COMPETITION DISTORTIONS IN INDIA – A CUTS DOSSIER

(CDI-41: July to September, 2018)

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: 41 for the quarter of July-September 2018.

In this edition, we cover the impact of distortionary and protective trade measures, such as anti-dumping and safeguard duties in the steel and energy sector. This mainly includes long-term adverse implications on: (a) the stability and sustainability of respective sectors; (b) competitiveness and costs of downstream industry stakeholders; and (c) prices and choice to the end consumer.

Moving on to contemporary sectors and the digital economy, we cover the possible distortionary impact of regulations such as data localisation and mirroring on India's growing digital economy space. In the same vein, we go on to discuss the possible negative implications - including but not limited to inhibition of innovation - of the *quasi-ban* on emerging technologies that offer virtual currencies/ cryptocurrencies.

On the flipside, much awaited pro-competitive developments have also occurred and been discussed - including the proposed amendments to India's payments law and further smoothening of the process of mobile number portability.

There is one piece of good news that the government is planning to build up a programme on Competition Assessment in the country to deal with distortions. The progress is rather slow because the approach is to get Ministries to volunteer for it. However, it is a good move.

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A. Trade Policies

1. India plans to impose anti-dumping duty on certain types of Chinese steel

India may impose anti-dumping duty of up to US$185.51 per tonne for five years on certain varieties of Chinese steel with a view to guard domestic players from cheap imports of the commodity from the neighbouring country.

In its anti-dumping investigations, the Directorate General of Trade Remedies (DGTR) stated that dumped imports of 'straight length bars and rods of alloy steel' from China have increased in absolute terms during the period of probe (2016-17).

Source: www.hindustantimes.com/business-news/india-plans-to-impose-anti-dumping-duty-on-certain-types-of-chinese-steel/story-6KrwEFd9ti7EJJ8rjKVqFN.html

Food For Thought

The rationale behind imposing anti-dumping duties is to counter and neutralise the undercutting effects of dumped imports on the domestic producers of steel.[1] It is a protective measure aimed at levelling the field for domestic players and ensuring that their competitiveness remains intact. The overarching purpose remains to establish a competitive and fair business environment thereby protecting the domestic industry from unfair trade practices.

However, there are also downsides to its imposition.

***Firstly**, as the domestic industry is indirectly immunised from competitive pressure, the prices of steel are bound to increase, thereby impacting downstream businesses and the end consumer. For instance, steel has been called the 'mother of raw materials' for several sectors and owing to the rise in prices of steel, sectors like engineering manufacturing have faced rising input prices over the years.[2] Notably, steel has been the subject of imposition of anti-dumping measures and import duties since the last year (For more, see previous editions of the CDD). This has impacted India's exports in*

[1] If a company exports a product at a price lower than the price it normally charges on its own home market, it is said to be "dumping" the product." The WTO anti-dumping agreement allows governments to act against dumping where there is genuine ("material") injury to the competing domestic industry. See www.wto.org/english/thewto_e/whatis_e/tif_e/agrm8_e.htm

[2] https://economictimes.indiatimes.com/news/economy/foreign-trade/raising-of-import-duty-on-steel-will-hurt-engineering-exports-eepc/articleshow/65886902.cms

engineering manufacturing, which constitutes about one-fourth of the country's total exports.[3]

***Secondly**, as dependence on domestic industry rises, the downstream players remain susceptible to fluctuations that impact the cost of steel production. Rise in input costs of the domestic steel industry (such as higher prices of iron ore and coal) affect the downstream players and the costs are eventually passed on to the consumer.*[4] *Hence, consistently promoting the imposition of such measures might actually turn out to be counterproductive for the domestic players in the long-run, thereby affecting other stakeholders and leading to consumer welfare losses.*

2. India considers 25 percent safeguard duty for solar panels

The DGTR has recommended imposing 25 percent duty on solar cells imported from China and Malaysia for coming two years, which if accepted by the government, could lead to a sharp hike in solar power costs.

Safeguard duties are temporary measures usually aimed at protecting the domestic industry from harm brought on by increased imports.

Source: https://thewire.in/energy/india-considers-25-safeguard-duty-for-solar-panels-from-china-malaysia

Food For Thought

It is evident that the proposed safeguard duty[5] *has been imposed keeping in mind the interests of domestic manufacturers of solar panels who were struggling to compete with cheaper imports.*[6] *However, it might negatively impact the end consumers as the costs of solar power generation from new plants are expected to rise by 56-60 percent. Protectionist measures such as safeguard duties can also hamper India's ambitious*

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[3] *Ibid*

[4] www.bloombergquint.com/business/jindal-steel-power-set-to-hike-prices-to-offset-input-cost-pressures#gs.mTdHvPo

[5] The safeguard duty is usually levied in cases where the domestic industry is injured or threatened with injury caused by a surge in imports. The injury has to be serious. Safeguard measures were always available under GATT (Article 19).

[6] https://www.thehindubusinessline.com/economy/proposed-solar-safeguard-duty-is-double-edged-sword/article24445449.ece

policy objective of adding 100,000 MW solar capacity by 2022, which ironically has been advanced due to the presence of cheap imports and falling tariffs.[7]

Other stakeholders in the value chain such as solar power producers will also be affected and the additional costs would eventually have to be borne by the consumer, thereby possibly disincentivising the requisite shift towards renewable energy and climate change action in the long-run. Notably, the decision has also irked solar cell players within the Special Economic Zones whose domestic sales, too, would attract the penal duties.[8]

Considering the disparate consequences of such decisions on a variety of stakeholders, especially the consumer and also being mindful of the long-term renewable energy goals of the nation, it is perhaps better that a robust cost-benefit exercise be conducted before such decisions are finalised and implemented.

B. Policies Inhibiting Competition

3. Data storage within India to create market entry barrier

The government's proposal to mandate storage of certain set of digital data within India is likely to create a market entry barrier and has potential to isolate the country in the internet space. According to Rajya Sabha MP Rajeev Chandrasekhar, "the draft bill requires that certain categories of data be stored in data centres located within India. These categories will be notified by the Data Protection Authority later. This requirement is likely to create a huge barrier to market entry given the enormous costs". He also said that India at present does not have the physical infrastructure to host large-scale data centres.

Source: www.newindianexpress.com/business/2018/sep/24/data-storage-within-india-to-create-market-entry-barrier-rajeev-chandrasekhar-1876648.html

Food For Thought

The Srikrishna Committee in its draft Data Protection Bill, 2018 mandated data localisation laws for certain set of data by stating several reasons including security,

[7] https://thewire.in/energy/india-considers-25-safeguard-duty-for-solar-panels-from-china-malaysia

[8] Supra Note 6

access to data by law enforcement agencies, privacy of citizens and promoting the local digital economy. In addition to this, the law also provides for data mirroring.

Data localisation, in essence being a protectionist measure has been criticised to be a distortionary measure, especially considering the costs to small businesses and start-ups. It has also been argued by industry players, academia and consumer groups that mandating data mirroring will raise entry barriers in the Indian market and adversely impact a variety of smaller domestic stakeholders, such as start-ups and micro, small and medium enterprises.[9]

Valid concerns in this regard are based on the premise that large foreign companies will be able to mobilise the requisite resources to invest in setting up their data centres within India, though the same may not be possible for smaller domestic companies. The possible enhanced costs of setting up or renting such infrastructure along with the non-availability of cheaper foreign cloud services may affect their business interests. It may also impact their access to the use of the latest technology.[10] *In sum, this might act as an entry barrier, especially from the perspective of small-scale businesses and start-ups.*

Such entry barriers, coupled with fears of potential long-term adverse impact on innovation and economic growth, may deepen the existing issues of monopolisation of data and the digital economy, leading to enhanced risks of digital colonialism.

4. Indian Banks Banned from Participating in Cryptocurrency-related Transactions

The Reserve Bank of India's (RBI) deadline to banks to stop any relationship with virtual currency (VC) exchanges ended in July. Previously, one could buy or sell VCs such as bitcoins through exchanges. The process involved transferring money to bank accounts linked to the exchange and getting the equivalent amount of VC like Bitcoins. This is not possible now.

Source:
http://timesofindia.indiatimes.com/articleshow/64868308.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

[9] www.livemint.com/Opinion/ELRMxxWJR0qwHgjmMN3wfO/Opinion--Implications-of-data-mirroring.html

[10] *Ibid*

Food For Thought

VCs have been the latest disruption in the digital financial space. The emergence of VCs has fundamentally challenged the entire financial ecosystem by circumventing present institutions and setups.

As a result of this innovation, several possible use-cases of the underlying blockchain technology have also been discovered in various other sectors leading to economic efficiency and consumer welfare. In the financial sector, payments and smart contracts are prevalent use-cases. However, the challenges that come along with VCs including money laundering and financial stability have encouraged governments to take a highly sceptic view towards them, which has led to sub-optimal regulatory decisions.

Critics believe that "India's central bank has also been actively drawing attention to the recent security issues and price volatility of VC to embolden the skepticism of India's policymakers".[11] Attempts of VC start-ups in the industry to repeal the ban have largely fallen on deaf ears.

Being a distortionary measure, the ban is likely to act as a barrier to entry for new VC investors that wish to enter the market. Market players would have to adopt alternative and possibly questionable means such as working through peer-to-peer transactions and black markets. This is expected to force new investors to pay high premiums for virtual transactions.[12] The overarching regulatory approach has been entity-based and not risk based, which in turn runs the danger of stifling innovation and competition in dynamic markets such as that of VCs. Reports have also suggested that similar global reactions to the emergence of cryptocurrencies might lead to an implosion of the market itself.[13]

The absence of a strong and effective connect and functionality between government policies and cryptocurrencies has led to an adverse and sub-optimal regulatory outcome globally – ranging from a complete absence of regulatory frameworks to a blanket ban on crypto. However, reports from international bodies like the EU have encouraged regulators not to ban or ignore VCs, and to instead seek joint international solutions.[14]

[11] https://unhashed.com/cryptocurrency-news/indian-banks-banned-cryptocurrency-transactions/

[12] *Ibid*

[13] https://unhashed.com/cryptocurrency-news/bloomberg-research-suggests-crypto-industry-brink-implosion/

[14] https://news.bitcoin.com/eu-report-ban-ignore-cryptocurrencies/

C. Policies Promoting Competition

5. Amendments proposed to India's payments law

The Inter-Ministerial Committee for Finalisation of Amendments to the Payments and Settlements Systems Act, 2007 submitted its final report containing recommendations to consolidate and amend the law relating to payments. The Committee was constituted on October 03, 2017 to re-examine the draft Payment and Settlement System Bill submitted by the Inter Departmental Group constituted by the Department of Economic Affairs (DEA) on March 15, 2017 and to finalise the draft Bill.

Source: https://dea.gov.in/sites/default/files/Payment%20and%20settlement.pdf

Food For Thought

The Payment and Settlement Systems Bill, 2018 embodies important pro-competitive provisions and seeks to establish a consumer and innovation friendly legal landscape for payments in India. The Preamble of the Bill explicitly states the overarching objectives, i.e. to foster competition, consumer protection, systemic stability and resilience in the payment sector. In addition to this, the Bill recognises that 'the growth in FinTech has enabled non-banks to play a significant role in payments and is thus sensitive to issues related to promotion of access and competition in the payments industry.

Hence, considering the unique features of the current payments industry and to fix the possible regulatory and competition related issues that have arisen, the Bill establishes a separate Payments Regulatory Board (PRB) to regulate the payment sector. Recognising non-banks as significant players in the payments ecosystem and providing for an independent regulator are two of the major pro-competitive steps.

However, members of the committee were not able to reach a unanimous agreement on some portions of the Bill.

***Firstly**, the proposed independent role and composition of the PRB came under the scrutiny of the RBI, according to which the PRB should be an institution within the RBI and the Chairperson of the PRB should be from the RBI and should have a casting vote. The Committee resolved this concern by incorporating Part III (sections 9 and 10) namely "Coordination with the RBI" which among other things - provides RBI with the* *powers to make a reference to the PRB to consider any matter, which in the opinion of the RBI is important in the context of the monetary policy.*

***Secondly**, the Department of Financial Services (DFS) proposed that the Bill should* inter alia *provide for public/ government ownership of at-least 51 percent equity in the National Payments Corporation of India (NPCI). The Committee decided not to intervene in this regard as it did not consider necessary for the law to mandate government ownership or directors in payment infrastructure institutions.*

Moreover, considering consumer protection being one of the chief objectives of the Bill, it would have been encouraging to see the Committee make room for independent experts and consumer representatives in the PRB.

Finally, given that digital payments is vital for the socio-economic development of the country, it is crucial that upon the finalisation and subsequent implementation, the fundamental principles of access, competition and consumer protection are not diluted, but only strengthened further.

6. Mobile number portability to become faster, easier

Switching to another mobile phone operator is set to become a quicker process and operators will have fewer discretionary powers to scuttle a porting request, according to new mobile number portability guidelines currently in the works.

The Telecom Regulatory Authority of India (TRAI), which issued a consultation paper in April to review guidelines on number portability, is ready with the new draft norms. Basically, the new norms aim to reduce the time (to port) and the discretion of the donor operator.

Source: www.livemint.com/Industry/P5rS50xScVUUxdUk9eXxDJ/Mobile-number-portability-to-become-faster-easier.html

Food For Thought

India's telecom regulator (TRAI) has recently taken numerous pro-competitive policy initiatives (See CDD Edition 39 and CDD Edition 38 for more details). Further streamlining the mobile number portability process is a welcome step and lies in line with TRAI's broader vision of developing a competitive telecom sector.

As recognised by the regulator, the current portability norms comprise obstacles that prevent seamless switching, that will be eased through the upcoming changes. For instance, presently, a subscriber is mandated to stay with one operator for at least 90 days before s/he is allowed to switch to another. Also, the maximum period for porting currently is seven working days.

Through the new draft norms, the regulator aims to completely automate the porting process to ensure a smooth experience for users. Ensuring smooth portability in essence is a pro-competitive step because the easier the ability of a consumer to switch between telecom service providers, the greater the competitive constraint between operators and the harder it becomes for them to retain consumers. In the process of contesting for consumer loyalty, operators would have to vigorously compete, thereby enhancing consumers' experience and advancing consumer choice.