CUTS International

COMPETITION DISTORTIONS IN INDIA – A CUTS DOSSIER

(CDI-43: January to March, 2019)

For earlier Dossiers please see: http://www.cuts-ccier.org/Competition_Distortions_India.htm

Periodic dossiers look at the interface of policy issues which have an impact on competition in India. Such impact could be negative, positive or mixed, depending on sectors and markets. In these dossiers, news as published is utilised without verifying its accuracy, but ensuring its veracity.

The purpose is to flag issues and provide food for thought to the layman as well as to the policymakers and regulators. A detailed analysis has not been undertaken as it would require deeper examination of the issues, particularly in terms of cost and benefits.

We are pleased to present to you the CUTS Competition Distortion Dossier Edition No. 43 for the quarter of January-March, 2019. In this edition, we continue to cover stories of distortionary trade policies in the steel and renewable energy sectors. As for policies that may negatively impact competition in the economy, we discuss the pain points in implementing the Foreign Direct Investment (FDI) Policy on E-commerce in India. Further, we cover initiatives that could contribute positively to competition in the country. These include the Telecom Regulatory Authority of India's decision to offer single channels to its customers, followed by the Reserve Bank of India's move to spark a discourse on promoting innovation and competition in the retail payments sector.

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A. Trade Policies

1. Is Iran dumping cheap steel to India via the UAE?

The Indian Steel Association has requested the government to impose a ban on steel imports from the United Arab Emirates (UAE) which they believe are actually from Iran. The reason for the request is largely due to the fact that they are failing to compete with imports in terms of prices, which has seen a noticeable surge of steel imports from the UAE, a net steel importer. The Association believes that imports are actually coming from Iran, which is produced by state-owned firms who have managed to accumulate a lot of steel and hence can afford to export at lower prices as way of getting rid of the stock. In other words, the Association is accusing exporters of dumping.

www.businessinsider.in/is-iran-dumping-cheap-steel-into-india-via-the-uae/articleshow/68460720.cms

Food for Thought

Continuing the discourse from our previous editions (Edition 40, 41 and 42), anti-dumping duty is a protectionist tariff imposed by the domestic government on foreign imports priced below fair market value in order to create a level playing field between domestic and foreign players.

There is a need to carefully weigh the pros and cons before granting the request of the Indian Steel Association. So far, the Government of India has constantly pursued protectionist measures in the steel industry. However, the industry still struggles to compete.

The imposition of anti-dumping for longer periods of time can artificially constrain fair competition and harm consumers. If there are no adequate competitive constraints in the domestic industry, imposing bans can easily see large market concentration arising as the domestic firms acquire market power, which they can use to increase the prices.

Thus, if investigations of the landed costs per unit of the steel from the UAE and a comparison with the production cost per unit of the domestic firms establish that there is indeed dumping, it is important that the ban on imports be temporary to ensure that the domestic firms remain exposed to competitive constraints.

2. India solar duty fails domestic producers as demand dwindles

India's bid to protect its solar-equipment makers by imposing a safeguard duty on cheap, Chinese imports has failed, according to domestic manufacturers, who are campaigning for tougher measures.

The country, in 2018, imposed a 25 percent tariff on solar cells and modules imported from China and Malaysia for two years. According to the Indian Solar Manufacturers Association (ISMA), this has resulted in developers either stalling projects to circumvent the two-year timeframe or sourcing cheap imports from Southeast Asia.

"There is a duty, yet it is not fulfilling its role", Jupiter Solar Chief Executive Officer Dhruv Sharma, who is also a member of ISMA's Governing Council, said. "No new manufacturers came in, new capacity has not come in, people are shutting shop, and employment has not been generated."

www.livemint.com/politics/policy/india-solar-duty-fails-domestic-producers-as-demand-dwindles-1548852897091.html

Food for Thought

Solar energy is revered as being the leading resource of future of energy in India and has established a strong foothold in energy discourses across the globe. In an attempt to bring domestic players at par with global players, a 25 percent safeguard duty was imposed on imports in the first year, starting July 30 2018, and 20 percent and 15 percent for two subsequent six-month periods, respectively. However, despite this measure the solar power sector lacks a corresponding visible increase in internal trade. In the financial year 2018-19, the capacity addition fell short by 3500 mw from its target of 10,000 mw.

The slowdown of India's solar energy success can be attributed to imposition of solar duty and cancellation of solar auctions. Due to the former, solar power developers are increasingly seen resorting to delaying in commissioning of projects until the duty reduces. As regards the latter, government agencies are often seen cancelling auctions whenever the winning tariffs are too high. Additionally, with safeguard duty being applicable on imports mainly from China and Taiwan, there is a rise in imports from Southeast Asian countries, such as Thailand and Vietnam.

The implication from this is that the safeguard duty has failed to achieve its intended purpose. Firstly, prices offered by domestic producers is proving to be so high above *import prices that some solar power developers are prepared to wait until the safeguard duty expires. Secondly, the safeguard was poorly designed. While China and Taiwan were identified, there are other alternative suppliers which are now imposing the same competition traits that the safeguard was intended to protect. Thus, domestic manufacturers continue to compete with cheaper imports while they are failing to produce competitively priced products. The government has an option of either increasing the safeguard period so that the waiting costs become high or to expand the safeguard to cover all possible import sources beyond Taiwan and China.*

B. Policies Inhibiting Competition

3. FDI Policy on E-commerce

The Department for Promotion of Industry and Internal Trade's (erstwhile Department of Industrial Policy & Promotion) (DPIIT) Press Note of 26 December 2018, renewing Foreign Direct Investment conditions for e-commerce marketplace platforms (renewed FDI Policy) led to a turbulent new year for FDI backed e-commerce platforms. With DPIIT having refused extension beyond February 01, 2019 for the renewed FDI Policy to come into effect, there is chaos among e-commerce companies. Big e-tailers have gone back to the drawing board to analyse their business models to make them compliant with the renewed FDI Policy.

The renewed FDI Policy sets out certain limitations with the intent of providing a level playing field to vendors of an e-commerce marketplace platform. This appears to be a move to redress complaints of vendors against FDI backed e-commerce entities favouring vendors linked to them.

www.businesstoday.in/top-story/new-fdi-policy-on-e-commerce-key-factors-amazon-flipkart-others-must-consider-in-future-strategy/story/320153.html

Food for Thought

The government's new FDI policy in e-commerce comes with a weak claim to fame in promoting a level playing field across the industry. It seeks to prevent foreign-owned online marketplaces from holding any equity interest and control over inventories through related companies that sell on their platform in order to avoid vertical foreclosure and exclusivity. It further puts the onus on platforms by stating that inventory of a vendor will be deemed to be controlled by e-commerce marketplace *entity if more than 25 percent of purchases of such vendor are from the marketplace entity or its group companies.*[1]

However, there are various clarifications required with respect to its implementation.[2] *First, with the policy norms being applicable only to foreign platforms, there is discrimination between domestic and foreign players under the pretext of promoting platform neutrality, thereby holding the potential to distort competition, and risk harming consumer welfare in the long run. Second, by establishing strict rules for companies with FDI providing marketplace, the policy creates an uneven playing field between them and companies without FDI. Third, the policy fails to address the issue of discriminatory treatment towards online vendors by domestic ecommerce platforms. They are not barred from adopting 'inventory model,' which may be discriminatory and can go against the interest of medium small and micro enterprises/start-ups and small vendors. For instance, there is no inventory restriction on food companies enabling them to leverage their own business by monitoring consumer demand.*

Therefore, India needs to balance its instinct of protectionism with its need for attracting FDI. Perhaps there is a need to reignite the discourse on a comprehensive national ecommerce policy that is applicable to domestic as well as foreign entities on the basis of intelligible differentia.

C. Policies Promoting Competition

4. TRAI regulations offering customers the choice to select single channels

The Telecom Regulatory Authority of India (TRAI) is all set to streamline cable TV and direct to home (DTH) subscriptions from February 01, 2019.

Till now, both the cable operators and the DTH service providers had a free run in that they offered packages designed in such a way that the user was forced to opt for a complete pack for just one channel, while also paying for additional channels that they never actually watched. That is not going to be the case anymore...TRAI's new regulations for DTH came into force from December 29, 2018. Under these regulations, broadcasters are required to publish tariffs for each channel as well as packages.

www.hindustantimes.com/india-news/new-trai-rules-for-dth-all-you-need-to-know/story-XLrDu7GtUpCNNylQWpoDGK.html

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1 https://dipp.gov.in/sites/default/files/pn2_2018.pdf

2 http://www.cuts-ccier.org/pdf/Submission_of_comments_to_DPIIT_on_draft_National_E-commerce_Policy.pdf

Food for Thought

At a time when internet streaming services are increasingly taking over regular DTH services, TRAI's new DTH rules come with a promise of keeping DTH systems relevant. The rules finally pass the baton of choice from large distribution platforms and local cable providers to consumers. As per TRAI statistics, 80 percent consumers view less than 40 channels out of 200 channels offered to them and less than 10-15 percent consumers opt for more than 100 channels.[3]

Therefore, significant changes have been introduced in the new framework. Lying at the heart of the new rules, individual channels will now be offered by the broadcaster, thus, enabling the subscriber to choose even a single channel. This is an a-la-carte option as opposed to the earlier situation where the subscriber had no option but to subscribe to large channel bouquets/packages offered by broadcasters. Limited options were available to consumers to optimise channel packages as per their tastes and preferences. The consumers were then forced to pay for channels over and above the ones that they intended to watch – a channel bundling of sorts. These regulations were challenged by a group of broadcasters wherein the Supreme Court held that TRAI acted with the objective to facilitate competition and promote efficiency in the operation of broadcasting services so as to facilitate growth in such services and harmonise the interests of service providers and consumers.[4]

In a complex industry such as broadcasting that is often characterised by large entry barriers, it is no surprise that broadcasters indulge in anticompetitive measures such as price distortions to increase their subscribers. Initially, the bouquets offered by broadcasters were discounted by 80 percent of the sum of a-la-carte channels thus compelling consumers to subscribe to them when the bouquets only contained a few popular channels. Thus, public ended up paying for unwanted channels translating into restricted choice. To that end, TRAI's decision to plug this loophole by enabling consumers to opt for single channels empowers them by bringing transparency and fair competition to the market.

5. RBI proposes to relax norms for new players' entry in retail payment

The Reserve Bank of India (RBI) proposed to relax norms for entry of new players in the retail payment systems with a view to give a boost to innovation and competition. The RBI's policy paper on 'Authorisation of New Retail Payment

[3] https://main.trai.gov.in/sites/default/files/FAQ18122018.pdf
[4] https://www.sci.gov.in/supremecourt/2018/24405/24405_2018_Judgement_30-Oct-2018.pdf

Systems' proposes a multi-pronged policy action for a more appropriate level of retail payment systems and operators.

It also makes a case for alignment of regulatory framework to encourage enhanced participation of both bank and non-bank entities. Earlier in June 2018, the RBI announced that it would encourage more players to participate in and promote pan-India payment platforms and would bring out a policy paper. The objective was to minimise the concentration risk in the retail payments market from a financial stability perspective and give a fillip to innovation and competition.

www.business-standard.com/article/economy-policy/rbi-policy-paper-new-players-in-retail-payment-systems-through-easy-norms-119012101227_1.html

Food for Thought

The National Payments Corporation of India (NPCI), which processes nearly 48 percent of India's electronic retail payments transactions, is the country's umbrella retail payments organisation. The conflict of interest with NPCI's role and functions arises where it acts as the largest operator of key payments infrastructure as well as competes as a service provider, thus hampering competition and leading to risk of concentration of market power.

In the light of the risk of NPCI's growth towards a monopoly power and a too-big-to-fail entity, the RBI policy paper on 'Authorisation of New Retail Payment Systems' is a welcome step.[5] *The paper discusses the pros and cons of a single operator for all retail payment systems including National Financial Switch (NFS), Immediate Payment Service (IMPS) and Unified Payments Interface (UPI), among others. It seeks to encourage competition and innovation in the ever expanding retail payments industry and to invite more players by relaxing entry and other regulations.*

To further the objective of managing concentration risk and promoting innovation and competition in the retail payments industry, the regulator should take directed efforts to address existing and emerging risks. Some measures include – creating a threat of competition for the NPCI; separating its role of as an infrastructure provider from its role as an instrument operator, by situating its payment instruments related functions in a separate profit making entity; encouraging level playing field by treating similarly placed entities similarly and dissimilarly placed entities dissimilarly; and moving away

[5] https://rbidocs.rbi.org.in/rdocs/PublicationReport/Pdfs/ANRPS21012019A8F5D4891BF84849837D7D611B7FFC58.PDF

from disproportionate entity based regulation towards proportionate risk-based regulation to promote competition and innovation.[6]

More importantly, there is a need to undertake Regulatory Impact Assessment and structured stakeholder consultation for devising innovative regulatory mechanisms. For instance, as per merchants and users of digital payments, infrastructure necessary for digital payments is not consistently available in the country, and awareness of digital payments is significantly low.[7] *Therefore, since consumers ultimately bear the effect of policies, it is pertinent to adopt an ex ante approach through evidence-based policy making.*

6 www.cuts-ccier.org/pdf/CUTS_Submission_to_RBI_on_Innovation_and_Competition_in_Retail_Payments.pdf

7 The findings of our study on Digital Payments are consistent with the projected disadvantages of concentrated payments systems in the policy paper, see www.cuts-ccier.org/Payments-Infrastructure/pdf/Presentation_for_RBI_Committee_on_Deepening_Digital_Payments.pdf