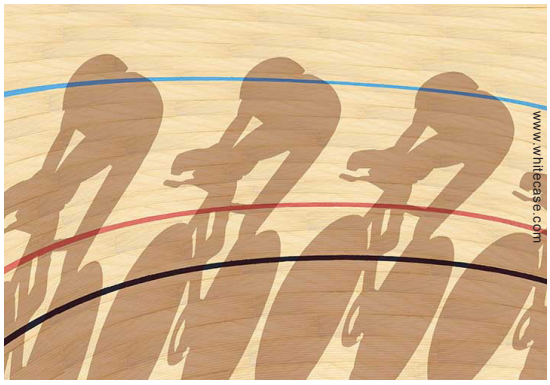
He intends to introduce legislation to further strengthen efforts to tackle anticompetitive practices that impose unnecessary costs on consumers, undermine industrial policy objectives and reduce the competitiveness of the economy.

In 2016, there should be further clarity from the Department of Economic Development about the implementation of the Competition Amendment Act (either in whole or in part). It also appears there will be further changes to the Competition Act, through the introduction of a new Competition Amendment Bill.

Two big market inquiries are expected to be finalised next year. The Competition Commission says the inquiry into the liquefied petroleum gas market will be completed by March.

The inquiry into the private healthcare sector will get under way, with the final report expected to be published by the end of the year.

In 2016 there will be important developments in competition law in South Africa and on the rest of the continent



The findings of these inquiries will guide the competition authorities on whether to take further action to encourage competition in these sectors. The information in the findings will also aid businesses in all sectors that are unaware they are breaching competition rules.

The competition authorities have also increased their focus on public interest considerations in merger analysis. While the regulator cannot divorce public interest from competition analysis, it also cannot overreach in its application of public interest. The draft public interest guidelines are yet to be finalised, and it is hoped they will be completed next year.

Many African countries have recognised the value of competition and have already introduced, or are introducing, competition regimes. Competition law is expected to play a critical role on the continent next year. It is anticipated that cases in Africa will become more complex.

Burundi, Comoros, the Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia and Zimbabwe now fall under the Common Market for Eastern and Southern Africa (COMESA), whose competition law regime became operative at the beginning of 2013.

The Democratic Republic of Congo, Djibouti, Eritrea, Libya and Uganda have no domestic competition regimes in place. Malawi and Kenya recently updated their competition legislation and more COMESA member countries are expected soon to announce developments in competition law.

This year South Africa's Competition Commission signed a memorandum of understanding with the Namibian Competition Commission to promote co-operation in competition law enforcement and policy. The heads of competition authorities from the Brics countries – Brazil, Russia, India, China and South Africa – also recently signed a memorandum of understanding to co-operate in the field of competition policy, share best practices and conduct joint studies of the competition law sector.

It will be interesting to see how these relationships unfold in 2016 and what South Africa will learn from shared information with its neighbours and Brics countries.

* *Partner in Bowman Gilfillan Africa Group's Competition Practice. The article appeared in the* Business Day*, on December 21, 2015*

ABUSE OF DOMINANCE

Sanctions Imposed on HP Romania

Romania's Competition Council sanctioned the company Hewlett-Packard (HP) Romania with a fine of about €665,000 for abuse of dominant position.

According to the competition authority, HP Romania has taken advantage of its dominant position to terminate before the agreed deadline and without any explanation a contract which granted its partners special prices for HP supplies, which they delivered to an important client in the business segment.

HP Romania cancelled the contract five months before the deadline, terminating the commercial relationships with the four partner companies. Between 2007 and 2011, HP Romania held a dominant position on the inkjet printer market for the business segment, with a market share of over 80 percent.

(www.romania-insider.com, 03.12.15)

Energy Commitments Accepted

The **European Commission** (EC) has formally accepted commitments that would open up Bulgaria's wholesale electricity market, ending its three-year abuse of dominance probe into the country's state-owned energy and gas company.

Bulgarian Energy will set up the market with the help of an independent third party and transfer ownership of the exchange to the Bulgarian ministry of finance. The company has also agreed to 'offer certain volumes of electricity on an independently operated day-ahead market on a newly-created power exchange in Bulgaria': minimum volumes of electricity supplied to the exchange for the next five years that will be put on sale in the day-ahead market.

The maximum price Bulgarian Energy can charge will be based on its production costs, and the volumes to be offered will vary hourly depending on energy consumption patterns.

(www.europa.eu, 10.12.15)

Alibaba Obstructed Competition

China's second-largest online retailer JD.com has called for an investigation into Alibaba, accusing the e-commerce group of abusing its dominant market position by preventing merchants from selling their products on rival websites.

JD.com reportedly sent a formal letter of complaint to an antitrust enforcer, China's State Administration for Industry and Commerce, alleging that market leader Alibaba had breached competition rules by relying on clauses with its merchants, pressuring them to operate exclusively on its own sales platforms.

The complainant had been tipped off by merchants using its own e-commerce service. They reported that Alibaba had prevented them from marketing their products on rival websites during an upcoming promotional sales event – known as Singles' Day – for fear of punishment or sanctions from the online retailer.

(FE, 06.11.15)

Orange Punished for Dominance

The **French** Competition Authority has fined Orange €350mn – the largest against a single company in the authority's history – after closing a five-year abuse of dominance investigation of the telecoms company.

The authority confirmed the fine, together with a number of pro-competitive injunctions, intended to address Orange's abuse of its power in the mobile and fixed-line telecoms markets for business customers.

Bruno Lasserre, President of the authority stated that the fine was proportionate and would act as a deterrent. The company has been fined seven times over the past 15 years for similar competition law violations.

(www.nation.co.ke, 18.12.15)

Vodafone Sues KPN in Damages

Vodafone is suing Dutch rival KPN for €115mn in damages, alleging that the former state-owned telecoms monopoly abused its dominant market position by blocking access to its fixed line network.

KPN illegally refused to supply technology allowing Vodafone access to its fixed line network, which delayed the roll-out of Vodafone's own broadband, telephone and pay-television service across the Netherlands until 2014 – a delay of three years.

This amounted to an abuse of dominance, Vodafone said, preventing the UK-based company from competing effectively in the Dutch telecoms market with KPN and other cable providers. *(GCR, 15.12.15)*

Theatre Chains under Lens

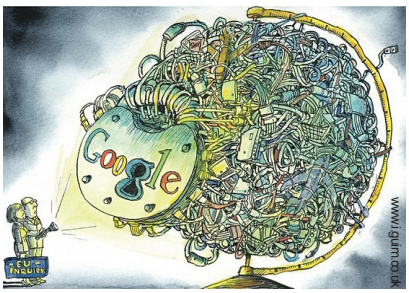
Ten states are investigating allegations that the **US'** three biggest movie theatre chains tried to keep smaller theaters out of markets and other antitrust behaviour.

The investigation is looking at whether chains have tried to thwart independent movie theatres and non-profit film centers, among others.

Knoxville-based Regal employs more than 23,000 people at its nearly 600 movie theatres nationwide, including 555 employees in East Tennessee operations.

(www.knoxnews.com, 17.12.15)

Yandex goes Public with Google



Russia's biggest search site Yandex had asked the EC to investigate Google's practices in relation to its Android mobile operating system in the European Union (EU).

The new complaint could strengthen the case against Google, possibly giving enough ammunition to EU antitrust regulators to eventually charge the company with anticompetitive business practices, on top of accusations related to its Google Shopping service.

Russia's competition watchdog ruled in September that Google had broken the law by requiring pre-installation of its search application on mobile devices running on its Android operating system. *(www.reuters.com, 13.11.15)*

PRICE FIXING

EU Drops LCD Panel Probe

The **EC** has closed an informal investigation into several companies it suspected of participating in a liquid-crystal display panel cartel, five years after it punished six other companies for fixing the price of large LCD screens used in computers and televisions.

The Commission had sent 'no-action' letters to several LCD producers confirming that the companies would not face a formal investigation. Toshiba, Seiko Epson, Samsung SDI and AU Optronics were contacted by the Commission.

The Commission fined six Taiwanese and Korean LCD panel manufacturers €648.9mn in 2010, after they conspired to fix prices and exchange information on future production capacity between October 2001 and February 2006. *(GCR, 18.12.15)*

Apple-Amazon in Question

German antitrust authorities are investigating Amazon and Apple for an agreement about selling audiobooks, targeting two companies that usually find themselves on opposing sides of competition battles.

The Federal Cartel Office opened the investigation after receiving a complaint from the German Publishers and Booksellers Association, which alleged Apple and Amazon were 'on the way to establishing a monopoly'.

The complaint, made public has also been sent to the EC, which is investigating separate allegations of market abuse by Amazon in the ebooks sector.

(www.cnbc.com, 16.11.15)

Canada Chocolate Case Crumbles

The **Canada's** Competition Bureau announced that its chocolate price-fixing case, originally brought against Nestlé, Mars, a distributor, and three individuals, has ended without any of the defendants having been convicted.

The Public Prosecution Service of Canada entered a stay of the proceedings against Nestlé and its former president Robert Leonidas, who were the last remaining criminal defendants. The decision, taken by the prosecutors independently of the competition authority, 'marks the end of the chocolate price-fixing matter,' the Bureau said.

In September, the government dropped its prosecution of Mars, the distributor network ITWAL, ITWAL's chief executive, and another former Nestlé executive. *(www.cbc.ca, 18.11.15)*

Welcome Turn in Cement Cartel Case

In a strongly worded judgment, **India's** Competition Appellate Tribunal (COMPAT) overturned a €836mn fine imposed on the members of an alleged cement cartel, holding that Competition Commission of India's (CCI) investigation was procedurally unfair.

The ruling is culmination of a three-year process which began after the CCI handed down its record fine in 2012. Following the judgment, the case has been sent back to the CCI, which has been ordered to start the investigation again and issue a new order within the next three months. It penalised 11 cement companies for illegally coordinating on prices, distribution and supply of cement.

COMAPT summarised the cement companies' arguments as suggesting this was a 'gross violation' of fairness and impartiality, and sided with the cement companies in its judgment. It held that the way the competition enforcer approached the investigation violated the companies' procedural rights.

(Mondaq, 15.12.15)

Rice Market under Inspection

Indonesia's Competition Authority is investigating possible price fixing between five of the country's largest wholesalers. It has conducted a series of inspections at markets, farms and rice mills on suspicion that supply is being kept artificially low in an attempt to raise prices.

Of particular concern is the supply of IR 45 medium rice, a mid-range variety, to Jakarta. The Jakarta rice market has recently faced increased scrutiny recently due to price rises.

KPPU confirmed that there has been no shortage in domestic rice yields, backing statistics from the Agriculture Ministry. *(GCR, 07.12.15)*

Telecom Italia Slammed

Telecom **Italia** and six other companies have been fined a total of €28mn by anti-trust regulator for anticompetitive conduct in the procedure for assigning network maintenance services.

Telecom Italia and its external suppliers Alpitel, Ceit Impianti, Sielte, Sirti, Site and Valtellina were accused of collusion in relation to restoration of service operations resulting from a report by an end user, namely the operators Fastweb and Wind.

Telecom Italia, which was handed a €21.5mn fine would be appealing to the Regional Administrative Court of Lazio to demonstrate the non-existence of the alleged anticompetitive conduct.

(www.telecompaper.com, 24.12.15)

Global Shipping Firms Questioned

Chinese regulators have fined seven major international shipping companies US$65mn for fixing prices after a year-long investigation. Korean, Japanese and European shipping companies that carry vehicles were found to have coordinated bids and routes in order to keep prices high.

The fines are equivalent to four to nine percent of the firm's international shipping sales to and from China. Authorities have been penalising firms under China's 2008 anti-monopoly law.

Several sectors have been affected by the crackdown including automakers, dairy and technology suppliers in an attempt to keep prices down for Chinese consumers.

(BBC, 28.12.15)

Take-off delayed

A Chinese planemaker will find it hard to break the Airbus-Boeing duopoly

www.media.ichn.com

Since the 1990s the global market for full-sized commercial airliners has been a duopoly. The market, which by some estimates will be worth US$4.6tn over the next 20 years, is dominated by Airbus, a European firm, and Boeing, its American competitor. But in theory, at least, airlines will soon have a wider choice of planes.

On November 2nd COMAC, a Chinese state-owned planemaker, revealed its C919 plane, a competitor to Airbus's A320 and Boeing's 737, the two most popular airliners in the skies. COMAC says the C919 will have its maiden flight next year – two years later than first scheduled – and enter service around 2019.

The Chinese are not the only ones who think they can break the duopoly. After several delays, Irkut, part of Russia's state-owned United Aircraft Corporation (UAC), hopes to launch its MC-21 aircraft, another potential rival to the 737 and A320, into service in 2017.

Many aviation analysts remain sceptical about whether these rivals, even with generous state backing, will ever put a significant dent in the bulging order books of Airbus and Boeing. The C919 will contain a great deal of Western-designed equipment – including its engines, until such time as China succeeds in a parallel venture to be a maker of world-class commercial-airliner engines. But analysts suspect that if and when it flies, its fuel efficiency will lag that of the newest versions of the Boeing 737 and Airbus A320.

And although the Russians and the Chinese may well be fairly good at designing aircraft, they have little experience in creating the complex production systems and supply chains needed to build them to the extremely high standards of reliability and safety that airlines expect. The need to improve their safety record will ensure that they are 'not a near-term risk' for the likes of Boeing, says Jason Gurksy, an aerospace-industry analyst at Citigroup.

Even Bombardier of Canada, which has a good record of safety and quality for the smaller aircraft that it makes, has struggled to break into this lucrative market. Fewer than 250 of its much-delayed CSeries planes have been ordered. In contrast, Boeing has already delivered more than 8,700 of the 737 in its various incarnations, and has orders for a further 4,200.

It emerged recently that Bombardier had tried unsuccessfully to sell a stake in the CSeries project to Airbus. On October 29, 2015 Bombardier announced that the provincial government of Quebec, where the firm is based, would pay US$1bn for a stake of 49.5 percent in the plane, whose development has so far cost US$5.4bn.

Incumbents are just as hard to dislodge in the market for smaller 'regional' jets (ones with up to around 100 seats), which is dominated by Bombardier and Embraer of Brazil, but which COMAC, UAC's Sukhoi subsidiary and Mitsubishi of Japan are all trying to break into. COMAC's regional jet, the ARJ21, had its first test flight in 2008, but because of concerns about cracks in its wings and dodgy wiring it has still not been certified for commercial flights in America.

Mitsubishi's MRJ and Sukhoi's Superjet were also delayed by technical problems. The Superjet is now in service with a handful of airlines, though orders have been sparse; and the MRJ may make its maiden flight shortly.

To be fair, the giants of the industry also find that it is not easy to get an entirely new aircraft design off the ground. The research-and-development costs for Boeing's newest aircraft project, the 787 Dreamliner, grew to US$28bn as a result of problems with its supply chain and electronics. And revenues from one of Airbus's newest aircraft, the giant A380, hardly cover its production costs, never mind the capital sunk into its development.

If even the industry's two dominant firms find it a long, expensive struggle to get a new aircraft design in the sky, no wonder their would-be rivals are having such a hard time.

– *The news item appeared in* The Economist *on November 07, 2015*

Conditions on Food Merger

The Competition Tribunal of South Africa has conditionally approved the merger of two companies operating healthy instant porridge brands, following an unconditional clearance by the Competition Commission and subsequent intervention by rival Kellogg South Africa.

The Tribunal approved Pioneer Foods' acquisition of 50 percent of Futurelife Health Product, after the companies agreed that Futurelife would remain an independent company for at least two years.

The parties notified the Commission in April 2015 and received unconditional clearance. But Kellogg, which operates an instant porridge brand, intervened and said the merger was anticompetitive. *(GCR, 12.11.15)*

AstraZeneca Secures Acerta Stake

AstraZeneca has agreed to buy a majority stake in Acerta Pharma with an option to take full control for up to US$7bn, capping an intense period of dealmaking for the UK group as it races to refill its drugs portfolio.

AstraZeneca will pay an initial US$2.5bn for 55 percent of Acerta, with a further US$1.5bn by the end of 2018 and an option to buy the remainder of the company at any time for a further sum of approximately US$3bn.

The latest deal would add to AstraZeneca's promising pipeline of cancer drugs as it seeks replacements for several old medicines where patent protection has lapsed or will do so soon. *(FT, 18.12.15)*

Wool Processing Cos. Combine

New Zealand's competition authority has approved the merger of two wool-processing companies after a year of consideration, despite the deal creating a virtual monopoly in the domestic market and protests from the companies' largest customer.

The Commerce Commission decided that the public benefits from Cavalier Wool Holdings' acquisition of New Zealand Wool Services International outweigh the competition concerns of monopolisation.

Both companies operate wool scouring businesses. When wool is initially shorn from the sheep it is referred to as greasy wool, and must go through a process of cleaning known as scouring to make it commercially useful before being sold, usually at auction. *(GCR, 19.11.15)*

Nod to Solvay/Cytec Acquisition

The EC has approved Solvay's €5.2bn acquisition of US-based Cytec, after the Belgian plastics and chemicals manufacturer agreed to divest one segment of its operations in the chemicals market.

The Commission said that the commitments had alleviated concerns that the deal would harm competition in the market for phosphor-based solvent extractants, which are used to separate cobalt from nickel in the mining and refining industry.

Solvay and Cytec operate alongside each other in that market under the respective 'Ionquest 290' and 'Cyanex 272' brands. *(www.law360.com, 02.12.15)*

Integration of Stock Exchanges

Pakistan's competition authority has approved the integration of three stock exchanges after imposing remedies to allay what it called 'lesser' competition concerns.

The stock exchanges of Islamabad, Lahore and Karachi will now merge to create a unified Pakistan Stock Exchange, based in Karachi. The Islamabad and Lahore entities will continue to operate as companies, but will no longer act as stock exchanges.

The Competition Commission of Pakistan said the transaction would not substantially harm competition, but the enforcer did impose conditions on the deal to address 'lesser competition concerns' regarding the potential dominance of the new exchange.

(GCR, 01.12.15)

FedEx-TNT Deal Approved

FedEx Corp. has received US antitrust approval to buy TNT Express NV, a US$4.8bn deal announced in April 2015. The transaction was included in a Federal Trade Commission list of transactions receiving early termination of antitrust waiting periods.

FedEx and TNT were informed by the EC that 'no statement of objections will be issued' in Europe, clearing one of the biggest hurdles for the deal. The European review had a January 13, 2016 deadline.

In January 2013, European regulators scuttled United Parcel Service Inc.'s pending deal to buy TNT.

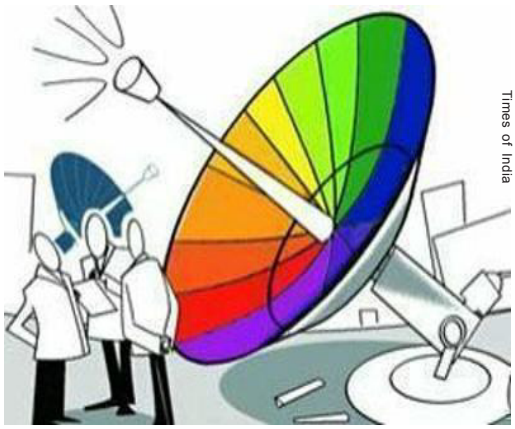
(WSJ, 24.11.15)

Bharti Sells 8,300 Towers in Africa

Bharti Airtel has struck a deal to sell tower assets in seven of the 13 countries it operates in across Africa and the US$1.7bn transaction will help the company pare its troublesome debt in the continent.

The company had entered Africa in 2010 by buying out the assets of Zain Telecom for about US$10bn. It has been struggling to run operations in the region at a time when it also needs cash to service the high debt and invest in new technologies like 4G in India.

Bharti Airtel has around 14,000 mobile towers in Africa and decided to exit the tower business as part of measures to cut down debt and make the business viable. *(ToI, 21.10.15)*



Times of India

Visa to Deliver Windfall to Banks

The Economist

Visa Inc, the US payments company, is closing in on a deal to acquire its former European subsidiary for US$20bn in a move that will land thousands of European banks large windfalls.

The deal means more than 3,000 banks and payment companies who own Visa Europe are set to share in billions of dollars from the buyout, which could be sealed. The US card company began early-stage talks to buy Visa Europe in the second quarter, after previous attempts to reach an agreement with the banks that own it failed.

Visa Inc said that it 'believes there is compelling logic for both Visa Inc and Visa Europe to consummate a business combination'. *(FT, 16.10.15)*

Monsanto Mulls Syngenta Takeover

Monsanto has evaluated whether it should seek to buy a rival agribusiness, including Syngenta, less than three months after the US company abandoned a US$46bn hostile pursuit of the Swiss group.

Brett Begemann, Chief Operating Officer at Monsanto, stated that the US company has looked at several potential targets in the agricultural sector, including Syngenta. However, he stressed Monsanto was focused on its core business.

A Syngenta takeover would allow Monsanto, a leading supplier of agricultural seeds, to become one of the key providers of crop protection chemicals to farmers. It could also enable Monsanto to move its domicile to Europe to avoid US taxes.

(FE, 18.11.15)

Co-operative Banks Agree to Merge

German cooperative lenders DZ Bank and WGZ Bank have agreed in principle to merge after several failed attempts to join forces, creating the country's fourth-largest lender with around US$534bn in assets.

Six years after scrapping the last attempt, DZ Bank and WGZ Bank will pool investment to take on challenges such as tougher banking rules, increased competition and demand for more digital services.

The deal will create a unified bank for the country's more than 1,000 cooperative lenders, whose customers are also their owners. *(FT, 20.11.15)*

GE Pulls Deal with Electrolux

Electrolux's attempts to grab a big slice of the North American market by buying GE's domestic appliances business have failed after the US conglomerate abandoned the deal because of opposition from regulators.

The Swedish manufacturer of cookers, fridges and washing machines had agreed to buy GE's unit for US$3.3bn as part of efforts to reduce Electrolux's dependence on Europe.

The deal would have combined the number two and three suppliers of domestic appliances in the US and given Electrolux about 34 per cent of the market. It was set to be the biggest acquisition in Electrolux's history, and would enable the company to go head to head with Whirlpool in the US.

(FT, 07.12.15)

Clearance to Intel/Altera

EU regulators cleared Intel, the world's biggest chipmaker, to buy US firm Altera for US$16.7bn in one of the largest ever Silicon Valley deals. The EC concluded that the merged entity would continue to face effective competition in Europe

Intel said the buyout, the largest in its 47-year history, would boost its portfolio of chips for data centres and connected household objects, often referred to as the 'Internet of things'.

Although competitors, the two companies joined forces in 2013 with Altera employing Intel transistor technology in its next-generation products. *(www.phys.org, 10.14.15)*

Barry Callebaut Acquires Nyonkopa

The race to secure direct supply routes of cocoa intensified after Barry Callebaut, a leading processor and wholesale chocolate maker, announced the acquisition of a Ghanaian-licensed cocoa purchaser.

The Switzerland-based group said it had bought Nyonkopa, which is licensed by the Ghanaian authorities to buy cocoa directly from farmers, for an undisclosed price.

Antoine de Saint-Affrique, chief executive of Barry Callebaut, said: "Nyonkopa will give us access to thousands of Ghanaian farmers at farm level and enable us to source directly from them and provide them with farm services." *(FT, 10.11.15)*

Marriott Buys Starwood Hotels

US hoteliers Marriott International and Starwood Hotels have agreed a US$12.2bn deal to create the world's biggest hotel company. Combined, the two firms have more than 5,500 hotels with 1.1 million rooms and US$2.7bn in revenue.

The two boards have 'unanimously agreed' to the deal, under which Marriott will buy Starwood. The tie-up will see them overtake the UK's Intercontinental Hotels, which has just under 5,000 hotels.

Marriott Chief Executive Arne Sorenson, who will head the new group, said the two firms hoped to become 'the world's favourite travel company'. *(BBC, 17.11.15)*

For Better or for Worse?
Judging this year's mega-deals

There were at least eight US$50bn-plus transactions struck in 2015, more than in any other year. The list of broken records in 2015 is long and varied but the reasoning behind them was often the same. Big deals mean more is at stake, though. These gigantic transactions often don't turn out as planned or deliver as promised. Below is a look at the top five deals of 2015 by size, and our verdict on each.

M&A volume in 2015 was one for the record books, but the official record on many of the biggest deals has yet to be written

Pfizer-Allergan

The US$160bn valuation of Pfizer's combination with Botox-maker Allergan isn't that far off from the total annual gross domestic product in Ireland (the merged company's planned home base). The transaction is on the pricey side, and there are fewer synergies to offset the expensiveness than there would be with other speculated Pfizer targets such as GlaxoSmithKline. it takes Allergan's Irish address. Buying Allergan also helps Pfizer set up its established products unit for an eventual spinoff.

Verdict: Allergan may not have been the best option for Pfizer, but the strategy here is more long term. The advantages of a lower tax rate and the value to be unlocked via a breakup cannot be ignored, making this a deal that should ultimately pay off.

Anheuser-Busch InBev-SABMiller

If it were not for the US$120bn price tag and the underlying assets being beer, investors would be far less intrigued by AB InBev's takeover of SABMiller. Sure, together they will be by far the strongest brewer in the world, generating half of the industry's profits. Analysts estimate a steady 6 percent annual rise in AB InBev's sales after 2016, while projections for SABMiller are lumpier.

Verdict: The merger had been bandied about so long that it got a fun nickname "MegaBrew." But considering the beer giant will still have to grapple with decelerating growth, this deal looks more like a mega-fizzle.

Royal Dutch Shell-BG Group

Shell was the only major energy explorer to strike a big deal in 2015, and in this case, there are no prizes for going first. Since the company announced its roughly US$80bn purchase of BG Group in April, oil prices have tumbled 40 percent, sending its own stock reeling, too. While the logic for the deal is sound Shell has received backlash for the overly optimistic oil price outlook it used to justify the high price tag. To win investors over, its promised bigger cost savings, but that may not be enough to make the math work.

Verdict: The bad timing puts Shell under pressure to translate the strategic logic into a boost for the bottom line. That is not going to be easy and investors could get stuck with a dilutive deal and a lousy return on investment.

Charter-Time Warner Cable

Charter was there to stop Time Warner Cable's fall after its planned combination with Comcast was scrapped due to regulatory opposition. Charter's US$79bn bid is no antitrust slam dunk either, but it has better odds. Even though Charter had to offer more for Time Warner Cable than Comcast did, its own rising valuation helps safeguard it from overpaying. Charter stands to almost quadruple its number of cable subscribers through the deal, adding scale that will increase its negotiating power with TV programmers.

Verdict: As long as Charter can navigate the hefty debt load it's taking on for the purchase, combining with Time Warner Cable will make it a stronger company and better able to fight back against the cord-cutting phenomenon and competition from online services.

Dow-DuPont

Dow and DuPont moved forward with a US$100bn-plus deal of their own to grab bragging rights for the biggest transaction in the chemical industry. The all-stock merger of equals is highly tax-efficient and promises significant cost savings. Investors would not get to see those spinoffs completed until 2018, though, and commodities will continue to be pressured in the meantime.

Verdict: The long timeline and complicated two-step process is damping investor enthusiasm over the deal, but this is one that makes a lot of sense and will create stronger chemical powerhouses, without a huge hit to the balance sheet.

– *Abridged from a news item that appeared in* Daily News and Analysis *on December 25, 2015*

Investment Climate, a Concern

The Ambassador and Head of the European Union Delegation to **Nigeria**, Michel Arrion said that many investors from Europe are currently worried about Nigeria's investment climate.

While majority of European investors were willing to invest in Nigeria, they were, however, worried about the protection of their investments. According to the statement signed by the Assistant Director/Head, Media and Protocol, Nigerian Investment Promotion Commission (NIPC), Joel Attah, there is a need for collaboration between the Commission and the EU to protect foreign investments.

Nigeria has the highest EU diplomatic presence in Africa with 20 embassies and high commissions and 10 diplomatic offices, adding that Nigeria is a strategic partner for the EU in political, economic and investment levels. *(http://en.starafrica.com, 08.12.15)*

COMESA Investment Pact

Zimbabwe is committed to improving its investment climate in order to attract more FDI and enhance economic growth. The country lags behind its regional counterparts in terms of FDI after it attracted US$545mn compared to Mozambique US$5.5bn and Zambia US$2.7bn in 2014.

Thabai Donald Dhliwayo, Director, Investment Facilitation, Ministry of Finance and Economic Development, Zimbabwe said given the high literacy level coupled with abundant mineral resources in the country, chances are high that Zimbabwe can be an investment hub for COMESA.

He said all member states were expected to have ratified a COMESA investment agreement by December 31, 2015 to ensure compatibility within their operations.

(www.chronicle.co.zw, 05.11.15)

Favourable Opportunities to Invest

Botswana has urged Indian companies to invest in sectors such as agriculture, automotive, manufacturing, mining, fast moving consumer goods, logistics, etc. as the country provides favourable investment climate for investors.

As a market-led economy, Botswana's key objective is to provide a favourable investment climate to investors which can nurture sustainable economic growth and diversification through the maintenance of a stable macro-economic environment.

Botswana claims to have one of the fastest growth rates in per capita income in the world, thus offering huge opportunities for Indian businesses.

(BS, 28.10.15)

Ensuring Economic Development

The **Armenian** government approved an investment policy concept and a programme of activities. The planned measures are expected to bring new investments to the country, create favourable and business environments, improve the transparency of regulated entities and introduce new investment vehicles.

This, in turn, will help create new jobs, strengthen the competitive advantages of the country and ensure economic development.

The concept defines the investment policy, its goals and objectives, outlines the basic principles of its implementation. It also identifies the government's steps to modernise the investment policy.

(http://arka.am, 08.10.15)

Incentive to Speed up Privatisation

Russia aims to raise US$13.53bn from privatisation in 2016, Finance Minister Anton Siluanov said, signalling a major acceleration of plans to sell state assets.

These plans, ambitious on paper, have largely ground to a halt over the last three years against the background of poor stock market conditions, exacerbated by a plunge in oil prices and western sanctions linked to the Ukraine conflict.

However, the same negative economic developments also mean that the government is increasingly strapped for cash, giving it an incentive to speed up privatisation as an alternative to raising taxes, cutting spending or exhausting fiscal reserves.

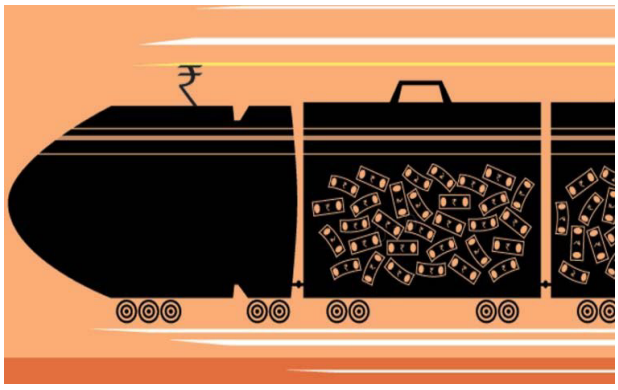
(Reuters, 31.12.15)

FDI Policy Set for Revamp

The Government of **India** recently amended India's foreign direct investment (FDI) policy in order to further liberalise foreign investment caps (shareholding caps) and other conditions applicable to FDI in several industry sectors.

The policy is issued in the form of press notes and periodically consolidated into one document. The FDI policy has been adopted by the Reserve Bank of India and enacted under relevant Foreign Exchange Management Act (FEMA) regulations.

In addition, the FDI policy imposes various sector-specific foreign investment caps and conditions applicable before and after foreign investment.



(ILO, 16.15.15)

Vestager's New Front on Corporate Tax Avoidance

The tax arrangements of multinational companies have rarely been out of the headlines over the past three years. Taxpayers have both marvelled at the cunning schemes that permit corporations to avoid paying their dues where they do business; and fumed at the impact their sleight of hand has on the amounts national treasuries collect.

Now the European Commission has hit back at some high profile practitioners of this fiscal vanishing trick. The competition commissioner, Margrethe Vestager, said that schemes concocted by two multinationals in different EU member states — Fiat in Luxembourg and Starbucks in the Netherlands — are illegal. The commission wants each company to pay between €20m and €30m to the authorities in those countries to cover improperly unpaid tax.

The decisions open a new front in the battle against tax avoidance by multinationals. Traditionally the commission's locus in such questions has been limited. Corporate taxation is a matter reserved to national governments, where it should remain.

Brussels has been able to step in because of the rules governing the single market. These take a dim view of national jurisdictions tailoring special inducements to encourage companies to locate operations on their soil. The cases involving Fiat and Starbucks focus on transfer pricing regimes, which allow companies to shift profits from one jurisdiction to another. The commission maintains that the authorities showed undue latitude in allowing them to pile up profits in low-tax countries. As this is illegal state aid, Brussels has the right to unpick the deals and force restitution.

The companies and jurisdictions involved will doubtless challenge the commission's findings. Staunch defenders of tax sovereignty will be dismayed at the precedent. But Brussels is right to look at the question of profit shifting. Sharp practice should be uncovered, whether blessed by national law or not. The very fact of the commission's intervention may help to deter similar infractions in future.

Brussels can only help so far. The commission rulings are an imperfect mechanism for tackling the problem. This week's precedents create new uncertainties for companies. They expose national tax rulings to challenge, meaning these no longer create "safe harbours" for business. But they do not sharpen the fuzzy boundary where legitimate planning ends and unacceptable avoidance begins.

Much of the problem lies in the tax system itself. It remains very easy to shuffle income off to low-tax jurisdictions through intra-group debt financing or the transfer pricing of such intangibles as intellectual property.

Neutralising the appeal of these arbitrages is not easy. But the commission is rightly implementing rules demanding greater tax transparency of companies. In future they will have to reveal much more about their profits and taxes on a country-by-country basis.

Most companies that exploit national differences to minimise their tax bills would prefer to keep such matters secret. Aggressive tax planning, even if legal, is hard to defend to the public, especially when times are hard.

Of course, disclosure will not end the culture of avoidance. That can only happen if bosses take a more responsible approach to tax, and politicians find a better system for linking the amounts companies pay to economic activity.

The legal and political barriers to the latter solution are vast. It will take time to overcome them. In the meantime, shaming, transparency and an activist Brussels may be the best tools the frustrated taxpayer has to hand.

(FT, 22.10.15)

UK Supermarkets Adopt Wage Strategies

Britain's supermarkets are among the most affected by the government's new 'national living wage' because they employ large numbers of low-paid workers. But they are taking different approaches to the drive to raise pay.

Lidl, for example, does not pay staff for daily breaks, but said it does pay a pension of one percent of salary and that staff are entitled to a 10 percent discount and enhanced sick and holiday pay.

Aldi said it would pay for breaks during work hours, but also gave staff the opportunity to join a pension scheme and offered benefits including a night-time premium and double pay on bank holidays.

(FT, 28.10.15)

CSR brings Benefits for Banking

Corporate social responsibility (CSR) is a form of corporate self-regulation integrated into a business model. CSR policy functions as a self-regulatory mechanism whereby a business monitors and ensures its active compliance with the spirit of the law, ethical standards and national or international norms.

Corporate governance broadly refers to the mechanisms, processes and relations by which corporations are controlled and directed. At present 'Corporate Social Responsibility' together with 'Corporate Governance' has been branded as one of the most important factors in the banking sector in our country.

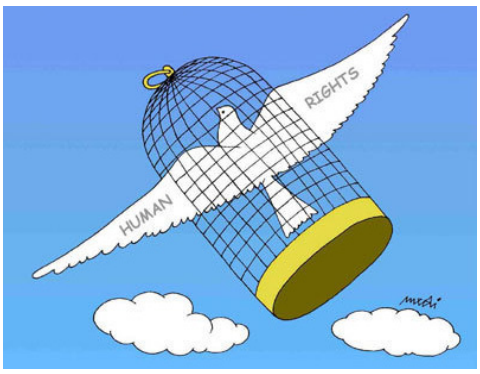
It is fast spreading in the sector under the leadership of the Bangladesh Bank. The combination of these two aspects, corporate social responsibility and corporate governance offers long-term benefits for any organisation. The benefits in the banking sectors are: reducing risk in the banking sector, attracting new investors in banking loan; and sustainable performance.

(FE B'desh, 29.12.15)

A New Benchmark for Human Rights

Sudeep Chakravarti*

I wrote about corporate human rights benchmarks being works in progress, in a column that also speculated about somewhat extreme fallout: eventual trading in human rights credits. While I continue to stick my neck out on that, let's take a look at what's going on with one such project: the Corporate Human Rights Benchmark, or CHRB.



If it passes muster, Corporate Human Rights Benchmark will undeniably be the next big thing in human rights tracking

CHRB seeks to initially rank global businesses in agriculture, the extractives industry and apparel. The businesses are to be judged for 'their human rights policy, process and performance, harnessing the competitive nature of the markets to drive better human rights performance'. If it passes muster, CHRB will undeniably be the next big thing in human rights tracking.

The project brings together two big names in the human rights space—the Institute for Human Rights and Business and the Business and Human Rights Resource Centre. These UK-based organisations are joined by Calvert Investments Inc., Aviva Investors, VBDO (The Dutch Association of Investors for Sustainable Development) and EIRIS. The last two focus on advising responsible investment. Representatives from these organisations form CHRB's steering committee, with Aviva Investors chairing.

The initiative was formally launched in 2013, the process of consultations took place the next year and shaping of draft parameters began this past June, and ended early October. A communication from the steering committee expects an 'amended methodology' to be published in 'early 2016'. Then it will be time for the first 'pilot ranking'.

It is an impressive effort. CHRB claims that more than 400 organisations and individuals were consulted across the world through meetings, webinars and online submissions. Companies and 'civil society' made up about a quarter each of those consulted, 16 percent were investors, a tenth were business and trade associates and human rights specialists accounted for a little less than a tenth.

They put their heads together to refine an approach that has five broad themes for measurement: leadership, governance and reporting are each given 10 percent weight; management systems 30 percent; and performance 40 percent. 'Governance' is subdivided into two sub-themes: policy commitments; and board-level accountability. 'Management systems' has three sub-heads: embedding policy; human rights due diligence; and remedies and grievance mechanisms. 'Performance' has two: key performance indicators and sector-specific practices; and adverse events—which can literally remake or break a business.

CHRB's movers maintain they were motivated by a recent survey by the Economist Intelligence Unit in which 39 percent of 'CEO respondents felt benchmarking companies on their human rights performance would make the biggest difference on the issue'. If the benchmarking exercise goes the credible distance, there is little doubt. As CHRB correctly claims, it will provide information to investors and civil society and media alike to track the human rights performance of such businesses, for policymakers and lawmakers to fine-tune regulation, and urge businesses to shape up. "They will be more likely to demonstrate 'learning'," CHRB hopes, "resulting in greater preventive measures as well as adequate remedies for victims".

This is all for the good of corporate accountability in some sectors of business that today witness the worst human rights and environmental depredations. It is no secret that races to the top of do-good, feel-good rankings are sometimes helped along by massive public relations output: glossy photo-opportunities, self-serving corporate documentaries and media manipulation.

CHRB hopes to guard against this by what it terms the 'annual lifecycle' of each company's benchmarking. It will begin with checking of methodology, then allow a company its window of disclosure, scrutiny of that disclosure with independent research and analysis, dialoguing with the company on such analysis and finally publishing that benchmark.

By June 2016, CHRB hopes to issue a pilot benchmark of 100 companies using its initial benchmark. By June 2017, the intention is to extend the reach to finance and engineering industries. By June 2018, the methodology is expected to be tweaked with pharmaceuticals and the information and communication technology sectors added to the list. By then, the ranking is expected to reach 500 companies across several sectors.

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* *South Asia Political & Security Risk Analyst, Consultant Editor & Media Convergence Specialist, Columnist, Author. Abridged from an article that appeared in* Mint, *on November 06, 2015*

Competition Risks in UK Energy Bill

A **UK** competition watchdog has voiced concerns over upcoming legislation that would formally establish an independent oil and gas regulator.

The Consumer and Markets Authority requested Energy and Climate Change Department to consider possible competition risks arising from the proposed Energy Bill currently before parliament. It marked the first time the authority has exercised its power to make written recommendations to UK ministers.

The Energy Bill, introduced to the House of Lords in July, will formally establish the Oil and Gas Authority as an independent agency separate from the Department of Energy and Climate Change, which had overseen the oil and gas regulator since its launch earlier in 2015. *(GCR, 08.12.15)*

Fair Competition in Aviation is Must

The **EC** is working on a new regulation in response to claims that some carriers from the Middle East benefit from unfair subsidies by foreign governments that discriminate EU carriers, and that the EU's current law is ineffective.

The Commission is of the opinion that there is need for an effective EU defence instrument against unfair practices by third country airlines. The new law is likely to be broader than the current one, and to give the Commission more powers to investigate alleged unfair competition.

It may also change the evidence needed to open an investigation and introduce new sanctions, such as the restriction or suspension of traffic rights. The proposal is expected to be published in 2016.

(www.out-law.com, 10.11.15)

Medical Malpractice & Insurance

A Bill recently issued by the **Italian** Social Affairs Committee, following the findings of the Ministry of Health's Alpa Committee, proposes a number of points that are worthy of analysis – including, above all, a systemic intervention in the healthcare industry.

The Bill will be examined by other committees and Parliament and it is clear that the legislature aims to address the question of medical liability from a civil and criminal perspective, as well as in broader terms of risk management.

It appears to be finally convinced that the lack of organisational structures for the management of clinical risks makes it impossible to find legal solutions that reduce the cost of litigation in this field.

(www.lexology.com, 15.12.15)

Passenger Bill of Rights in Force

For nearly three decades in **Nigeria** the rights of passengers have largely been ignored by airlines – a situation which has been exacerbated by the absence of relevant laws. In a bid to address this issue, the Nigerian Civil Aviation Authority (NCAA) has introduced a passenger bill of rights which places high value on air travel needs.

Its overarching objective is to protect the rights of passengers and increase their confidence in aviation services. To achieve this, the Ministry of Aviation has ordered all aviation companies to set up consumer service units, as well as establishing the Aviation Consumers Council – comprising industry stakeholders and members of the public – to advise the Ministry on global best practices.

The regulation sets out rules to deal with issues including no-shows, overbooking, lost or damaged baggage, denied boarding, and delay and cancellation of local and international flights. *(ILO, 07.10.15)*

Creating a Single 'Super-Regulator'

China is considering bringing together its banking, insurance and securities regulators into a single super-commission, following the summer's stock market crash that was blamed in part on poor inter-agency coordination.

The uncoordinated policy response prompted senior leadership to begin internal discussions about merging the three main financial regulators, part of a broader goal to reform China's markets.

Industry insiders have expected a shake-up in the regulatory apparatus in the months following the crash. Sources opined that Beijing had already begun exploring a replacement for China Securities Regulatory Commission (CSRC) head Xiao Gang.

The three regulatory agencies that may be merged are the CSRC, the China Banking Regulatory Commission (CBRC) and the China Insurance Regulatory Commission (CIRC).

(IE, 17.11.15)

Regulations for Taxi Industry

Regulations that govern the taxi industry must be overhauled to let them compete on a level playing field with ride-sharing services like Uber and others.

The **Canadian** Competition Bureau said that consumers and all stakeholders in the industry would benefit in the form of lower prices, reduced wait times, better services and lower overhead if regulators allow the forces of innovation and competition to shape the industry.

The taxi industry is regulated at the municipal and provincial levels in Canada. While taxi companies are subject to these regulations, ride-sharing services are not. This creates an uneven playing field in the industry. *(www.cbc.ca, 26.11.15)*

Regulatory Body for Road Transport
A Necessary Policy Prescription

Edayatu Lamptey*

Road transport and road related accidents kill more people in the country than malaria, cholera and tuberculosis combined

Road transport by far carries more passengers in country than the combined rail, river, foot and air yet it is one of the areas where abundance of regulatory gaps has led to non-standardisation and a clear direction for strategic growth.

Data from the National Road Safety Commission (NRSC) paints a gruesome statistics about road accidents. The NRSC reported last year that a total of 2,571 individuals were knocked down by vehicles; 13,133 road accidents were recorded in which 11,328 individuals were injured and 1856 lost their lives.

Regulations in other modes of transport

Ghana, like many countries, has regulatory bodies to regulate other modes of transport. For example, the Ghana Civil Aviation Authority regulates the air transports and brings about standards and safety in line with international best practices. The Ghana Railway Authority, on the other hand, regulates rail transport with the Ghana Maritime Authority regulating marine transports in the country.

Current State of Road Transport Co-ordination in the Country

The Police Motor Traffic Department is mandated to enforcement of rules and regulations whilst the NRSC promotes road safety education. These agencies have worked well within the limits of the mandates. The absence of an overarching body setting policies, standards and regulation has resulted in stunted growth of the sector coupled with low standards impacting on safety and loss of producer and consumer welfare.

State of Affairs Bus Transport Sector in Ghana

The government's inability to take a leading role in providing passenger transport services has resulted the private sector filling in the gaps. The absence of a well-regulated transport sector in Ghana showcases the weakness and gaps in the policy arena and this need to be addressed with the urgency it requires.

In Accra alone, the modal share for informal transport is more than 70 percent. Private operators dominate the industry with the Metro Mass Transit Ltd contributing less than five percent of the total passenger traffic.

According to a research conducted by CUTS International under the Competition Reforms in Key Markets for Enhancing Social and Economic Welfare in Developing Countries (CREW Project) it has been revealed that some of the transport Unions adopt unfair means to make it difficult for 'new entrants' and also protect self-interests while negotiating fares.

The absence of a comprehensive regulatory framework for the passenger transport sector in Ghana seems to have promoted anti-competitive tendencies in the sector. Having a regulatory authority would further attract private investments and partnership from private firms and individuals in the sector – by improving its predictability.

The Way Forward: Proposing the Road Transport Regulatory Authority

The Government of Ghana, through the Ministry of Transport has realised the need for effective regulation in the transport sector and has proposed a Road Transport Authority (RTA) to improve services and performance in the sector. The findings of the CREW project echo the fragmented nature of the passenger transport sector due to unrestricted entry by private bus operators.

The Ministry of Transport with the support from the EU engaged a consulting firm to advise the Ministry on the relevance of the RTA and to provide the framework legislation of the same. One of the key recommendations of the report was to set up the RTA with general powers for policy formulation, quality control, standards management, complaints handling and general monitoring of road transport operations; and the quality control and standards function will be the most appropriate point to start in the RTA's role out plan as they are currently not being performed by any existing entity.

Regrettably, almost three years since the report was submitted to the Ministry, it has not received the needed traction on the side of government.

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* *Young Professional , CUTS Accra. Abridged from an article that appeared in the* Modern Ghana *on January 08, 2016*

Trap door

George Hay

Too-big-to-fail rules make banking less global

Bank regulators at last have a template for handling cross-border financial implosions. The Financial Stability Board (FSB) spelled out final rules that force lenders to hold buffers of capital allowing them to cope with another crisis.


The Economist

Yet getting authorities around the world to end the too-big-to-fail problem comes at a cost to global banks' business models.

Banks deemed of global systemic importance will by 2019 have to hold the equivalent of 16 percent of their risk-weighted assets in equity or debt that can be written off. This total loss-absorbing capacity (TLAC) should ensure that shareholders and creditors, not taxpayers, absorb future losses.

On the face of it, 23 American and European global systemically important banks (G-SIB) are better off than they were a year ago, when the FSB published its initial consultation. Though the TLAC requirement remains unchanged, it now applies to China's four big state-owned banks as well.

Chinese and other emerging market lenders have six years longer to comply, but their inclusion shrinks any future competitive advantage.

Even so, TLAC is a headache, particularly for banks that fund themselves primarily with deposits. They will have to issue debt that can be written down if necessary. To hit an additional 18 per cent TLAC target by 2022, banks would in the toughest scenario have to raise over €1.1tn, the FSB reckons.

The rules also give local regulators quite a lot of power over big foreign lenders. Institutions with overseas branches - like many international banks in Hong Kong - will have to keep between 75 and 90 percent of their local TLAC requirement in that jurisdiction. The wording of the FSB term sheet implies host regulators can add additional capital or funding requirements as they see fit.

For a global bank that runs most of its business off a single balance sheet – like, say, Deutsche Bank - this is potentially expensive. Ever since the FSB suggested this 'pre-positioning' requirement last November, banks have moaned that making capital less fungible will hurt efficiency. The FSB's final decision forces banks to reconsider their geographical footprint. The price to pay for global bank rules may be fewer global banks.

(The article appeared in the Business Standard *on November 10, 2015)*

Regulations Concerning Basel III Rules

In Japan, several important regulations concerning the Basel III rules have been implemented in 2015. In December 2010 the Basel Committee issued the Basel III rules text.

According to the text, the main aims of the Basel III rules are to raise the quality of the regulatory capital base; enhance risk coverage of the capital framework; increase minimum capital requirements; build up the capital conservation buffer and countercyclical buffer; implement new liquidity standards (ie, a liquidity coverage ratio and net stable funding ratio); and introduce a leverage ratio requirement.

The first three of these main points were implemented in Japan by way of a March 31 2013 notification published by the Financial Services Agency (FSA), an agency of the Cabinet Office. In 2015, Japan implemented rules on the liquidity coverage ratio and disclosure of the leverage ratio.

(ILO, 20.11.15)

Switching Bank Accounts Easier

The UK Competition and Markets Authority (CMA) ruled that it should be a lot easier for customers to change banks. The watchdog introduced a raft of proposed measures that should make switching accounts easier and ensure the banking sector is more customer-friendly.

Although more drastic measures, such as breaking up specific big banks have been rejected, the CMA underlined the need for initiatives to improve the situation for banking customers after considering findings by the regulator that Britons could save £70 a year on average by switching personal accounts and the fact that well over half of consumers have been with their current bank for more than 10 years.

The regulator is planning to set up a new website to help account switching that should be an improved version of the Current Account Switching Service and adds a price-comparison service.

(www.ibtimes.co.uk, 22.10.15)

Not so Smart

Why two big banks failed

In 2008, as the financial system was collapsing, Alan Greenspan, the former chairman of the Federal Reserve and champion of free markets, admitted he had been wrong. "I made a mistake in presuming that the self-interests of organisations, specifically banks and others, were such that they were best capable of protecting their own shareholders and their equity in the firms," he said. In other words: why would bankers destroy their own livelihoods?

Some clues to Greenspan's conundrum can be found in a new book* on Lehman Brothers, the American investment bank whose failure precipitated the worst of the crisis, and a recent report** on the collapse of HBOS, a British retail bank, that imploded soon after. Although the two banks had different histories, they made similar mistakes.

For a start, both strayed from their core expertise. HBOS was created through the combination of Halifax, a retail mortgage lender, and Bank of Scotland, one of Scotland's two biggest banks. The merged entity wanted to gain market share in England and compete with the likes of HSBC and Barclays. The easiest way to increase business was to focus on smaller, riskier borrowers. The new lending book grew by 50 percent in 2007, just as the market was beginning to turn.

Lehman was best known for bond-trading, but moved heavily into property lending. Through a subsidiary called BNC Mortgage it was the 11th-biggest subprime lender in America; it underwrote more mortgage-backed securities than any other Wall Street firm and it made direct investments in property companies.

Managers of both firms thought they were taking advantage of profitable opportunities. By taking even more risk, even as others were retreating, they were gaining market share. They believed this would bring success in the long term. HBOS thought that retreating from lending in 2007 would damage its franchise. In essence, the pair thought they could survive only by moving forward, like sharks.

Risk-control systems should have saved managers from their mistakes, but didn't. Lehman had a risk department that employed nearly 400 people, including former regulators; its approach to risk management had been praised by the Securities and Exchange Commission (SEC), an American regulator, in 2005. But the chief risk officer was overruled and risk limits were ignored; some investments in commercial property and private equity were excluded from internal stress tests.

HBOS conducted its own stress tests on its property portfolio, but used a hypothetical downturn milder than the recession of the early 1990s. A stress test conducted by external consultants in 2005 calculated that the bank would lose the equivalent of three years' profits only once every 5,000 years; three years later, the bank needed a government rescue.

Both banks became heavily dependent on short-term funding in the wholesale markets, and thus vulnerable to any loss of investor confidence. That may explain why both banks were slow to write down the value of their assets: any admission of weakness could damage their reputation. And while both banks raised equity in their dying months, neither raised enough.

In neither case did the board control the managers. More than two-thirds of Lehman's board had no significant recent experience of banking. The report on HBOS said its board lacked 'knowledge and experience of banking'. To be fair, recruitment of experienced non-executives might have been difficult; anyone capable of overseeing a modern bank was presumably working for a competitor.

That points to a broader problem. Lehman had over 7,000 legal entities, of which 209 were registered subsidiaries; it had assets of US$700bon. Such a complex organisation was very hard to monitor, let alone control.

A long period of benign economic conditions and rising property values lulled executives at both HBOS and Lehman into a false sense of security. They thought they were brilliant and could handle the cycle; in fact, they had just been lucky. To go back to Greenspan's error, bankers did focus on their self-interest: they believed that if they did not expand their balance-sheets and keep pushing up profits, they would be replaced. They did not see the truck coming until it hit them.

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* "Lehman Brothers: A Crisis of Value" by Oonagh McDonald, Manchester University Press

** "The failure of HBOS plc" www.bankofengland.co.uk/pra/Documents/publications/reports/hbos.pdf

– *The news item appeared in* The Economist *on November 28, 2015*

Watchdog to Hear Concerns over UK Mortgage Market

James Pickford and Caroline Binham

The Financial Conduct Authority wanted to identify areas where a lack of competition causes problems for consumers. It is taking views on subjects from lenders' behaviour, to how easy it is for consumers to find suitable home loans and the impact of the Mortgage Market Review — stricter rules for borrowers that were introduced in 2014.

This is a prelude to a full market study, which the regulator has previously said will begin in 2016. These studies are sweeping, industry-wide inquiries that can lead to changes in business practices, even if competition laws have not been broken.

The mortgage market study would be the second major competition inquiry in the banking sector: the FCA gained competition powers earlier in 2015 and in February launched an investigation of wholesale banking.

Meanwhile, the Competition and Markets Authority, the UK's main competition watchdog, is investigating retail banking and lending to small and medium-sized businesses.
The scope of the FCA's review is broad, encompassing the entire mortgage market from conventional loans to equity release and the unregulated buy-to-let sector. This first stage of the process will end in December.

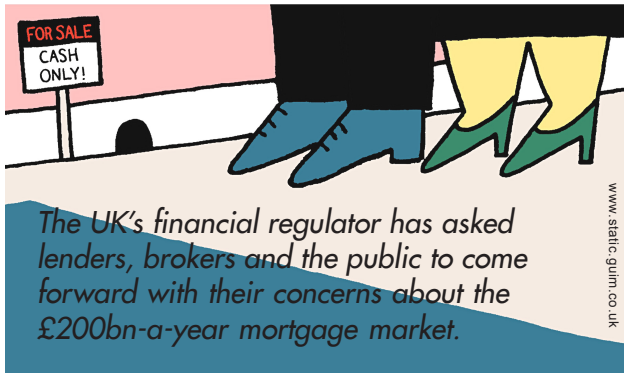
The Bank of England said it was particularly worried about a sharp rise in buy-to-let lending. However, Christopher Woolard, FCA director of strategy and competition, said it was a 'very big jump' to suggest that asking for information about one type of lending meant the regulator was about to crack down on it.

The UK mortgage market offers a wide range of products, some of them complex and the FCA said customer information sometimes lacked consistency or was poorly presented, with not enough clarity about charges and fees.

Lindsay Cook, a consumer campaigner and founder of MoneyFightClub.com, said: "If you're intelligent and can use the web the information is there, but many people struggle."

Woolard acknowledged that some complexity was inevitable in a free and competitive market. "If you want innovation in a market you have to accept that people will come along and do things that don't fit the existing model. The question is can you make transparent to consumers what the pricing is for those products?" he said.

Borrowers sometimes focused too much on the initial rates and conditions of a mortgage and neglected long-term costs, the FCA said.



The UK's financial regulator has asked lenders, brokers and the public to come forward with their concerns about the £200bn-a-year mortgage market.

They might be too optimistic about their future income, or unaware of more suitable products, particularly if they were in unusual circumstances, such as self-employed or retired.

The FCA said the Mortgage Market Review had meant it was harder for some people to get a mortgage or reduce the amount they could borrow.

There was anecdotal evidence, it said, that some consumers were unable to access suitable deals and it will look at how widespread the problem is.

Andrew Montlake, a director at broker Coreco, said the changes to mortgage rules had brought "common sense" to lending decisions but had also caused lenders to think twice about new products. "Whenever you introduce new regulations everyone runs for the hills."

Another area of concern has been access to mortgages for older customers. The FCA believes that expanding the equity release market, which allows people to cash in some of the value of a property while continuing to live there, could be part of the answer.

Legal experts said the FCA's action was yet more proof of its eye for behavioural economics and the theory that consumers do not necessarily act in their best interests.

"Past experience of FCA market studies would also suggest that potential remedies can be far wider in scope than was anticipated at the start of the process — for example, applying across a wider range of products or services."

The FCA will not spare itself the question of whether regulators themselves are part of the problem. Ray Boulger, Technical Director at broker John Charcol, said regulatory authorities had recently intervened in the mortgage market. "At the moment there are too many regulators with their fingers in the pie," he said.

– *The article appeared in* The Financial Times, *on October 07, 2015*

A Strong Press is Best Defence against Crony Capitalism

Luigi Zingales*

In the past decade economists have shown a growing interest in the media. Most of their attention has focused on the role the media play in limiting government corruption or in shaping electoral outcomes. Little attention has been dedicated to its influence on the type of capitalism prevailing in a country.

Media outlets willing to stand up to economic power are essential

While nowadays almost all the world professes itself to be capitalist, not everybody experiences the same type of capitalism. In fact, the form of capitalism prevailing in most of the world is very distant from the ideal competitive and meritocratic system we economists theorise in our analyses and most of us aspire to. It is a corrupt form, in which incumbents and special-interest groups shape the rules of the game to their advantage, at the expense of everybody else: it is crony capitalism.

The reason why a competitive capitalism is so difficult to achieve is that it requires an impartial arbiter to set the rules and enforce them. Markets work well only when the rules of the game are specified beforehand and are designed to level the playing field. But who has the incentives to design the rules in such an impartial way?

While everybody benefits from a competitive market system, nobody benefits enough to spend resources to lobby for it. Business has very powerful lobbies; competitive markets do not. The diffused constituency that is in favour of competitive markets has few incentives to mobilise in its defence.

This is where the media can play a crucial role. By gathering information on the nature and cost of cronyism and distributing it among the public at large, media outlets can reduce the power of vested interests. By exposing the distortions created by powerful incumbents, they can create the political demand for a competitive capitalism.

This is the role that "muckraking" publications such as McClure's magazine played in the US in the early 20th century, where the investigative reporting of Ida Tarbell created the political environment to break up Rockefeller's Standard Oil monopoly. And it is the role that the business newspaper The Marker has played in Israel in exposing the effect on the national economy of the concentration of power and wealth in the hands of a few billionaires.

Unfortunately, this is not the most profitable sort of media activity. It can be very expensive, not so much from the costs of the resources dedicated to investigative journalists, but because of the economic repercussions from annoyed advertisers that these investigations can generate.

The value of the advertising that is withheld from muckraking media will generally exceed the additional revenues generated from new subscriptions.

Even if they do not lose money, muckraking newspapers at best break even. As a result, the important social role they play becomes the preserve of profitable media companies, which can afford investigative journalism as a sideline rather than a business model that can make profits.

Before the internet revolution, newspapers were very profitable and some of them were willing to fund costly investigative reporting and weather any possible retaliation by advertisers. Not anymore. Plummeting advertising revenues, disappearing classified ads and dwindling subscriptions have all but hollowed out newsrooms and their investigative reporting teams.

For most readers, however, it is difficult to ascertain whether investigative journalism is professional, independent and unbiased; or whether it only preys on easy targets, sparing the powerful players in the economy. Without any quality certification, the risk is that competition will drive the price of all news to zero, destroying any incentives to invest in quality.

Inquisitive, daring and influential media outlets willing to take a strong stand against economic power are essential in a competitive capitalist society. They are our defence against crony capitalism. When the media outlets in any country fail to challenge power, not only are they not part of the solution, they become part of the problem.

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* *Professor at the University of Chicago Booth School of Business. The article appeared in the* Financial Times, *on October 18, 2015*

Millers Association should Heed CCPC's Advice before the Competition Law Scotches it

Simon Ng'ona*

Business associations (BAs) can play a productive, pro-competitive role in the development of a particular sector, thus promoting the efficient functioning of that market. Although the principal function of a BS, typically, is to provide services to its members, these associations also have industrial policy and political functions.

www.zambiareports.com

On various occasions, the Competition Consumer Protection Commission (CCPC), even in its old outfit as Zambia Competition Commission (ZCC), has encountered, in the course of its enforcement activities, varied situations. The Competition Authority has continued to raise specific concerns regarding activities of BAs and their compliance with competition law.

One contemporary issue relate to the Millers Association of Zambia (MAZ). Its recent quest to hike Mealie Meal prices has receive resistant, hostility and squashing responses from varying stakeholders including government, consumer organisations and others.

In as much as the Millers, just like other industry players, are facing both productive and supply side challenges due the economic paralysis Zambia is in, it is business immorality for the association to continue setting prices. This practice has been a tendency by most associations and this is a situation that cannot be allowed to pervade the exiting free market economic setup and requirements.

Prohibition of price setting and the motives behind

Within the category of coordinated activities, it is firmly established that there are certain practices which are absolutely prohibited, such as price-fixing etc. Hanford Chaaba, the Public Relations officer at the CCPC, in his recent statement, draws the public and the MAZ to Section 8 of the Competition and Consumer Protection Act (CCPA) 2010.

This section and the subsequent ones prohibit and make void all decisions taken by associations of undertakings, as well as agreements and concerted practices between undertakings, which have either the object or the effect of preventing, restricting or distorting competition.

But what does competition in the purview of literature and practice mean

To get a clear understanding on whether effective competition has ensued or not, two variables will always have to be factored in mind, i.e. price and non-price competition. These two factors collectively form what might be termed as effective competition, although they can be looked at isolatedly. Therefore, any effort to undermine either of the two factors through concerted efforts or price fixing is prohibited under most competition laws.

Moving forward, what could be some of the decisions that could warrant prohibition under competition law?

As already indicated, these include, not merely formal decisions adopted by an association under any procedures laid down in its constitution or founding documents, but also the constitution itself, any rules governing the association's operations, binding regulations made by the association and any nonbinding recommendations made by it, for as long as they are it is distorting effective competition.

Whether the commission has done a legal audit of some of the constitutions governing these associations and vet whether there are provisions which promote anticompetitive behaviour? If not, this could be one potential area of work the commission could explore.

Now that the law is clear, why has the MAZ eschewed heeding advice from the Commission?

Or why has MAZ opted to ignore such provisions and continue to announce prices instead of leaving it to individual players. This applies to all business associations.

But anyway, could there be any exemption for associations to engage under competition law

The Zambian competition law and others acknowledges that cooperation between associations may, in certain instances; result in some benefits to consumers. If cooperation does not appreciably restrict, prevent or distort competition in the first place, it will fall entirely outside the prohibitions contained in Part III of the CCPA which deals with restrictive business and anticompetitive trade practices.

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* *Centre Coordinator, CUTS Lusaka. Abridged from an article that appeared in* Lusaka Times, *on October 11, 2015*

Publications

PolicyWatch


PolicyWatch

Volume 16, No. 4 October-December 2015

Indian Industry's Fundamental Flaw

The October-December 2015 issue of the newsletter carries a cover story entitled 'Indian Industry's Fundamental Flaw' which points out the major hurdles for India in becoming a manufacturing giant like lack of investments, weak Research and Development capacities and unsupportive policy regime and complexities in doing business.

It encompasses an exclusive interview of Coal, Power and Renewable Energy Minister Piyush Goyal stating that India's investment thrust will be towards renewable energy. In addition, the feature 'Beware the Disruptors' deeply analyses the governance scenario under the leadership of Narendra Modi.

The newsletter also encapsulates a feature by economist Bijoy Das Gupta entitled 'India Prepared for Global Turbulence'. Besides, it carries news and features on Infrastructure, Trade and Economics, Corporate Governance, Governance and Reforms, CAG, Health, Education, Competition etc.

www.cuts-ccier.org/pw-index.htm


ECONOMIQUITY

October-December 2015

Trading blows, war continues

How India fares at WTO yet to be decided

Economiquity

The October-December 2015 issue of Economiquity carries an article entitled, 'Trading blows, war continues: How India fares at WTO yet to be decided' in its cover story which states that the Nairobi Ministerial witnessed the continuation of the battle on various fronts of the international trading system. Given the compromise language in the Nairobi Ministerial Declaration, one may say that India has drawn its battle with the rich as well as with some emerging powers.

A special article by Noah Smith states that the New Year is always a time for reflecting on what happened in the past year. But it is worth stepping back and taking a look at the bigger trends shaping the world.

Another special article by Linda P Fried opines that the United Nations General Assembly recently adopted its 2030 Agenda for Sustainable Development: 17 goals and 169 targets to eradicate poverty, eliminate inequality, and fight climate change over the next 15 years. It is an extraordinarily ambitious agenda for the world community, which closely aligns with the mission and responsibilities of public health.

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
- Readability (colour, illustrations & layout)

Sources

BBC: British Broadcasting Corporation; BS: Business Standard; FE: Financial Express; FT: Financial Times; GCR: Global Competition Review; IE: Indian Express; ILO: International Law Office; ToI: Times of India; WSJ: Wall Street Journal

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