COMPETITION DISTORTIONS IN INDIA – A CUTS DOSSIER

(CDI-45: July to September, 2019)

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

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.

Dear reader,

Season's Greetings!!

We are pleased to present to you the Competition Distortion Dossier for July to September Quarter. In order to ensure that you do not miss any updates from this quarter, we have extensively covered most significant news stories from the three months that have an impact on the competitive atmosphere in India and so, it has become slightly (read much) longer than it usually is.

As we ready the Dossier for you, there is good news that we would like to share. The government has opened the fuel retail market for non-oil companies with a net worth of more than Rs. 250 crore thereby increasing the level of competition in the market and ending the dominance of state-run retailers.

This Dossier covers updates regarding India's trade policies on government's attempts to tweak anti-dumping rules, and anti-dumping duties on Al-Zinc coated products and PTA imports while also highlighting the disapproval of small and medium-sized enterprises (SMEs) against the domestic steel manufacturers' plea to impose anti-dumping duty on steel imports. In pro-competition news, a large number of stories covering different sectors like shipping, aviation, railways etc. are reported of which privatisation of Indian Railways and divestment of Air India are two important pieces. Although the privatisation of Railways at present is a namesake considering the control is still essentially in government's hands, the government has shown hints of its inclination to privatise trains on 50 key routes and also taking forward privatisation of suburban trains. In anti-competitive stories, we have dealt with stories on NPCI's discussion regarding setting a market cap on each player, diminution of competition due to the elimination of Jet Airways, and cancellation/modification of government tenders to promote Make in India products.

We hope you enjoy reading these stories as much as we enjoyed reporting them.

Cheers!

Contents

1. Trade Policies

Govt. to Make Changes in Rules of Trade Remedies[1]

The government will soon make changes in the rules of trade remedies, such as anti-dumping and safeguard, for making them more effective to protect the domestic industry, an official said. The changes in the rules of antidumping, countervailing or anti-subsidy and safeguard have been approved by the Commerce Ministry and will soon be notified by the Revenue Department.

These are trade remedy measures provided under the global trade norms of the World Trade Organization (WTO) to protect the domestic industry in case of dumping of goods, a significant jump in imports, and subsidised imports. According to the changes, the government will remove lesser duty rules (LDR), which will pave the way for Indian investigating authorities to impose anti-dumping and countervailing duty to the full extent of dumping and subsidy margins, respectively.

Food for Thought

India has long been advocating for measures like LDR to be mandated by WTO and has even made formal proposals for the same.[2] The WTO Anti-Dumping Agreement provides that a Member state can impose anti-dumping duty on imports that qualify as dumped goods and hamper the domestic industry up to a mandatory maximum margin.[3]

As the law stands, it was only obligatory and not mandatory for the DGTR to impose the lower of the dumping and injury margin as anti-dumping duty.[4] So, if the DGTR wanted to impose the maximum dumping margin in any case, it was not prohibited from doing so. In effect, the LDR did not cause any hindrance to regulation. While it creates a sense of insulation for the domestic industry from dumping exporters, it does very little to actually help the domestic business. The move further appears to be causing two concerns: 1. Making the business atmosphere in India inhospitable for foreign businesses because it indicates that the government may impose a punitive

[1]https://www.business-standard.com/article/pti-stories/govt-to-make-changes-in-rules-of-trade-remedies-to-make-them-more-effective-119092200225_1.html
[2]https://www.financialexpress.com/archive/make-lesser-duty-rule-must-for-anti-dumping-india-tells-wto/127427/
[3]Article 9 of the WTO Anti-dumping Agreement. Whether or not to impose the duty to the full margin as anti-dumping duty is at the discretion of the state.
[4]https://commerce.gov.in/writereaddata/traderemedies/Anti_Dum.pdf

anti-dumping duty now instead of going for just remedying the injury caused; and 2. Releasing the domestic industry from some degree of competitive pressure from international firms.

The discretion to impose punitive duty has been abused in the past in different jurisdictions where the concerned governments have imposed punitive anti-dumping duty on different issues.[5] *Whether or not this would make it less beneficial for the consumers in the long run is something that we would have to wait and see. Therefore, the discretion must be more carefully treaded upon than before in the absence of a guiding principle in the form of LDR. The government has once again chosen the easier route to placate domestic industry without any structural reform to enhance their competitiveness.*

Anti-dumping Duty likely on Aluminium Products[6]

The government may impose a provisional anti-dumping duty of up to US$199 per tonne on imports of aluminium and zinc coated flat products from China, Vietnam and Korea, according to a notification of the Commerce Ministry. The duty was recommended by the Ministry's investigation arm Directorate General of Trade Remedies (DGTR) after conducting a thorough probe, following a complaint from JSW Steel Coated Products Ltd. Aluminium and zinc coated flat products are used in infrastructure projects, solar power plants, roofing, and white goods.

Food for Thought

As has been discussed in the previous editions of CDD (editions 40, 41, 42 and 43), long term imposition of anti-dumping duty is likely to have a negative impact on both the industry as well as the consumer. Only quite recently has the government imposed anti-dumping duty on China.[7] *This investigation is likely to result in taking some steam off the domestic competitors producing Al-Zinc coated steel. However, it is notable that the quantity of import of AL-Zinc on account of its need in various industries, particularly solar, is very high. India would require roughly 2.1 million tonnes of Al-Zinc coated flat steel products for achieving the goal of 70 GW of solar*

[5] *See* for instance https://www.metalbulletin.com/Article/2361778/AMM-Tianjin-Magnesium-appeals-punitive-anti-dumping-ruling.html; https://www.ft.com/content/43bcf296-a827-11e6-8b69-02899e8bd9d1.

[6] https://www.moneycontrol.com/news/india/anti-dumping-duty-likely-on-aluminium-and-zinc-coated-flat-products-from-3-nations-4210571.html

[7] https://economictimes.indiatimes.com/news/economy/foreign-trade/government-imposes-anti-dumping-duty-on-certain-steel-products-from-china/articleshow/66281376.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

energy by 2022 as per some estimates.[8] *The anti-dumping duty is, therefore, likely to increase the cost of achieving that ambitious solar project.*

A suitable alternative option that the government could possibly consider in order to ensure that the competition in the market is maintained while also protecting the domestic industries could be that the domestic Al-Zinc coated steel manufacturers are provided low-interest loans to compete with the Chinese, Vietnamese or Korean producers. This would help them compete effectively and also fulfill the domestic needs for such products.

Anti-dumping Duty Imposed on PTA Imports from South Korea, Thailand[9]

The Finance Ministry has imposed definitive anti-dumping duty on all imports of purified terephthalic acid (PTA) from South Korea and Thailand. PTA is the primary raw material in the manufacture of polyester chips, which, in turn, are used in a number of applications in textile, packaging, furnishings, consumer goods, resins and coatings. Based on the recommendations of the Designated Authority in the Commerce Ministry in its sunset review findings, the Revenue Department has now imposed a definitive anti-dumping duty.

Food for Thought

As has been reiterated in our various previous stories in this Edition and in the past, the move to impose an anti-dumping duty is not bereft its pros and cons. Where necessary, it plays the role of helping the domestic industry. However, when imposed repeatedly or with the persistent goal of just protecting the domestic industry, it has a detrimental effect on the industry as it distorts competition.

While it would protect the domestic producers – notably MCPI Ltd. and Reliance Industries Ltd. - the petitioners, such imposition could have a likely negative effect on the downstream markets of PTA dependent industries. With relaxed competition, the prices are likely to see a rise and thereby adversely affect the market.

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[8] https://www.pressreader.com/india/the-hindu-business-line/20190722/281715501206388

[9] https://www.thehindubusinessline.com/economy/anti-dumping-duty-imposed-on-pta-imports-from-south-korea-thailand/article28746030.ece

Steel User Industry Urges Govt not to Hike Import Duty[10]

Major steel-consuming small and medium industries have moved the government against steel manufacturers association plea to impose 25 percent duty on steel imports. In a letter addressed to Prime Minister Narendra Modi and Finance Minister Nirmala Sitharaman the user industry said that imports as of May account for less than 4.68 percent of the country's total gross production.

The claim of steel companies that South Korea, Japan and China have diverted big volumes to India due to trade barriers imposed by the US and EU is false as the three countries export very little to the US, said the user industry. Safeguard measures are in response to a sudden surge in imports, but in reality, imports have come down in the last three years due to protective measures taken since September 2015, said the letter also addressed to the commerce, steel and MSME ministers.

Food for Thought

Carrying forward from our narrative on anti-dumping duties on how they affect the downstream industries that are dependent on the imports on which anti-dumping duty is imposed, this letter from steel using SMEs completes the picture. The problem with anti-dumping duty is that it does not just affect one industry but several dependent industries, especially in the case of raw material industries such as steel.

The government has been taking protectionist measures in the steel industry for a while now. Considering India's current economic predicament, it might be important to consider how important the import of steel is to several downstream markets that are likely to increase jobs and hence more consumption, thereby making the economy grow. Protectionism in steel has hurt India and there is a need for the government to consider the burden on the downstream markets if anti-dumping duty is imposed on the foreign in only a bid to protect the domestic steel producers.[11] *Steel being a necessary component in the growth of any industry, it has a great deal of strategic importance, and such impositions have hurt several engineering and manufacturing industries.*

[10] https://www.thehindubusinessline.com/economy/steel-user-industry-urges-govt-not-to-hike-import-duty/article28419727.ece

[11] https://timesofindia.indiatimes.com/blogs/toi-edit-page/the-cost-of-protecting-steel-indias-steel-industry-is-a-standing-example-of-how-protectionism-harms-the-economy/

An irrational anti-dumping duty is not only bad for competition, but for the whole economy. While it hurts competition between the domestic and foreign steel manufacturers, it also hampers competition in the downstream markets and they end up producing goods at non-competitive prices, which again is a part of the circle that India is unable to produce competitively priced goods for export resulting in a huge trade deficit.

2. Policies Promoting Competition

Govt. to Split Coal India to Boost Competition[12]

India may spin-off units of Coal India Ltd, the world's largest coal miner, into separately-listed companies to boost competition and raise government funds, according to people with knowledge of the matter. The state-run company and the Coal Ministry are studying a proposal by the Finance Ministry's Department of Investment & Public Asset Management to list four of Coal India's biggest production units, as well as its exploration arm, said the people, who asked not to be named as the plan is not public. "The development is in an early stage and it was unclear how long it may take," the people added.

Food for Thought

Coal India Ltd. (CIL) is a Maharatna company and the world's largest coal-producing company[13] and contributes to around 83 percent of India's total coal output.[14] CIL fully owns eight subsidiary companies in India namely Eastern Coalfields Limited, Bharat Coking Coal Limited, Central Coalfields Limited, Western Coalfields Limited, South Eastern Coalfields Limited, Northern Coalfields Limited, Mahanadi Coalfields Limited and Central Mine Planning & Design Institute Limited (CMPDIL).

In 2017, NITI Aayog came out with a Draft Energy Policy that recommended corporatisation of the seven Indian subsidiaries of CIL engaged in coal mining into independent companies, thereby promoting competition between them.[15] However, the recommendation was met with severe criticism from the ruling Government and party

[12] https://www.thehindubusinessline.com/companies/govt-may-split-coal-india-to-boost-competition-raise-funds/article28514279.ece
[13] https://www.coalindia.in/DesktopModules/DocumentList/documents/AnnualReportAccounts2018-19.pdf
[14] *Ibid*
[15] https://niti.gov.in/writereaddata/files/new_initiatives/NEP-ID_27.06.2017.pdf

spokespersons made it clear that the government of the day had no intention to do that.[16] *The recommendation was well-placed to eliminate the opacity in the coal economy and increase the competition in the sector with the aim of boosting competition.*

Perhaps the recommendation should have been taken up by the government back in 2017 itself. Nonetheless, better late than never. The government has finally come around to accept the idea to now convert four of those subsidiaries into listed independent companies. This is likely to promote competition in India's coal production and boost the economy. However, merely splitting the subsidiaries may not be enough as flexibility and freedom in management is also equally important for ensuring that the subsidiaries actually compete with each other. As the government may still be holding a dominant majority of stakes in the companies even after splitting, it is important to give them adequate room for competing not just amongst each other but also with international companies, considering the renewed foreign direct investment (FDI) norms.

Airports Privatisation to See Significant Foreign Participation[17]

There is likely to be 'significant participation' from foreign airports in the second round of airport privatisation, said Guruprasad Mohapatra, Chairman, Airports Authority of India (AAI). The Ministry will take the process forward which will end with the Cabinet giving its nod for the successful bidders.

At the moment, the timeline for the second round of airport privatisation is yet to be drawn up although 20-25 airports are expected to be put up for privatisation. Asked whether AAI will be reduced to being a mere landlord which gets funds from the private entities managing the airports, the outgoing AAI Chairman said that the only way airports can be developed around the country is if the private sector comes in and the government moves to develop underdeveloped airports.

[16] https://www.thehindubusinessline.com/economy/policy/bjp-opposes-niti-aayogs-proposal-to-split-coal-india/article9740493.ece

[17] https://www.thehindubusinessline.com/economy/airports-privatisation-to-see-significant-foreign-participation/article28725231.ece

Food for Thought

Privatisation of airports is a growing trend across the world and also increasingly debated. On one hand, privatisation results in improved efficiencies, tougher competition, engagement of more modern technology and thereby consumer welfare, while on the other, concerns regarding high costs of financing, hurdles in monitoring and lesser control of government are raised.[18] *Despite the challenges, however, privatisation of airports is likely to benefit consumers in the longer when a sufficiently competitive ecosystem settles in.*

At the same, there is also the question of AAI being a stakeholder as well as a competitor in managing airports. This makes the playing field vastly uneven and therefore poses challenges for the participating private companies. Also, the concerns regarding the concentration of the control of airports in a few private hands are also legitimate that should be given due regard. For instance, the government panel for public-private partnerships — the PPP Appraisal Committee (PPPAC) disregarded the suggestion of Department of Economic Affairs of the Ministry of Finance to not award the lease for more than two airports to any one bidder, which resulted in Adani Enterprises Limited winning the bid for all six airports in 2018.[19]

Private E-Portals to Book Government Trips Soon[20]

Online private travel portals, such as MakeMyTrip and Yatra may soon become authorised travel agents for government trips. The Department of Commerce is in talks with such third-party travel aggregators for steep discounts and reimbursements for cancelled tickets to get them on board.

"We are talking to many third-party aggregators including Yatra and MakeMyTrip to offer services on Government eMarketplace (GeM)," said an official, adding that this would be the first step to make them the official ticketing partners. At present, only state-run entities such as Balmer Lawrie, IRCTC and Ashok Travels & Tours are empanelled as official travel agents. In the case of official air travel, tickets can be purchased directly from the airlines or through the three authorised travel agents.

[18] https://www.moneycontrol.com/news/india/aviation-whats-the-right-approach-to-privatisation-of-airports-in-india-4419581.html
[19] https://www.thehindu.com/business/Industry/finance-ministry-niti-aayog-guidelines-ignored-in-airport-privatisation/article28733682.ece
[20] https://economictimes.indiatimes.com/news/economy/policy/private-e-portals-to-book-government-trips-soon/articleshow/70456833.cms

Food for Thought

This is a welcome move that is likely to improve transparency in the transport service procurement process. With the presence of several entities, there would also be competition among the service providers to provide the government with better services and tariffs. The current position where only the state entities are allowed to provide these services creates an absence of choices for state bodies that deserve to be challenged.

However, the decision has been only to invite them to provide service on GeM and not for anything place. The government bodies must not make any discriminatory policies for going with state entities by creating an uneven playing field, even after the participation of the private entities. This would also help the exchequer in saving on travel costs by seeking mandated discounts and cost-free reimbursement on cancellation of bookings. Given the increase in competition, this is also likely to improve.

Rules to End Gas Distributors' Monopoly[21]

The government is set to introduce rules in six months that could lead to the phase-out of monopolies controlled by natural gas distribution companies in 34 cities, including New Delhi and Mumbai, allowing many consumers to choose a new supplier, a regulatory official said.

In 2009, natural gas supply regulator — the Petroleum and Natural Gas Regulatory Board (PNGRB) — gave exclusive gas marketing rights, initially for five years, to companies that had established gas distribution networks across cities. It allowed them to use their pipelines exclusively for 25 years to help them recover billions of dollars they had invested. However, now one of the three members of the PNGRB's board said the regulator is soon moving to open up the still relatively new business to the competition.

Food for Thought

The market for distribution of natural gas in India at present has a fair amount of concentration after the PNGRB granted exclusive licences to distributors. A major monopolist in the sector is GAIL, the government-owned natural gas processing and

[21] https://www.business-standard.com/article/economy-policy/govt-plans-to-launch-rules-to-end-gas-distributors-monopoly-in-34-areas-119071601497_1.html

distribution company. The company directly or indirectly controls a number of distributors in the metro cities, such as Mahanagar Gas in Mumbai and Indraprastha Gas in Delhi. This would effectively halt this monopoly.

Another laudable point in this decision is that the government intends to phase-out the existing distributors. It is important that PNGRB in the same light also ensures that there is some capacity-building mechanism for the next bidders for licenses before the baton for gas distribution is handed over.

It might also be important for the PNGRB to look at ways to ensure that the distributorship is appropriately transferred after the scheduled time, i.e. five years in order to avoid concentration of management and control of gas distribution in India, since recovering the cost of infrastructural investment is now not a concern. These steps would ensure healthy competition between the competitors.

Rationalising Additional Taxes on Aviation Turbine Fuel[22]

The Aviation Ministry has formed a committee to rationalise additional taxes that airlines have to pay while uplifting Air Turbine Fuel (ATF) at airports across India, according to senior government officials.

Currently, airlines have to pay charges such as 'throughput charges', 'into plane charges' and 'fuel infrastructure charges' when they take ATF at any airport for their planes. "These charges are taxed multiple times as they are billed in a circuitous manner," said a senior government official. A second government official said that to develop a direct billing mechanism between airline companies and airport operators - so that these multiple taxes can be removed - the Ministry of Civil Aviation has formed a committee comprising representatives from airlines, airport operators, oil companies, among others. This Committee is expected to submit its report soon, the second official added. As per government estimates, if a direct billing mechanism is implemented, airlines would be able to save around ₹400 crore per year.

[22] https://www.livemint.com/politics/policy/govt-forms-committee-to-rationalise-additional-taxes-on-aviation-turbine-fuel-1566110381077.html

Food for Thought

For an ailing aviation sector in India, this is a much-awaited relief. Considering that nearly 40 percent of all costs of any airline's total expenditure in India is spent in ATF, reviewing the imposition of multiple taxes is very important. In the current system, there are taxes on taxes (GST, VAT and excise) which encumber the net tax value that the airlines have to pay. Given that the quantum of taxes paid increasingly becomes burdensome after each stage of taxation, this would release the airlines from a lot of operational barriers to their business and hence, facilitate better competition.

The cost of ATF is an essential component that affects the profitability of any airline. A major reason why ATF is at least about 35-40 percent more expensive than the rest of the world is because of several taxes on ATF. This move is likely to ease up the business of airlines a bit and help them effectively compete against foreign airlines, which they have been largely incapable of so far.

Indian Law Firms to Open Doors for Foreign Peers[23]

The Society of Indian Law Firms (SILF) has recommended to the government that foreign law firms be allowed into India in four phases, marking a reversal in a position that could lead to the bar being lifted. However, the group is still opposed to the Big Four — Deloitte, PwC, EY and KPMG — offering legal services. The entry of overseas law firms has long been staunchly opposed by their domestic counterparts, led by SILF.

If the government agrees, the Advocates Act will need to be amended. The government may get the ministries of commerce and law to work on a regulatory structure to allow multinational law firms in, said people in the know. SILF recently submitted to the government a detailed plan on the matter. This includes allowing Indian firms to promote their services.

Food for Thought

The law governing registration and right to practice of lawyers, Advocates Act 1961, is implemented by the Bar Council of India (BCI). The opposition from the SILF to allow foreign law firms to also operate in India has also been shared by the BCI. While the Supreme Court has disallowed the foreign law firms from practicing in India, the

[23] https://economictimes.indiatimes.com/news/politics-and-nation/indian-law-firms-agree-to-open-doors-for-foreign-peers/articleshow/70285997.cms?from=mdr

opposition has mainly been from the SILF. The reasoning for such opposition is very clear that it leads to an increase in competition for domestic law firms.

Notably, foreign law firms would be mainly interested in entering the transactions market that has the largest chunk of the revenue in the legal industry. The advent of foreign law firms would give rise to competition in the business of the domestic and foreign law firms would be eating up a share of the existing and established law firms. The present government had already shown an interest in allowing multinational law firms to operate in India in 2017. However, the vehement opposition from law firms which was also compounded by the BCI has obstructed that decision so far, and is likely to obstruct it for the coming future by agreeing to open the doors in 'phases'.

An important factor that has been a hurdle to permitting entry to foreign law firms has also been the overwhelming presence of lawyers in the Lok Sabha, which has only come down in the past two decades.[24] The government would perhaps need to ruffle some feathers if it finally decides to allow the foreign law firms because the BCI is likely to demonstrate with strikes and protests, halting the business of an overwhelming pendency of the gigantic legal system that India has.

'One Nation One Tag' for Seamless Travel[25]

In a bid to end the use of multiple smart tags to travel on tolled roads and to pay entry tax in different cities, a 'One Nation One Tag' is set to be rolled out in the next couple of months. Currently, FASTag, the RFID-based smart tag can be used to pay toll on the national highway network and a few state roads and it's mandatory for commercial vehicles to have a separate tag to enter Delhi, which is issued by the municipal corporation.

Food for Thought

FASTag is a reloadable tag which enables automatic deduction of toll charges and lets you pass through the toll plaza without stopping for the cash transaction. The tag employs Radio-frequency Identification (RFID) technology and is affixed on the vehicle's windscreen after the tag account is active.[26] The system was launched in 2014 with the

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[24] Stands at 4% in the present Lok Sabha. *See* https://www.prsindia.org/sites/default/files/parliament_or_policy_pdfs/Vital_Stats_17thLS_Profile_Final_0.pdf.

[25] https://timesofindia.indiatimes.com/india/one-nation-one-tag-for-seamless-travel-and-paying-entry-tax/articleshow/71318590.cms

[26] http://www.fastag.org/

aim of simplifying the toll payments for commercial vehicles such as large trucks between different states on National Highways.

At present, all state governments have accepted FASTag except Delhi. In Delhi, the commercial vehicles have to get a separate tag from Municipal Corporation. If other states were to employ a similar system, it would result in a lot of encumbrance for the vehicles. One nation one tag facilitates ease in transport of commercial vehicles thereby making it easy for various commercial vehicles to operate between different states. Removal of such barriers to entry promotes competition. However, a question that rises with this development is the issue of authorisation to grant tags. The government might also do well to delve into the question of bringing in competition for bodies that are authorised to grant tags to commercial vehicles.

TRAI Gives More Time to Telcos to Implement Revamped MNP Norms[27]

The Telecom Regulatory Authority of India (TRAI) has extended the deadline for implementation of new mobile number portability (MNP) rules for consumers wanting to switch to a new operator without changing their mobile number. The revamped MNP or port out rules aim to make the entire process faster and simpler. The TRAI has prescribed a two-day timeline for port out requests within a service area, cutting the migration process from seven days.

The deadline for implementation of MNP regulations, which was earlier slated to come into effect from September 30, 2019, was extended after the telecom operators and MNP Service Providers (MNPSPs) sought more time to perform testing before migration to the new process, to ensure that subscribers are not inconvenienced.

Food for Thought

The MNP facilitates easy switching between various telecom operators without changing the phone number. As the rule stands at present, the telecom operators are required to facilitate the change between operators within seven days from the date of application. However, with the new MNP rules, the operators are required to facilitate the switch within two days.

[27] https://economictimes.indiatimes.com/industry/telecom/telecom-policy/trai-gives-more-time-to-telcos-to-implement-revamped-mnp-norms-november-11-new-deadline/articleshow/71335919.cms

The ease of switching makes the Telecom market very competitive for operators. The consumers can now switch between operators within a matter of two days. However, the mechanism to ensure that consumers do not face any operational difficulties after the switch is essential. Therefore, the move to grant additional time is justified provided the MNP rules are strictly complied with by operators after implementation.

Inter-State Portability of PDS in 4 States[28]

In a major step that would take India closer to achieving the objective of 'One Nation One Ration Card', the Minister for Consumer Affairs, Food and Public Distribution Ram Vilas Paswan inaugurated the inter-State portability of public distribution in two clusters in the adjoining States of Andhra Pradesh and Telangana and Gujarat and Maharashtra. This will enable beneficiaries from either of the States' cluster to avail the benefits accruing to them under the National Food Security Act from any of the two States.

Addressing the media, Paswan said 11 States/Union Territories, including Andhra Pradesh, Gujarat, Haryana, Jharkhand, Karnataka, Kerala, Maharashtra, Punjab, Rajasthan, Telangana and Tripura, have implemented the intra-State portability of ration cardholders to lift the entitled food grains from any Fair Price Shops (FPSs) within their states. These states and UTs are expected to introduce inter-State portability from January 01, 2020.

Food for Thought

The aim of the National Food Security Act, 2013 (NFSA) is to provide Targeted Public Distribution System (PDS) to the rural and urban population. The most vulnerable class that is largely dependent on the PDS are those living below the poverty line. Also, this is the class that constitutes a majority of labour class workforce. In search of employment, they often have to migrate between states. PDS being a State distribution system, failed to provide ration to a person who had changed his place of residence. However, with the inter-state operability of PDS, migrants from different parts of the country would be able to receive their entitlements, no matter where they are.

This facilitates competitive federalism between states. With a sense of competition, the state governments are likely to work harder to provide better delivery of food grains

[28] https://www.thehindubusinessline.com/economy/inter-state-portability-of-pds-implemented-in-4-states/article28966290.ece

through PDS and result in larger consumer welfare. This will particularly help the people living on the borders of two states to easily switch between the state from which they can obtain food grains.

Private Coal Miners to Sell their Produce in Open Market[29]

The Centre will allow private coal block operators to sell more than 25 percent of their production in the open market in subsequent rounds of auctions if its experience from the current round is satisfactory, coal secretary Sumanta Chaudhuri said. "If block operators under the current round of auction fares well in terms of achieving milestones, operationalise their blocks and reaching their peak rated capacity, the Centre may allow more than 25 percent of production to be sold in the open market in subsequent rounds of coal block auctions," Chaudhuri said.

To make sure operators can operationalise their blocks in the least possible time, the Centre is amending the Mines and Minerals (Development and Regulation), or MMDR, Act to scrap redundant approval requirement by states and is looking at increasing the number of coal exploration agencies through accreditation and empanelment. It is also focusing on coal evacuation infrastructure.

Currently, the Centre has offered to auction 27 coal blocks to private operators who would be allowed to sell 25 percent of their production in the open market. In case they cannot consume the rest 75 percent of their rated production, they are allowed to sell it to Coal India at notified prices. In addition, it has offered nine blocks for public sector companies that can sell its entire produce in the open market.

Food for Thought

A vast majority of coal mines in India are operated by Coal India Limited (CIL) which receives coal mines for extraction from the government without bidding for it. Coal India exercises monopoly in the coal market. A few private enterprises that have been allotted the coal mines are only allowed to extract coal for the purpose of running their related industries, such as iron & steel, cement or captive power plants.

The inability of private players in selling the extracted coal from coal mines under their control contributed to the monopoly of CIL. Enabling private companies that have the rights over the newly auctioned mines to sell 25 percent of their produce in open

[29] https://m.economictimes.com/industry/indl-goods/svs/metals-mining/private-coal-miners-could-get-the-chance-to-sell-their-produce-in-open-market/articleshow/70779607.cms

market makes the market for coal more competitive. The government also intends to allow them to sell more than 25 percent of their produce if the first round proves successful. On this note, the government should perhaps also consider allowing the existing licensees of coal blocks to sell their produce in open market at par with the new bidders to further enhance competition in the market.

CMs' Committee Meets on Agricultural Pricing[30]

The Chief Ministers' Panel on Agriculture is deliberating with other state governments on whether to permit genetically modified (GM) crops in the country 'in restricted spaces'. The contentious move may take time as some state governments have opposed the introduction of GM crops. The panel has, however, decided to make substantial changes to the Essential Commodities Act to remove stock limits.

"Our oil seeds productivity is less, we are looking at new technology on seeds. The issue of the use of GM crops is a very debated. We are dependent for oilseeds that we import from other countries, these countries use GM technology. We today discussed the issue to build a consensus on the use or not to use GM crops in restricted and specific areas," said Maharashtra chief minister Devendra Fadnavis who is a convenor of the high-powered committee of the Chief Ministers' panel on Agriculture reforms.

Food for Thought

At present, we are dependent on imports for oil seeds from countries where they are grown with the help of GM seeds only. Considering that we are anyway consuming GM crops, it might be worthwhile for the Government to investigate the usability of GM crops for oilseeds and engage in research to understand their suitability for India, particularly if contained in restricted spaces as the Panel has discussed.

The opposing states should be required to present evidence on grounds for not using GM seeds in India. An attempt of this nature is likely to enable India to become self-sufficient in oilseeds production by competing with foreign markets on an equal footing. The Panel has additionally positioned its reliance on the opinion of experts. In such a circumstance, research in such an important trade area for the country can be

[30] https://economictimes.indiatimes.com/news/economy/agriculture/chief-ministers-panel-on-agriculture-states-talk-genetically-modified-crops-in-restricted-spaces/articleshow/70710762.cms?from=mdr

considered by the government, especially considering the pre-requisite safeguards in question.

IOC Hires Foreign Flagged Crude Carrier[31]

Indian Oil Corporation Ltd (IOC) has hired a foreign-flagged very large crude carrier (VLCC) at a day rate of US$31,950 for seven years. This has to upset the calculations of the government to use such long-term contracts to help India expand its shipping capacity to haul more oil cargoes for strategic reasons. Earlier this year, IOC had called for bids to hire a ten-year-old oil supertanker for a firm period of five years with two extensions of one year each. This was the first of such experiments brokered by the shipping and oil ministries.

The move followed intense lobbying by the local shipping groups which said that long-term contracts would facilitate funding at better rates to buy ships. Local fleet owners participating in the tender were given a so-called 'right of first refusal' to match the rate and take the contract if the lowest quotation was offered by a foreign owner.

Food for Thought

While the move is indicative of a healthy competitive atmosphere between domestic and foreign shipping companies, it also results in a setback for the government to expand the expertise and capacity of the domestic shipping companies at engaging in hauling more oil cargoes. The bidding was also conducted in a manner to support the local fleet owners by giving them the right to the first refusal to match the bid of the foreign bidder in case it was the lowest.

The problem was not just a low bid, but also the availability of enough ships in the fleet matching the pre-requisite criteria for it. While the strategic importance of capacity-building has to be taken into account when the government supports a local ship, it should also be kept in mind that IOC is an important profit-making PSU which should ideally be prioritising efficiency over anything else. A different mechanism for capacity building must be developed to empower the local fleets to participate in such bidding in the future more competitively.

[31] https://www.thehindubusinessline.com/economy/logistics/centre-experiments-with-long-term-ship-charters-for-psu-refiners-gets-off-to-a-false-start/article28427451.ece

Railways Mulls Privatising Train Services[32]

Railway Board Chairman V K Yadav said the national transporter will offer more trains to private players in the coming years. He said on a private basis, the first Tejas Express train operated by the Indian Railway Catering and Tourism Corporation (IRCTC) will start running between Delhi-Lucknow from October 2019. He said, offering trains to private players is important for the Railways to sustain and grow. Yadav said, however, the maintenance of the train coaches, locomotives will be done by the Railways.

He said Railways will provide its crew of loco pilots and guards to run those trains, and the private players will have the remaining of the services such as ticketing, entertainment and other services on board the trains. He said the privatisation plan will take time. "We have started working on the plan and many companies have shown interest in the idea," Yadav said.

Food for Thought

In her budget speech, Finance Minister Nirmala Sitharamn expressed clearly that the government does not have enough fiscal space to make heavy investments in modernising the Railways. While it requires a capital investment of about Rs. 50 Lakh Crore between now and 2030, at present the capital outlay is just Rs. 1.6 Lakh Crore. To offset that deficit, a more efficient way of doing it would be required to generate revenues. While the government is mulling privatisation, it must be clearly understood that the government is only looking at licensing the train operations and not any other part of the train.

By giving the two Tejas trains to IRCTC for operation in the first leg, the government is attempting a trial albeit it is still being run by a government-owned company. To take the initiative further, the government has also identified 50 key routes on which trains can be operated by private players.[33] *The government intends to keep all the infrastructure with itself to regulate the social service dimension of the Railways better. While it seems that the government is making a short term move to enable the Railways to generate enough revenue to modernise the Railways, it might do well to make a long term decision of this sort.*

[32] https://www.livemint.com/politics/policy/railways-mulls-privatising-train-services-in-coming-years-1568038588132.html

[33] https://economictimes.indiatimes.com/industry/transportation/railways/railways-provisionally-selects-50-routes-for-private-operators/articleshow/71338962.cms

Efficiency of Indian Railways has barely improved over the years and the quality of service has been less than satisfactory. Additionally, it must also be seen that the existing that Indian Railways provides in a train are mostly contracted to third party vendors anyway, from pantry to bed-rolls. So, giving more autonomy to a private player in operation of the train is likely to do better. With improved competition, the other trains being run and operated by the Railways may also be forced to become efficient or face elimination.

Government Committed to Disinvestment of Air India[34]

The government is committed to the disinvestment of national carrier Air India and the plan is to make it more operationally viable before disinvesting it, Civil Aviation Minister Hardeep Singh Puri said. Replying to supplementaries during Question Hour, the Minister said there has been a steady improvement in finances of Air India and the airline is set to make profit during the current financial year. He said Air India is currently making a revenue of Rs 15 crore every day. "Our plan is to revive Air India, make it more operationally viable and then to disinvest it. So far as Air India is concerned, the government is committed to the privatisation of Air India. Let there be no ambiguity on that," he said.

Food for Thought

Air India has now entered into losses of over Rs. 8400 crores.[35] While divestment is a much required move for the ailing company, it is nonetheless a burdensome exchange for whoever decides to take the company. One way to make the divestment easier for the government would be to take some load off from Air India by paying off at least a part of the debt. Another problem is that the government has expressed that it will try to ensure that Air India goes in the hands of an Indian company only.[36] There is need for some expertise on the Panel that decides the fate of Air India divestiture. With Amit Shah's presence, there is political will in place for the divestment.

While it is important that the divestiture takes place as early as possible, the government should not delay the process of divestment any further in the hope of

[34] https://www.thehindubusinessline.com/economy/logistics/government-committed-to-disinvestment-of-air-india-civil-aviation-minister/article28272232.ece
[35] https://www.indiatoday.in/business/story/finance-minister-nirmala-sitharaman-meeting-on-air-india-disinvestment-today-losses-cross-rs-8-400-crore-1600310-2019-09-18
[36] https://www.businesstoday.in/sectors/aviation/govt-ensures-air-india-is-purchased-by-indian-entity/story/363468.html

finding an Indian company for it, considering the fact that the Indian aviation companies are themselves going through a phase of tough struggle. At present, Air India is little more than a bad debt for the country. Perhaps the focus of the government should be on inviting more and more takers for Air India and developing competition for it.

The battered condition of Air India complemented by the grounding of Jet Airways has further resulted in diminution of competition in the aviation sector. Privatisation in more efficient hands is likely to improve the situation.

3. Policies Inhibiting Competition

Rs. 25,000-Cr Tenders Cancelled to Promote 'Make in India' Products[37]

The government tender's worth over Rs. 25,000 crore were either cancelled or modified and re-issued after the Department for Promotion of Industry and Internal Trade (DPIIT) stepped in to change their conditions to promote 'Made in India' goods, a top official said. "The department is taking every step for effective implementation of public procurement order, 2017, to promote 'Made in India' products," the official said. The government issued the order on June 15, 2017, to promote the manufacturing and production of goods and services in India and enhance income and employment in the country.

Food for Thought

While the government has been trying to pitch 'Make in India' to businesses and investors across the globe, the stories of its failure have been widely reported and voiced.[38] *Different sectors have raised concerns regarding the ineffectiveness of the initiative or at least how it was implemented,*[39] *with data showing that investment in India has plummeted since 2015.*[40] *In a bid to promote the initiative, the government incorporated a provision in the General Financial Rules, 2017 to favour domestically produced goods or services over others.* [41]

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[37] https://www.thehindubusinessline.com/economy/25000-cr-tenders-cancelled-or-modified-to-promote-make-in-india-products/article28814890.ece

[38] https://www.livemint.com/industry/manufacturing/-make-in-india-has-not-eased-manufacturing-woes-1550415878174.html

[39] https://www.firstpost.com/business/make-in-india-fails-to-generate-adequate-jobs-lack-of-funding-options-force-indian-firms-to-up-imports-lt-chief-am-naik-7185821.html

[40] *Supra* n.37.

[41] https://doe.gov.in/sites/default/files/GFR2017_0.pdf

*In pursuance of the same objective, the government also brought an executive order titled the **Public Procurement*** (Preference to Make in India), ***Order 2017** to further promote the initiative in the procurement of goods and services by state bodies.*[42] *The withdrawal or modification of different public tenders was done to effectively implement the same order. While WTO prohibits protectionism generally, there is a need to ensure that liberalisation is with safety nets.*

While the government may well be within the legal bounds in passing this order, the conduct of the government in modifying or cancelling is severely discouraging for private businesses and investors who spend their time, resources and effort in applying for a public tender and wait for it with hopes. It disturbs India's ease of doing business prospects and also results in unfair treatment of foreign businesses.

Promoting domestic industries by including the relevant terms, clauses or provisions in the call for bids or Tenders could have been a justified way of doing it. However, in absence of any such clause, the withdrawal or cancellation of tenders would mean giving retrospective effect to a delegated legislation. Such moves by the government consequentially hinder competition. The government should, therefore, perhaps refrain from distorting the terms of a tender after the submissions by competitors have been made. There is also a need for a policy for periodic review of such measures to ensure that they are truly benefitting SMEs and not distorting competition – and doing course correction as and when required.

Broadcasters Gaming New Tariff Rules Through 'Perverse' Discounts[43]

As new consumer-friendly pay television rules shrunk viewership and sent rankings topsy-turvy, Indian broadcasters found a way around. The telecom regulator is now studying whether discounts should be capped. The television tariff rules, rolled out in February end, allow subscribers to pay for what they view, and is aimed at curbing the practice to bundle unwanted channels in bouquets. Paying Rs. 130 a month gives access to 100 free-to-air channels, and viewers can choose more by paying a maximum of Rs 19 per channel.

[42] https://dipp.gov.in/sites/default/files/publicProcurement_MakeinIndia_15June2017.pdf
[43] https://www.bloombergquint.com/business/broadcasters-gaming-new-tariff-rules-through-perverse-discounts-says-trai

Yet, the number of bouquets has not come down and broadcasters were offering as much as 70 percent discount on the combined price of channels offered in bouquets, the TRAI said in a discussion paper released on Aug. 16. Some broadcasters have cut bouquet price by 80-90 percent, it said. They have been confusing consumers with too many bouquets with very few changes, becoming a hurdle in selecting channels *a la carte*, it said.

Food for Thought

The idea behind the television tariff rules (New Tariff Order[44]) was meant to ensure that the broadcasters do not charge arbitrary prices for subscriptions based on bouquets. After the Order, the broadcasting companies provided discounts for their channel bouquets. TRAI finds this conduct erroneous and seeks to cause disruption, and for the same purpose, has brought forth a Consultation Paper attempting to address the issue of discounting by one of three ways: i. Prohibit channel bouquets; ii. Capping the discount on bouquets; and iii. Revising the maximum price for subscribing to a channel (Rs. 19, at present).

This attempt by TRAI is likely to hamper the smaller players in the market as they survive because of the bouquets. Experts say that if any of the first two proposals are brought into force, the smaller players would be forced to either decrease their investment on the quality of content or charge a lower price for their stand-alone subscription. This is particularly bad for competition and will end up eliminating the smaller players.[45] However, a more rigorous analysis is required before concluding whether such a decision would affect competition in the market. As some of the broadcasters also commented on the Consultation Paper, there is a need for more assessment since it has only been about 6 months since the New Tariff Order (NTO) came out that the TRAI is considering revising it.[46]

Also considerable is the fact that the NTO was brought to life only after much deliberation and litigation over a period of two years. Revising the Order would mean requiring the broadcasters to further amend their conduct on the basis of the frequently changing rules. TRAI could possible undertake a Consumer Impact Assessment or a Regulatory Impact Assessment to understand the impact of NTO before making any such decision.

[44] https://main.trai.gov.in/sites/default/files/RegulationTCCCP21122018.pdf.

[45] https://economictimes.indiatimes.com/industry/telecom/trais-new-consultation-paper-on-broadcast-tariffs-spells-trouble-for-industry-experts/articleshow/70731573.cms

[46] Times Network's comments, available here.

UPI Entities May Face Cap on Market Share[47]

The National Payments Corporation of India (NPCI) is exploring the option of imposing a cap on the market share or transaction value of individual payment entities on the Unified Payments Interface (UPI) platform. The move could address concerns that concentration of transactions through non-banking players such as Google Pay and PhonePe could pose a systemic risk to the digital payments ecosystem in the country. This issue was discussed in a meeting of the UPI steering committee led by the NPCI.

"There was a proposal on limiting each company's market share to not more than 33 percent of all UPI transactions so that no one enjoys monopoly overpayments in the country," said a top banker, who was present at the steering committee meeting. But discussions around this proposal are at a preliminary stage and nothing has been finalised.

Food for Thought

If this decision is brought to life, the NPCI would be attempting to step into the shoes of the CCI by trying to regulate competition. Also, if there is a need to cap market shares in UPI apps, should it be equally applicable for other financial instruments like Debit Cards, Credit Cards, e-Wallets, etc.? Additionally, the presence and dominance of a few firms are not creating any insurmountable entry barriers for any new entrant. The only entry barrier for a new competitor to be is to get one of any of the 140 member banks to integrate with it.[48] Therefore, the question that arises is, whether there is a competition concern in the market for UPI apps? And if yes, is capping the market share by volume or value the most optimal way to do it?

The fact that UPI apps do not charge a penny for the services further adds to the problem of regulating competition between them. If enforced, this decision would likely hinder competition because the competitors cannot compete for more than 33 percent of the market share. This would likely stagnate the efficiency amongst the competitors because there would be no reason for them to spend on innovation after achieving 33 percent market share.

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[47] https://economictimes.indiatimes.com/industry/banking/finance/upi-entities-may-face-cap-on-market-share/articleshow/70986116.cms
[48] https://www.livemint.com/opinion/online-views/let-there-be-no-cap-on-the-market-share-of-a-upi-app-1569254074205.html

CBI Seeks Information on Bilateral Flying Rights[49]

The Central Bureau of Investigation (CBI) has approached the Ministry of Civil Aviation and the Directorate General of Civil Aviation (DGCA) seeking information about the set guidelines and procedures followed while negotiating for bilateral flying rights with other countries. The information sought is in connection with the investigation over alleged irregularities in the signing of bilateral flying rights by the Indian government to West Asian countries in 2008-09. It was also alleged that acts of the commission were made on extraneous considerations causing immense losses to Air India and pecuniary benefit to private domestic and foreign airlines, which were given unrestricted entry into India and major routes were given to them without reciprocal benefits to Air India.

Food for Thought

Bilateral flying rights are determined by an agreement between any two countries that wish to run flights between them, to determine the number of flights that would ply between the two countries. The rights are granted to different airlines that the governments choose. The matter at hand pertains to granting such rights favourably to West Asian airlines while discriminating against Air India.

Of the several reasons that have brought Air India down, corruption could also be one. India has entered into Air Service Agreements with 109 countries. Corruption cases are not new to Air India, and it is arguably a reason for the failure of Air India to compete against its private counterparts, both domestic and foreign. A case in point is Arvind Jadhav, the ex-Air India chief's arrest in January this year in another corruption case. A robust mechanism for checking corruption in such a capital intensive industry is required especially when the capital involved is exchequers.

Jet Airways Grounded, International Fares Take to the Sky[50]

The slump in international capacity created by the grounding of Jet Airways has led to a steep rise in overseas airfares, said executives at airlines and travel companies. Flights to destinations such as London, New York and Toronto have seen the biggest

[49] https://indianexpress.com/article/business/aviation/cbi-seeks-information-on-bilateral-flying-rights-from-civil-aviation-ministry-dgca-6017031/
[50] https://economictimes.indiatimes.com/industry/transportation/airlines-/-aviation/jet-grounded-international-fares-take-to-the-sky/articleshow/69997304.cms?from=mdr

increase. For instance, fares on the Mumbai-New York route rose as much as 157 percent between March and June, according to data compiled by travel portal Cleartrip.

Food for Thought

The rise in airfare is a clear consequence of the absence of competition in the aviation sector. While it could allude to the grounding of Jet Airways, aviation has shown signs of anticompetitive behaviour in the past too. The aviation companies have been caught in CCI investigations in the past with severe penalty imposed.

Another perspective that should be taken into account while examining the price hike is whether the hike is periodic in the sense that it rises every year in these months in India. There is a likelihood of that because the summer months are usually the holiday months when most people intending to go for a vacation trip.