CUTS International

COMPETITION DISTORTIONS IN INDIA – A CUTS DOSSIER

(CDI 56: April to June 2022)

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 impact competition in India, which can be both negative and positive. News, as published, is used without verifying its accuracy. The purpose is to flag issues to the layman, specialised policymakers and regulators, rather than be judgmental. This would require greater analysis, particularly in terms of cost and benefits in addition to that.

Dear Reader,

Greetings!

We are pleased to present the Competition Distortion Dossier #56 for the first quarter of the year, i.e., April-June 2022. We have extensively covered the most important news stories from these three months that impact the competitive landscape in India.

The first section investigates the government's decision to prolong anti-dumping charges on Chinese solar glass for another two years to encourage the domestic industry. Based on the investigation findings, the section then outlines the government's decision to impose countervailing duties on the copper tube and pipe imports from Vietnam, Thailand, and Malaysia for five years. Further, it assesses the detrimental impact on the domestic industry of the government's decision to suspend and then entirely revoke anti-dumping duties on stainless steel goods from China and Indonesia.

The dossier examines EU's proposed "sustainable regulation" for standardising and universalising a single type C charger. It also discusses the revision of laws on voluntary winding up of a company by the Ministry of Corporate Affairs, the Government of India and the Union Government's approval for using coal mine land for infrastructure, and a five-year review of goods and services tax (GST).

The dossier also contains comments on the policies inhibiting competition, including the controversy surrounding the privatisation of the government's shareholding in Pawan Hans Ltd. It also sheds light on and analyses TATA's acquisition of Air India, its resulting conglomerate and its detrimental impact on the competition in the India Singapore Airline industry. Furthermore, we examined the prospect of Railways missing its asset monetisation objective for this fiscal year yet again, as well as the issue of complexity and uncertainty surrounding the position of the National Anti-Profiteering Authority.

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

Cheers!

Contents

A. Trade Policies 3

Possible Extension of Anti-Dumping Duty on Chinese Solar Glass...................... 3

India Imposed Countervailing Duties on Imports of Copper Tubes & Pipes 4

Upsurge in the Import of Stainless Steel is Damaging India's Domestic Industry 6

B. Policies Promoting Competition 8

EU's Common USB-C Charger Mandate 8

Government's Disinvestment Strategies: Plan to up Efficiency and Investments 10

MCA Reworks Rules for Winding up Businesses 12

Five Years of GST: Contributions and Recent Developments 14

Cabinet Approves Policy for Using Coal Mine Land for Infrastructure 16

C. Policies Inhibiting Competition 17

Controversies Surrounding Pawan Hans Ltd Privatisation.............................. 17

Conglomeration in the India-Singapore Airline Sector.................................. 19

Railways Set to Miss Asset Monetisation Target Again 21

National Anti-Profiteering Authority Needs an Extension to Decide on Pending Cases 24

A. Trade Policies

Possible Extension of Anti-Dumping Duty on Chinese Solar Glass

The Commerce Ministry's investigation arm, the Directorate General of Trade Remedies (DGTR), has recommended continuing anti-dumping duties on Chinese solar glass for another two years to protect domestic players from cheap imports. The said product under consideration is known as solar glass, low iron, and solar photovoltaic glass. It is used in solar photovoltaic panels as well as solar thermal applications. The DGTR has recommended levying of duty between US$192.82 and US$302.65 per tonne. The Finance Ministry can decide whether or not to impose an anti-dumping duty.[1]

Food for Thought

Dumping is said to have occurred in international trade parlance when a state or a company exports an item at a price lower than the price of that product in its domestic market. It affects the price of the "product under consideration" in the importing country, reducing the manufacturing firm's profit margins and production capabilities. According to international trade rules, Article VI of "GATT", a country may levy tariffs on such dumping products to level the playing field for domestic manufacturers. In India, the duty is imposed by the Ministry of Commerce and Industry after a thorough investigation is conducted by its quasi-judicial body, the DGTR.

In August 2017, the Finance Ministry imposed a five-year anti-dumping duty on Chinese solar glass. On the request made by the Indian solar glass manufacturer Borosil Renewables as a "domestic industry", the DGTR launched an anti-dumping investigation. Following an investigation, the DGTR found no material difference between solar glass exported from China and the solar glass produced in India. The domestically produced solar glass was comparable to the imported products regarding physical characteristics, production technology, manufacturing process, and applications. The investigation also concluded that the product under consideration, i.e. the solar glass, is being exported to India from China at prices below standard value, undercutting the cost of the domestic industry and resulting in continued dumping.

[1] https://economictimes.indiatimes.com/industry/renewables/dgtr-for-continuation-of-anti-dumping-duty-on-chinese-solar-glass/articleshow/91596426.cms

Borosil Renewables Ltd has recently submitted a request for a sunset review of the anti-dumping investigation about imports of solar glass from China because the earlier imposed duty is set to expire in July 2022. The price impact of dumped imports from China was discovered during the sunset review investigation to be the primary cause of ongoing losses for the domestic industry. Compared to the time of the initial inquiry, the dumping margin had grown during the sunset review examination. Throughout the investigation period, the market share of Chinese imports was significantly high. Considering this, the DGTR has recommended maintaining anti-dumping duties on imports of solar glass from China because there is a clear likelihood of dumping in "significant volumes" which would harm the domestic industry. It was also noted that given the solar glass manufacturers and exporters in China have a strong export orientation and substantial excess capacity, the lapse of existing duty will significantly increase the volume of imports from China.

Since duty imposition on solar glass imports from China, Borosil Renewables has worked to double its capacities and plans to increase additional capacity. The company has recently acquired a European solar glass manufacturer and aims to become the largest non-Chinese manufacturer of solar glass by 2025.

India Imposed Countervailing Duties on Imports of Copper Tubes & Pipes

The Commerce Ministry has recommended the imposition of countervailing duties on copper tubes and pipes emanating from Malaysia, Thailand, and Vietnam for five years. The DGTR of the Ministry of Commerce and Industry, in its finding, concluded that imposition of countervailing duty is necessary as it has been found out in the investigation that the volume of imports for the product under consideration from the subject countries has increased in absolute terms as well with consumption in India.

This policy action is directly aimed at guarding domestic players against imports that are subsidised by these countries. The recommended duty ranges between 2.3 percent of CIF (cost, insurance, freight) value to 14.76 percent of CIF value. [2]

[2] https://economictimes.indiatimes.com/news/economy/foreign-trade/dgtr-for-imposing-countervailing-duty-on-copper-tubes-pipes-from-malaysia-thailand-vietnam/articleshow/89381280.cms?from=mdr

Food for Thought

Countervailing duties are imposed when a foreign government provides assistance and subsidies to its domestic manufacturers, allowing the imported product to be sold at a lower price than what is sold locally in the domestic market of such a country. Subsidies and other forms of assistance granted under this setting include preferential loans, grants, various tax breaks, etc. Under the World Trade Organisation's (WTO) global trade rules, member states have the authority to impose such duties to protect domestic markets from the negative impact of unfair trade practices.

Article VI of the GATT of 1947 governs the imposition of anti-dumping and countervailing duties. When an imported product receives subsidies or is exempt from domestic taxes in the country where it is manufactured, the duty nullifies and eliminates the price advantage (low price). The said duty raises the price of imported goods, bringing them closer to their true market value, thus providing a level playing field for domestic products.

In India, the CVD is applied as an extra levy in addition to customs duty on imported items that are either tax exempted or subsidised in the country of origin. Section 9 of the Customs Tariff Act 1975 and its supplementary regulations, the Customs Tariff (Identification, Assessment, and Collection of Countervailing Duty on Subsidised Articles and for Determination of Injury) Rules, 1995 (the "CVD Rules"), govern the imposition of countervailing duties in India. The DGTR, under the Ministry of Commerce and Industry, deals with Anti-Dumping, Countervailing Duties, and Safeguard measures in India.

In the matter concerning imports of copper tubes and pipes originating in or exported from Malaysia, Thailand, and Vietnam, in July or August 2020, the Directorate received representations from the Bombay Metal Exchange, which expressed concern about the rapid decline in domestic production of copper tubes and pipes in India. Imports from the above-listed countries have increased due to manufacturers' strong national subsidy system and tariff discount offerings.

Taking these submissions into account, the DGTR initiated a suo-moto inquiry on September 25, 2020, into subsidies offered by Malaysia, Thailand, and Vietnam on exports of copper pipes and tubes to India. Usually, the DGTR investigates trade remedies based on a fully documented petition. Still, in cases where the industry is fragmented and dispersed, the DGTR resorts to suo-moto investigations after notifying all interested

parties to provide relief to the ailing domestic sector from such unfair trade practices to ensure a level playing field.

On a related note, the only copper processor in India, Sterlite's plant in Thoothukudi near Chennai, has been shut down, thus turning India into a net importer of copper. CUTS has studied the matter on being commissioned by NITI Aayog, which can be seen at: cuts-ccier.org/pdf/synthesis-report-on-economic-impact-of-select-sc-and-ngt-decisions.pdf

Upsurge in the Import of Stainless Steel is Damaging India's Domestic Industry

During the fiscal year 2021-2022, the Government of India temporarily suspended anti-dumping duties on certain stainless steel products from China. Recently in the budget announcement for 2022-2023, the government has moved to entirely revoke the import duties on stainless steel products from China and Indonesia. Finance Minister Nirmala Sitharaman, in her budget statement, announced the scrapping of anti-dumping and countervailing duties on stainless steel "in larger public interest considering prevailing high prices of metals."[3]

Food for Thought

India envisioned its accelerated growth by bolstering its Micro, Small and Medium-sized Enterprises (MSMEs). The aim is to facilitate MSMEs sustainable development and enhance their employment generation capabilities. The government has taken aggressive measures like the 'Make in India' initiative, the PLI programme, etc. Further extending its domestic agenda of industrial growth, the government also imposed stricter import duties under the international trade regime. However, the government's recent policy change for suspension and revocation of import duties on stainless steel products seriously ill affects the domestic industry.

Stainless steel accounts for only 3.0 percent of total steel consumption in India but is still crucial in applications for its "corrosion resistance" metal quality. The Indian stainless steel industry is self-sufficient in terms of competence and capacity to meet national demand and export requirements. Stainless steel is eco-friendly, user-friendly, and cost-effective. Compared to other steel businesses, stainless steel generally has a lower margin and is more susceptible to market fluctuations. Despite its inherent disadvantages of high

[3] https://economictimes.indiatimes.com/industry/indl-goods/svs/steel/imported-stainless-steel-is-killing-indian-msmes-jindal-stainless-md/articleshow/91691994.cms?from=mdr

capital costs, logistical challenges, and reliance on imported raw materials, India has a competitive stainless steel industry compared with most industrialised nations.[4]

According to the Finance Minister's budget statement this year, the decision to remove import duties on stainless steel products was made in response to a rise in domestic pricing that impacted job-creating small and medium-sized manufacturing firms. Small and medium-sized enterprises account for more than 30 percent of India's industrial capacity and 45 percent of the country's goods exports. Steel prices had been rising, and in late 2020 they increased by up to 25 percent. There has been a worldwide increase in pricing because of rising raw material costs, especially iron ore.[5] *According to official data, engineering exporters have requested that the government take action to control rising steel prices.*

When proposed, many major stainless steel manufacturers in the country opposed the suspension of anti-dumping duties and warned that cheap Chinese imports might flood domestic markets. And this is exactly what happened, as per the reports, the imports of stainless steel from China and Indonesia increased by 184 percent in the financial year 2022 compared to the financial year 2021. This has directly resulted from removing import duties on the concerned product. In January only, the proportion of imported stainless steel from these nations reached 40 percent. Data shows that due to the concentration of heavily subsidised imports, the capacity utilisation of Indian MSMEs has decreased to anywhere between 60 and 50 percent in the past few years. The industry has experienced significant unemployment resulting from a sharp decline in domestic capacity utilisation and has forced many manufacturers to go into the trading business instead.[6]

Further, it is also argued by many industry experts that there exists no clear justification for the government's move to remove import duties when other countries globally have imposed duties on Chinese and Indonesian stainless steel. Countries that are major buyers of stainless steel worldwide, such as the US, Europe, Brazil, and Korea, have imposed import taxes ranging from 17 to 190 percent on imports from China and

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4 https://www.financialexpress.com/opinion/corroding-indias-atmanirbharta-on-stainless-steel/2327404/

5 https://www.livemint.com/budget/news/budget-2021-govt-suspends-anti-dumping-duty-on-some-steel-products-from-china-11612187035400.html

6 https://economictimes.indiatimes.com/small-biz/sme-sector/budget-as-chinese-stainless-steel-imports-surge-indian-msmes-feel-the-heat/articleshow/89010238.cms

Indonesia. China, too, imposes an anti-dumping duty of 20.2 percent on Indonesian steel.[7]

While lifting import duties on stainless steel could adversely impact its small domestic producers, the move is expected to lower the cost of kitchen appliances[8]*and spur demand in real estate, auto, plastic*[9] *and other downstream sectors.*[10] *However, along with removing the import duties, the government has imposed duties on the export of stainless steel products. Barriers to exports are likely to impact small and medium exporters and outbound Indian investments adversely.*[11] *This move may also be inconsistent with the objectives of the PLI scheme, which aims to enhance exports of steel products.*[12] *Simultaneously, the EU has hiked tariffs on imported stainless steel from India.*[13]

B. Policies Promoting Competition

EU's Common USB-C Charger Mandate

In early June 2022, the EU passed its long-debated proposal to mandate a standard charging port for all gadgets to be sold in the territory by 2024. The provisional agreement proposes that all small and medium-sized portable electronic devices, such as mobile phones, tablets, cameras, earphones, and similar devices, use a USB-C charging port, regardless of the manufacturer. The legislation has a broader application, including laptops, but the Laptop Original Equipment Manufacturers (OEMs) will have more time to comply with the new regulation. This has hit big electronic device manufacturing companies like Samsung, Huawei, and, most notably, Apple. These companies will have to change the charging port of their wide-ranging devices to USB-C in two years.[14]

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[7] Supra note 1

[8] https://www.newindianexpress.com/business/2022/may/26/import-duty-cut-will-lower-cost-of-kitchen-appliances-say-companies-2458061.html

[9] https://www.financialexpress.com/industry/input-duty-cuts-will-spur-demand-say-real-estate-auto-plastic-units/2534158/

[10] https://www.india.com/business/steel-product-rates-to-fall-by-10-for-domestic-producers-predicts-eepc-5408032/

[11] https://www.thehindubusinessline.com/companies/export-duty-on-stainless-steel-will-have-long-term-implications-abhyuday-jindal-md-jindal-stainless/article65523151.ece

[12] https://www.news18.com/news/business/export-duty-hike-on-steel-items-to-hit-projects-under-pli-scheme-isa-5228209.html

[13] https://zeenews.india.com/economy/eu-hikes-tariffs-on-india-indonesia-stainless-steel-imports-2445851.html

[14] https://www.livemint.com/technology/tech-news/eu-mandates-common-charging-port-for-all-phones-tablets-and-cameras-by-2024-11654613075830.html

Food for Thought

The EU's recent move of introducing a provisional agreement requiring all products sold within its borders to use the USB-C charging port significantly affects companies that use proprietary technology, such as Apple. Under the same mandate, the Union also intends to introduce a provision requiring phones and chargers to be sold separately so that consumers have a choice and can avoid purchasing unnecessary chargers. The EU plans to standardise device charging speed and adopt measures to promote wireless charging technology.[15]

The proposed law affects a wide range of portable electronic devices, but Apple especially has received much attention in the debate over the EU's decision. Apple has a separate revenue-generating stream from its "Lightning Port" charger. The company's best-selling products, such as iPhones, Air Pods, and Apple Watch, use the proprietary Lightning charge technology, which has been one of its most closely-guarded trade secrets for almost a decade, with no substitute available in the market. Apple supports USB-C charging for several devices, including certain MacBooks and iPads.

These, however, are not the products that Apple sells in large quantities. Apple sells the most iPhones, Air Pods, and Apple watches, all of which do not use the universal standard. Even if one buys a third-party lighting cable, the third-party manufacturer will pay Apple a licensing fee to use its Lightning port technology. The universalisation of the USB type C charging port thus negatively impacts Apple's revenue model, rendering its unique "Lighting Port" trade secret obsolete.[16]

Such a policy aims to make products in the EU market more sustainable by reducing electronic waste in the long run, improving consumer convenience, and increasing cost efficiency. With the standardisation of charging ports across the product line, the EU hopes to cut the estimated 11000 tonnes of electronic waste produced annually and the €250mn spent on the cost of unnecessary chargers. The success of such a policy will also motivate other countries to adopt the same regulatory provision in their respective jurisdiction. However, with all of these benefits to note, there is also concern about how to deal with the policy's immediate consequence: that as USB-C chargers become more

[15] https://timesofindia.indiatimes.com/gadgets-news/european-union-makes-usb-c-mandatory-for-phones-why-this-is-bad-news-for-apple-and-all-other-details/articleshow/92063148.cms

[16] https://www.firstpost.com/tech/news-analysis/eu-makes-usb-c-mandatory-for-devices-sold-after-autumn-2024-apple-may-exploit-loophole-in-legislation-10771661.html

prevalent, a substantial number of incompatible electronics and chargers will have to be discarded.[17]

Hopefully, this may also lead to standardisation of electric plugs and sockets, thus eliminating the need to carry adapters. However, this move will cost far more than USB-C chargers.

Government's Disinvestment Strategies: Plan to up Efficiency and Investments

The government has been taking various measures as part of a disinvestment strategy to boost the production and efficiency of state-run companies and attract investments into the companies instead of shutting them down. As per the Finance Minister, the performance of public sector enterprises privatised between 1994 and 2004 has improved and most are now run by professional boards. The new public sector enterprise or PSE policy has opened up all sectors for private investors, including space and nuclear energy.[18]

The Finance Minister, in her statement, discusses that the principle with which disinvestment is happening now is not to shut down a unit. The economy needs that many companies and even more. For economic activities to be done professionally and efficiently, the spaces have to be opened up for more players and competition. The government has lined up over half-a-dozen companies for strategic sale, including Shipping Corporation of India, CONCOR, Vizag Steel, IDBI Bank, Nagarnar Steel Plant of NMDC and HLL Lifecare.

Food for Thought

As per a senior finance ministry official, the government was planning to come out with an expression of interest (EoI) document for the sale of shares in IDBI Bank by next month after getting clarity from the Reserve Bank of India on the structure and deal size of the proposed sale. The government also recently conducted road shows in the US. Based on the feedback from investors, the government will seek clarity on the deal size, guidelines

[17] https://www.business-standard.com/article/technology/eu-agrees-on-common-charger-for-portable-electronic-devices-by-2024-122060800097_1.html

[18] https://www.livemint.com/economy/disinvestment-strategy-aimed-at-increasing-efficiency-investments-sitharaman-11654877747725.html

or conditions on mergers, consortium composition and the glide path for the government to reduce its equity holding in the bank.

According to the official, such road shows will now be done in India. The government holds a 45.48 percent stake in the bank, while Life Insurance Corp. of India owns 49.24 percent. Stake sales by both entities will be decided. There is flexibility (to decide on the stake to be sold by the government), but control has to be passed on.

On the strategic sale of Shipping Corp. of India, BEML and NMDC, the official said that the demergers of all three companies' non-core assets from core operations were progressing. The sale process would pick up pace after the demergers are concluded. As per media reports, SCI's Mumbai headquarters Shipping House, a training institute in Powai and some other properties will not be sold but instead be transferred to the demerged Shipping Corp. of India Land and Assets Ltd. As part of its strategic disinvestment strategy, the government will transfer its shareholding of 63.75 percent in SCI and management control to a private entity. In the case of Hindustan Zinc Ltd, the government will sell its holding via an offer for sale, the official added. The central government currently owns a 29.54 percent stake in Hindustan Zinc which is worth around Rs 37,000 crore, as per media sources.[19]

So far in the current fiscal year, the government has mopped up over ₹24,000 crores from disinvestments, including the public listing of LIC. The target for the full year has been set at ₹65,000 crores. In the last fiscal year, over ₹13,500 crores were realised via disinvestment, including the amount realised via the privatisation of Air India. Tata has taken over Rs 15,300 crore worth of Air India debt and paid Rs 2,700 crore to the government in cash.[20]

While the steps towards disinvestment are welcomed for a more competitive business environment with private players entering different sectors, the government is facing a rough patch in reducing its role in business. Private investors are lukewarm to its disinvestment plans and some of the interest being shown is of suspect provenance. The government has called off the sale of Bharat Petroleum Corporation Ltd after failing to find a strategic investor.

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[19] https://indianexpress.com/article/business/companies/government-to-sell-entire-stake-hindustan-zinc-cabinet-decision-7935334/#:~:text=The%20Union%20Cabinet%20on%20Wednesday,a%20majority%20government%2Downed%20company.

[20] https://indianexpress.com/article/business/companies/air-india-stake-sale-a-booster-shot-7744862/

It is reviving sales of Central Electronics Ltd and Pawan Hans Ltd with new rules in place seeking bona fides after questions arose over the financial integrity of bidders. The government is selling its residual stake in Hindustan Zinc, which could contribute to this year's disinvestment target after the lower-than-expected proceeds from the LIC listing. It also intends to put Shipping Corporation of India (SCI) on the block despite delays over hiving off its non-core assets.

Originally scheduled for 2021-22, the LIC IPO set back the divestment proceeds for the year. This led to the government missing even its revised disinvestment target of ₹78,000 crores, a pale shadow of the original ambition of raising ₹1.75 lakh crore. Disinvestment receipts have missed reduced revised estimates in two of the four preceding years, and this year's budget estimate is a more prudent ₹65,000 crore.

The difficulties in accomplishing strategic sales are a matter of concern. This route should ideally be more acceptable to buyers who might be wary of boarding state-run enterprises as minority shareholders. LIC's stock price has been trending since listing, indicating the market's perception of government influence in managerial decision-making. The privatisation pipeline must find viable takers. Lowering disinvestment ambitions affects government finances and blunts competition in the economy. The targets should not be lowered; instead, efforts should be ramped up to achieve the disinvestment goals.

MCA Reworks Rules for Winding up Businesses

The Ministry of Corporate Affairs (MCA) has revised the rules on the voluntary winding up of companies to give additional opportunities to companies to make a case for an exit through electronic filing after the initial request. The same has been done to make the corporate exit process, outside the Insolvency and Bankruptcy Code (IBC), smoother under the Companies Act provisions. The idea is to improve the business climate as ease of exit is a consideration for many entrepreneurs before they commit investments.

As per procedure, the Registrar of Companies has to make sure that the company has no assets or liabilities and needs to review the latest financial statements before allowing the voluntary closure of businesses.[21]

[21] https://www.livemint.com/news/india/mca-recasts-rules-on-voluntary-exit-of-businesses-11656088465266.html

The Companies (Removal of names of companies from the register) Amendment Rules 2022 notified by the Ministry offers two additional opportunities for businesses to rectify their application for closure and to provide any additional information sought by the Registrar. On each occasion, the businesses can furnish the information within 15 days of intimation by the regulator, according to the order.

Food for Thought

Exit barriers are as vital as entry barriers to harm competition. Voluntary winding up offers companies with little economic activity to shut their businesses outside the purview of the IBC process. This is a major consideration for entrepreneurs before they commit investments. Voluntary winding up under the Companies Act and the corporate restructure option available under a 2019 Reserve Bank of India scheme are two possibilities other than IBC available to businesses.

This is separate from the regulator striking off the company's name from the register for defaulting on filing annual returns for two consecutive years. Currently, around 40,000 companies are being removed from the official database. Companies that do not commence operations after incorporation have the option to seek 'dormant status' to avoid getting struck off by the regulator.

The government has been taking several steps to address industrial sickness. IBC has increased the pace of resolving bankruptcies. Still, legacy cases transferred to the National Company Law Tribunal from the previous regime of the Board for Industrial and Financial Reconstruction dominate liquidation cases under the IBC regime. These cases with little assets offer no chance of a turnaround. The government is working on amendments to the IBC, and a Bill is expected to be placed before Parliament in the monsoon session. The proposals include a cross-border insolvency regime and steps to reverse questionable transactions of bankrupt firms.

Experts said that voluntary winding up and removing defunct companies by the Registrar help keep the official database clean and manageable when the government is scaling up services to the industry. Keeping the database manageable is also vital for effective enforcement. MCA recently rolled out a new module for limited liability partnerships on its compliance portal MCA21 and is rolling out a similar module for companies. The Ministry increasingly relies on data analytics and artificial intelligence to detect trends from companies' vast amount of statutory filings that may warrant detailed inspection. Ease of exit is a part of ease of doing business and a competitive business environment.

It is also important for the industry as many entrepreneurs cannot commence business operations for various economic reasons after incorporating a company. Thus, these steps by the regulator are a welcome step to cut unnecessary burdens and make another facet of doing business in India a bit simpler.

Five Years of GST: Contributions and Recent Developments

The GST has completed its 5th year since its inception on July 01, 2017. The move toward 'one nation, one tax' was one of the most historic indirect tax reforms India had ever undertaken. After concerted efforts of consensus building for over a decade, GST replaced 17 Central and state taxes and 13 cesses, eliminating the cascading impact of indirect taxation and laying the foundation for a common national market.[22]

Earlier, our indirect tax regime was based on origin and inefficient, resulting in high costs accruing to the economy. Every state was, in fact, a distinct market for businesses and consumers. Many industries were uncompetitive under the old tax regime, which altered factory or warehouse location choices that should be determined by purely business considerations. As per an estimate by the Federation of Indian Chambers of Commerce & Industry (FICCI), the overall tax burden on goods ranged between 25 and 30 percent before GST.

Food for Thought

Some consider the new GST regime complex, with its high and multiple tax rates. This was widely debated, and the GST Council considered two essential factors before arriving at a 5-tier rate structure. First was the principle of equivalence, where all items fit into rate slots nearest to the prevailing aggregate duty rates of all indirect taxes. Second, to safeguard the poor from inflationary pressure, items with 60 percent weight in the Consumer Price Index (CPI) were exempted from GST, while another 15 percent were subject to just a 5 percent levy.

The proportion of the taxable value of goods and services covered under the lowest bracket of the 'nil' tax rate has gone up from 9 percent in 2017-18 to nearly 17 percent in 2019-20, and that in the highest GST bracket of 28 percent is estimated to have been brought down from 12 to 7.6 percent in 2019-20. Consequently, the effective GST rate decreased from 14.4 percent at inception to 11.6 percent in 2019. However, despite this

[22] https://www.livemint.com/opinion/online-views/goods-and-services-tax-at-five-the-new-regime-s-journey-so-far-11656520388411.html

and the pandemic's disruption, the GST-to-GDP ratio went from 5.8 percent in 2020-21 to 6.4 percent in 2021-22, reflecting improved compliance. With better compliance, the formation of a complaint-redressal mechanism (a GST Tribunal) will be both timely and fair.

To protect the interests of the MSME sector, the government has taken a series of initiatives in the form of enhanced threshold exemptions from GST registration, return filing and audits, quarterly filing of GST returns for taxpayers with an annual turnover of ₹5crore, exemption from GST payment at the time of receipt of advances on account of the supply of goods, and a composition levy scheme, among others. For small taxpayers, the number of return filings in a year has dropped sharply from 24 to only eight. GST has opened new avenues for MSMEs through GST-based bill discounting and collateral-free access to credit.

The federal nature of the GST regime was on display during the pandemic. In 2020-21, the revenue from State GST (or SGST) declined due to economic contraction. However, given the compensation paid to states and the arrangement of back-to-back loans, overall GST revenues for states stood at ₹7.69tn in 2020-21 (including back-to-back loans and compensation cess), versus ₹6.86tn in 2019-20. That was a growth rate of 12.1 percent in a COVID-affected year. With revenues from SGST rising to ₹8.68tn in 2021-22, this growth was 12.9 percent. These back-to-back loans would be extinguished by extending the compensation cess beyond its initial sunset of June 2022.

In the pre-GST era, Indian states would have had no recourse to compensation cess, nor could they have contemplated augmenting their revenues through fresh and higher levies during a pandemic. Overall, in the five years (2017-18 to 2021-22) since the introduction of GST, the overall resource growth for states was 14.8 percent per annum, versus an annual average growth rate of 9 percent between 2012 and 2015. States are better off than they were before GST was introduced. So, a young tax regime was put to the test by a period of high economic and human stress, and it proved its usefulness to India's public finances.

The recently concluded GST Council meeting has moved to address some of the issues with GST to make it less regressive, and that is good news for greater competition in the country.

Cabinet Approves Policy for Using Coal Mine Land for Infrastructure

The Union Cabinet approved the policy for land acquired under the Coal Bearing Areas (Acquisition & Development) Act, 1957, so that land which is mined out or practically unsuitable for coal mining can be harnessed for developing and setting up infrastructure related to coal and energy[23] and for increasing investment and job creation in the coal sector.

The CBA Act provides for the acquisition of coal-bearing land and its "vesting in a government company", free from any encumbrance. The approved policy provides the framework for using such land for energy and coal-related infrastructure.

The Government coal companies, such as Coal India Ltd. (CIL) and its subsidiaries, shall remain owners of these lands acquired under the CBA Act. The policy allows only leasing of the land for the specified purposes given in the policy. Government coal companies can deploy private capital in joint projects for coal and energy-related infrastructure development activities.

The government company that owns the land would lease such land for a specific period given under the policy. The entities for leasing shall be selected through a transparent, fair and competitive bid process and mechanism to achieve optimal value. The lands will be considered for various activities.

Food for Thought

The policy would mean that the land belonging to government companies such as CIL can now be leased out to private entities through joint ventures with CIL for infrastructure development. This unlocking of un-mineable land for other purposes will also help CIL cut its cost of operations. It will be able to set up coal-related infrastructure and other projects such as solar plants on its land by adopting different business models in partnership with the private sector. It will make coal gasification projects viable as coal need not be transported to distant places.

The lands mined out or practically unsuitable for coal mining are prone to unauthorised encroachment and entail avoidable expenditure on security and maintenance. Under the approved policy, the establishment of various coal and energy-related infrastructure,

[23] https://www.livemint.com/industry/infrastructure/cabinet-approves-policy-for-using-coal-mine-land-for-infrastructure-11649877063604.html

without transfer of ownership from Government companies, would lead to the generation of many direct and indirect jobs.

The proposal to utilise the land for rehabilitation purposes would ensure proper land utilisation and eliminate wastage of all-important land resources. It would also avoid acquiring fresh chunks of land for rehabilitation of Project Affected Families, eliminate loading of an additional financial burden on the projects, and increase profit. It will also address the demand of the displaced families as they always prefer to stay as close as possible to their original residential places. It will help obtain local support for coal projects and provide land to the State Government for afforestation in lieu of forest land diverted to coal mining.[24]

The policy will help realise Atmanirbhar Bharat's goal by encouraging domestic manufacturing, reducing import dependence, job creation, etc. The policy will unlock land for various coal and energy infrastructure development activities that would encourage investment in backward areas of the country. Utilising already acquired land would also prevent the fresh acquisition of land and related displacement and promote local manufacturing and industries.

C. Policies Inhibiting Competition

Controversies Surrounding Pawan Hans Ltd Privatisation

The government has put on hold the strategic sale of state-owned Pawan Hans Ltd. This was done after the National Company Law Tribunal (NCLT) issued an adverse order against one of the leading members of the winning consortium of Pawan Hans Ltd. bidders. The government has notified that the award letter will only be issued after a thorough legal investigation of the tribunal's order.

On April 22, 2022, the NCLT, Kolkata bench sanctioned Cayman Islands-based Almas Global Opportunity Fund SPC, a majority partner entity of the winning Star9 Mobility consortium, for wilful violation of an approved resolution plan of EMC Ltd. and fortified its "performance bank guarantee" of ₹30 crore. The tribunal has also asked the Insolvency and Bankruptcy Board of India and the Ministry of Corporate Affairs to file a case against Almas Global Opportunity Fund SPC in a special court under the Companies Act for violating the resolution plan mentioned above.

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24 https://pib.gov.in/PressReleasePage.aspx?PRID=1816361

Food for Thought

On April 29, 2022, the Indian government approved the highest bidder for the sale of Pawan Hans Ltd to Star9 Mobility Pvt Ltd. The Star9 Mobility consortium consists of Big Charter, Maharaja Aviation, and the Cayman Islands-registered Almas Global Opportunity Fund SPC. After three consecutive failed attempts, the government could finally get a successful bidder for its stake in Pawan Hans Ltd. The buyer of the helicopter services provider, Pawan Hans, will get management control rights with a 51 percent stake in the company. Pawan Hans has 42 helicopters in its fleet. The government had fixed, i.e. the reserved price for the sale of Pawan Hans Ltd. Stake was Rs 199 crore. Star9 Mobility has made a bid of Rs 211.14 crore for the government's 51 percent stake in the company, which is much higher than the reserve price. This is the government's second major aviation sale for the year, after the sale of Air India to the Tata Group in January.[25]

Many aviation industry experts have welcomed the government's decision to privatise Pawan Hans Ltd. It will boost India's small/ civil helicopter industry's competitiveness and open up new markets, which are desperately needed.

Captain GR Gopinath, the man credited with starting the nation's low-cost carrier (LCC) revolution and the founder of the helicopter charter company, "Deccan Aviation", pointed out that "Any privatisation is a good move as long as it does not lead to a monopoly or cartelisation." The said privatisation will benefit customers and the country by improving the company's operations and removing several existing restrictions because it is a state-owned business. Pawan Hans Ltd. has had heavily subsidised operations, which led federal and state government agencies to award contracts without a formal tendering process, compromising its ability to compete on price, quality, and technical requirements.[26]

India has failed to reach its full potential in the commercial helicopter service sector. While comparing India's aviation sector, leaving aside the developed aviation markets of the US or the EU, countries like Brazil have more helicopters than India and a much bigger market. The total number of registered civil helicopters in India is currently around 230, and in Brazil, the city of Sao Paulo alone has more than 700 helicopters. Thus, departing from its traditional role as a government-owned corporation with a

[25] https://indianexpress.com/article/explained/pawan-hans-star9-mobility-sale-explained-7900953/#:~:text=Government%2Downed%20helicopter%20service%20Pawan,Group%20in%20January%20this%20year

[26] Ibid

predetermined objective, Pawan Hans will be able to adopt a fresh approach to its operations.

Though the bidding for the sale of Pawan Hans by Star9 Mobility has come under the legal radar, Almas Global Opportunity Fund SPC, the largest stakeholder in the consortium, has recently been sanctioned by the NCLT for violation of The Insolvency and Bankruptcy Code, 2016. The sanction is issued against Almas Global Opportunity Fund's successful bid to buy EMC Limited after it entered the insolvency resolution process in 2019. According to the resolution professional's plea before the NCLT, Almas Global failed to pay about Rs 568 crore to EMC's creditors under the resolution plan submitted. Further, the petitioner before NCLT also argued that Almas Global had continuously made excuses for failing to pay and perform its obligations.[27]

Along this legal dispute, claims are also being made that there is little or no information in the public domain about the consortium's leading stakeholders and their ability to run such a company. Big Charter Pvt Ltd, Almas Global Opportunity Fund SPC, and Maharaja Aviation Pvt Ltd formed Star9 Mobility Pvt Ltd, a new six months old consortium with no significant prior experience in the concerned business. The Big Charter under the Star9 Mobility banner deals in aircraft; only Maharaja Aviation has three helicopters.

It is not the first time that the government has been accused of discrepancies in the government's privatisation programme/scheme and selling India's national assets to a selective group of businesspeople in the same process. In a similar fashion, the government had to postpone the sale of Central Electronics Limited in January this year after questions were raised regarding the winning bidder's financial track record and alleged connections among bidders. The NCLT is still hearing the matter.[28]

Conglomeration in the India-Singapore Airline Sector

On June 03, 2022, the Competition Commission of Singapore (CCCS) issued a statement expressing its concerns about the Tata Group's acquisition of Air India. After winning the bid for the airline and receiving the necessary approval from the

[27] https://www.financialexpress.com/industry/sale-of-pawan-hans-put-on-hold-concerns-after-nclt-slams-winning-bidder/2527207/

[28] https://thewire.in/business/pawan-hans-sale-cayman-firm-nclt / https://www.thehindu.com/news/national/congress-raises-questions-over-pawan-hans-disinvestment-asks-why-merger-with-ongc-not-explored/article65373464.ece

Competition Commission of India last year, Tata Sons' subsidiary Talace Private Limited took control of Air India on January 27, 2022.

Three major airlines operate on the Singapore-Mumbai and Singapore-Delhi routes: Air India, Vistara, and Singapore Airlines. Before formally acquiring Air India from the government, Talace Private Limited filed an application with CCCS to determine whether the transaction violated the country's Competition Act.[29]

Food for Thought

As Air India prepares to set in tune again, it has been confronted with a roadblock as the CCCS has voiced concerns over the airline's acquisition by the Tata Group. The Tata Group, after the said acquisition, now operates four airlines on local and international routes: Air India, Air Asia, Air Vistara, and Air India Express. Air Vistara is a partnership between Tata Group and Singapore Airlines, with the former owning 51 percent of the company. Tata Sons Private Ltd owns 83.67 percent of AirAsia-India, with the remaining portion being held by AirAsia Investment Ltd (AAIL), Malaysia's AirAsia Group subsidiary. And most recently, on October 08, 2022, a Tata Group subsidiary, Talace Private Limited, acquired a 100 percent stake in Air India.

The presence of three major airlines, Air India, Air Vistara, and Singapore Airlines, on two overlapping routes, Mumbai-Singapore and Delhi-Singapore and air cargo transport routes between Singapore and India is a source of concern. After completing a phase 1 review on the matter, CCCS raised such concerns based on information from Talace Private Limited and third parties. The concerns highlighted by the regulator involve Section 54 of Singapore's Competition Act of 2004. The Competition Act 2004 prohibits mergers that have resulted or are expected to result in significantly lessening competition in the Singapore market. Under the Act, competition issues arise if the merged entity has/will have a market share of 40 percent or more; or have/will have a market share of 20 to 40 percent, and the post-merger combined market share of the three largest firms is 70 percent or more.[30]

Tata Group currently controls 26.6 percent of the Indian aviation market, with Air India holding 9.8 percent, Air Asia 7.3 percent, and Vistara 7.1 percent, respectively. While Air

[29] https://timesofindia.indiatimes.com/business/india-business/singapore-anti-trust-regulator-raises-concerns-over-tatas-ai-purchase/articleshow/91995363.cms

[30] https://www.financialexpress.com/industry/tatas-air-india-buy-hits-singapore-antitrust-wall-conglomerate-owns-two-of-three-key-airlines/2548132/

India and Vistara are primarily focused on international routes, Air Asia operates in the domestic travel business. Tata Group aims to consolidate all of its assets to have a stronger portfolio in the aviation industry. Air Asia has 30 aircraft as of 2022, Air India has 113 aircraft and Vistara has 42 planes, along with Air India Express, which has 24 aircraft.[31]

Air India and Vistara have a significant market share on the Delhi to Singapore and Mumbai to Singapore route, making them likely competitors (if not the closest). The issue becomes more complicated because Singapore Airlines is the third major airline operating flights between India and Singapore and owns a 49 percent stake in Vistara. Singapore Airlines (SIA) is a significant competitor of Air India and Vistara for the overlapping air passenger transport routes and air cargo routes.

However, given that SIA is a joint-venture partner with Tata Sons in Vistara and also a prospective partner with Vistara in the Commercial Cooperation Framework Agreement, CCCS needs to assess the extent to which SIA competes with the merged entity along these routes further. The Commission has also expressed concern about the competitive constraints faced by airlines with a comparatively smaller market share, such as Indigo, due to the formation of the above-mentioned potential conglomeration.

Currently, Delhi has four daily flights to Singapore and vice versa, two from SIA and one from Vistara and Air India, which is the same even for the Singapore-Mumbai route. The CCCS needs to delve a little deeper into the entire structure of the deal.[32]

Railways Set to Miss Asset Monetisation Target Again

This will be the second year that Indian Railways will fall far from the asset monetisation target. The reasons attributed are the reluctance of the state-run transporter not to follow the path set by the government. The government has considered linking the release of the annual allocation to fund generation through asset monetisation.[33]

Against the target of over ₹57,000 crore, railways may only raise Rs. 30,000 crore due to its reluctance to let the private sector run trains or modernise stations through the public-private partnership (PPP) route. Even last year, the first year of the

[31] https://www.outlookindia.com/business/why-singapore-s-competition-commission-has-raised-concerns-for-air-india-s-acquisition-by-tata-group--news-201133

[32] Ibid

[33] https://www.timesnownews.com/business-economy/economy/asset-monetisation-railways-set-to-miss-target-for-the-second-year-in-a-row-article-91586239

implementation of the Rs. 6-lakh-crore National Asset Monetisation Pipeline, railways managed to rake in Rs. 800 crores against a target of ₹17,810 crore- 4.5 percent of the annual goal.

The government had, however, managed to close the year with receipts of over Rs 96,000 crore against the ₹88,000 crore targets. The success achieved in the programme's first year has prompted the authorities to ensure that key ministries play their role to help entities under their charge raise resources for new buildings and create new infrastructure. This year too, it is hoping to scale the ₹1.6 lakh crore monetisation projections for the year, banking heavily on the mining sector, which is being prodded to raise more resources. The centre has scaled the target for coal and mines by five-and-a-half times- from ₹6,000 crore to ₹33,281 crore- with other sectors expected to be on course, at least for the moment. So far, no target has been fixed for the urban infrastructure and hospitality sectors. However, government sources said that proposals to redevelop properties such as Hotel Ashok are at an advanced stage.

But the Finance Ministry and the Cabinet secretariat are surprised at how railways have responded to repeated calls to move faster on the asset monetisation plan, which included a massive thrust for the private sector. After years of discussions, there has been little progress on the railway station development front, which is expected to generate Rs 17,000 crore last year and Rs 29,000 crore during the current financial year. Railway officers believe taking up only a few large projects through the PPP mode is better and do the smaller station development by awarding contracts.

Food for Thought

India has announced the National Monetisation Pipeline (NMP: Vol. I[34] and II[35]) on August 23, 2021, which proposes monetising ₹6 lakh crore worth of important National Government assets from (4 years) Financial Year 2022-2025 by leasing these assets on a long-term basis to private players. To meet the government's asset monetisation objectives, the Finance Minister launched this roadmap in Budget 2021-22 and developed it in line with NITI Aayog.[36]

[34] https://www.niti.gov.in/sites/default/files/2021-08/Vol_I_NATIONAL_MONETISATION_PIPELINE_23_Aug_2021.pdf

[35] https://www.niti.gov.in/sites/default/files/2021-08/Vol_2_NATIONAL_MONETISATION_PIPELINE_23_Aug_2021.pdf

[36] https://www.india.gov.in/spotlight/national-monetisation-pipeline-nmp

NMP focuses on increasing the significance of brownfield assets by involving the private sector, transferring income rights rather than ownership of the projects to them, and utilising the proceeds for building the nationwide infrastructure. The ownership of the assets continues to remain with the government with a mandatory handover to the public authority at the end of the transaction cycle, thus only enabling transfer to the private sector for better utilisation and monetisation and not outright sale or privatisation. It is seen as a means for sustainable infrastructure financing.[37]

The NMP has been viewed as a strategic step to cope with the significant financial consequences of India's economic downfall, which has been exacerbated by the ongoing global covid-19, leading to drastic GDP contraction, rising fiscal deficits, and increasing public debts. Therefore, through NMP, Asset Monetisation will be undertaken. It is the process of unlocking the growth capital by repurposing the current assets and expanding the country's economy by using the funds generated from the transformation of underutilised public assets into commercial benefits. It has served two broad goals, i.e. unlocking the profits from investments in public infrastructure and assessing the effectiveness of the private sector in infrastructure administration and operations. I

ndia's government is seeking to monetise existing infrastructure assets by leasing them to private companies for a specified amount of time in exchange for a share of the revenue. This would not only aid the government in alleviating budget constraints but also free up the balance sheets to allow for the construction of entirely new infrastructure.[38]

NMP is an efficient intrusion because it limits the government's participation in identifying important infrastructure and allows the private sector to produce revenue and share it with the government. The government would likely fund more infrastructure projects in the future since it will have more resources at its disposal to the private sector. This expands the opportunities for the private players and helps effectively utilise the already created unutilised assets. Thus, the engagement of the private sector in this area will be very beneficial to the entire sector and the Indian economy.[39]

The NMP thus seeks to level the playing field to recruit private participants and encourage greater competition and collaboration in the public infrastructure sector.

[37] Casting Light On The National Monetization Pipeline - Fiscal & Monetary Policy - India

[38] https://www.niti.gov.in/asset-monetisation-holds-key-value-creation-infrastructure

[39] Asset Monetization-Why Government is doing it?-Explained-2021.

Therefore, Railways lagging in the target affects the overall targets set under NMP and prevents the economy from achieving the goals.

National Anti-Profiteering Authority Needs an Extension to Decide on Pending Cases

The National Anti-profiteering Authority (NAA) may take a year and a half to decide on pending cases at its current pace, even as the Goods and Services Tax Council (GST) is yet to decide on folding the agency into the Competition Commission of India (CCI). If the authority is to decide on these cases on its own, it may need another one-year extension once its term ends on November 30.[40]

The anti-profiteering mechanism has three stages. The first is a state-level committee that screens local complaints. The second is a standing committee for national-level complaints, while the third is an investigation by the directorate general of NAA. The recently conducted two-day GST Council meeting in Chandigarh agreed to a detailed review of the NAA's mandate to further strengthen it.[41]

Food for Thought

The GST Council had decided to explore bringing anti-profiteering cases under the CCI, the country's monopoly watchdog. However, a final decision on this is awaited. One Industry representative believes that the NAA should get more time to complete pending cases, as a new authority may take time to understand the nuances of these cases. "In the absence of a common cost methodology to determine the existence or otherwise of profiteering, it would be more difficult for a new body to deal with these matters," as quoted by the representative. It is expected that NAA may get an extension considering the large pendency of cases. As per another expert, the moot point remains that the industry struggles without any prescribed methodology to determine the quantum of profiteering.

Views also suggest that the solution proposed of merging the NAA with CCI may not resolve the fundamental dispute and aspects related to constitutionality. Rather, any such merger will be meaningless unless there is a robust framework to determine the quantum of profiteering for diverse sectors under investigation, based on economic realities and in light of the statutory provisions. This change in the governing body will

[40] https://www.livemint.com/companies/news/naa-may-need-an-extension-to-decide-on-pending-cases-11656436734594.html

[41] GST Council presses for extending tenure of National Anti Profiteering Authority - The Economic Times

not affect the challenge posed by the constitutional validity of the anti-profiteering provisions in various high courts. 140 writ petitions are pending against NAA in multiple courts. However, the courts have set aside any NAA order so far. One expert has noted that with five years of GST, there should be no anti-profiteering provisions and market forces should decide to price. At the minimum, there should only be limited applicability in the future when the GST rate is reduced on a particular product or service for a limited time.

Therefore, the pendency of cases with NAA, and the question of its constitutionality, hamper the competitive business environment due to ambiguity on the definition of anti-profiteering as an illegal activity.

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