CUTS International

COMPETITION DISTORTIONS IN INDIA – A CUTS DOSSIER

(CDI-49: July to September 2020)

For earlier Dossiers please see: https://cuts-ccier.org/competition-distortion-in-india/

This periodic Dossier produced by CUTS International looks at the interface of policy issues that have 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,

Greetings!

We are pleased to present to you the Competition Distortion Dossier for the July to September 2020 quarter. To ensure that you do not miss any updates from this quarter, we have extensively covered the most significant news stories from these three months that have an impact on the competitive landscape in India. We understand that this Dossier would reach you at a time when the whole world is fighting a fierce battle against one of the greatest healthcare crises that we have seen so far.

Taking forward from previous editions, we have divided the Dossier into three parts: Trade Policies; Policies Promoting Competition; and Policies Inhibiting Competition.

In the first part, we cover developments regarding the trade-war between India and China, in terms of tariff and the ban on Chinese apps. About the former, the government is contemplating imposing anti-dumping duty on optical fibre from China. Additionally, the Indian government in September – in a second wave – has banned another 118 Chinese apps. We delve into how that affects the Indian ecosystem, and where it puts India internationally.

Throughout the Dossier, developments under the 'Aatmanirbhar Bharat Abhiyan' plan have also been covered, whilst examining the possible adverse effects on competition. At the same time, there are several positive news in this edition of the Dossier in the area of promotion of competition. A major overhaul in that regard has been the passing of three Farm Bills, which have received assent from the President. Now, the new laws open the markets for farmers, giving them space to conduct business outside the stipulated physical parameters. It allows farmers to transact inter-state and intra-state and decide prices based on negotiations. Some states, particularly those ruled by opposition parties have opposed the new farm laws, ostensibly due to the pressure of vested interests who were earlier taking huge rents from the farmers.

This edition of the Dossier has witnessed more policies inhibiting competition than promoting competition. Ranging from the ever-growing concerns in the telecom sector to the most recent (on-going) Google-Indian startups war, this Dossier talks about it all. There is an impending need for government and regulators (including businesses) to introduce policies keeping in mind competition and economic factors. Amidst an already broken economy, this becomes imperative. Without that, India's recovery will be delayed longer than the stipulated two years.

We hope you enjoy reading these stories as much as we did, reporting them. Our best wishes to you and your family and colleagues for dealing with the COVID-19 crisis, and everything else.

Cheers!

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1. TRADE POLICIES

Large-Scale Dumping of Optical Fibre from China – Impending Tariff Wars?[1]

The government is considering imposing a remedial duty on the import of "single-mode optical fibre" after an investigation by the Directorate General of Trade Remedies (DGTR) confirmed its dumping mainly from China, the officials said, requesting anonymity. The DGTR is a single-window agency tasked with providing a level-playing field to the domestic industry against unfair trade practices by foreign companies exporting to India.

Food for Thought

The DGTR, after a detailed investigation, concluded that the import of single-mode optical fibre at below cost (mainly from China) is threatening to cause serious harm to Indian manufacturers. Thus, the DGTR proposed a 10 percent safeguard duty on imports from all developed countries and China for one year.[2] It was found that increased import of single-mode optical fibre was causing or are likely to harm domestic producers of directly competitive products.

The combined import from all developing countries except China is less than nine percent, whereas China alone has a share of over 84 percent in our imports. Thus, the imposition of safeguard duty will ensure that the domestic firms are not washed away from the market.[3] A similar investigation against China about the dumping of optical fibres is underway in the EU.[4]

Single-mode optical fibre is an input for the manufacturing of optical fibre cables which are used by telecommunication companies for connectivity purposes. The product becomes significant due to increased government and private interest in internet connectivity of homes, offices, gram panchayats, defence systems (NFS Project) and data centres.

1 Rajeev Jayaswal, 'Anti-dumping measure: Tariff on Chinese optical fibre likely', Hindustan Times, August 25, 2020, https://www.hindustantimes.com/india-news/anti-dumping-measure-tariff-on-chinese-optical-fibre-likely/story-LHhTYR5IyP7txmCVAEKKwM.html.

2 http://www.dgtr.gov.in/sites/default/files/NCV%20Final%20Finding.pdf.

3 Rajeev Jayaswal, 'China dumps large-scale optic fibre cables from India, tariff wars expected', Hindustan Times, August 24, 2020, https://www.hindustantimes.com/india-news/china-dumps-large-scale-optic-fibre-cables-from-india-tariff-wars-expected/story-7KoR9raunhmoWvhh7Vh25J.html.

4 'EU launches investigation into Chinese optical fibre cable imports', Reuters, September 24, 2020, https://in.reuters.com/article/us-eu-china-digital/eu-launches-investigation-into-chinese-optical-fibre-cable-imports-idINKCN26F21T.

The DGTR recommendation comes in the wake of a similar imposition by the Chinese government on Indian single-mode optic fibres effectively depriving the industry of access to 50 percent of the world market.[5]

The current measure can be justified based on injury to the domestic market, deprivation of market access, and the present global scenario. However, before imposing anti-dumping duties it must be kept in mind that even though they reap benefits in the short-term in ways that boost the domestic market, in the long-term they can also reduce the international competitiveness of domestic firms producing similar goods.

Chinese Apps Ban[6]

The Government of India banned 118 Chinese apps, including the popular video game Player Unknown's Battlegrounds (PUBG), as tension with the neighbouring country continued to escalate at the Line of Actual Control (LAC) in Ladakh.

PUBG has over 50 million players in India.

Although the move has been well received in general, a section of social media users and PUBG players are criticising the step. But the Ministry of Electronics and Information Technology (MeitY) is standing firm. It stated that the move is a safety measure. "This decision is a targeted move to ensure safety, security and sovereignty of Indian cyberspace," said the statement.

Food for Thought

The Indian government in the first week of September banned 118 Chinese apps, after a similar move in July, when 59 Chinese apps including TikTok were banned, citing concerns related to collecting, processing, and transmitting user data outside India and safeguarding the 'sovereignty and integrity of India'.

Even though this move could be seen as helping Indian startups and furthering the 'Atmanirbhar Bharat' framework, in reality, it is limiting access to technology and global funds which will hurt Indian startups. Chinese investment in India's tech start-up ecosystem has secured for India a significant standing in recent years, not only because

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[5] PTI, 'China extends anti-dumping duties on optical fibres from India', Mint, August 13, 2020, https://www.livemint.com/news/india/china-extends-anti-dumping-duties-on-optical-fibres-from-india-11597318339565.html.

[6] Priyanka Chandani, 'Why India's virtual war on Chinese apps is significant', Deccan Chronicle, September 04, 2020, https://www.deccanchronicle.com/technology/in-other-news/040920/why-indias-virtual-war-on-chinese-apps-is-significant.html.

of the inflow of funds but also in terms of cutting-edge technologies and experience to scale up businesses. This is proven by the fact that by the end of 2019, more than half of India's 31 unicorn companies had investments by Chinese tech giants Alibaba and Tencent.[7]

This is likely to affect the level of competitiveness of Indian tech start-ups globally. With a decrease in investments leading to less access to technologies, Indian start-ups will not be able to produce competitive products.

On the other hand, there are both short-term and long-term winners from the ban. Apps in segments that are easy to replicate, such as productivity and utility apps, will see an immediate boost, given that they are easier to build and replicate. Additionally, Indian apps like the banned Chinese apps which already exist are also likely to witness a boost. For instance, Chingari, a competitor from India to TikTok saw its downloads soar from one lakh to one crore-plus on Google Play Store soon after the ban.[8]

Similarly, after the ban, ShareChat – a regional language social network – and its sister app, Moj, have consistently been on the top 20 apps of Google's Play Store, with over 150 million downloads combined.[9]

Thus, it is likely that the ban will further competition in the domestic market, giving a chance to the local start-ups to step up their game and fill the void. However, this is at the cost of quality constraints and inconvenience to consumers. All the apps banned allowed functional efficiency for users in India. Without a suitable substitute, which can match the quality standards, consumers are set to lose in this game. The vacuum created by the ban could also solicit bigger security risks as it will give space to unofficial apps.

The ban could also pose ramifications for India, internationally. It can be argued to be discriminatory against a single country and hence violative of the non-discriminatory principles of WTO – the most-favoured nation and the national treatment.

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[7] 'Ban on Chinese apps will hurt Indian start-ups, deter Chinese investment: analysts', Global Times, June 30, 2020, https://www.globaltimes.cn/content/1193046.shtml.

[8] K. Bharat Kumar, 'The Hindu Explains | What will be the impact of Chinese apps ban?', The Hindu, July 05, 2020, https://www.thehindu.com/news/national/the-hindu-explains-what-will-be-the-impact-of-chinese-apps-ban/article31991127.ece.

[9] Priyanka Sahay and M. Sriram, 'Ban on 118 Chinese apps: The new reality for startups, the gainers, and the likely effect', Money Control, September 03, 2020, https://www.moneycontrol.com/news/business/ban-on-118-chinese-apps-the-new-reality-for-startups-the-gainers-and-the-likely-effect-5792171.html.

2. Policies Promoting Competition

Unbundling GAIL's Gas Marketing and Transmission Businesses[10]

Officers at GAIL Ltd — the state-owned gas marketing and transmission company — continue to oppose the government's plans to unbundle its gas transmission business and gas marketing businesses, and claim that the Central Government has not replied to or approached the GAIL Officers Association (GOA) on their concerns regarding the proposed unbundling.

GOA had, in 2018, written to the Prime Minister and the Petroleum Ministry to express its opposition to the move, citing concerns about the viability of the two businesses as separate entities and the impact of the move on the company's plans to expand its pipeline network. Recently, Petroleum Minister, Dharmendra Pradhan had reaffirmed the Centre's plans to unbundle GAIL's gas marketing and transmission businesses to make it more competitive and 'increase credibility'.

Another GAIL officer noted that profits from the gas marketing business had helped the company invest in further building gas infrastructure and that there was concern about the viability of these businesses as separate entities.

Food for Thought

India is aiming to build a gas-based economy. The government is hoping to raise the share of natural gas in the country's energy mix to 15 percent by 2030 from the current six percent. At the same time, it is also planning to double its gas pipeline network and gas import terminal capacity over the next few years. The government-owned natural gas utility giant, GAIL, is the biggest gas marketer and transporter in India and has a history of various competition cases against it.

For over two years now, the Petroleum and Natural Gas Minister, Dharmendra Pradhan has been batting for the bifurcation of GAIL, as a step towards bringing greater transparency to India's gas market. Mr. Pradhan made it clear that the marketing and laying of pipelines or transmission are two different segments, and it has always been the opinion of the ministry that these two functions by GAIL should be separated. Many private, as well as government-owned companies, have also voiced concerns about GAIL being present in both the marketing and transmission business.

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[10] Karunjit Singh, 'GAIL officials opposing unbundling of marketing, transmission businesses say no response from govt', The Indian Express, July 27, 2020, https://indianexpress.com/article/business/gail-officials-opposing-unbundling-of-marketing-transmission-businesses-say-no-response-from-govt-6524995/.

Under the Petroleum and Natural Gas Regulatory Board Act, 2006, marketing and transmission functions should not be performed by the same entity.[11] *The purpose was to prevent conflict of interest since companies like GAIL are in a position to push their gas on priority because as a transmission company it also operates pipelines. This is not in the interest of consumers or suppliers. Hence, unbundling is needed.*

Different jurisdictions like the US and Europe have been able to increase the use of natural gas in their overall energy mix primarily due to such unbundling. Even though India does have open access to its pipeline and a regulator (PNGRB) in place, the practical reality is that it is difficult to access natural gas pipeline infrastructure.

There has been increasing concern amongst the smaller buyers of natural gas that they can only use GAIL's pipelines if they purchase gas from it as they are not able to negotiate transmission agreements with GAIL for shorter durations and relatively small volumes. This can be attributed to GAIL's dominance in the market – it owns more than 70 percent of India's 16,981-km pipeline network, giving it a stranglehold in the market. Natural gas users have also often complained about not fairly getting access to GAIL's 12,160-km pipeline network to transport their fuel.[12]

If the government wants to have a fair chance of achieving its projected increase in the share of natural gas in the national energy mix, the unbundling of gas marketing and transmission businesses has to be the first of many steps. For long, we have advocated that in all networked sectors, the infrastructure should be separated from the distributors/suppliers so that all of them can have equal access to the carrier system. For instance, towers in the mobile telephony sector are mostly in independent companies rather than licenced operators.

Space-Sector Reforms[13]

In May 2020, Finance Minister Nirmala Sitharaman announced that the government was actively pursuing reforms in the space sector to allow private-sector participation in satellite launches and space-based services. The Union Cabinet approved the establishment of the Indian National Space Promotion and Authorisation Centre (IN-

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[11] Section 21, PNGRB Act, 2006.

[12] 'GAIL opposes government's hive-off plan', The Telegraph, July 28, 2020, https://www.telegraphindia.com/business/gail-opposes-hive-off-plan/cid/1787552.

[13] Rishiraj Baruah, 'Space-sector revamp: IN-SPACe to mentor startups and private sector; NSIL to monetise Isro know-how', The Economic Times, September 07, 2020, https://economictimes.indiatimes.com/prime/technology-and-startups/space-sector-revamp-in-space-to-mentor-startups-and-private-sector-nsil-to-monetise-isro-know-how/primearticleshow/77964607.cms?utm_source=newsletter&utm_medium=email&utm_campaign=PrimeMailerPaid&utm_content=Story3&ncode=1b4e3e790f1e7027b977c2986913e805.

SPACe) to provide an administrative environment for private companies to use Indian space infrastructure.

The government in a press release emphasised that IN-SPACe will hand-hold, promote, and guide private industries in space activities through encouraging policies and a friendly regulatory environment. However, techno-economic studies, funding base, seed investment, and insurance will have to be handled by the private sector on its own.

Besides, a public-sector enterprise, New Space India Limited (NSIL), has been incorporated as a commercial arm of the Department of Space to exploit the benefits of the research and development carried out by ISRO. It has been mandated with owning and operating satellites, launch-vehicle development, launch services, and technology transfer. NSIL's role is important in international collaborations, as it can be a part of industry consortiums in these areas.

Food for Thought

Having covered the announcement of May 2020 in the previous Dossier (48th edition), the concerns raised then were related to implementation, enabling policies and appropriate regulatory frameworks to put the bold statements by the finance minister into action. It has been well noted that the private sector has always been involved in the Indian space industry, more so over the last four decades, with around 500 Indian companies being set up. These have heavily been involved in developing launch and ground-infrastructure facilities in collaboration with ISRO.

However, it has been the lack of a well-defined legal, regulatory, and administrative framework that has hindered space commerce from flourishing in India. With the introduction of IN-SPACe and NSIL, the government is trying to fix these concerns. These space sector reforms are aimed at encouraging participation by non-governmental private entities (NGPEs) and are in line with the 'Atmanirbhar Bharat' roadmap which envisages private participation in space activities along with NGPEs.

IN-SPACe has been established as an autonomous nodal agency of the Department of Space and will act as a facilitator and regulator for NGPEs. It is a much-awaited independent single-window system that removes entry barriers for corporations and startups. However, it remains to be seen if 'red tape' (registration and licensing procedures) will act as a deterrent for start-ups to enter the market.

In our previous Dossier, we had also mentioned that startups were concerned about their Intellectual Property (IP) rights and the liability of different parties. In a recent webinar titled, 'Unlocking India's Potential in Space Sector', the ISRO chairman talked about these issues.

About liability, the ISRO chairman said that national space legislation – Space Activities Bill – has been submitted to the Prime Minister's Office and is under inter-ministerial consultation. The Bill formulates a licencing regime and allocates liability to the licencee against claims brought against the government in respect of any damage or loss arising out of a commercial space activity or about a space object covered under the licence.[14] *However, it leaves the quantum of such liability to be determined by the government. Such an open-ended definition is too risky for all.*

This seems like an area that will increase costs for NGPEs and will be quite debilitating for a nascent stage space industry in India. It is important for the government to pre-determine the quantum of liability, or a ceiling for it, to enable NGPEs to obtain insurance and financial assistance. This will ensure that NGPEs can withstand any such liabilities, and do not cease to exist because of financial hits.

Transparency to the maximum possible liability will be an important factor for private players who are seeking to enter this sector. In that regard, India can take lessons from the US that has adopted a tiered and capped liability structure across the entire value chain, along with an analysis of the maximum possible damages, to ensure that liability is proportionately affixed.[15]

Section 25(2) of the draft Space Activities Bill talks about IP and states that any IP developed onboard an Indian space object in outer space will be the property of the Indian government.[16] *This has come under severe criticism by industry experts. The Bill should rather provide for a licensing mechanism (instead of ownership) or provide compensation to the private party for such IP rights. In that regard, NASA has a broad waiver policy, retaining only a nonexclusive, royalty-free license for government use and the right to step-in if the contractor does not develop it.*[17]

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[14] Kunwar Surya Pratap et al, 'With IN-SPACe in the Picture, What Is the Space Activities Bill's Place?', Science, The Wire, July 29, 2020, https://science.thewire.in/space/with-in-space-in-the-picture-what-is-the-space-activities-bills-place/.

[15] National Laws Governing Space Activities; Legislation, Regulation & Enforcement, Paul Stephen Dempsey, Northwestern Journal of International Law & Business, Volume 36, Issue 1, Winter 2016.

[16] https://www.prsindia.org/sites/default/files/bill_files/Draft%20Space%20Activities%20Bill%202017.pdf.

[17] Barbara Luxenberg, 'Protecting Intellectual Property in Space', Documents on Outer Space Law, 1985, https://digitalcommons.unl.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1005&context=spacelawdocs.

The creation of IN-SPACe is the right step to further the privatisation of India's space sector. Several industries, including telecom and information technology, will benefit from the consequent commercialisation and innovation. However, the Space Activities Bill needs to be revisited to add more clarity to better regulate private sector participation together with IN-SPACe. Yet again, it all comes down to the policy and regulatory framework, and its implementation. It will be interesting to see what happens in (this) space next.

Three Farm Bills, One Agenda: Greater Competition in the Market[18]

President Ram Nath Kovind gave his assent to all the three contentious farm bills, which opposition parties say are anti-farmer and corporate-friendly after they were recently passed by Parliament during its monsoon session amid vehement protests.

The three bills - The Farmers Produce Trade and Commerce (Promotion and Facilitation) Bill, 2020 (FPTC), The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Service Bill, 2020 (FAPAF), and The Essential Commodities (Amendment) Bill, 2020 (EC) – have now become Acts.

The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020, seeks to give freedom to farmers to sell their produce outside the notified APMC market yards (*mandis*). The government says this is aimed at facilitating remunerative prices through competitive alternative trading channels.

The Farmers (Empowerment and Protection) Agreement of Price Assurance and Farm Services Act, 2020, seeks to give farmers the right to enter into a contract with agribusiness firms, processors, wholesalers, exporters, or large retailers for the sale of future farming produce at a pre-agreed price. And the Essential Commodities (Amendment) Act, 2020, seeks to remove commodities like cereals, pulses, oilseeds, onion, and potato from the list of essential commodities and will do away with the imposition of stock holding limits.

Food for Thought

At CUTS, we are very happy that these laws were passed after so many years of evidence-based advocacy by us and several others including the late Sharad Joshi of Shetkari Sangathan, Maharashtra. The passing of the three Farm Bills in the

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[18] Meenakshi Ray (ed.), 'President Kovind gives his nod to all 3 farm bills, government notifies them', Hindustan Times, September 27, 2020, https://www.hindustantimes.com/india-news/president-of-india-gives-assent-to-farm-bills-govt-notifies-them/story-hcEVlDqYVXXiWhvoaOeIlK.html.

Parliament, and subsequent notification of the same as Acts, witnessed protests from farmers and the opposition, raising concerns mainly about how they were passed, and how they will further add to the troubles of farmers. Another concern raised has been that agriculture is a state subject, and the Centre has overstepped its reach in regulating a subject-matter which does not fall under their jurisdiction. However, the government has stated various pro-competitive and pro-market reasons for passing these Acts.

The Agricultural Produce Market Committees (APMCs) are the villains in the narrative of the farm marketing arrangements. In that regard, the FPTC Act is being hailed as a game-changer creating new opportunities for farmers allowing them to conduct barrier-free inter-state and intra-state trade and commerce outside the physical premises of markets notified under state APMC legislations. The Act allows farmers to engage in direct marketing, thereby eliminating intermediaries. But why the need to bring this change?

Pre-APMC days were dominated by price misinformation and arbitrage. APMCs were created in the early 1960s to ensure price discovery (determination of prices by market forces – demand and supply) and fair transactions. They were designed to create infrastructure for auctions and storage out of the cess paid by the buyers and not by the taxpayers.[19]

The purpose of APMCs was to further a democratic, decentralised system with physical auctions as the basis of price discovery and licensing of traders to ensure payment. However, over time, the system deteriorated, and vested interests took over. New licenses were deliberately delayed or declined to protect the interests of entrenched traders. Price discovery and display of prices were also affected, leaving the farmers in the lurch.

As Pradeep S Mehta, Secretary General, CUTS had rightly pointed out in 2013, "The issue is not just about converting our farmers from price-takers to price-makers…but to balance the need of different interest groups by addressing the root causes of anti-competitive practices, which are rampant all over the country."[20]

[19] T Nanda Kumar, 'Agri reforms: Where did the APMCs go wrong?', Financial Express, 25 September 2020, https://www.financialexpress.com/opinion/agri-reforms-where-did-the-apmcs-go-wrong/2091149/.

[20] Pradeep S Mehta, 'APMC reform a must', Financial Express, April 12, 2013, https://www.financialexpress.com/archive/apmc-reform-a-must/1101267/.

Now, with the introduction of the three Farm Acts, the government hopes competitive markets and higher private investments in the food supply chain will improve farm-gate prices.

The farmers will now be able to sell products across the country in any market of his/her choice at the price negotiated with the purchaser. This price discovery by the farmers will certainly benefit them and get the larger portion of the market margins, which was hitherto enjoyed by the traders. This creates a structure for e-trading for agriculture produce, thus fostering competition in the market, leading to improved prices for farmers for their produce.

However, these pro-competitive effects of the Farm Acts are not yet accepted by the farmers, mainly due to a lack of assured price mechanism, and a greater trust deficit. In the absence of a guaranteed support price mechanism, the Farm Acts fail to mention very strong support for the Minimum Support Price (MSP) as a benchmark price for open agriculture trade and winding of APMCs.

For the farmers to get on board with these revolutionary changes, the government needs to give an iron-clad guarantee on holding the price line 100 percent over and above the inflation-linked cost of production to the primary producer and not allowing any players to offer a price below that line to them.[21]

Without ensuring the confidence of farmers in the system, the implementation of the Farm Acts will not be as expected, and the rural agricultural economy will likely see a great fall.

3. Policies Inhibiting Competition

Policy Blueprint for the Indian Telecom Industry to Fillip the Ailing Sector[22]

India needs a flourishing telecom sector to emerge as a digital powerhouse. For that, the country must nourish its telcos with a robust policy framework, taking lessons from best practices in the international markets.

[21] Vijay Jawandhiya and Ajay Dandekar, 'Three Farm Bills and India's Rural Economy', The Wire, October 01, 2020, https://thewire.in/agriculture/farm-bills-indias-rural-issues.

[22] Rishi Tejpal, 'The telecom regulatory maze: how licensing reforms can revitalise the ailing industry', The Economic Times, September 07, 2020, https://economictimes.indiatimes.com/prime/media-and-communications/the-telecom-regulatory-maze-how-licensing-reforms-can-revitalise-the-ailing-industry/primearticleshow/77962972.cms?utm_source=newsletter&utm_medium=email&utm_campaign=PrimeMailerPaid&utm_content=Story1&ncode=1b4e3e790f1e7027b977c2986913e805.

It's about time India repaired the severe damage already done to its telecom edifice….There is an urgent need to ease the financial woes of telcos – particularly Vodafone Idea and Bharti Airtel – to catalyse innovation and investment in the sector. It is also crucial for a seamless transition to a 5G regime in India.

The Adjusted Gross Revenue (AGR) saga, which began around two decades ago, concluded with the Supreme Court's verdict on the matter. But the AGR calculation methodology – the main bone of contention –remains unchanged. Without a change in the policy and the corresponding fees that telcos pay on the AGR, the dark clouds over the industry will not blow over.

Recently, the Telecom Regulatory Authority of India's (TRAI) former chairman RS Sharma mentioned that the regulator is working on reforming the licencing regime for telecom and will release a consultation paper soon for promoting innovation and attracting investments. That was exactly the mission of the National Digital Communications Policy (NDCP) 2018 as well.

Food for Thought

This news article laid down a roadmap for the Indian telecom industry to give it a way out of its ailment. It started with identifying the issue that has been at the heart of the AGR matter - the ambiguity around the definition of AGR which calls for alternatives to the disputed AGR muddle. In that regard, a straightforward and least complicated way of collecting licence fee is suggested – to charge a fixed fee per subscriber as decided by the government or regulator. A minimum fee can be based on the market share and the number of service providers.

As there are no exclusions or eliminations involved, this method removes the ambiguity in defining the subscriber count and does away with the fear of any account jugglery by telcos. The US Federal Communications Commission (FCC) charges a fixed amount for license fees based on the subscriber count.

Another method, as suggested, in the article for collecting licence fees is based on the resource holding and utilisation of the spectrum. In that regard, the government can charge licence fees based on the spectrum held by telcos. It can either be on the whole spectrum or may vary for utilised and utilised portion – more for unused resources and less for used resources.

A simpler approach has been taken by Ofcom, the broadcasting watchdog in the UK, to remove the ambiguity in the definition of part of the revenue which is used for

calculating licence fees. It charges the fees based on the slab rate, taking into consideration only the relevant turnover from relevant activities to calculate the license fees.

This approach will inhibit telcos from aggressive bidding, which they do to secure as much spectrum as possible since there is no clarity on how much and when the next spectrum will be available.

Telcos have also been demanding a clear roadmap on spectrum availability for a long. The National Telecom Policy 2012 proposed to share a spectrum-availability roadmap every five years, but this has still not been achieved. The NDCP 2018 mentions the optimal pricing of the spectrum to ensure sustainable and affordable access to digital communications' as one of its missions. It has been two years since the policy document for approval, but there has been no action on this front. Besides, a road map for the quantum of the spectrum, a five-to-10 year plan for auctions is also needed.

Aggressive bidding in the past auctions has distorted the pricing of many spectrum bands. And the fundamental flaw in our spectrum-pricing methodology is that it takes into account the previous auction's selling price as the base price for the next auction. This method ignores many other factors such as changing market dynamics, the evolution of the technology ecosystem, and the competitive landscape. All these have evolved drastically since 2010 (the time of the first auction).

Aggressive bidding by telcos in the previous auctions, either because of expiring licences in some circles or because of less quantum of spectrum put on auction, led to a steep rise in the base price for the forthcoming auctions. Unless there is a market-discovered price, taking into consideration the current market dynamics, telcos will be forced to buy spectrum at very high costs.

There are many grey areas where the telecom regulator needs to step in. Not only do several issues need to be addressed immediately, but an effective execution strategy with a review every two to three years is also required to give succour to telcos. The market is super-dynamic and ever-evolving. And so is the need for appropriate regulatory frameworks and policies.

Reliance Jio wants India's 2G users. So it's killing 2G[23]

In just five short years, Jio surged from birth to utter dominance. Today, it boasts around 392 million users—around 70 million more than its nearest competitors, Bharti Airtel and Vodafone-Idea. The young telco also claims to have a complete 5G solution in the works.

With its parent company, Jio Platforms, mopping up over US$20bn in funding, it is also the only Indian telco in a position to spend big when the Indian government finally holds 5G spectrum auctions. This is expected to happen in 2021.

But even as Jio sharpens its knives in anticipation of the 5G prize on the horizon, it still has unfinished business in the present. Or rather, there's a relic of the past that Jio wants finished—2G.

Many announcements were made at the annual general meeting (AGM) of Jio Platforms' parent company Reliance Industries Limited (RIL) in July. A new partnership with Google, along with US$4.5bn in funding from the American internet giant, for instance. Along with this, RIL chairperson and managing director Mukesh Ambani also announced an ambitious three-year target—achieve a subscriber base of over 500 million, account for a billion smart sensors, and be present in more than 50 million homes and businesses.

There is one major hurdle to that. At present, as per an August consultation paper from TRAI, some 300 million of India's active mobile subscriber base of 961 million are still using 2G technology. For all its dominance, Jio, which boasts an entirely 4G network, is completely locked out of this. Its older rivals, meanwhile, still count on their 2G networks for a significant portion of their business.

Food for Thought

India has 1143.91 million wireless subscribers. Of these, 960.78 million are active subscribers, according to a TRAI report released in August 2020. Of this, over 600 million are smartphone users and the remaining, over 300 million, are on 2G. Many also hold more than one SIM card, so the number of users may be lesser than the numbers shown above.

[23] Pratap Vikram Singh, 'Reliance Jio wants India's 2G users. So it's killing 2G.', The Ken, August 31, 2020, https://the-ken.com/story/reliance-jio-wants-indias-2g-users-so-its-killing-2g/?utm_source=recap_story&utm_medium=email&utm_campaign=recap_newsletter#.

2G users in India account for around a third of the overall mobile subscriber base, with many being feature phone users. Most of them cannot afford a smartphone. This acts as a major setback for Reliance Jio, which wants the entire 300 million 2G user base to itself – however, it does not have 2G technology; it rather boasts of an entirely 4G network. It is then, no wonder, that Ambani wants a 2G-mukt (free) India.

Vodafone Idea and Bharti Airtel, however, do not agree with this (2G-mukt), as the majority of their customers are on the 2G network. Jio's plan to revamp the telecom market in India will hit Vodafone the hardest, given its largest 2G user base (60 percent of total subscriber base) coupled with the weak financial situation and inability to commit large CAPEX investment.

Jio plans to shift the 2G user base to 4G with the introduction of a smartphone at a fraction of the current cost. Given the fact that Jio dominates the mobile broadband space (4G) with a 58 percent market share, it is not difficult to believe that it could capture the incumbents' market share in the feature phone segment with its new offering. Jio's recent tie-up with Google will further this agenda, as the commercial agreement is to roll out affordable entry-level 4G and 5G smartphones, especially for lower-income groups.

Additionally, Jio is also close to finalising partnerships with Indian and Chinese handset makers to launch subsidised SIM-locked smartphones bundled with 4G data, voice, and own content services.

Jio wants to act to its advantage, dominate, and change the existing telecom interface and technology, thus forcing the existing competition out of the market. Re-farming the existing 2G/3G spectrum to 4G will require substantial technological changes along with additional investment. Vodafone Idea, for instance, is certainly not in a position to acquire either.

Let's not forget, the multiple tie-ups Reliance has recently bagged with the Big Techs – Google and Facebook – among others. Without 2G, Jio as well the Big Techs will be much closer to acquiring the next billion users they are looking for to tie into their respective ecosystems.

A 2G-mukt Bharat will not only push Reliance further into becoming a 'national champion', but it will most certainly also harm consumer welfare, especially for those belonging to the lower-income groups. Even if Jio-Google manages to bring out a cheap 4G device, it will still likely be too expensive for 2G users.

Overhaul in the Indian E-Pharmacy Market[24]

Overnight the Indian online pharmacy space has seen a major overhaul. Putting to end months of speculation, Reliance Retail officially announced its acquisition of NetMeds while leading startups PharmEasy and MedLife headed for a merger.

Reliance Retail acquired NetMeds for Rs. 620 crores. The five-year-old startup had raised investments worth US$100mn so far. With the acquisition, Reliance Retail takes up a 60 percent stake in NetMed's parent company Vitalic and a 100 percent stake in its subsidiaries Tresara Health Private Limited, NetMeds Market Place Limited, and Dadha Pharma Distribution Pvt Limited.

Another big movement in the healthtech space was PharmEasy and MedLife moving the CCI for their merger. MedLife will be selling all of its operations to PharmEasy, for an almost 20 percent stake in the latter. According to an ET report, the combined entity would be worth US$1.2bn.

Food for Thought

E-pharmacies have been among the biggest beneficiaries of the COVID-induced lockdown as customers avoided purchasing from physical stores due to safety concerns, like other e-commerce operations. Online pharmacies' market in 2019 was around US$ 20 billion out of which the total addressable market (revenue opportunity for e-pharmacies) share was approximately 47 percent. This is likely to grow to more than 60 percent by 2023 amid the rise of chronic disease treatments and ease of home delivery of medicines.

Also, as per a Federation of Indian Chambers of Commerce & Industry (FICCI) white paper published recently, more than 50 e-pharmacies serving 3.5 million households in India before the pandemic grew around 2.5x to around 8.8 million households during the lockdown.[25]

Amid the pandemic, the e-pharmacies sector in India has recently witnessed major overhauls with Reliance's acquisition of NetMeds, the merger of PharmEasy and

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[24] Sanchita Dash, 'With Reliance buying Netmeds and PharmEasy merging with MedLife, Amazon and Flipkart are in for a tougher competition than they would like', Business Insider, August 19, 2020, https://www.businessinsider.in/business/startups/news/with-reliance-buying-netmeds-and-pharmeasy-merging-with-medlife-amazon-and-flipkart-are-in-for-a-tougher-competition-than-they-would-like/articleshow/77625512.cms.

[25] Sandeep Soni, 'CCI approves PharmEasy's merger with rival Medlife; deal to help compete with Reliance, Amazon, others', Financial Express, September 22, 2020, https://www.financialexpress.com/industry/sme/cci-approves-pharmeasys-merger-with-rival-medlife-deal-to-help-compete-with-reliance-amazon-others/2089487/.

MedLife (approved by CCI), and the entry of Amazon into the e-pharmacy space launching its service to deliver prescription drugs in Bengaluru through its largest seller Cloudtail.[26]

With Reliance's foray into the online pharmacy market, along with Amazon rolling out its Amazon Pharmacy service, the market is likely to see an increase in concentration levels, leading to competition distortions. There is no doubt that both, Reliance and Amazon will use their existing dominance in their respective markets to get an edge in the e-pharmacies market.

However, the merger of two startups PharmEasy and MedLife is likely to help compete with these giants, among others. Similar reasoning was given by the CCI while approving the merger in the early weeks of September 2020.

With behemoths like Amazon and Reliance entering the sector, government authorities may finally look to notify the e-Pharmacy Draft Rules soon without which a clear regulatory framework is still missing.[27] *There are reportedly more than 50 e-pharmacy platforms in the country, which have been pushing the government to notify these draft rules.*

A regulatory framework becomes important to also ensure that offline brick-and-mortar players are not pushed out of the market. Various industry associations have already raised concerns about online pharmacies muting competition and contributing to high drug prices in the country.

Google – PayTM – In-App Purchase Fee[28]

Indian startups are up in arms against the Google Play Store for forcing apps with in-app purchases to use its 'expensive and unaffordable' billing system. Google levies a 30 percent commission against 1.5-2 percent levied by external gateways.

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[26] Samidha Sharma and Alnoor Peermohamed, 'Epharmacy consolidation: Reliance Retail acquires Netmeds, PharmEasy & Medlife to merge', ET Tech, August 19, 2020, https://tech.economictimes.indiatimes.com/news/startups/pharmeasy-and-medlife-merge-combined-entity-expected-to-be-valued-at-1-2-billion/77613518.

[27] Salman S.H. and Tarush Bhalla, 'PharmEasy to merge with rival Medlife to create $1bn entity', LiveMint, August 18, 2020, https://www.livemint.com/companies/news/pharmeasy-to-merge-with-rival-medlife-to-create-1bn-entity-11597764014673.html.

[28] Megha Mandavia and Ashwin Manikandan, 'Startups accuse 'gatekeeper' Google of not playing fair', ET Tech, 30 September 2020, https://tech.economictimes.indiatimes.com/news/internet/startups-accuse-gatekeeper-google-of-not-playing-fair/78396140. Salman S.H. and Prasid Banerjee, 'Google-Paytm row brings app store monopoly debate to India', LiveMint, 22 September 2020, https://www.livemint.com/companies/news/google-paytm-row-brings-app-store-monopoly-debate-to-india-11600702390981.html.

While the policy has always been in place, it is only now being enforced in India. This will affect dating, education, video and music-on-demand, and other apps that rely on in-app purchases but not those for physical deliveries such e-commerce.

The startups say it is unfair exploitation of the Play Store's monopoly that stems from the dominance of Google's Android operating system.

"It will badly affect us — 30 percent is tax, cannot be called commission!" said Snehil Khanor, CEO of TrulyMadly, a dating app. "They say we provide an ecosystem, but we get the downloads through ads. For many small companies, it can be an existential threat."

Food for Thought

In the Hall of Fame of draft policy announcements, Google's announcement wins the race. Despite its rival Apple drawing fire from companies like Facebook, Spotify, and Epic Games over its App Store fees, Google went ahead and announced that all app developers will need to use its in-app payment options, thus, being subjected to a 30 percent commission (Google Tax) on all such payments.

This announcement followed closely to Google's decision to briefly ban PayTM's app because it used scratch cards and cash backs that were akin to 'gambling' (ironically, which is also offered by Google Pay).

And now, over 150 startups have united against Google with the hope of creating a local app store to circumvent such aggravated and anti-competitive fees and practices by the giants, which leaves both start-ups and consumers with very little choice.

On October 05, 2020, PayTM launched its 'Mini App Store' in response to Google's move. PayTM asked startups to list their apps – or mobile websites – on the store, promising them the attention of its 150 million monthly active users.[29]

Google then quickly backtracked on its decision to charge a 30 percent commission, only to push the implementation date from September 2021 to April 2022. But the damage was already done, creating a coalition of more than 150 startups.

There is no wonder that Google wields enormous power – it does not just own the ecosystem; it is the ecosystem. "Between 2012 and 2018, India accounted for 36.9

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[29] Bhumika Khatri and Shreedhar Manek, 'App store wars: A new hope or phantom menace?', The Ken, 13 October 2020, https://the-ken.com/story/app-store-wars-a-new-hope-or-phantom-menace/?utm_source=daily_story&utm_medium=email&utm_campaign=daily_newsletter.

billion downloads on Google's Play Store, the highest in the world. Its Android operating system powers nearly 97 percent of India's smartphones; it has a widely popular suite of apps from search and browser and maps to video streaming and productivity apps; its payments app Google Pay holds the largest UPI payments market share — 40 percent — in the country. PayTM is a distant third, with just 13 percent market share."[30]

However, the coalition of startups is trying to blunt this influence. These startups are calling for creating an alternative to the Play Store, to the effect of an 'Atmanirbhar Bharat' app-store. However, the startups are not keen on a government-owned app-store either. What they want rather, is regulation. They want policies to regulate monopolies – whether Indian or foreign – and clear the way for start-ups to become large institutions.

In this regard, the government and the Competition Commission of India (CCI) must step up and clarify the policy and regulatory stance. Recently, the CCI found no contravention in WhatsApp pre-installing its payment services app, WhatsApp Pay, on users' phones. The reasoning given was that 'mere pre-installation does not translate to usage'.

It is time for the government and CCI to move from ex-post to ex-ante assessment, thus stopping the harm before it is caused by big conglomerates. Technology is important but more important, is to regulate companies who further such technology to ensure that the domestic market is not bereft of competition. But a caveat is necessary that regulation should be optimal so that it does not stifle innovation or fair competition.

DISCLAIMER:

This information has been collected through secondary research and CUTS C-CIER is not responsible for any errors in the same. The press clippings used here have been suitably adapted/ summarised to convey their essence to the reader without any distortion of content.

[30] Bhumika Khatri and Shreedhar Manek, 'App store wars: A new hope or phantom menace?', The Ken, October 13, 2020, https://the-ken.com/story/app-store-wars-a-new-hope-or-phantom-menace/?utm_source=daily_story&utm_medium=email&utm_campaign=daily_newsletter.