‘Competition’ is killing us: Transcript of the Taxcast, edition 104, September 2020

Naomi: Hello and welcome to the Taxcast from the Tax Justice Network – your monthly podcast on how to take back control from the super rich and powerful. And how to reprogramme our economies to work for all of us. I’m the producer and host, Naomi Fowler. Make sure you never miss an episode – drop me an email on naomi@taxjustice.net to subscribe and you’ll be the first to hear the latest Taxcast. OK, let’s get on with it, coming up later:”

“I had this kind of moment of realisation, really looking at the role I was playing of facilitating companies to gain more and more power. I started to question the whole system”

Naomi: “We talk to competition lawyer Michelle Meagher about how her eyes were opened to the dangers of letting companies get too big and form monopolies which act against our interests.

If you’re thinking there’s only bad news at the moment, well, perhaps I can cheer you up a bit. We know one of the key problems in our tax systems is corporate secrecy – corporations *don’t* want to tell us which countries they do genuine business in. Well, the EU is edging closer towards public country by country reporting rules for multinationals. Here’s Olivia Lally from Eurodad in Brussels:”

Olivia: “Public country by country reporting would allow everyone, including citizens, decision makers and journalists to see information about where corporations do business and what they pay in tax in each country they operate. In fact, we already have public country-by-country abortion for the banking sector in the EU, and it's been working well. Research shows that it's discouraged banks from shifting their profits to low tax jurisdictions. In 2016, after the Panama papers tax scandal, the European commission published a legislative proposal for public country by country reporting for all large multinationals across all sectors. And yet we still haven't had an agreement on what the final rules could look like because the proposal has been stuck in the council of EU member States. Now, the good news is that recent political developments mean we've got a majority of EU member States ready to agree on a position. So, in order to get to an agreement, the presidency of the EU council needs to put the proposal on the agenda. But, the current presidency, Germany has been dragging its heels and it's yet to confirm if it will hold the debate. The current proposal has a lot of weaknesses and loopholes. So we need to do two things. Firstly, we need Germany to bring the file to the agenda so that EU member States can finally agree on their position. And secondly, and really importantly, we need members of the European parliament under governments to support ambitious rules that introduce full country by country reporting that is public for all countries, without any loopholes or any exceptions and citizens can help with this. You can contact your government and make sure that this is discussed in an upcoming council meeting in November and make sure that your country supports full public country by country reporting.”

Naomi: “That’s Olivia Lally from Eurodad in Brussels. Austria changed its position to support public country by country reporting *because* of public pressure, so it works.

We’re going to talk to John Christensen now of the Tax Justice Network about his take on this month:”

Naomi: “Okay, John, so this month we've had more leaks from within the global banking industry showing us how blatantly the major banks of the world are disregarding rules about opening their doors to dirty money, the FinCen files. And we're going to talk about that in a bit, but first let's talk about a proposed bill in New York state, which is gathering momentum at the moment, that would strike at the heart of the massive economically damaging speculative trades that go on there. New York has a staggering amount of what they call churning and the bill is proposing a financial transactions tax on some of the trades done on New York's stock exchange. So really important. New York is in dire straits financially, they're cutting back on teachers and all sorts of essential services. They have a huge deficit. Millions of US Americans have lost their jobs or on the verge of losing their jobs on the verge of being evicted. Lots of people in terrible trouble there, losing their healthcare access too. So this couldn't be a more critical time to do something really visionary could it? And a financial transactions tax would slow right down some of that really unhelpful financial activity, like some of the mad high frequency trading that they do in nanoseconds. For this bill, they need 68 sponsors, so far, they've got 37. If they get 68 sponsors, the house would then have to take a vote on it.”

John: “As you say, 37 members of the New York state legislator are sponsoring a bill to support a financial transaction tax in that state. Now, historically New York state has applied to financial transactions tax at a rate of 0.25%. And it's still there on the statute book, but wall street lobbying has led to a situation where the revenues are actually rebated right back to wall street. So they're not actually collecting the money. But you can see why there might be a very strong interest in the financial transactions tax in New York state at the present that the state faces a $9 billion deficit just for this year, they face the prospect of having to lay off 22,000 public workers because they don't have enough money to pay their salaries. And at the same time Wall Street stock markets have reached record levels and turnover on the markets is also at record levels, arguably, I think because another bubble is building up at this time in the digital economy stocks. So New York is a leading financial centre and the potential for using a financial transaction tax for raising additional revenue is to put it mildly significant because, you know, we've seen figures suggesting that 4.4 trillion of transactions have taken place in New York, just in the month of August. So market analysts tell us that if the existing tax was imposed at the existing rate of 0.25%, which was first applied over a century ago, the tax would have raised billions just in the month of August.”

Naomi: “Um, let's talk about the transactions they want to include in this financial transactions tax - who makes the money from these? Why would we want to disincentivise these things?”

John: “So look, a financial transactions tax is a tax on selected financial transactions. Normally the tax is set at a very low rate. For example, the stamp duty in the United Kingdom in London is levvied at a rate of just 0.5% of the value of the transaction and in Hong Kong where they have a, a similar duty, um, set at 0.3%, which is paid jointly by sellers and the buyers. A financial transactions tax could be designed to cover either a very wide range of financial transactions or a very narrow range of financial transactions and the types of transactions it could cover includes all currency. In other words, foreign exchange transactions, sales of shares, sales of bonds, sales of options, sales of all types of derivatives. And to give you a sense of the scale of these markets, the daily turnover on the global markets, the daily turnover in the global markets for foreign exchange for example, is of the order of $6.6 trillion a day. And if you look at the swaps and derivative instruments, uh, markets, again, it's very similar $6.5 trillion turnover every single day. Now just think about how much money would be raised if you applied a financial transaction tax at a rate of 0.25% Now, in most cases, the financial transaction tax is used to raise revenue, but many economists and that includes the very famous Lord John Maynard Keynes, think of the primary role of a financial transactions tax..the primary role of a financial transaction tax is to curb speculative trading, which is very destabilising. Um, and this would lead to less churning on the money markets. And by the way, for listeners, churning is a way for financial intermediaries to increase their fees and their commissions by making unnecessary trades using their client's money. So the more they churn the market, the more that they make in fees and commissions."

Naomi: "Right, and just briefly on the European Union, the actual budget is not being voted through at the moment because many nations are insisting that a financial transactions tax be included in that EU budget before it goes forward. So it's quite an interesting revival going on and a lot of support."

John: "Yeah, we've been seeing the financial transaction tax move gradually up the political agenda since the 2008 banking crisis. And clearly this year's COVID pandemic has boosted interest, as governments have been forced to massively increase their health expenditures. Since 2008, France and Italy have both adopted financial transaction taxes at the national level. And Spain is pushing forward with its own financial transaction tax. So, you know, it's moving forward and at a larger scale. And this is really exciting actually, Germany currently holds the presidency of the European Union and they'll hold it until the end of this year. And they've expressed their commitment to the introducing a financial transaction tax at the level of the European Union. Uh, and the current, uh, German finance minister, Olaf Schultz, who by the way, is standing for election, the German presidency elections coming up, he has committed himself to this project, which has overwhelming cross-party support in the European Parliament. So that's all very exciting. There's political will to adopt a financial transaction tax and it's very live in the European Union."

Naomi: "Right and going back to New York, it's such a no brainer for New York, but there's so much lobbying against it."

John: "Yes. It's really important to stress that the financial transaction tax fulfils most of the criteria, if not all of the criteria for good taxes, it's progressive, it's easy to collect. It's not so easy to avoid and it could raise substantial sums of additional revenue, it might reduce speculative trading and reduce the risk, the herd mentality, which accompanies so much of this kind of churning and, and market potential market trading. That herd mentality can accelerate booms and busts cycles and exaggerate market instability and a financial transaction tax might actually reduce that, a good thing. Now, another thing which you hear, I've heard quite a bit, both in New York and in London is that a financial transaction tax could potentially lead to financial intermediaries leaving New York or leaving London. But I think the answer to that criticism, if it is a legitimate criticism, rather than it's just a lobbying tactic, you just cannot be serious because no one in their right mind is going to seriously believe a leading, you know, one of the world's leading marketplaces New York and shift away across the Hudson into, into Jersey, just because of the possibility of the imposition of a 0.25% transactions tax. It's just not serious because New York is one of the world leading clusters of funded legal and financial expertise. These are really exciting times for supporters of a financial transaction tax. And this might be the moment when progress can be, can be built on the back of both pressure within the European Union and New York to bring the financial transactions tax finally onto the agenda."

Naomi: "Yeah. And it's such a small amount as well. It's such a tiny tax, but the implications of it are just so, so big for the rest of the world. Um, let's talk about the FinCen files, leaked documents from the financial crimes enforcement network in the United States. They're the people that are supposed to enforce the law on behalf of the US treasury. That includes any transaction in the world that involves dollars. So that's a lot of transactions, the leaks of putting $2 trillion worth of potentially dodgy transactions on display. It shows us yet, again, the dangers of allowing businesses in this case, banks to get so big, they feel that they can disregard governments, disregard laws, or they can pressure for laws to be written in order for them to abuse their power. Um, we need, we all need good, robust financial systems, but instead of a fine on serving us, we're ending up too often with governments serving finance and capital. I mean, look at the lobbying, but it's going to line up to try to defeat these efforts on financial transaction taxes in New York, for example. And none of these major banks in these latest leaks are losing their licenses. Yet again, we have to say it. These banks should be broken up because they're too big. This is all really dangerous for democracy, isn't it?"

John: "Yeah. I think that is the key issue. It is dangerous for democracy and in better times, this story would be so massive that it would be dominating the news cycles day after day. And we'd have had politicians queuing up in television studios to argue the case, prosecuting bankers and strengthening financial regulation and pushing back against this awesome monopolistic power of the, of the banking lobbies, and also the legal lobbies, which I would add, but alas, these are not the best of times and political leaders and the political parties in both the UK and the US are themselves implicated in dark money flows coming from Russia and elsewhere. And whilst they might huff and puff a bit on camera, we can expect little or nothing in the way of useful political action to come out of the FinCen story. Now, the story originates, as you say, from a leaked document coming out of the US treasury because the financial crimes enforcement network is actually a treasurer to the department of the U S treasury. And this is the part of the US treasury that's responsible for investigating financial crimes involving every use of the dollar. So it's not just dollars being transacted in the United States itself, but dollars being transacted anywhere else in the world. Uh, even if the players are way outside and have no connection to the United States. And for the greater part, the leak has involved documents, which are known as suspicious activity reports, generally, known as SARS. And in, in a dim and distant past, I used to be quite involved in, in suspicious activity reports, which are filed in total confidentiality by bankers, by law firms and by all other financial intermediaries, or they should be filed by all other financial intermediaries. What the FinCen story reveals is how financial interim use have helped their criminal clients to launder their money through the offshore circuits. And some of the banks involved for example, include global giants like JP Morgan and Barclays and HSBC."

Naomi: "Yes, I feel like we're watching the same story over and over again. I mean, even the press releases the banks put out in their own defence seem to be the same lines. You know, this is all in the past. We uphold all applicable laws, we have robust systems. Um, but really, uh, the banks are kind of burying FinCen in these suspicious activity reports and they really are set up to fail. Um Nate Sibley of the Kleptocracy Initiative, he tweeted, before we slag off FinCen, he says, quote, "remember the tiny task agency is effectively tasked with policing the integrity of the global financial system. And it has a budget of just $120 million. That's less than the US government accidentally sends in benefits to dead federal employees each year!"

John: "Unbelievable, isn't it?! I'd just like to pick up on these, these kind of grotesque press releases coming out of the banks. You know, I've spent my whole career looking at dirty money flows and the offshore financial world. And I've been hearing these pathetic excuses about yeah, that's in the past, but everything's changed. I've been hearing that for 40 years. Yes, change has happened, but they're so superficial and compliance is so weak and the regulatory regulations have been undermined to such an extent that the whole thing is nothing more than a fig leaf, an exercise in window dressing. Um, and as far as most banks are concerned, and I've heard this from compliance officers working with the biggest banks in London, they just say the whole thing is just a charade."

Naomi: "Yeah. And over 3000 UK companies are named in the FinCen files and that's more than any other country. And in fact, FinCEN sees the UK as a higher risk jurisdiction, just like Cyprus is categorised the same way. So, you know, UK is right there in the middle of it all."

John: "I think the link with Cyprus is an interesting one, and I think it's perfectly reasonable to make that association, but just remember Cyprus has been for decades has been the, kind of the starting off point for money coming out of the former Soviet Union and before the collapse of the Soviet union, huge wads of money were coming out of the Soviet Union through Cyprus and then on into the banking system. And now alas, we can see that London has been reduced to that level. And I don't think it's an unreasonable comparison to make.

The problem here is that even if a banker has really strong grounds for believing that a client is engaged in a criminal activity, there's no obligation to do anything other than to file a suspicious activity report to the relevant authorities. And then just continue as if nothing is there's nothing wrong going on. And the FinCen story reveals how ineffective anti money laundering measures have been as a tool for reducing crime, for detecting crimes…the Fin Cen story should tell us that financial crime is not a story about a few bad apples, it's systemic, especially in the world of offshore finance, which is dominated by Britain and by the United States. And big monopolist companies."

Naomi: "Thanks John! Now it's time for the Taxcast special feature. We've been warning for such a long time now that the growth of monopolies like Facebook, Amazon, big Pharma, big agriculture are a threat to genuinely fair and decent business practices. They're a threat to tax justice. And they're a threat to democracy. We shouldn't stand by and allow our economies to be hijacked. This month, there's a new book out that says it all: Competition is Killing Us: How Big Business is Harming Our Society and Planet - and What To Do About It. I highly recommend this book - it links so many things we all really care about in an effortless and fascinating read. I'm talking to the author of the book Michelle Meagher:"

Naomi: "You were once a big believer in free markets, and then you write about how you realised as a competition lawyer that free markets aren't really free, fair competition isn't really fair?"

Michelle: "Yeah, absolutely, I kind of have been through a little bit of a transformation in my way of thinking. So I started out as a kind of teenage Conservative, I was a huge fan of Thatcher, I believed in free markets from a kind of quite idealistic perspective of absorbing this idea that I think is actually quite widespread, um, that as long as markets are free, and as long as competition is fair, then, um, actually, all the benefits of capitalism will be spread as widely as possible and we'll all be better off for it and that companies will be competing to serve our needs. And meanwhile, the state will kind of provide a separate role and therefore the systems will be able to work in harmony."

Naomi: "Can you tell me a bit about your life working as a competition lawyer?"

Michelle: "Yes, I was working as a competition lawyer in the city, which means that I was advising big companies, mostly on their mergers predominantly. So you know, if two companies want to merge, they have to get approval from the authorities if they are big enough, if they meet certain thresholds, so we were helping them to do that, and that was all still in the system that was designed to ensure that prices are as low as possible for consumers and that competition is free. And what I realised was, I kind of had this light bulb moment really, where I was working on a particular deal. It was a merger between the fizzy drinks company Britvic and another fizzy drinks company, ag bar that makes products like iron brew. And I had this kind of moment of realisation of understanding that if all we were looking at in this process of whether we were going to approve this deal was where the prices were going to be as low as possible, well that's not really serving the interests of the public at large. And you know, we don't really want fizzy drinks to be as cheap as possible. And once I kind of had that realisation, really kind of looking at the role I was playing in that system of kind of facilitating companies to gain kind of more and more power, I started to question the whole system and the role I was playing. And that's kind of what I ended up focusing on in my book. It's this question, why does capitalism, why does the system really concentrate wealth and power into so few hands, um, but spread its harms so widely? I started to look at how we treat mergers, how we treat monopolies. And increasingly there's been evidence in recent years that markets are hugely monopolised, actually markets are increasingly growing concentrated, right under the noses of regulators who are subscribing to this kind of idealistic view of free market competition that I had."

Naomi: "Right, you write about your Bangladeshi roots and how you believed you could address the world's inequalities through regulating capitalism, and er the leader of the Illinois black Panthers said once "we don't fight fire with fire best…we say, we're not going to fight capitalism with capitalism, with black capitalism." I've come across ideas about black empowerment by participating or championing the same kind of damaging practices so many times, how do you now feel that you can best address inequality? I know that's a big question!"

Michelle: "Yes, yeah my kind of hope or contribution towards that is to really call into question this idea of competition. The idea is that monopolies are killing us, we want more competition actually, the *lack* of competition is the problem – when you're trying to challenge the existing paradym, the tools of that paradym are unlikely to help you in that fight, so I'm trying to draw you know, a question mark over our whole conception of competition and you know, this assumption that that is the only way that the market or that society and the economy can operate. And so when I'm talking about corporate power I'm talking about all of those centralising forces within the current market system that allow wealth and power to snowball into the hands of the few. When I'm thinking about inequality, we can talk about empowering other groups, both within capitalism and in the kind of immediate sense, but also looking at things other than competition, you know, cooperative, collective models of structuring things. An insight from the black lives matter movement - you read their manifesto, it talks repeatedly about kind of collective action, collective benefit - we should be inserting democratic, truly broad based influence into all of the structures of power. And that includes, you know, into the market, into the corporation or companies as a vehicle for wealth creation. You know, we can't trust through some kind of blind faith that companies competing to maximise profits will be, you know, benefiting society more widely, I think that's been largely debunked and not just, not just by me. But the question is, what should we do instead? And my proposal is that we need to, you know, identify sites of power within the market economy and insert the power of the currently disempowered into those structures."

Naomi: "Yeah. Ultimately if you want to change systems, you have to democratise them, and that is such a key element that's missing out of so much business. I'm thinking about, you know, cooperative models, staff who are represented on boards, who have a say in how companies are run, would have more of a long term perspective, uh, there's so much work done on this area of democratising the way business is done."

Michelle: “A hundred percent. I absolutely agree. And I think that it's not just about democratising companies or power in that way, but also democratising the way we regulate companies. You know, there should be more input and more consultation of different stakeholders. When regulators are approaching some of these questions, you know, you get the same experts on the business side, you get the same kind of consultants and economic experts and lobbyists, and so on presenting their view, there's not really a coalition to present the other side so I think that increasing the influence of stakeholders over regulatory processes is also a huge part of this.”

Naomi: “And you talk a lot about the damage of shareholder capitalism, how would you characterise shareholder capitalism? Why is it so damaging in your view?”

Michelle: “This idea of shareholder value, shareholder capitalism, which really has been embraced by the business world and to a large extent by the kind of legal world that supports it, boils down to this idea that the responsibility of directors of a company is to maximise profits for the shareholders. It embodies all these other ideas, like a false idea that the shareholders are the owners of the company, that they are the most important stakeholders, but the true costs of that business aren't captured by the price by that pure transaction that happens between the business and its customer. So an obvious example is the burning of fossil fuels, the price of oil does not include the catastrophic damage that is being done to our ecosystem and to our environment. And so those costs are another good way to maximise profits because these are all costs that you're not having to pay for what is, you know, the underlying business that is producing your profits. And of course those two things are linked. You see many of the worst abusers of the environment, of labour standards and so on, have some kind of monopoly power. And so, it's looking at those other ways that this idea of shareholder value really motivates companies to find every kind of loophole in the economic system and to make a quick buck off of that.”

Naomi: “So, yeah, how do we actually introduce the true costs of these cheap products? Like the things we get cheap stuff from Amazon delivered to our door, you know, people could say, what's the problem with that? How do we introduce the true costs of those things into the marketplace?”

Michelle: “It's a huge problem. I think that people are trying to attack it from all different angles, you know, there's a lot of work to be done in accounting that looks at how do you account for all of the different costs? Can we require companies to report on all of these different costs so that it is, in effect priced into their share price, it forms part of their balance sheet. The angles that I come at it are really from a kind of regulatory perspective. So how can we force companies to operate at the standards that we would expect them to? And that's kind of two fold. One is directly by regulating them, having the rules that mean that you can't just you know, pollute and you can't just abuse your workers and so on, but also, if you take a kind of anti monopoly lens and consider the potential for regulatory capture, if you allow companies to get too big, they're able to control the regulations that they are subject to, then you get into another way of actually making sure that companies follow the law is to make sure that they don't get big enough to ignore the law.

Another way is to make sure that some of these costs are internalised. And the final way that I really look at it is if you create greater representation and greater challenge to the power of companies that are currently able to act in this way, then you will see a change in the way that they make decisions. So if you have an environmental representative or an employee representative of board level, that is in its own way an internalisation of some of those concerns into the very decision making mechanism of the company and equally, if we find ways to encourage and support other ways of doing business, whether it's through cooperative business or even at a stakeholder level, whether it's by encouraging unionisation or collective bargaining amongst otherwise kind of small businesses, collectivisation amongst them would help them kind of challenge the Amazons of the world and show that there is another way of doing business, but also allow them to offer that other option and challenge to the version that's offered by the Amazons of the world."

Naomi: "Right. And you warn in the book and I'm quoting, we may lose control of big companies completely. Tax is so closely related to democracy, isn't it? And, for example, the Tax Justice Network thinks in the area of tax, corporate taxation will become a thing of the past if we're not, if we don't get on top of this issue about how big monopolies influence governments, and buy influence with governments, undermining democracy."

Michelle: "Yeah, I think it's a hugely important aspect of all of this, the different ways that monopolistic companies are able to shape their environment and really rig the whole game to their advantage. So if you've got the Apples of the world that don't have to pay the same corporate tax level as their competitors because they have preferential agreements with the Irish government as an example, and they're able to kind of site their IP wherever is most 'tax efficient', then that's not going to be free competition or fair competition because you've already got a company that's essentially at a huge competitive advantage but also there's the other huge part of it that you've mentioned which is the kind of influence that can be bought and that really shapes so much of the economy and tax just being one part of that in terms of companies being able to shape these rules to that, to that best advantage."

Naomi: "You say also in the book that corporations have $19 trillion sitting on their balance sheet balance sheets as savings, and it's time to put that money to work. What do you mean by that?"

Michelle: "When people say that we can't afford the kind of measures that we would need to make a green new deal for combating climate change, actually companies are hoarding cash and sitting on enormous war chests of money and currently the way that companies are seeing that money is, you know, can I use this money to buy up flailing competitors, particularly those that have been made vulnerable by the economic crisis that's coming or by the pandemic itself? Can I use that money to buy influence, and return profits to shareholders that way? Can I use that money to issue share buy backs, you know, buy back shares of shareholders returning cash to them, but also in the meantime driving up the share price? And can I use that money to give out dividends and do that in some kind of 'tax efficient' way? You know, we can afford to do all of the things that we need to do to make the world safer, more sustainable, more equal - the money is there. And the question is - who is in charge of that money, or what rules have we placed on that money? And currently the rule that we've placed is, you know, shareholder value and profit maximisation, and that money will only ever be used in that way, unless we manage to find ways to repurpose it."

Naomi: "I've been talking to Michelle Meagher. Her book Competition is Killing Us: How Big Business is Harming Our Society and Planet - and What To Do About It is published by Penguin, you can find the link in the show notes. You've been listening to the Taxcast from the Tax Justice Network, thanks for joining us. We'll be back next month."