CUTS International

COMPETITION DISTORTIONS IN INDIA – A CUTS DOSSIER

(CDI-52: April to June 2021)

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 second quarter of the year i.e. April to June 2021. 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 competition landscape in India. 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 recent trade policies where we discuss Anti-dumping duties on imports of flexible slabstock polyol from Saudi Arabia and United Arab Emirates. While placing such a duty is imperative in certain situations, we have discussed how Manali Petrochemicals (dominant player in the respective market) has been trying to enhance own profits by pleading the government for imposing the anti-dumping duty. Contrastingly, three pulses have been moved from the reserved to the open category, ahead of the Kharif season, with an intention to fulfil the domestic shortage.

In the dossier, keeping in mind the Mega Privatisation Drive as part of the Union Budget 2021-22, the privatisation of Shipping Corporation of India (SCI) and the disinvestment of IDBI has been highlighted and how it will increase the overall competition and fairness in the market by creating a level playing field for the private players. Further, the Reserve Bank of India (RBI) has released a consultation paper for bringing regulations uniformly applicable to all regulated entities in the microfinance sector.

The decision of setting up a One Nation, One Ration Card structure in place would enhance public mobility and ease of living, which indirectly would positively affect the market as labour is the most valuable resource of any commercial entity. Keeping the *Atma Nirbhar* vision in mind, a draft national strategy and roadmap for development of rural tourism has been developed to promote local products in order to generate jobs and empower local communities.

The dossier also contains the policies inhibiting competition. Government brought about the pre-pack insolvency resolution system for the Micro, Small and Medium Enterprises (MSMEs). Further, draft e-commerce rules were released, which, if implemented, would increase compliance requirements for the e-commerce players but not for the brick and mortar stores. We look at it as hindering fair competition in the market.

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

Cheers!

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A. Trade Policies

Imposition of Anti-dumping duty

On April 05, 2021, the Finance Ministry imposed anti-dumping duty on imports of flexible slabstock polyol from Saudi Arabia and United Arab Emirates. This was a result of the recommendations made by the Directorate General of Trade Remedies in the Commerce and Industry (Designated Authority) basis the application filed by Tamil Nadu-based Manali Petrochemicals, which accounts for 98 percent of domestic production of flexible slabstock polyol, had filed the application seeking anti-dumping duty on flexible slabstock polyol imports from Saudi Arabia and UAE.[1]

Flexible Slabstock Polyol is a polyether and reacts with catalysts and additives, yields polyurethane foams used in upholstery, mattresses, pillows, boosters, transport seating and packaging. The anti-dumping duty ranges from $101.8 and $235.02 per metric tonne (molecular weight 3000-4000), with about $150.06 imposed on the Sadara Chemical Company, Saudi Arabia.[2]

Food for Thought

An anti-dumping duty is a protectionist tariff that a domestic government imposes on foreign imports that it believes imports are priced below fair market value.[3]

While the Designated Authority had on September 01, 2020 recommended the imposition of anti-dumping duty, the revenue department has imposed the duty on April 05, 2021 – seven months after the Designated Authority made the recommendation. Further, it was imposed upon the premise that the act of dumping has been causing a 'material injury' to the Indian domestic industry.[4]

For instance, Dow India (Related Importer) began reselling the subject goods in India at a lower price than that of the imported price, which incurred losses.[5] *The Related Importer also claimed to give post-sales discounts (bearing no evidence in this regard) to match the prices, thus creating price pressure.*

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1 https://www.thehindubusinessline.com/news/national/anti-dumping-duty-on-flexible-slabstock-polyol-from-saudi-arabia-uae/article34253868.ece

2 https://taxconcept.net/business-economy/anti-dumping-duty-imposed-on-flexible-slabstock-polyol-imports-from-saudi-arabiauae/

3 https://economictimes.indiatimes.com/news/economy/foreign-trade/india-imposes-anti-dumping-duty-on-flexible-slabstock-polyol-imports-from-saudi-arabia-uae-for-5-years/articleshow/81918126.cms?from=mdr

4 https://www.cbic.gov.in/resources/htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-add2021/csadd20-2021.pdf

5 https://taxguru.in/custom-duty/anti-dumping-investigation-imports-flexible-slabstock-polyol.html

However, importation is, therefore, necessary to sustain the domestic flexible polyurethane industry. Domestic industries lack updated technology. To keep up with the competitive market, the chemical industries in India require materials from improved technology.[6]

Given that the dominant player in the market has sought and received continued protection of anti-dumping duties for more than 17 years against subject imports signifies that the motivation could be to safeguard self-interests by enhancing profits. Little heed would be paid to protecting all the domestic players. Thereby, imposition of such duties can potentially place Manali Petrochemicals in a position where it can abuse its dominance at the expense of the domestic industry and, subsequently, adversely affect the competition in the market.[7]

It is plausible that there are other factors that the Indian industries are bearing losses if they are. Given that the rule as per the World Trade Organisation (WTO) guidelines is to impose anti-dumping duties against claimed dumped goods, this instance could be an exception to sustain competition and fair trade in the industry.

Removal of Import Duties

India, the world's largest importer of vegetable oils, buys nearly 15 million tonnes annually. Of this, palm oil comprises 9 million tonnes and the rest 6 million tonnes is soybean and sunflower oil. Indonesia and Malaysia are the two countries that supply palm oil. Domestic edible oil prices have more than doubled in the past year. India meets about two-thirds of its edible oil demand through imports.

India's import of palm oils rose by 48 percent to 7,69,602 tonnes in May 2021 on higher shipments of crude palm oil. India, the world's leading vegetable oil buyer, had imported 4,00,506 tonne palm oil in May 2020. The country's total vegetable oil imports rose 68 percent to Rs 12.49 lakh tonne in May 2021, compared to 7.43 lakh tonne in the year-ago period. The share of palm oil is more than 60 percent of the country's total vegetable oil imports.

The Directorate General of Foreign Trade (DGFT), on June 30, 2021 removed import restrictions on refined, bleached, deodorised palm oil and refined, bleached, deodorised palmolein from Southeast Asian countries till December 31, 2021. The Central Board of Indirect Taxes and Customs (CBIC), in a notification, cut the basic

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6 https://www.freepressjournal.in/business/remove-anti-dumping-duty-on-flexible-slabstock-polyol-assocham

7 https://taxguru.in/custom-duty/anti-dumping-investigation-imports-flexible-slabstock-polyol.html

customs duty on crude palm oil to 10 percent and refined palm oil to 37.5 percent with immediate effect till September 2021.

Food for Thought

The government reduced basic customs duty on crude palm oil to help bring down the edible oil prices in the retail market and provide relief to people. The government has tried to balance the interest of both consumers and farmers. Having given immediate relief to consumers (below poverty line), the duty would be imposed again from October to ensure that the farmers are protected when the harvesting season begins.

To further cool down prices, palmolein and palm oil were moved from "restricted" to the open general category of imports till December 31st, 2021. While "restricted" items require an import license, the latter category does not. The reduction is expected to lead to higher palm oil imports by the world's biggest edible oil buyer in the coming months. It would narrow the difference between tropical vegetable oil and competitors such as soyoil and sunflower oil.[8]

Furthermore, the effective duty difference between crude and refined palm oil has narrowed to 5.5 percent from 11 percent for shipments from Malaysia. What is to be noted here is that the Indian vegetable oil industry is currently operating at half capacity. In such a scenario, removing the import duties would enhance the competition and reduce the margins for the domestic industry players.

Additionally, palm oil prices rose by 9.00 percent in key producing nations Malaysia and Indonesia, negating the import duty cut imposed by India to bring down prices.[9] *In India, they have risen more than 6.00 percent even after the government cut import tax and allowed shipments of refined palm oil. Its price overseas jumped in anticipation of strong demand from the world's biggest buyer. However, high vegetable oil prices have proven to be a blessing in disguise and "would attract more acreage in oilseed cultivation which is critical for reducing dependence on imports".*[10]

The government plans to monitor the prices daily and expects the industry to pass on full benefits to consumers. This trade policy could either be a death knell for the domestic refining industry in halting the expansion of palm plantations in the country; or make India "AtmaNirbhar" (self-dependent) in edible oils, which is the cherished

[8] https://www.reuters.com/article/us-india-palmoil-tax-idUSKCN1OV1AM

[9] https://www.deccanherald.com/business/business-news/palm-oil-prices-rise-in-india-despite-import-duty-cut-removal-of-import-curbs-1007739.html

[10] https://theprint.in/india/liberal-palm-oil-import-rules-will-harm-self-sufficiency-say-farmers-traders-seek-review/709956/

goal to which National Oilseeds Mission is committed to achieving it by aligning policies including foreign trade.[11]

Import embargo on defence items

The Ministry of Defence (MoD) announced a list of 108 items of defence equipment that must not be imported and be compulsorily procured from indigenous sources according to provisions in the Defence Acquisition Procedure 2020. They call it the "Positive Indigenisation List".

The list includes 49 items that will be banned for import after December 2021; 21 that cannot be imported after end-2022; 17 that will be banned for import after December 2023; 13 after December 2024; and eight that will have to be procured indigenously after December 2025. This list supplements an earlier import embargo on 101 defence items announced last August.

The 'second positive indigenisation list' comprises complex systems, sensors, simulators, weapons and ammunitions like helicopters, next-generation corvettes, Air Borne Early Warning and Control (AEW&C) systems, tank engines, medium power radar for mountains, Medium Range Surface to Air Missile (MRSAM) weapon systems and many more such items to fulfil the requirements of Indian armed forces.

Food for Thought

From raising foreign direct investment (FDI) in defence manufacturing to creating a separate budget for buying locally made military hardware and notifying a list of weapons or equipment that cannot be imported, the government announced a raft of measures to boost self-reliance in the defence sector in May 2020.[12]

Starting this December, the military will rely exclusively on indigenous vendors for defence equipment, including land-based, single-engine, light helicopters, next-generation corvettes, mission systems for airborne early warning and control systems, helicopter launched anti-tank guided missile, warship-grade steel and armoured or mine-protected infantry vehicles. The list creates long-term business opportunities that will enable the industry to invest and build capacity and capability.

After several rounds of consultations with state-owned and private defence manufacturing firms and leading industry bodies such as the Society of Indian Defence

11 https://pib.gov.in/PressReleasePage.aspx?PRID=1731715

12 https://www.hindustantimes.com/india-news/centre-imposes-ban-on-import-of-108-defence-items-to-boost-selfreliance-101622481950005.html

Manufacturers (SIDM), the MoD has prepared the second list. They have ensured that the list is comprehensive with "truly big-ticket items" built in India and significantly boost India's self-reliance.[13]

This will further boost indigenisation with the active participation of public and private sectors to fulfill the twin objectives of achieving self-reliance and promoting defense export. The list recognises the potential of the local defense industry. It will also invigorate domestic research and development impetus by attracting new investment into technology and manufacturing capabilities.[14]

The second positive indigenisation list focuses on weapons or systems currently under development or trials in India and are likely to translate into firm orders in the future. The list provides an excellent opportunity for 'start-ups' and Micro, Small and Medium Enterprises (MSMEs), which will get a tremendous boost from this initiative. However, this could seem that the MoD, the Defence Research and Development Organisation and service headquarters will take all necessary steps, including handholding of the industry, to ensure that the timelines mentioned in the 'second positive indigenisation list' are met.[15]

Pulses import from restricted to open category

After a gap of three years, India, the largest pulses producer and consumer of pulses globally, has opened up the import of tur, moong, and urad. The Union Ministry of Commerce changed these three pulses from restricted to open category.

According to the Commerce Ministry, the relaxation for the import of pulses will be applicable until October 31, 2021. The imports under this modified norm will have to arrive on or before November 2021. The import consignments of these items with the Bill of Lading issued on or before October 31 shall not be allowed by Customs beyond November 30, 2021.

In the past few weeks, tur prices in retail markets have been over Rs 7,000 per quintal, which is almost Rs 1,000 more than its 2020-21 MSP of Rs 6,000 per quintal. Urad prices are ruling even higher, at around Rs 8,000 per quintal. The 2020-21 MSP

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[13] https://www.newindianexpress.com/nation/2021/may/31/india-expands-negative-list-for-defence-imports-with-108-new-items-2310016.html

[14] *Ibid*

[15] https://www.thehindu.com/news/national/defence-ministry-notifies-second-negative-import-list/article34690749.ece

for urad is Rs 6,000 per quintal. The market price of moong is also near its MSP of Rs 7,196 per quintal.[16]

Food for Thought

In a move to keep prices under a check, the government amended the pulses import policy by moving tur, urad and moong from 'restricted' to 'free' category.[17]

There have been contrasting remarks on the step taken by the Indian government. Pulses trade body Indian Pulses and Grains Association (IPGA) has welcomed the decision of the government. Under the free import policy, the Open General License (OGL) will enable traders to quickly import the required quantity of tur, moong, and urad to fulfill the shortage of pulses. The government might have considered factors like lower buffer stock of pulses with a government agency, National Agricultural Cooperative Marketing Federation (Nafed), uncertainty in availability of pulses from Myanmar due to the political instability in that country and high ocean freight while opening up pulses imports.[18]

They believe that the procurement of tur by state agencies is almost over and farmers are not left with much stock, while the urad crop is also exhausted. In the case of moong, there is some stock with farmers from the summer harvest. Thus, the decision to open imports should not have much impact on the realisations of farmers.[19]

On the other hand, farmers and traders with stocks apprehend losses as prices are likely to move downwards as demand is subdued due to lockdown restrictions in many parts of the country. The demand for pulses has been low for some time now and is not likely to improve soon. Prices of tur and urad are ruling just above the government-mandated minimum support price (MSP), while moong prices are below MSP.

Both views, contrasting but valid, have to be considered by the government while implementing the scheme. Liberalising the sector could either benefit the traders or cause immense harm to farmers ahead of the Kharif season.

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[16] https://www.business-standard.com/article/economy-policy/ahead-of-kharif-sowing-season-govt-allows-free-import-of-3-types-of-pulses-121051500975_1.html

[17] https://www.thehindubusinessline.com/economy/agri-business/govt-opens-up-pulses-imports/article34567458.ece

[18] https://economictimes.indiatimes.com/news/economy/foreign-trade/india-changes-pulses-imports-from-restricted-to-open-category-after-3-years/articleshow/82660699.cms?from=mdr

[19] https://www.business-standard.com/article/economy-policy/ahead-of-kharif-sowing-season-govt-allows-free-import-of-3-types-of-pulses-121051500975_1.html

B. Policies Promoting Competition

Privatisation of Shipping Corporation of India (SCI)

In furtherance of the new privatisation policy, the Modi Government has announced to shed about 64 percent stake in SCI, including a fleet of 59 vessels. It had received multiple bids in April 2021.[20] The Shipping Ministry, led by Minister Mansukh Mandaviya, argued that the respective sector must remain 'strategic' as there cannot be comprehensive progress in the short term without government ownership.

There has been no FDI in the sector over not a single global shipping company has used the option to invest and start a shipping company in the country. This is because in shipping, the ship carries the country's flag in which it is registered and subsequently, is subject to the country's tax regime. The Indian flag suffers from certain barriers in tax and duty structures that have impeded FDI flow into the shipping sector. Hence, higher risks, lower returns combined with unfavourable tax structure and operating conditions have led to no FDI in the said sector for 13 years.

Besides, Indian-registered ships lack government policy support or preference to carry Indian cargo. Such FDI policy has successfully worked for, *inter alia*, the Telecom sector as service providers cannot access the Indian markets without being in India. However, this is not the same case with shipping. Foreign ship-owners do not need to come to India to carry Indian cargo when they can access the same cargo based in Singapore and Dubai.[21]

Food for Thought

Shares of SCI surged to their highest in a decade on receiving multiple expressions of interest for its proposed privatisation, as the government planned to sell its entire 63.75 percent stake, or 29.69 crore shares, along with the management control, as part of its divestment plan.[22] The Shipping Ministry highlighted the importance of SCI for energy and national security as a 'strategic' sector while opposing its privatisation by citing the instance of the 2019 US-Iran conflict when Iran was trying to take control of the Strait of Hormuz combined with sporadic incidents of attacks, international players hesitated to trade in the region. On the other hand, with the support of the Indian Navy, SCI

[20] https://www.hindustantimes.com/business/privatisation-govt-gets-multiple-bids-for-shipping-corporation-of-indias-101614661673705.html

[21] https://www.livemint.com/Opinion/tNSdqc7faVU6A3BCYHaX7I/Why-India-has-failed-to-attract-foreign-investment-in-shippi.html

[22] https://www.bloombergquint.com/markets/shipping-corp-shares-jump-to-the-highest-in-10-years

continued its operations in the said region via the stationed ships to provide crude oil to the Indian refiners.[23]

Even in the case of China, three state-owned shipping firms account for about 11 percent share of the global tonnage compared to India's share of only a percent.[24] *However, the industrial policy as adopted by the Chinese government is starkly different from that in India as in the case of the former, major industries are under the direct or indirect control of the government. In contrast, India has adopted a liberalised industrial policy where private entities are allowed in almost every sector.*

While SCI can provide for oil and other essentials, major sea exploration work is carried on by multinational corporations (MNCs). This is primarily because the Indian government does not have the expertise to conduct underwater repair or construction, deep water diving, or offer exploration support. Having to allocate shipping as a 'strategic' sector based on its claimed contribution to the national security or energy without assigning any strategic role to it would defeat the entire purpose. In such a case, SCI would remain oblivious of private expertise to compete in the marketplace, thereby reducing competition and simultaneously contributing minimally to country's strategic growth.[25]

Comprehensive progress in the sector with the help of government ownership is an unsupported argument as little returns are expected from this sector to the government due to the tax regime policy followed.[26] *In such a policy ecosystem, not privatising the shipping sector would make the Indian market non-competitive in the global market. An alternative could be to control some of SCI's fleet for catering to national or global emergencies.*

TRAI releases new Regulatory Framework for Cable and Telecom Service Providers

The Telecom Regulatory Authority of India (TRAI), on June 11, 2021, released an amendment to interconnection regulations of 2017 which provides for a framework

23 https://www.bloombergquint.com/economy-finance/new-privatisation-policy-why-the-shipping-ministry-wanted-to-stay-strategic

24 https://www.bloombergquint.com/economy-finance/new-privatisation-policy-why-the-shipping-ministry-wanted-to-stay-strategic

25 https://www.moneycontrol.com/news/opinion/shipping-ministrys-opposition-to-sci-privatisation-is-not-credible-6716831.html

26 https://www.thehindubusinessline.com/economy/logistics/shipping-ministry-outfits-to-get-first-preference-over-scis-non-core-real-estate-assets/article35802230.ece

for technical compliance of conditional access system (CAS) and subscriber management system (SMS) for the broadcasting and cable sector. The framework is incorporated as schedule IX in the Interconnection Regulations, 2017. The operationalisation and oversight of the framework shall be carried out throughout a testing and certification agency, which shall be prescribed by the authority later.

CAS enables the digital transmission mode in encrypted form so that consumers can only access TV channel signals through a set-top box. The amended interconnections regulation aims to introduce a testing and certification regime for CAS and SMS to streamline the distribution network for Cable TV.

This move was made keeping in mind that despite the digitisation of cable TV in India, TRAI has been getting complaints from industry players about unauthorised distribution of signals and the under-reporting of subscribers.

Food for Thought

Standardisation and certification of a CAS, especially to define the robustness, will improve content security, reduce piracy for the industry, and restore fair competition. It will also improve the quality of products for the benefit of the operators and subscribers. For example, it would avoid that vendors of non-robust technology delivering fragile products that cannot be maintained and must be replaced shortly after deployment for technical or security reasons.[27]

However, defining CAS or SMS could lead to defining preference towards certain vendors or solutions. This would make purchasing of these less competitive and could result in even higher pricing to Distribution Platforms Operators (DPOs) and ultimately to customers. Each DPO has its business processes, requirements and budgets. Selections of products will be based ultimately on all of these factors.

Further, many SMS platforms are heavily customised to meet the business' requirements, costing more than US$4mn.[28] *Migrating to a new SMS platform as selected by TRAI would result in heavy costs being incurred, customisations having to be re-built into any new platform and large migration exercises to move customers to the new platform. Equally, the portal's mobile applications built to support subscribers and engineering staff would need to be re-built to work with a new SMS platform.*

[27] https://www.trai.gov.in/sites/default/files/Nagra_Kudelski_04062020.pdf

[28] https://www.trai.gov.in/sites/default/files/IMCL_04062020.pdf

These would ultimately result in re-building the business from scratch and take away the business from other revenue-generating activities.

Subject to the CAS or SMS meeting the requirements specified in Schedule III, there seems no need for any further assessment or benchmarking of products required for DPOs to deploy them within their networks. At most, the regulator can recommend some preferred products. Still, there should not be any limit to DPOs purchasing or even building their solutions subject to the requirements specified in Schedule III being met.

Additionally, one of the reasons the amendment was brought is the complaints on the transmission of unencrypted signals or unauthorised transmission of signals.[29] This does not necessarily indicate the incapability of the CAS system but rather the fact that some DPOs are illegally transmitting intentionally in unencrypted form their video signals or even still transmitting analogue video signals. Sometimes, networks sell all broadcasted channels for as low as Rs. 150 per month to subscribers when in reality, this content costs Rs. 400-500 and DPOs following the laws cannot drop their prices to these levels.

TRAI must undertake legal and better policy recourse to look into these illegal practices and pricing schemes that are becoming more prevalent to ensure effective competition for all.

Consultative document on regulation of Microfinance

The Reserve Bank of India (RBI) had issued a new framework uniformly applicable to all regulated entities (REs) active in microfinance, including scheduled commercial banks, small finance banks, non-banking financial companies (NBFCs), NBFC – microfinance institutions (NBFC-MFIs). It proposes a uniform definition of microfinance for all REs on the basis of the household income of microfinance borrowers being up to Rs. 125,000 for rural areas and Rs. 200,000 for urban and semi-urban areas.

In addition to REs, "not-for-profit" companies also provide microfinance loans and those with an asset size of less than Rs. 1.00 billion are exempted from registration as NBFCs with RBI. Currently, the maximum indebtedness of a microfinance borrower

29 https://www.trai.gov.in/sites/default/files/New_Indian_Consumer_Initiative_04062020.pdf

from NBFC-MFIs, excluding loans for education and medical expenses, cannot exceed Rs. 125,000, and more than two NBFC-MFIs cannot lend to a borrower.

Instead of this limit-based approach, the paper proposes to tie the maximum indebtedness to a household's debt-to-income ratio and cap the aggregate indebtedness from all REs at 50 percent of household income. The paper proposes to remove minimum tenure restrictions and the requirement for NBFC-MFIs to provide at least 50 percent of loans for income-generating purposes.

Food for Thought

RBI has effectively communicated its positive outlook of the sector to all stakeholders, its concerns at the negative aspects of MFIs' working to the industry players and crafted a set of regulations that balance the requirements of responsible finance with business growth and viability. This is a step in granting the MFIs, freedom to set interest rates by board-approved policy and not bound by a regulatory cap on interest rates.[30] *It communicates RBI's faith in microfinance institutions.*

The rate ceiling also has had an unintended consequence of creating a prescribed benchmark for other microlenders. For instance, banks' lending rates also hover around this regulatory ceiling, despite the comparatively lower cost of funds. Ultimately, borrowers are deprived of the benefits of enhanced competition and economy of scale even under a falling interest rate regime.[31] *What is, however, apprehended is that the institutions follow the fair practices code, whereby disclosure and transparency would be ensured.*

Having to include all institutions involved in microfinancing under the umbrella of 'regulated entities' has been a long-awaited step to construct a level playing field for the players in the market. As far as the indebtedness cap up to the outstanding not exceeding 50 percent of the household income is concerned, this assessment of household income in a fragmented society like ours would require a detailed process for KYC and thorough information about each individual's (in the household) scheduled repayments across all other loans. The accuracy of such an assessment will be a daunting task.[32]

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[30] https://www.livemint.com/industry/banking/rbi-releases-framework-for-regulation-of-microfinance-loans-seeks-feedback-from-stakeholders-11623676607782.html

[31] *Ibid*

[32] https://www.moneycontrol.com/news/opinion/rbis-consultative-document-is-an-attempt-to-level-the-playing-field-in-the-microfinance-sector-7102661.html

Overall, this seems like a welcome step in the arena as standardised regulations across all REs will encourage healthier competition and more competitive pricing of microfinance loans.

National Strategy for developing tourism

The Ministry of Tourism issued draft national strategies and roadmaps for various forms of tourism. These forms of tourism include: (i) sustainable tourism, (ii) rural tourism, (iii) medical and wellness tourism, and (iv) business tourism. Meetings, Incentives, Conferences and Exhibitions (MICE) is a segment of business tourism and refers to events that bring large groups together for a specific purpose. Medical tourism refers to tourism focused on maintaining, improving, or restoring health through medical intervention. The national strategy aims to provide an institutional framework, strengthen the medical and wellness tourism ecosystem, develop a brand, digitise, and ensure quality.

The strategy recommends state governments give infrastructure status to MICE-related infrastructure. While granting the Industry status, the States should provide the following benefits to the MICE infrastructure, namely Hotels, Resorts and Convention Centres: (i) Benefit of capital subsidy and allotment of land for MICE infrastructure as being provided to other manufacturing industries; (ii) Benefit of industrial tariff for power and other utilities and property tax.

Food for Thought

The Draft National Strategy and Roadmap for Development of Rural Tourism in India seeks to develop and promote local products through tourism to generate income and jobs in rural areas and empower local communities.

The second proposal – Draft National Strategy and Roadmap for Medical and Wellness Tourism - seeks to promote India as an accessible and affordable destination for medical treatments and wellness courses. The key drivers for the growth of medical tourism and wellness tourism are mainly affordability and accessibility of good healthcare services, facilitation around hospitality services, minimal waiting time, availability of the latest medical technologies and accreditations.

The Government of India recognises medical value travel and wellness tourism as one of the essential sectors that can accelerate the country's development and attain Aatmanirbhar Bharat's objective. The backing for the strategy is to provide impetus to

the growth of medical value travel and wellness tourism in India and maintain India's competitive advantage. The national strategy aims to provide an institutional framework to strengthen the medical and wellness tourism ecosystem, develop a brand, and ensure quality assurance.

The downside to such a strategy is that medical facilities will expand to provide services to better paying medical tourists, thus attracting healthcare workers in a big way with higher salaries, etc. This will deprive the poor indigenous population of getting good healthcare. As it is, our public health care system is in shambles, as witnessed during the pandemic, and proposals to run centers on a PPP basis have been opposed by many.

Secondly, doctors are in short supply and proposals to develop barefoot doctors to provide services at lower costs have been opposed by the medical lobby. With respect to the MICE industry, currently, Infrastructure status has been accorded to the construction of 3 star and above hotels outside the cities with a population of one million and above.

The Ministry of Tourism will pursue to expand the list of cities for grant of infrastructure to MICE infrastructure projects such as Hotels and Resorts, Exhibition and Convention Centres, etc. This will facilitate investment into MICE infrastructure, which will contribute to the growth of MICE business in the country. This is a winning effort and requires support from all in a whole of government approach.

MICE infrastructure is capital intensive and takes a long time to recover investments. Often availability of land in urban areas is a challenge for developing a convention center or a hotel with convention facilities. The strategy involves making suitable land available to the Private Sector for setting up and operating the MICE facilities. The States will encourage long-term lease of land or revenue-sharing model, which does not require a heavy upfront payment. PPP models can also be explored where the state establishes a unit as a standalone company, gets all clearances, and invites the private sector as operational partners on a revenue share model.

Disinvestment of IDBI Bank

The Cabinet Committee on Economic Affairs, chaired by Prime Minister Narendra Modi, gave its in-principle approval for strategic disinvestment along with transfer of management control in IDBI Bank Ltd.

The RBI had removed the LIC-controlled IDBI bank from its prompt corrective action (PCA) framework, which was imposed in May 2017, after it had breached certain regulatory thresholds, including capital adequacy, asset quality and profitability, in April. The Government of India (GoI) and LIC together own more than 94 percent of the equity of IDBI Bank (GoI 45.48 percent, LIC 49.24 percent).

LIC is currently the promoter of IDBI Bank with Management Control and GoI is the co-promoter. LIC's Board has passed a resolution to the effect that LIC may reduce its shareholding in IDBI Bank through divesting its stake along with strategic stake sale envisaged by the government. The intent is to relinquish management control by considering price, market outlook, statutory stipulation and interest of policyholders. This decision of LIC's Board is also consistent with the regulatory mandate to reduce its stake in the Bank.

Meanwhile, IDBI Bank reported a nearly four-fold jump in its standalone profit after tax to Rs. 512 crore in the March quarter compared to Rs. 135 crore in the year-ago period on the back of an impressive 38 percent growth in its net interest income (NII).

Food for Thought

Presenting the Budget on February 01, 2021, Finance Minister Nirmala Sitharaman proposed taking up the privatisation of two state-run banks and IDBI Bank in the Financial Year 2021-22, as part of a disinvestment drive to garner Rs. 1.75 lakh crore.[33]

The strategic buyer will infuse funds, new technology and best management practices for optimal development of business potential and growth of IDBI Bank Ltd. and shall generate more business without any dependence on LIC and GoI assistance or funds. The rationale for privatisation cannot and should not be limited to economic efficiency. A clear and consistent articulation of the benefits that citizens can expect from the programme can help create a broader consensus for it and overcome unreasonable barriers.[34]

Resources through strategic disinvestment of Government of India equity from the transactions would be used to finance infrastructural programmes of the government benefiting the citizens.

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[33] https://pib.gov.in/PressReleasePage.aspx?PRID=1716211

[34] https://www.livemint.com/opinion/online-views/let-the-principles-of-competition-guide-privatization-11617812252093.html

Generally, as an economy grows and develops, the banking sector becomes more specialised, sophisticated, and cost-effective. The financial depth and financial efficiency give constructive feedback on capital accumulation, productivity, and growth in this process. It has been noted that it is the design of developed countries. The proposed and approved disinvestment of IDBI Bank seems to be in the right direction to flood funds and enhance the efficiency of the banking operations. Further, from the citizens' point of view, particularly at a time of jobless growth and even "job-loss" growth, privatisation typically is associated with reducing and reorganising the labor force, either in preparation for privatisation or soon afterward.[35] *Moreover, even where expansion and investment can be expected to absorb labour and even facilitate the growth of the labour force in the long term, there is frequently a short-term decline.*

In other words, it is to expect that labour force would feel the backlash of the disinvestment. However, in the larger frame of things, the growth in the employment arena is immense. The problem is that no one has the patience to wait for long-term gains at the cost of immediate losses.

One Nation, One Ration Card

The Supreme Court had directed states and Union territories to implement the 'One Nation, One Ration Card' scheme till July 31, 2021, to make the community kitchens run to feed migrants till the end of the pandemic. The top court also ordered the Central Government to provide dry ration for free distribution among migrant workers till the situation eases.

A bench of Justice Ashok Bhushan and justice MR Shah issued a slew of directions on a plea of three activists seeking directions to the Centre and states to ensure food security, cash transfers and other welfare measures for migrant workers. The scheme was launched on a pilot basis in four states by Union Minister late Ram Vilas Paswan. The system aims to provide ration and food security to migrant workers and their families under the National Food Security Act (NFSA) and other schemes.

The 'One Nation, One Ration Card' is a tech-driven system that allows labourers, daily wagers, urban poor like rag pickers, street dwellers, temporary workers in organised and unorganised sectors, domestic workers, etc. to get their daily quota of food grains from any electronic point of sale (e-PoS)-enabled FPS of their choice anywhere in the country.

[35] https://www.inflation.eu/inflation-rates/india/historic-inflation/cpi-inflation-india.aspx

Food for Thought

'One Nation, one Ration Card' system is a citizen-centric reform identified by the department of expenditure under the Union Finance Ministry. The department has also incentivised, with additional borrowing of 0.25 percent of Gross State Domestic Product (GSDP) to states completing the implementation of the system, which translates to additional borrowing permission of ₹37,600 crores. The scheme eliminates the need to obtain a new ration card for the new location. The implemented scheme is expected to promote ease of living and persons' mobility within the country.

Human being is the most valuable resource in a market or sector. Nurturing this resource has the potential of reaping sweet fruits in the market output. The scheme aims to ensure that the beneficiaries under the National Food Security Act (NFSA) and other welfare schemes, especially the migrant workers and their families, get ration from any Fair Price Shop (FPS). Other aims of the intended reform were to better target beneficiaries, eliminate bogus or duplicate or ineligible ration cards, and thus enhance the welfare and reduce leakage. For this, the reform conditions stipulated under the Aadhaar Seeding of all Ration Cards, biometric authentification of beneficiaries, and automation of all the Fair Price Shops (FPS) in the State.[36]

What is feared is that the digitisation of this PDS process, through Aadhaar-linked ration cards and smart cards, has been pushed to reduce leakages. However, there has been a rise in exclusion errors in post-Aadhaar seeding. Many sections of society still do not have Aadhar Cards, thereby depriving them of food security. An FPS receives the monthly quota of products strictly in accordance with the number of people assigned to it. The ONORC, when fully operational, would disrupt this practice, as some FPSs may have to cater to more numbers of cards even as others cater to less, owing to the migration of people.[37]

Given the visionary scheme of the government with a nudge from the Supreme Court, it is hoped that the loopholes shall be addressed during implementation.

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[36] https://www.moneycontrol.com/news/india/explained-what-is-one-nation-one-ration-card-scheme-7194501.html

[37] https://www.drishtiias.com/daily-updates/daily-news-editorials/one-nation-one-ration-card-scheme-2

C. Policies Inhibiting Competition

Pre-Packs for Micro, Small and Medium Enterprises (MSME)

The President of India promulgated an Ordinance on April 04, 2021 within the Insolvency and Bankruptcy Code (IBC Code). The MSME units will now be able to opt for a pre-packaged insolvency resolution under the IBC Code. The government has made way for pre-packs for MSME defaults of up to Rs. 1 crore. A pre-pack process allows the creditor and the debtor to work on a resolution plan informally. Essentially, pre-packs are hybrid mechanisms allowing out-of-court resolutions to be recognised under insolvency law with appropriate safeguards for all stakeholders. The plan, if the parties agree, can then be presented to the adjudicating authority for approval.

While a pre-pack process is underway, no insolvency proceedings can be initiated against the MSME. The Ordinance makes available the pre-packaged route to genuine and viable cases to ensure the least business disruption. The Central Government and the Insolvency and Bankruptcy Board of India (IBBI) have also received notification[38], rules[39] and regulations[40] for operationalising the pre-pack process.

Food for Thought

The COVID-19 pandemic is expected to lead to a rise in insolvencies. Accordingly, institutions such as the World Bank and the International Monetary Fund have advised Governments to protect small enterprises from going out of business. In response to this, governments have rolled out measures like a moratorium on loan repayments, sector-specific forbearance, infusion of liquidity into the banking system to provide credit to financially distressed firms, relief in asset classification banking norms, flexibility in director's obligations to initiate insolvency proceeding and suspension of filing of insolvency proceeding by the creditors. The government has increased the default threshold for filing an insolvency application from Rs 1 lakh to Rs 1 crore to

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38 https://ibbi.gov.in/uploads/legalframwork/e9b1c4b3489e51213db701b27222b474.pdf

39 Insolvency and Bankruptcy (prepackaged insolvency resolution process) Rules, 2021 http://www.scconline.com/DocumentLink/KdLk8eWa

40 Insolvency and Bankruptcy Board of India (Pre-packaged Insolvency Resolution Process) Regulations, 2021 <http://www.scconline.com/DocumentLink/C93OxTv2>

protect the interest of the MSME sector from being pushed into insolvency proceedings.[41]

Further, adopting the plan evaluation process akin to the Swiss Challenge retains competitive tension such that promoters propose plans with the least impairment to rights and claims of creditors.[42]

While this Ordinance is also a step in the same direction, to protect MSMEs through a mechanism known as pre-packs, the resolution plan attains finality, not on the consent of 66 percent of financial creditors but its approval by the adjudicating authority. Such mandatory involvement may be a roadblock in speeding the pre-pack process, thereby structurally defeating its very purpose.

Although the framework of the chapter does not reduce the role and involvement of the National Company Law Tribunal (NCLT) very significantly, it is expected that given that this process can be initiated with the approval of 66 percent of the unrelated financial creditors, the disputes would be minimal which will make the process to run more efficiently than the usual corporate insolvency resolution process (CIRP).[43]

In the recent case of Silpi Industries v. Kerala SRTC,[44] *the Supreme Court held that an MSME must be registered to claim certain benefits under the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006. With 90 percent of MSMEs being unregistered*[45]*, the judgment can potentially exclude 62 million MSMEs from benefits of the Act, thereby hamper competition and fair practice in the industry.*

The Supreme Court's verdict effectively contradicts the very legislative intent of the MSMED Act.[46] *It disregards that the MSMED Act, 2006 is welfare legislation with speedy disposal of issues forming its legislative core. The present Ordinance is a similar legislative instrument aimed at protecting the growth of MSMEs through speedy*

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41 https://www.scconline.com/blog/post/2021/07/20/pre-packs-for-msmes-a-positive-step-with-implementation-hurdles/#_ftn2

42 https://m.economictimes.com/small-biz/legal/centre-promulgates-ibc-amendment-ordinance-to-allow-pre-packaged-insolvency-for-msmes/articleshow/81909630.cms?_oref=cook

43 https://www.scconline.com/blog/post/2021/07/20/pre-packs-for-msmes-a-positive-step-with-implementation-hurdles/#_ftn2

44 http://www.scconline.com/DocumentLink/nXnbfmko

45 https://www.inventiva.co.in/stories/inventiva/what-would-be-the-affect-on-the-msmes-in-india-if-the-lockdown-increases-for-4-8-weeks/

46 https://www.barandbench.com/columns/dilution-statutory-protection-msmes-critique-supreme-court-judgment-silpi-industries

disposal of insolvency resolution. The Ordinance must be broadly interpreted to expand all the MSMEs in this stressful economic stretch during COVID-19 and even later.

Imposition of Countervailing duty

The commerce ministry has recommended the imposition of countervailing duty on certain types of aluminium wires from Malaysia for five years, a move aimed at guarding domestic players against imports that are subsidised by that country. The ministry's investigation arm Directorate General of Trade Remedies (DGTR) in its findings after a probe stated that imposition of definitive countervailing duty is required to offset subsidisation.

The recommendation has been made for a definite period of five years. It is a result of the probe carried out by the directorate following complaints from Vedanta Ltd and Bharat Aluminium Company Ltd. They had filed a petition on behalf of domestic producers to initiate anti-subsidy investigation. It has recommended a duty of 6.87 percent and 16.5 percent.[47]

Food for Thought

Countervailing duty is a country-specific duty imposed to safeguard the domestic industry against unfair trade subsidies provided by the local governments of the exporting nations. Under the global trade rules of the World Trade Organization (WTO), a member country is allowed to impose anti-subsidy to countervailing duty if the government of its trading partner subsidises a product. The Anti-subsidy rules require domestic and imported products to be 'like articles' for the rules to be applicable. DGTR, in its investigation, concluded that the Aluminium Wire produced domestically is similar to an article to the one imported from Malaysia. Hence, they are comparable, collectively and cumulatively, in product characteristics, manufacturing process and technology, functions and uses, product specifications, pricing, distribution & marketing and tariff classification of goods.[48]

In accordance with Rule 2(b) of the Rules, the domestic producers constituting major proportion in the total domestic production can be considered as a domestic industry. It requires the applicant party (Vedanta Ltd.) to hold a majority proportion of the Indian production of the subject product. In the submissions made by the applicant party,

[47] https://www.freepressjournal.in/business/dgtr-recommends-imposing-countervailing-duty-on-imports-of-aluminium-wires-from-malaysia-heres-all-you-need-to-know

[48] https://www.dgtr.gov.in/sites/default/files/FF%20-%20Aluminium%20Wire%20%28English%29_compressed.pdf

claims of this sort were made; however, no evidence was produced to support the same. A vague estimate of the production of other domestic producers is unreliable. The Authority should request information from the other two big producers and examine if the domestic industry's share is more than 50 percent (after excluding the Special Economic Zone unit of Vedanta from the total production).[49]

The duty was imposed on the ground that it would remove the unfair advantages gained by subsidisation, prevent the domestic industry's decline, and help maintain the availability of wider choices to the consumers of the subject goods. The purpose of countervailing duties, in general, is to eliminate injury caused to the domestic industry by the unfair trade practices of subsidisation to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country. Imposition of countervailing duties, therefore, would not affect the availability of the product to the consumers.

The Authority notes that the imposition of the countervailing measures would not restrict imports from the subject country. Therefore, it would not affect the availability of the product to consumers. However, imposition of countervailing duties is bound to affect the price levels of the product in India, and accordingly, affect the consumers. Additionally, 'material injury' claimed to be caused to the domestic players has not been substantiated with any material evidence.

The possibility of imports from other nations causing such an injury was discarded whereas import price per unit from other countries was substantially lower than import price from Malaysia during the financial years 2017-18 and 2018-19.[50] *Therefore, if any, price competition and injury to the domestic industry could also be due to imports from other countries.*

Draft e-commerce rules

The draft e-commerce rules released by the government on June 21, 2021 propose to ban fraudulent flash sales and mis-selling of goods and services on e-commerce platforms. Appointment of Chief Compliance or Grievance Redressal Officer is among the key amendments proposed under the Consumer Protection (E-Commerce) Rules, 2020.

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49 https://taxguru.in/custom-duty/anti-subsidy-investigation-imports-aluminium-wire-wire-rods.html

50 *Ibid*.

They seek to propose additional accountability and transparency enabling obligations upon e-commerce entities. The key obligations include the appointment of a Chief Compliance Officer, Nodal Contact Person, a Resident Grievance Officer and the setting up of a Grievance Redressal Mechanism on the entity's website. Further, marketplace e-commerce entities are proposed to be made liable for the losses suffered by a consumer on account of a defaulting seller and misleading advertisements by such sellers.

To curb unfair trade practices and create a level playing field, the Draft Rules seek to ban certain types of flash sales. It additionally proposes to impose personal liability on the Chief Compliance Officer if he fails to ensure the exercise of adequate due diligence on the part of sellers.

Food for Thought

The proposed e-commerce regulations could negatively impact consumer interest, creating a high level of uncertainty and increasing the compliance burden for e-commerce companies and MSMEs providing services to online retailers. Under the amendments, e-commerce platforms will face several restrictions and an increased compliance burden. However, the same will not apply to brick-and-mortar stores.

Implementing amendments in their current form will significantly increase the compliance burden on MSMEs and start-ups. They are not even in the e-commerce business but provide services to e-commerce. The proposed regulations could increase compliance liabilities, affect global investor sentiment to ease doing business in the country, and severely impair the growth of the online commerce sector.

The draft, to some extent, reflects the government's intent towards protecting the small and medium sellers. Solopreneurs and women entrepreneurs, especially, merit special consideration and attention. There is zero paperwork for them up to GST threshold (Rs 20 lakh) and minimal compliance requirement for all sellers at least till Rs 1 crore of revenue.

The proposed Rules seek to also deal with competition violations. We already have the Competition Act and Competition Commission of India (CCI), as a regulator. In January 2020, CCI published a market study on e-commerce in India and suggested self-regulation by marketplaces for certain aspects. CCI is already investigating certain alleged anti-competitive practices in the e-commerce industry.

The proposed Rules go against the construct of the Competition Act. It presumes that certain arrangements are anti-competitive practices in the e-commerce industry. It presumes that specific arrangements are anti-competitive or against consumer interest, without any scope for rebuttal of such presumption. Similarly, Rules also introduce provisions that should get covered in the proposed Data Protection Act. Such an overlap in regulations and regulators goes against tenets of a harmonious eco-system.[51]

There should be a uniform mechanism for effective resolution for all new-age businesses, namely by co-regulatory and self-regulatory bodies. The law should set basic principles and let the industry experts implement it.

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.

51 *Ibid*.
RLINK "https://economictimes.indiatimes.com/small-biz/policy-trends/view-proposed-e-commerce-rules-places-unreasonable-restrictions-unconstitutional-in-nature/articleshow/84700538.cms?from=mdr" https://economictimes.indiatimes.com/small-biz/policy-trends/view-proposed-e-commerce-rules-places-unreasonable-restrictions-unconstitutional-in-nature/articleshow/84700538.cms?from=mdr