


Welcome

This is the latest edition of “Hot Issues” from Burson-Marsteller’s Global Public Affairs Practice. Every month, “Hot Issues” focuses on new forthcoming legislative or policy issues that will impact business from around our global network of 150 offices in Latin America, Asia-Pacific, Europe, Middle East, Africa and North America.

The public policy dynamics in each country, let alone a particular region can be very different, demonstrated by the different experts we utilize in the countries where we operate. Conversely, there are similarities and you can see this in some of the issues we have picked out.

Hot Issues are designed to give you a flavour of our global perspective and should any of the items raise particular interest with you, please contact the designated person listed with that issue.



China Issues New Foreign Investment Industrial Guidelines

The National Development and Reform Commission (NDRC), China’s top economic planning authority, and the Ministry of Commerce have jointly published the 2012 Foreign Investment Industrial Guidance Catalogue outlining industries in which foreign investments will be encouraged, restricted or completely prohibited. Vehicle manufacturing has been removed from the “encouraged” category of industries that welcome foreign investment to the “permitted” category, meaning that foreign auto makers will no longer benefit from reduced tariffs on imported plant equipment. However, additional sectors have been opened for foreign investment, mostly in strategic industries including energy-saving and environmentally-friendly technologies, next-generation information technology, biotechnology, alternative energy and alternative-fuel vehicles.

The move to withdraw support on foreign auto makers is widely seen as China’s effort to support its domestic automobile industry. An NDRC official has said the move is largely due to over capacity in automobile production in China. The new policy will adversely impact existing global auto makers in China like General Motors, Toyota, and Honda. Analysts said while the pain may not be felt immediately, it will impact those companies in the coming years as higher costs reign in and competition from domestic companies intensifies. It will also give their Chinese partners more bargaining power as foreign companies will become increasingly reliant on them due to reduced incentives and aids provided by government. GM, for example, has been strengthening ties with its local partner, the

state-controlled SAIC Motor Corp. Yet, the companies hardest hit by this new policy may be new foreign brands trying to enter the Chinese auto market. Under the new guidelines, foreign auto makers will face more red tape as they attempt to set up operations in China. Japan’s Fuji Heavy Industries Ltd, the maker of Subaru, may be one such example as it is in line for approval to form a local joint venture with Chinese state-owned car maker Chery Automobile Co. The U.S Trade Representative has publicly voiced concern over the new policy.

Foreign auto makers investing in electric vehicles or other alternative energy technologies will, however, be safe from the new directive as foreign investment in emerging strategic industries is encouraged. In these industries, limited and prohibited items are reduced, caps on the proportion of foreign capital are lifted, and preferential policies like fiscal subsidies and tax reduction are applied. China will also allow foreign companies to invest in a number of industries, like medical institutes, that have previously been banned to foreign investors.

More clarity for details over what exactly will be restricted in each sector has been called for as the guidelines have not provided such details. The new guidelines will take effect starting January 30, 2012.

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Indian Government Pushes for Foreign Direct Investment in Ailing Airlines

On January 17th, Ajit Singh, India's Civil Aviation Minister, announced that the government will seek Cabinet approval to allow foreign airlines to buy ownership stakes of up to 49% in Indian carriers. The move follows the government's earlier rejection of calls to bail-out Kingfisher Airlines and months of intense lobbying by Kingfisher and other Indian airlines to open up India's sky to foreign carriers. Currently, foreign non-airline investors can hold up to 49% stake in local carriers, but foreign airlines have been banned from owning stakes. The proposal is a welcome move for the airlines as the state-run carrier, Air India, as well as private airlines like Kingfisher and GoAir have all suffered huge losses, largely due to high fuel costs and years of cut-throat price wars. The entry of foreign airlines is expected to provide much needed rescue to these underfunded carriers.

If approved by the Indian Parliament, foreign airlines will be able to directly invest in India's fast-growing aviation market. Despite Indian airlines' woes, the aviation sector is a booming one for India. With its large young population with increasing financial resources, India is now the world's fastest growing aviation market with an 18% increase in passengers in 2011 and a 30% increase in flights operated by domestic carriers in 2011 compared to 2010. At least 12 new airports are currently being built. Analysts say the ability to leverage the Indian aviation industry to drive international traffic is another attractive aspect for foreign airlines coming into India. While foreign carriers may take a long time to profit or break even from investing in local Indian carriers, companies like Air Asia, British Airways, Singapore Airlines and Lufthansa are potentially interested in

entering India's aviation market. One day after the Government's announcement, Malaysia's Air Asia said it will look into setting up an Indian subsidiary.

Despite solid backing from the local airlines, the government, and industry representatives, there is notable political opposition over the proposal. Left-leaning parties and trade unions cite fears of foreign domination of India's aviation industry. The Janata Dal (Union) has indicated its strong opposition to the proposal, saying this will jeopardise national security and create labour problems as foreign airlines will likely take over full administrative control if they invest in local carriers. On the other hand, some analysts and industry insiders have cast doubts over the efficacy of the plan to save the troubled domestic airlines due to the industry's own problems including high fuel taxes and high landing fees.

The Group of Ministers will submit a note for cabinet approval soon, although no timeline for this has been disclosed. It is speculated that it could take up to one year before it becomes law. This proposal is only one of many steps required to liberalise India's economy. To truly unlock the investment potential of India's aviation industry, the government, foreign investors and airlines will still need to intensify their push for further liberalisation of the sector, in particular the lowering of jet fuel taxes.

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Japan Debates Participation in the Trans-Pacific Partnership

Prime Minister Yoshihiko Noda announced that Japan is interested in joining the Trans-Pacific Partnership (TPP), a multi-lateral trade partnership that presently involves the United States, Australia, Brunei, Chile, Malaysia, New Zealand, Peru, Singapore, and Vietnam, and may soon also include Canada and Mexico. The pact requires member countries to eliminate tariffs and to agree to common regulations that will allow businesses to operate seamlessly across borders. Katsuyuki Ishida, Japanese senior vice-minister at the Cabinet Office, said Japan will

talk about the TPP with Singapore, Malaysia and Australia during visits to the three countries in February to gain their support for Japan's participation.

Joining the TPP will present an opportunity for Japan to make reforms to a number of industries. Japan is well known for its different treatment towards foreign and domestic companies. In the insurance industry, for example, Japan Post Insurance (JPI) has enjoyed exemption from some of the laws that

regulate private companies and it has privileged access to the Japanese Post Network to sell its products. The American Chamber of Commerce in Japan has long advocated for equal treatment for foreign insurance companies with JPI through a number of such measures as the regulation of JPI by the same authority and same standards applied to private and foreign companies, the application of all provisions of the Insurance Business Law to JPI, and equal access to Japan's postal network by all private companies. The TPP would enable member countries to negotiate an equal playing field in the insurance industry with the Japanese government that will benefit foreign insurance companies operating in Japan. Likewise, in the financial services industry, licensing requirements from the Bank of Japan have effectively barred foreign banks from providing financial services to government entities. Opening up the licensing system through TPP talks will help improve competitive conditions and enable foreign companies to compete with Japanese banks to provide the most efficient and cost effective services to the government.

Despite support from the Prime Minister and many mainstream media, Japan's participation in the TPP has faced significant opposition from many Diet

members and from various industries, most prominently the agricultural and healthcare sectors. The agricultural industry opposes the partnership because they feel it will devastate rice farmers who are under government protection, whereas the healthcare sector fears that Japan's universal healthcare system will be replaced by a market-driven one. Even within the ruling Democratic Party of Japan (DPJ), there is significant opposition and a group of DPJ members travelled to Washington in mid-January to lobby the US against approving Japan's participation in the TPP, saying that the Diet is unlikely to ratify the TPP as the majority of Diet members are opposed to it.

Depending on the progress of preliminary talks with member countries and ratification by the Diet, the earliest Japan could expect to fully participate in the TPP is mid-2012. Foreign businesses are expected to continue to lobby for Japan's ascension into the TPP as the debate within Japan continues.

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Spain: Perspectives on the privatization of public companies

After the elections on 20 November, one of the major challenges of the new Spanish Government is to reduce the very high public debt, to which the privatization of state companies may be able to contribute. There are currently four large projects on the table:

- State Lotteries
- Public Television Stations in the Autonomous Communities
- Airport management (in the hands of the Spanish state company AENA) which will be privatized in the medium term
- Network of 'Paradores' (hotels in historical buildings and enclaves).

These last two sectors, linked to tourism, constitute one of the few areas which saw growth of 8% in 2011.

In line with positive data from the tourism sector,

air traffic recorded 6% growth in passengers in the Spanish airports in 2011, according to AENA provisional results. The last government made preparations to privatize 49% of AENA and operations at Madrid-Barajas and Barcelona El Prat airports, with the deadline for the presentation of bids set for 31 January. One week before, after appointing a new official in the company to oversee the final privatization process, the new Minister of Public Works cancelled this plan due to challenging market conditions. Potential alternatives could include the sale of a stake in Spain's entire airport system, rather than privatizing separate airports.

On the other hand, the Minister of Industry, Energy and Tourism stated that the Government "does not rule out" privatizing the management of the 'Paradores' and that, although they have had losses in recent years, it is due to the weight of repayments of investments in new hotels, according to the auditors of the company.

The case of the State Lotteries is quite similar to AENA: despite being a Spanish state company it has made continuous profit over a long time (the Gross Operating Profit was 2,681 million euros, 27.95% in sales) and is expecting to pay monthly dividends of around 8-9% to investors. The previous government was forced to postpone privatization of 30% of the company last September because "the conditions in the market were not suitable to guarantee the income reflected by its value". The current Treasury Minister then criticized the operation for the fixed revenue yielded by this activity to the State, a position which he continues to maintain.

At a time when Spanish companies are experiencing liquidity constraints, the Government finds itself in the difficult situation of trying to generate income with the desire for national assets to remain in local hands. This might open big business opportunities for private companies and also for foreign investors.

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Germany's 'Energiewende' – the rocky road ahead

Germany, which for a long time has played the role of the front runner in renewable energy policies, is now struggling with the turnaround in this policy area. After the decision to completely phase out nuclear energy until 2022 and to decarbonise the energy system in the long-run by relying on renewables, it is not yet clear which strategy to choose to bridge the gap in energy production until a full transition towards a sustainable energy supply is possible. It is still unclear which energy sources should be used to replace the nuclear power plants that were shut down in 2011 and fundamental questions such as the funding of necessary grid reinforcements and the creation of incentives for investment in new conventional power plants are also still unsolved. This uncertainty represents an economic challenge to the majority of companies in the energy industry, including system operators, energy producers and plant manufacturers, who in turn will want to be closely involved in the legislative process.

A good example for the scale of the emerging deadlock is the current fight over subsidies for solar generation. While the Federal Ministry for the Environment (BMU) rejects a fundamental change in the promotion and the system of feed-in tariffs, the Federal Ministry of Economics and Technology (BMWi) is in favor of a more market-oriented approach, such as quotas. For the German solar industry this discussion resembles a serious threat. The affected companies will need a highly structured and extended approach to their communication efforts with governmental bodies to secure their current position as world market leaders. The solar panel producers are particularly

concerned since they are facing growing low-cost competition and would significantly lose market share. A similar process can be observed in the market for wind turbines.

At the moment, analysts see new federal elections as the only way to break the deadlock within the German government, with elections taking place in September 2013. With this in mind, German energy policies over the next 18 months will only evolve through a series of small steps – there isn't the political will for major decisions. Any legal changes will come mainly from amendments to existing laws, from ordinances of Ministries, and from regulation decrees of Ministries – both at a national and regional level. This is important since larger parts of the legislative package that frames the energy turnaround still need to be specified and implemented.

Although 80% of the population welcomes the 'Energiewende', public acceptance of the detail is another point entirely: large infrastructure projects, such as high voltage transmission lines necessary for the grid connection of off-shore wind farms, the placement of turbines or CO₂ storage facilities for the CCS technology face serious public criticism. The "not-in-my-backyard" mentality will make it essential for companies to think about stakeholder relations and proactive communications.

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Brussels: Greener Public Procurement

On 20 December 2011, the European Commission published its proposal for a directive on public procurement, which will now have to be approved by the European Parliament and the Council of Ministers over the next 12 months. The proposal, which is a revision of the current EU legislation on public procurement, lays down the rules on the procedures for procurement by public authorities. In the European Union, public procurement accounts for 17% of the gross national product and has therefore important implications for a large number of industry sectors.

The revision comes amidst discussions on creating the green economy, in which climate change impacts, energy use, and resource efficiency will play an increasingly important role. Policymakers are currently trying to create incentives for producers and consumers to consider the environmental impact of products by “greening” the internal market through policy initiatives such as green public procurement (GPP), eco-design and eco-labelling. Green Public Procurement (GPP) means that public authorities seek to procure goods, services and works with a reduced environmental impact throughout their life-cycle compared to goods, services and works with the same primary function that would otherwise be procured.

GPP is at the moment a voluntary instrument, which means that individual Member States and public authorities can determine the extent to which they implement it. As such it has not been a major issue for many industry sectors. Although the proposed directive

does not mandate green procurement, it contains a number of green provisions. These include the possibility for authorities to refer to existing (eco)labels and encourage life cycle costing in their tender specifications.

Industry is slowly waking up to the potential implication of green public procurement, while environmental NGOs and green minded policy-makers are pressing for further reaching legislation. Trade associations often find it difficult to engage in the discussions due to the differences of opinion and interests among their members. Therefore Burson-Marsteller Brussels has initiated an industry roundtable to discuss these issues and explore how industry can become more engaged. Active participants include Albemarle, 3M, Xerox, Johnson & Johnson, CEFIC, HP, OSRAM, Digital Europe, Philips Europe, Herman Miller, GE, and Bayer.

The roundtable provides an opportunity for like-minded companies to form alliances. For leading innovative companies, the green policy debate provides interesting opportunities as there is a great interest among policymakers to work with progressive companies that can also use the renewed attention as a marketing and positioning tool.

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México: New environmental regulation and the “green sells” challenge

On December 6th, the Senate approved the General Law on Climate Change (GLCC), which was sent to The House of Representatives to continue its legislative process. The GLCC creates the National Institute of Ecology and Climate Change and establishes a climate change fund and a National Registry of Emissions. The law also restricts and sanctions the use of fossil fuels and determines sanctions from a 1000 to 30,000 days

of minimum wage for individuals or companies that fail to provide the information requested .

Lorenzo González Merla, Director of Environment of Altos Hornos de México (AHMSA), argued that if the new rules, as approved by the Senate, are rigorously applied to the industrial sector in the country, the private sector will have to limit its production volumes in order not to increase costs through increased taxes.

"These higher costs mean a serious disadvantage compared to competitors like China, USA, Europe, Brazil, India and other producers in countries that do not face such restrictions," he said.

Environmental issues are now a fundamental part of public policy and a priority in the international arena. The private sector has two options: deal with the costs or use it for competitive advantage. The GLCC can be a great opportunity, as companies play a key role in the area of innovation in the transition to a green economy. For the private sector, the challenge is to achieve the integration of financial, human and technological resources to develop products and services which are environmentally friendly as well as being profitable and competitive.

More and more companies are making more efficient practices in their water, raw materials and energy, as part of a culture of social responsibility, through which they obtain tangible economic benefits. But just as important as the changes, they need to be able to communicate their achievements effectively to build the foundation of a good relationship with various governmental actors, to receive financial aid during its transformation, and to strengthen prestige and confidence with the consumer. Today and tomorrow, "green sells".

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Brazil: Federal Government to grant subsidies for ethanol storage

The Executive Branch forwarded to the National Congress the Provisory Measure # 554/11 which authorizes the Federal Government to grant economic subsidies up to US\$ 270 million per year to finance storage operations for ethanol. The objective is to stimulate the expansion of product inventory to stabilize supply in the off-season periods (March and April) of sugar cane and reduce price volatility. The grant will be disbursed to financial institutions, development banks and agencies.

It will allow the equalization of interest rates for financing ethanol storage operations and lower the costs of financial contracting and monitoring of the operations of the National Program of Oriented Productive Microcredit (PNMPO). The expected result is lower interest rates for those who stock the product.

The rules governing this financial subsidy, including those relating to values and time limits, will be established by the National Monetary Committee (CMN), an body that comprises the president of the Central Bank and the ministers of Finance, and Planning and Budget. The subsidy shall be available for a period of 5 years, which represents a total amount of US\$ 1.35 billion of resources.

The PNMPO, created in April 2005, aims to generate jobs and income for small companies. The granting of

this credit is intended to meet the financial needs of small entrepreneurs, using a methodology based on the direct relationship on the spot where economic activity is performed. The federal government believes that the PNMPO requires adjustments in order to achieve a greater number of beneficiaries. One of the problems is the high interest rate, driven largely by the high costs of operations in small contractors.

The Provisory Measure will equalize some of the costs from hiring and monitoring of these operations by financial institutions that practice interest rates of 8% per year to final borrowers, which, according to the government, will encourage the increase of supply credit.

Provisory Measure # 554/11 was presented by the Executive Branch in December 26th and has 120 days, from February 1st, 2012 (parliamentary recess until January 31st, 2012), to be approved by the Chamber of Deputies and Federal Senate. During this period, changes can be suggested to the original version with amendments from any congressmen.

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U.S. – Energy, an Election Year “Hot Potato”

Even before President Obama’s State of the Union address to Congress was delivered on January 24th, an avalanche of press releases, blog posts, and advocacy ads by industry organizations, partisans and environmentalists, all signaled energy as a dominant theme for U.S. politics and public policy in 2012.

TransCanada Corp’s Keystone XL pipeline will be at the center of this election-year debate. The proposed \$13 billion pipeline network, which received Canadian approval in March 2010, also requires the U.S. State Department to weigh in. However the Obama Administration has delayed the decision into 2013, setting this up as contentious debate on environmental, jobs and energy security issues.

With an emphasis on American-made energy, President Obama’s speech stressed the need for development of “every available source” and an “all-of-the-above strategy” including natural gas, tapping fossil fuel reserves, as well as renewable energy sources including wind and solar power.

Obama highlighted energy themes for a significant portion of his speech, and also repeated the Administration’s previous calls for breaking the country’s dependence on foreign oil.

Immediately following the address, ads sponsored by global ENGOs were launched as part of a high-profile campaign to dissuade the U.S. from drilling in the Arctic Ocean and in federal waters off Alaska’s coast. Meanwhile, with U.S. gasoline prices likely to approach record highs this summer, business groups and other proponents for oil and gas interests are launching their own campaigns attacking the President on energy issues and advocating for increases in domestic production. According to the U.S. Energy Information Administration’s “Annual Energy Outlook 2012,” current policies will still leave America importing 37 percent of its liquid fuels in 2035 – or about seven million barrels of oil a day.

The nexus of environmental, economic and energy security issues pose overlapping public policy challenges that are hot topics this election year, setting the stage for a November referendum by U.S. voters, and subsequent legislative and regulatory initiatives with the new Congress and Administration.

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U.S. – Labor: 2012 kicks off with a bang

The National Labor Relations Board (NLRB) regulates union elections and unfair labor practice complaints, as well as making new rules regarding labor-management relations, and is governed by a rotating schedule of five board members appointed by the President and confirmed by the U.S. Senate. However, in recent years political infighting has stalled the confirmation process as the terms of sitting board members expired, leaving leadership at the agency to dwindle from five, to four, to three – and eventually to two board members. After an awkward two-year stalemate in the confirmation of new members, the U.S. Supreme Court invalidated almost 800 decisions by a two-person board, finding a lack in statutory quorum. On December 31, 2011 – with two seats already vacant, and the third member’s term expiring – the NLRB once again faced the dilemma of not having enough leadership to function. This, in essence, would have

shut-down the agency until the lingering political impasse could be broken.

Using a technical rule called “recess-appointments” that by-passes Senate approvals when Congress is out of session, President Obama appointed three new board members to the NLRB on January 4th, meaning that the agency would be fully staffed again and ready to continue issuing its generally union-friendly decisions. Business groups have filed lawsuits against the Administration, claiming that Congress was not technically in recess; therefore, the President did not have authority to re-staff the board with unconfirmed individuals – one of whom is a former union attorney.

Following the recess appointment announcement, the liberal blog, Huffington Post, called the Administration’s move “unusually aggressive, particularly given his reputation for pleading with

HOT ISSUES

Congress for bipartisanship” but added that “it reflects a theme that administration officials say will continue to surface in the months ahead of the 2012 election: the president leaning on his executive power - and not relying on Congress - to try to boost the economy.”

At stake are various rules and provisions that would make it easier for unions to organize workplaces, such as requirements that all businesses must prominently post new “employee rights” notices in the workplace. Additionally, changes to rules governing union-organizing elections would mean that the current

30- to 40-day process could be reduced to perhaps less than 10 days – giving employers less time to discuss union options with employees. Although the business community anticipated a relatively “quiet” year for new labor rules this year, 2012 is starting out with quite a ruckus.

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