Competition Distortions in India – A Dossier

(CDI-2: May-July, 2009)

This periodic dossier produced by CUTS looks at the interface of policy issues which has an impact on competition in India, which can be both negative and positive. News as published is used without verifying their accuracy. The purpose is to flag issues to the layman as well as to the specialised policymakers and regulators, rather than be judgmental about them. This would require greater analysis particularly in terms of cost and benefits therewith.

This is the 2nd edition of the CUTS Competition Distortions Dossier covering the period of May-July, 2009.

The first one sent out on 17th July was quite successful, and many comments were received on the issues raised in the covering letter on the Government making flying on the State-owned Air India mandatory for all government travellers. Not many ventured into the Dossier per se, perhaps because the anachronsitic order drew much umbrage.

However, some powers did read the dossier which contained issues surrounding antidumping etc. It has now drawn attention of the Competition Commission of India to take up the matters with the Finance Ministry and the Commerce Ministry under its advocacy powers.

In this issue which is attached and can also be accessed at our website: www.cuts-ccier.org, we carry new stories (Table of Contents given below) including the one on Air India, hoping that the issues can be agitated so that India can be competitive and thus promote inclusive growth. However, there are some good news as well, when the Commerce Ministry has wisely turned down requests for taking Safeguard Action on several products when the user industry protested.

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A. Trade issues

1. Imposition of anti-dumping duty

i) Centre considers anti-dumping duty on polypropylene

In an attempt to protect the domestic polypropylene (PP) industries, the government is recommending a provisional anti-dumping duty on PP imported from Saudi Arabia, Oman and Singapore. This follows an appeal by Reliance Industries, supported by Haldia Petrochemicals Ltd. (HPL), the only two producers of PP in the country. As a result of this duty, the companies from these countries selling the product cheap in India will be discouraged.

The appellant Reliance Industries figures among the top eight PP producers in the world and the company holds a 70 percent share of the domestic market and caters to three percent of global consumption of PP.

The government justifies the imposition of the duty on the ground that imports from the subject countries have increased in absolute terms as well as in relation to total imports, total demand and total production in India. Moreover, the market share of the duopolistic domestic industry has come down, while the demand has increased. Despite increase in demand, the prices of the domestic industry have been suppressed hence there is significant underselling from these countries.

However, the local processing industry is apprehensive of the proposed duty as it will lead to a significant price rise of the raw material (PP); in some cases the price may rise to almost double as the amount of duty is almost equivalent to the international market price. PP is used as a raw material in a variety of industries, including packaging, woven sacks for cement, fertilisers, sugar and various consumer items such as house ware, auto components, pipes, water tanks, furniture, and medical appliances. Most of the units associated with processing are small and medium enterprises (SMEs) and there is a fear of hurting them in case of price rise in the domestic market.
http://www.business-standard.com/india/news/centre-considers-anti-dumping-dutypolypropylene/361374/

Food for thought:

The above case illustrates trade distortions allegedly caused by the unfair trade practice (UTPs) of dumping (by foreign companies) in case of PP. Remedies in the form of levy of anti-dumping duty to make the playing field more level and protect domestic industries are also illustrated. However, the duty is being opposed by the domestic end-user industry on the ground that the move will increase the price of the raw material. Most of the manufacturers using PP as raw material are SMEs. And they are at the mercy of a domestic duopoly.

The question arises, will not the imposition of anti-dumping duty have an adverse implication for SMEs who are already struggling for survival due to the intensified global competition? Trade liberalisation and use of tariffs to protect domestic consumers are to be used to promote competition and not stifle it by using non-tariff measures such as anti dumping.

2. Safeguard duty to check imports in India

i) Sparks fly over safeguard duty on soda ash

Government and the detergent and glass manufacturers are in confrontation over the issue of imposing a 20 percent safeguard duty on imports of soda ash from China. Soda ash makes up over a quarter of their raw material cost. The decision of safeguard duty follows representations from all five companies comprising soda ash industry in India—Tata Chemicals, Gujarat Heavy Chemicals, Saurashtra Chemicals, Nirma and DCW-- to avoid market disruption in the domestic industry.

However, the domestic end-user industry, detergent and glass manufacturers, have opposed the imposition of such duty. The industry is alleging Directorate General (DG) of Safeguards for favouring the soda ash industry and taking decision of imposing the duty in hurry without even waiting for the responses of affected parties on this issue. According to them, DG Safeguards invited views of all interested parties up to February 16, 2009 but notified preliminary findings on January 30, 2009 without giving a fair hearing to the affected parties, which is against the principle of natural justice.

Besides, the total imports of soda ash are less than 10 percent of the domestic installed capacity and imports from China are hardly two-three percent. Also, there was practically no rise in imports during the period of investigation.

The end-user industry's argument is that the volume of imports was unlikely to hurt the domestic manufacturers of soda ash and the imports simply helped in keeping domestic prices in check in the highly-cartelised local industry.

Indian soda ash manufacturers are having a dominant position in the pricing of soda ash in domestic and some international markets and are charging a much higher rate than the market rate in China. There is growing global presence of domestic soda ash manufacturers and their control on domestic and international pricing of soda ash in countries like Kenya, Romania, the US and Africa. For instance, Tata Chemicals is the second largest soda ash manufacturer globally, with manufacturing capacities in Kenya, UK and Netherlands. Whereas, Gujarat Heavy Chemicals is the fourth largest soda ash producer in the world.

The case for a stay on the order has been filed by the All India Glass Manufacturers Association and the All India Detergent Manufacturers Association apart from a few companies like Hindustan Unilever and Saint Gobain.
http://www.business-standard.com/india/news/sparks-fly-over-soda-ash-duty/357272/

Food for thought:

The above case illustrates the use of trade remedial measures being used by the government to curb the alleged unfair practices in order to protect the domestic industries. But, detergent and glass manufacturers using these products as raw material from outside are opposed to the move saying that they will have to pay higher prices which would end up in higher cost of finished goods. The end-user industry has also alleged that the DG Safeguards has not given them the opportunity of hearing which is against the principles of natural justice.

The allegations such as cartelisation of domestic soda ash manufacturers and their control on domestic and international pricing are issues which require detailed analysis that has not been conducted yet. However, the question remains, is the decision likely to benefit some manufacturers who have sought for imposing safeguard duty or it would serve the public interest? Also, why was safeguard action advocated in this case in place of anti-dumping duty?

ii) Safeguard duty deferred on local user's concerns

Rejecting domestic producer's claims of injury from imports, the government sought further consultations with user industries on the proposal for imposition of 20-25 per cent safeguard duty on imports of products like steel, paper and auto parts. Amidst a conflict of interest between producers and user industries, the government deferred the decision for two months.

Domestic user industries, especially the employment-intensive ones, are crying foul over imposition of safeguard duty on imports that they use as inputs. They had warned that slapping of such duty would not only harm them but also lead to job losses.

However, domestic producers like Essar Steel and Ispat had approached the government for immediate imposition of safeguard duty on key steel items. With fall in demand in major economies like the US and many European countries, global producers of these products are targeting big and growing markets like India. India has followed WTO-compliant rules for protecting the domestic industry against imports. Both anti-dumping and safeguards duties are allowed after investigations under multilateral trade rules to stand the WTO scrutiny. Anti-dumping duties vary from country-to-country while the safeguard duties are uniform.
http://www.financialexpress.com/news/safeguard-duty-on-six-items-deferred-on-local-users-concerns/457618/0

Food for Thought:

The Government has wisely deferred its decision on the proposal of the producing industry for imposing safeguard duty on the ground that more consultation from both the domestic industry and the concerned interested parties is needed.

Although, domestic producers are not satisfied but the user industry welcomed the decision because they feel imposition of duty will not only protect their interest but also protect the employees working with them.

The case indicates that imposing safeguard duty is not always a good idea to protect domestic industry from international competition. Producing industry should also raise their efficiency to face competition from imports.

B. Other issues:

3. Nokia Siemens knocks on Competition Commission's door

After being disqualified from bidding for Bhartiya Sanchar Nigam Limited's (BSNL) Rs30, 000-crore Global System for Mobile Communication (GSM) contract, Finnish telecom equipment maker Nokia Siemens Networks Ltd has sought intervention of the Competition Commission of India (CCI) on the grounds that the tendering process was not transparent.

The company has raised the issue that its bid was rejected on technical grounds given that the company has been supplying equipments to operators worldwide including BSNL. The company claims that if its equipments were good enough for BSNL's previous contracts then how they can be disqualified on technical grounds for the subject project.

Nokia Siemens has also highlighted lack of competition in the bidding process since BSNL's technical committee qualified bids from only one equipment supplier in three of the four zones. Hence, BSNL may have lost out in getting the best prices in the process. The company is asking CCI for an investigation as to whether the tender conditions were diluted to favour certain vendors.

BSNL officials view, however, is that it is not only Nokia, bids from two other companies were also disqualified on technical grounds. Their argument is that a company can not qualify simply because it had supplied equipments earlier, and if past deals were to be the criteria, then there would be no need for issuing terms and conditions on tenders for new projects.
http://www.thehindubusinessline.com/2009/05/19/stories/2009051952120100.htm

Food for thought:

Nokia Siemens has raised its pitch against BSNL's tendering process by lodging a complaint with the CCI. Nokia's allegation is that bidding process has not been transparent. The decision of CCI is still pending, but there are few issues in this case that need attention:

Competition in bidding ensures better price and quality to the company and in turn can benefit the consumers. In this case, qualifying only one bidder for supplying equipment may not be the right decision on behalf of BSNL as there will not be any competitor and the sole bidder may not allow BSNL to bargain for price and it may not get the best prices.

Nokia's argument that they have proven their quality by supplying equipment to various Indian companies including BSNL for last three years can not be justified to qualify for the bid. If so, what is the need for inviting fresh tenders?

The issue remains: how to ensure transparency in the bidding process of public sector companies, particularly when only single bid ends up qualified on technical grounds? Can giving opportunity to the firms rejected on technical ground for defending their case without changing any of their initial terms help in resolving the dispute?

4. Levies may make Indian iron ore less competitive

The government is contemplating a 15 percent levy on export of all types of iron ore. Additionally, it is also working on market-linked royalty on iron ore mining which, according to estimates, could rise to 10 percent of the selling price in the spot market. Considering the two levies, the price of iron ore could rise up to 25 percent, which will not be absorbed by Chinese importers in any case. Thus, India might lose its competitiveness in the Chinese market and consequently, our competitor, Australia, will take advantage of the rising Chinese demand.

The development assumes significance as India has factored in a 33 percent price decline of Vale and Rio Tinto's ore for Chinese, Japanese, Korean and European steel mills for their long term ore supplies. But, the two global mining leaders are presently engaging Chinese steel mills to accept the same price cut. But, the latter have been pressing for a price cut of over 45 percent for long term ore supplies which if accepted, will make Indian ore uncompetitive in the Chinese market.

Exporters from India presently charge US$15 a tonne as against US$18-20 a tonne from Australia and over US$25 a tonne from Brazil. Considering the range-bound spot price of iron ore between Australia and India, shipment from India remains profitable. But, any sops on freight cost from Australia or any such hike from India will worsen the export potential from here.

The iron ore industry is already feeling the heat of reducing demand from steel producers as a consequence of poor demand from the consumer industry. However, Indian iron ore industry is banking heavily on Chinese demand as China is expected to import 517 million tonnes of iron ore for this year compared to 480 million it imported last year.
http://www.business-standard.com/india/news/levies-may-make-indian-iron-ore-less-competitive/361932/

Food for thought:
The government's proposal to levy duties on iron ore are intended to ensure continuous supply to the domestic steel manufacturers and help to bring in price stability. However, such a move will make Indian iron ore dearer in the international market and may lose competitive advantage in China which is the largest consumer and importer of iron ore.

Looking at the global recession, one hopes that government decision is preceded by a comprehensive research regarding iron ore export elasticity as well as the capacity of the domestic users to sustain Indian iron ore producers. However, there is a need to strike a balance between the exports and domestic demand.

Looking at the current situaion, is the export levy needed? Whether cumulative 25percent increase in the cost of Indian iron ore in the international market likely to benefit the domestic manufacturers and consumers(as assumed by Governemnt) or will it have an adverse effect on Indian industry?

5. China accused of 'predatory pricing' tactics

In a protest against Chinese business tactics, India's small and medium enterprises have warned that they were hurt by "typical Chinese predatory pricing" intended to drive rivals out of the business so that Chinese companies could capture the Indian market and then raise prices to more normal values. To deal with the situation, they are urging the government to step up the pace of its anti-dumping investigations and impose tougher safety and quality checks to protect Indian companies from cheap Chinese goods.

A survey conducted by Federation of Indian Chambers of Commerce and Industry (FICCI) highlighted that majority of small and medium-sized manufacturers (SMEs) had suffered a serious erosion of their Indian market share over the past year, because of cheaper Chinese products. It is also estimated that Chinese imports were 10 to 70 percent cheaper than comparable Indian products.

The bite was felt by companies in a range of sectors, including processed food, light engineering, building materials and heavy engineering, chemicals and textiles.

Already, Indian manufacturers face serious competitive disadvantages in comparison with China, including poor infrastructure and rigid labour laws that perversely discourage companies from growing and instead promote inefficient fragmentation. Even if these disadvantages are removed, Indian companies will not be able to fight a Chinese price mechanism of an artificial nature that targets specific industries and wipes them out.

Looking at the high rise in imports of Chinese toys, Government announced a six-month ban on the import of Chinese toys. However, the ban was lifted after two months, when Beijing threatened to take the issue to the World Trade Organisation (WTO).
http://www.ft.com/cms/s/0/42bd9a40-5900-11de-80b3-00144feabdc0.html

Food for thought:

The fact that India needs to protect its industry from alleged unfair competition from China has been debated and accepted for a long time now. It has been felt that China is, by no means, a fair trading partner and is capturing Indian market at a very fast pace through anti-competitive trade practices such as predatory pricing. Predatory pricing involves pricing products below cost with the intention of acquiring market. The intention is to recover the losses through future price increases. As a control measure, India is using various anti-dumping and safeguard measures.

It is a matter of research whether the influx of cheaper Chinese products into India (as well as in other developing countries) is motivated by predatory pricing or it is simply vigorous price competition by Chinese firms. Consequently, this has resulted in lower production costs and hence lower prices against which Indian firms are unable to compete. Are the Chinese exports prices lower than those of the same products being sold at home?

An important issue in such cases is the time taken for anti-dumping investigations. In India, it takes 10 to 12 months which is more than enough for Chinese firms to damage the Indian industry. The issue in this situation is how to ensure quick action, particularly in case of China?

6. Government officials to travel only by AI

To provide assistance to cash-strapped Air India, the Finance Ministry has ordered all Central Government employees to fly only on the state-owned flag carrier for their official travel—both domestic and international. The rule will also apply to even non-governmental people if they are flying on government business and claiming a refund.

It is said that for travels to stations not connected by Air India, the officials may travel by Air India to the point closest to their eventual destination, beyond which they may utilise the services of another airline, which should also preferably be an alliance partner of Air India. The order reverses the permission given to government employees to use private carriers, in December 2005.

The attempt by the Government was made in order to lend some confidence to a clutch of lenders the airline plans to tap for medium-term loans. Senior finance ministry officials said a revenue stream for the airline was better than leasing planes to augment its fleet, given the weak aviation market leasing would provide little comfort to the lenders.

The National Aviation Company of India Ltd (NACIL), which runs flag carrier Air India, is expected to register a loss of about Rs 5,000 crore during 2008-09 fiscal. Nacil is facing a financial crisis after its borrowings rose sharply to Rs 15,241 crore in June 2009 from Rs 6,550 crore in November 2007.

Recent development says that the Competition Commission of India (CCI), under its advocacy powers, may question the Finance Ministry directives as the issue involves anti-competitive behaviour.
http://www.business-standard.com/india/news/govt%5Cs-remedy-for-troubled-a-iofficials-to-tour-onlynational-carrier/363888/

Food for thought:

Every domestic airline in India is undergoing huge losses and this initiative might help Air India (Govt. owned carrier) recover the losses. It was recently reported that the carrier will able to earn approximately Rs. 1000 crore annually from this initiative at the cost of the private airlines which will result Air India in having an unfair advantage over private airlines, whether the travel is within or without India.

It is believed that Government is the sole shareholder in Air India, therefore has an incentive to issue conducive policy directives, in order to maximise its revenue. It has already agreed to extend a bail out package of Rs. 5,000 crores to Air India, while private airlines too are clamouring for bail outs.

The fact is that the losses of Air India are not only due to bad market but poor management compounded by its merger with the Indian Airlines, which has been more efficient. Furthermore, the Government abuses its ownership of Air India in more ways than one, such as freebies for favoured ones and so on.

A couple of questions which arise from this move are:

- *Will it not result in a conflict of interest on the part of government?*
- *Is it not a violation of competitive neutrality?*
- *This move surely will take major patronage from private players to the govt. owned carrier; therefore, will it not result in Air India becoming dominant in the market?*
- *Will not private airlines clamber for bail out aid, and if agreed, will it not burden the exchequer and penalise the tax payer?*