COMPETITION DISTORTIONS IN INDIA – A CUTS DOSSIER

(CDI-47: January to March, 2020)

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

This periodic dossier produced by CUTS looks at the interface of policy issues which has an impact on competition in India, which can be both negative and positive. News, as published, is used without verifying their accuracy. The purpose is to flag issues to the layman as well as to the specialised policymakers and regulators, rather than be judgmental about them. This would require greater analysis particularly in terms of cost and benefits therewith.

Dear Reader,

Greetings!

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

One recommendation, in the context of Covid19, we have made is that some provisions of the Competition Act, 2002 be kept in abeyance to allow players in the same sector to coordinate their activities given the economic situation that we are in and which will worsen over the near future. This was published in The Wire and can be accessed at: https://thewire.in/business/covid-19-competition-law-enforcement-india.

There are several good news in this bulletin in the area of promotion of competition. One particular case is that of stopping of antidumping action on PTA, a chemical used for synthetic fibres, despite a powerful oligopoly. This would lead to making our synthetic fabrics and garments more competitive.

Another piece of good news as we write this is that TRAI has made it mandatory for TV set-top boxes to be made interoperable. Earlier the STB suppliers maintained a competition restriction by not allowing portability with another system, which should be over.

Coming to this dossier, in the trade policies section, we cover developments regarding India's Budget 2020 and the associated trade concerns and the stories around the imposition of anti-dumping duty on raw materials for the textile industry.

In pro-competition news, a large number of stories covering different sectors like aviation, telecom, railways, etc. are reported of which, divestment of Air India is an important piece. We have also covered stories on commercial mining of coal by private companies and IPO of LIC et al. In anti-competitive stories, we have dealt with the developments on the divestment of Concor and capping of airport contracts and the imposition of health cess on import of medical equipment.

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

Cheers!

Contents

1. TRADE POLICIES

Anti-dumping duty sought on MEG: Textile cos' body opposes the move[1]

A group of textile companies approached the Directorate General of Trade Remedies against a move by Reliance Industries Ltd and India Glycols Ltd seeking imposition of anti-dumping duties on a raw material used to make polyester.

In a letter to DGTR Director-General BS Bhalla, an association representing companies like Indo Rama Synthetics India, Filatex India, Garden Silk Mills and Bombay Dyeing, had argued that imposing such a duty on the material–mono ethylene glycol (MEG)–would lead to a 'significant' loss to India's textile units.

Food for Thought

Although India is the 3rd largest exporter of textile and apparel globally,[2] textile exports from nearly 15 states have shrunk heavily in the last 5 years.[3] The overall exports have grown at a much slower pace than the imports in the same period.[4] Several factors such as a sharp decline in yarn exports, cheaper import of finished products, state, and central level taxes on the export and high-interest rates on industrial loans[5] and heavy anti-dumping duties[6] on essential raw materials have contributed[7] to pushing the sector into a struggle for profitability.[8]

If excessive anti-dumping duties on essential raw materials are imposed at a time when the capacity of the local industry is limited, the margins of the textile manufacturers shrink. MEG is one such essential raw material that is required in the

1 https://indianexpress.com/article/business/anti-dumping-duty-sought-on-meg-textile-cos-body-opposes-move-6249516/

2 https://www.investindia.gov.in/sector/textiles-apparel

3 https://www.financialexpress.com/economy/textile-exports-from-nearly-15-states-shrink-in-last-five-years-these-states-see-maximum-contraction/1891848/

4 *Ibid*

5 https://www.businesstoday.in/sectors/jobs/slowdown-bites-textile-sector-industry-body-urges-govt-to-prevent-job-losses/story/373956.html

6 Anti-dumping duty has been imposed every now and then on the various essential raw materials like PTA and MEG. At present there is no anti-dumping duty on MEG, and therefore the domestic MEG manufacturers have sought the duty on MEG.

7 Up until February, there was an anti-dumping duty on PTA. Even now, there are different anti-dumping duties levied on raw material such as dyes & chemicals, intermediaries, spares and accessories. *See* https://www.financialexpress.com/industry/textile-body-seeks-anti-dumping-duty-removal-on-raw-material/1902868/.

8 https://www.businesstoday.in/sectors/jobs/slowdown-bites-textile-sector-industry-body-urges-govt-to-prevent-job-losses/story/373956.html

textile manufacturing business. At present, there is not enough supply of MEG domestically to meet the demands of the industry. This implies therefore that the request by Reliance Industries Ltd and India Glycols Ltd results in some important issues for discussions.

First, given that the current domestic production level is not large enough to meet demand, import competition will continue to come in even after the anti-dumping duty. This implies that some firms will access the critical raw material at a higher price, which would also impose cost build-ups in the textile products. Second, importers are therefore currently playing an important role in ensuring that the textile industry gets access to critical raw material.

There is, therefore, a need to incentivise import of MEG at cheaper prices to support domestic textile and apparel manufacturing. Anti-dumping duties discourage rather than encourage imports. Third, while the imports are necessary, if the landed costs of the MEG is well below the production costs for domestic manufacturers, continued importation can easily drive the manufacturers out of business. It will not be in the interest of the Indian economy for the domestic industry to close shop in preference of imports, as this would negatively impact employment. Thus, while anti-dumping duties may make it possible for the domestic manufacturers to spike the prices, there is a need for caution in ensuring that a proper balance is reached between the two conflicting objectives.

The scrapping of anti-dumping duties on PTA will boost exports: Industry[9]

The government's decision to abolish anti-dumping duties on raw material for synthetic fibre-based clothing and certain plastic-based products will bring down their manufacturing cost and potentially boost exports, say, manufacturers. The move announced "in the public interest" in the Budget Saturday (1st February 2020), does away with a previous NDA government decision to block countries like China, Taiwan, Malaysia, Indonesia, Iran, Korea, and Thailand from substantially exporting the material — purified terephthalic acid (PTA) — into India.

It also follows "persistent" demand "for quite some time" from several industries to allow them to source the product at a more affordable rate. "That particular product (PTA) is a raw material for many industries. There has been persistent demand that

[9] https://indianexpress.com/article/business/scrapping-of-anti-dumping-duties-on-pta-will-boost-exports-industry-6248097/

they should be allowed to source that particular product at an affordable rate, even if it means importing it," said Nirmala Sitharaman, Union Finance Minister.

Food for Thought

When an anti-dumping duty is imposed repeatedly or with the persistent goal of just protecting the domestic industry, which is an oligopoly, it has a detrimental effect on the industry of distorting competition. Therefore, an anti-dumping duty should be a temporary measure, designed to ensure that the protected industries become competitive, ready to compete with imports when the duty is removed.

While the anti-dumping duty on PTA would protect the domestic producers – notably Reliance Industries Ltd, Indian Oil Corp, JBF and MCPI,[10] such imposition could have a likely negative effect on the downstream markets of PTA dependent industries. With reduced competition due to the elimination of imports, the prices are likely to see a rise and thereby adversely affect the market.

The imposition of such duty left the domestic textile industry with limited domestic suppliers of PTA. The core of their argument was that the product's cost had become more expensive domestically, which made their products pricier and less attractive for their domestic and international buyers. Consequently, the exports of some of these products dropped during 2014-16, and import of the products they had been producing spiked since no safeguard against cheaper imports of these downstream polyester-based products existed.[11]

To ensure that India's domestic textile manufacturing industry becomes globally competitive, this is a welcome move that is likely to boost the textile industry.[12] Some studies have argued that with the abolition of the duty, the PTA spread of Rs 7-Rs 8 per kg (import landed price over domestic) will reduce over the near term, with landed PTA being cheaper by Rs 4-Rs 6 per kg.[13]

---

10 https://economictimes.indiatimes.com/industry/cons-products/garments-/-textiles/anti-dumping-duty-revoked-on-pta-import/articleshow/73862837.cms?from=mdr

11 https://indianexpress.com/article/explained/budget-2020-nirmala-sitharaman-anti-dumping-duty-on-purified-terephthalic-6251132/

12 https://www.financialexpress.com/industry/anti-dumping-duty-withdrawal-on-pta-breather-for-man-made-textiles/1878107/

13 https://www.indiaratings.co.in/PressRelease?pressReleaseID=40142&title=Market-Wire%3A-Removal-of-Anti-Dumping-Duty-on-PTA-Gives-Breather-to-Man-Made-Textiles-

The anti-dumping duty was imposed at the behest of two local PTA manufacturing behemoths – MPCI and Reliance.[14] Though this will shrink their margin due to enhanced competition from global PTA manufacturers, it is expected that the firms were able to invest competitively during the period that the duty was in effect, such that they will also be able to compete with imports. Even if they are unable to compete, the benefits that will trickle down to textile manufacturers far outweigh any discomfort on the part of the domestic industry.

According to some pundits, this was a major political economy challenge and the Textile Ministry could rustle up solid arguments to ensure that the disguised protectionism was arrested.

Budget 2020: Govt maintains protectionist stance; hikes import duties on over 100 categories of products[15]

The government hiked import duties on over 100 categories of products across sectors, including certain food items, furniture, footwear, household appliances, parts of mobile phones, and toys, continuing a progressively protectionist stance sparked over the last few years. It has also decided to amend customs rules to allow safeguards to limit quantities of imported products that it feels will "threaten" the domestic industry.

For instance, the duty on shelled walnuts has been hiked to 100 percent from 30 percent. Duties on tricycles, dolls and puzzles are now 60 percent as opposed to 20 percent earlier, while completely built units of commercial electrical vehicles like buses and trucks will carry a 40 percent customs duty, up from 25 percent, starting April 01, 2020.

Exemptions on duties for products like certain milk products and alcoholic beverages, peanut butter, preserved potatoes, tin plates, sheets and strips, goods used in the construction of roads and parts used to manufacture printers have also been withdrawn.

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

15 https://indianexpress.com/article/business/budget/budget-2020-govt-maintains-protectionist-stance-hikes-import-duties-on-over-100-categories-of-products-6246701/

Food for Thought

The announcements in the Budget 2020 have extended a pattern of protectionism in India's trade policy which perhaps started with the hike in import tariffs on 19 items in 2018.[16] *This argument is further strengthened when one sees that after hiking the tariffs in 2018, the government also intended to bolster exports, although neither clear and specific measures for the same were provided nor was it achieved.*[17] *This round of raising the import duty does not appear any different.*

The objective behind these protectionist measures is to lower imports and address India's growing trade deficit. However, new research argues that this is the wrong diagnosis while noting that India's trade deficit has risen as a consequence of stagnating exports, rather than too many imports.[18] *The research further argues that the slowdown in exports is driven by the lack of competitiveness of Indian producers and the failure to meet global product standards.*[19]

The need of the hour is a holistic industrial policy for India, which takes on board trade policy and competition policy dimensions, and one that improves low productivity, shortage of credit, poor marketing strategies, absence of product standards and poor infrastructure. At the same time, the government has to reduce transaction costs and make it easier for running a business.

An approach to keep these issues as focal points for improving the economy might be better suited for making the domestic industry more competitive globally and thereby decreasing the trade deficit. Import substitution is a myopic way for solving India's trade woes that have been proven to fail in India before 1991 and several other economies as well.[20]

[16] https://www.reuters.com/article/india-import-tariffs/update-1-india-raises-import-tariffs-on-19-items-in-bid-to-stem-rupee-slide-idUSL4N1WC4HO

[17] https://www.ft.com/content/f98df7b4-c19d-11e8-8d55-54197280d3f7

[18] https://www.epw.in/journal/2020/9/budget-2020-21/union-budget-and-trade-sector.html

[19] https://www.livemint.com/news/india/why-protectionism-won-t-boost-india-s-trade-11583325828295.html

[20] https://www.livemint.com/opinion/columns/india-s-rerun-of-its-protectionist-folly-mars-the-liberalization-era-11581262685208.html

2. POLICIES PROMOTING COMPETITION

RBI issues draft framework for setting up a competitor to NPCI[21]

The Reserve Bank of India (RBI) issued a draft framework for authorisation of a pan-India new umbrella entity (NUE) for retail payment systems. At present, only the National Payments Corporation of India (NPCI), a not-for-profit company, performs this role. The NUE could choose to be a for-profit entity or a not-for-profit as defined under Section 8 of the Companies Act. The NUE will be a company authorised by the central bank under Section 4 of the Payment and Settlement Systems (PSS) Act, 2007.

"It shall be governed by the provisions of the PSS Act and other relevant statutes and directives, prudential regulations and other guidelines/instructions," the central bank stated in a release. The entity eligible to apply as promoter or promoter group for the NUE shall be 'owned and controlled by residents' with three years' experience in the payments ecosystem as Payment System Operator (PSO)/Payment Service Provider (PSP)/Technology Service Provider (TSP). The shareholding pattern shall be diversified. Any entity holding more than 25 percent of the paid-up capital of the NUE shall be deemed to be a promoter.

Food for Thought

So far, NPCI has been managing retail payments and encouraging innovation very well, although the jury is still out on its performance. However, it is hard to ignore that NPCI is the only "umbrella" organisation for retail payments, although there are 89 payments system operators.[22] *With Unified Payment Interface (UPI) launched in 2016, the NPCI saw a boom of success. In January 2020, it breached the 2-lakh crore mark.*[23] *In this backdrop, it would be appropriate to comment that the NPCI had become, or at least was on the way to becoming, too big to fail.*[24]

21 https://www.financialexpress.com/industry/banking-finance/rbi-issues-draft-framework-for-setting-up-competitor-to-npci/1864879/

22 https://www.bloombergquint.com/business/rbi-sets-the-stage-for-a-competitor-to-e-pay-platform-npci-but-why

23 https://www.bloombergquint.com/business/upi-transactions-cross-rs-2-lakh-crore-mark-for-the-first-time-in-december

24 CUTS International undertook a project titled Competition and Regulatory Assessment in Digital Payments Infrastructure Sector that dealt with some of these issues. One of the recommendations in the study was creating a competitive threat to the NPCI which seems to have manifested in this draft framework. *See* https://cuts-ccier.org/pdf/Research_Report-Competition_assessment_of_payments_infra_in_India.pdf

Encouraging competition by authorising a pan-India umbrella entity, which is interested to play this role subject to applicable conditions, is a positive and forward-looking approach. The absence of competition might end up stifling innovation in the long run. One of the challenges that the Watal Committee on Digital Payments had noted was that competition and innovation in the payments market is not a mandate for the regulator.[25] *With this, that stands changed.*

However, the draft framework also has certain limitations. Firstly, the regulatory objectives behind the creation of a new umbrella entity (ies) are not defined, which makes the assessment of their performance difficult. Secondly, the applicability of the draft framework to NPCI has not been provided for, and it is unclear if it was a willful omission and the RBI wishes to keep NPCI out of the framework. Lastly, there are no provisions on consumer protection or grievance redress mechanism for the new entity.

Coal Ministry to issue Notice Inviting Tender for commercial mining auctions by March-end[26]

The Ministry of Coal aims to issue the Notice Inviting Tender (NIT) documents before the end of the current financial year to begin the process of commercial coal mining auctions. In a bid to boost production, the Centre decided to allow private companies to mine coal for commercial use in February 2018. The Centre had also planned to begin auctioning coal mines with no end-use restrictions by December 2019.

"This change would require the approval of the Union Cabinet, followed by an Ordinance or a Bill depending on the urgency and subject to the House being in session," a top Coal Ministry official said. The earlier timeline to begin offering blocks for 100 percent commercial coal mining was December 2019.

Food for Thought

A vast majority of coal mines in India are operated by Coal India Limited (CIL) and subsidiaries, which receive coal mines for extraction from the government without bidding for it. A few private enterprises that have been allotted the coal mines were only allowed to extract coal to run their related industries, such as iron & steel, cement,

[25] The Committee notes that the Payment and Settlement Systems Act, 2007, needs to be updated to clarify that the regulator's statutory objective is to enhance competition, innovation and consumer protection in payments market. *See* http://finance.du.ac.in/du-finance/uploads/pdf/Reports/watal_report271216.pdf

[26] https://www.thehindubusinessline.com/news/coal-ministry-to-issue-notice-inviting-tender-for-commercial-mining-auctions-by-march-end/article30496483.ece

or captive power plants until late last year.[27] *The inability of private players to sell the extracted coal from coal mines under their control due to the policies contributed to the monopoly of CIL.*

This move is likely to augment competition in the coal market and challenge CIL's monopoly in the business. This will also facilitate improved options for coal consumers within India, such as thermal power plants, and push CIL to improve its efficiency and meet its targets for production which it has been failing to meet for the past few years.[28]

The government intends to auction the same blocks that were created for captive use. While this might help speed up the process of new auctions, the problem is that those blocks are too small to attract global miners who have access to modern technology. Therefore, delimiting the blocks and introducing open acreage system might be a preferable recourse, as in the oil and gas sector. In this system, bidders are allowed to decide the size and kind of mines.[29]

Given the significance of coal as a basic raw material for most industries, this move is very welcome. However, with increased competition and improved efficiency, some restructuring in CIL might be required, which could see some employees losing their jobs. This could explain why the majority of the workforce has already been opposing the decision to open the coal market to 100 percent FDI.[30] *Notably, the Bill to introduce necessary changes in the law to facilitate private mining of coal has been passed in both Lok Sabha (March 06, 2020) and the Rajya Sabha (March 12, 2020).*[31]

[27] https://energy.economictimes.indiatimes.com/news/coal/in-a-first-pvt-sector-gets-coal-blocks-with-freedom-to-sell-25-output/72395766

[28] https://www.businesstoday.in/current/graphics/infographic-how-coal-india-fails-india/story/385331.html. Coal India's production target of 660 million tonnes (mt) for the year is 168 mt short of its total supply requirement: https://economictimes.indiatimes.com/industry/indl-goods/svs/metals-mining/cil-to-miss-supply-target-for-5th-year-in-a-row/articleshow/70799672.cms?from=mdr.

[29] https://www.thehindubusinessline.com/economy/open-acreage-coal-mining-will-create-level-playing-field-for-investors/article30872560.ece

[30] https://www.indiatoday.in/business/story/trade-unions-coal-strike-1599519-2019-09-16

[31] https://www.prsindia.org/billtrack/mineral-laws-amendment-bill-2020

LIC policy will retain its sovereign guarantee: FM[32]

Finance Minister Nirmala Sitharaman assured nearly 30 crore policyholders of Life Insurance Corporation (LIC) that their interests would be protected when the government dilutes its stake in the insurance behemoth.

"We are bringing an initial public offering (IPO) of LIC, and not selling it completely. There will be no change in the ownership," she said at a post-Budget media interaction. The Budget has proposed an IPO for LIC, through which the government will dilute its stake in it. Allaying policyholders' concerns, the Minister said LIC policies would not lose their sovereign guarantee.

Food for Thought

The LIC IPO is a welcome decision that is being expected to improve accountability and transparency in the country's largest insurance company. The public listing will induce transparency in the management of the company by regular filings to stock exchanges, regulators and market scrutiny, which is also expected to enhance the efficiency of the government-owned insurer. This can further mean that the influence of the Central Government will be under check.[33] The IPO is also likely to bring in the money from Foreign Portfolio Investors and international investors which could add weight to the government's purse[34], given that its market capitalisation is likely to be greater than several private heavyweights in India.[35]

LIC is further likely to boost investor confidence by the IPO. This decision marks a significant step in increasing competition in the insurance sector in India which until a few years ago was highly monopolistic.[36] Although the sector is experiencing

32 https://www.thehindubusinessline.com/markets/lic-policy-will-retain-its-sovereign-guarantee-fm/article30720508.ece

33 https://www.livemint.com/companies/news/what-value-may-lie-within-the-doors-of-lic-11582212870781.html

34 https://www.businesstoday.in/opinion/columns/lic-ipo-life-insurance-corporation-of-india-listing-disinvestment-in-state-insurer-modi-govt/story/396051.html

35 https://www.businesstoday.in/opinion/columns/lic-ipo-life-insurance-corporation-of-india-listing-disinvestment-in-state-insurer-modi-govt/story/396051.html

36 https://economictimes.indiatimes.com/markets/ipos/fpos/lic-ipo-back-on-the-table-a-money-back-plan/articleshow/71286257.cms?from=mdr. CUTS International has undertaken a project on Regulatory Impact Assessment in Insurance Sector in India which was aimed at facilitating foreign investments, enabling access and enhancing competition.

unprecedented growth since the past decade, there is also a mounting fear of growing concentration in the market.[37] *This decision may be expected to challenge that.*

However, the Finance Minister's statement assuring the sovereign guarantee to LIC's policyholders has an anti-competitive angle attached to it. Even as LIC continues to operate as a government company, LIC is at an advantage by being a government company as it can provide its policyholders the assurance of a sovereign guarantee of assured sums, which the private players cannot.[38]

Although it has been speculated that the IPO will result in the elimination of the sovereign guarantee, the Minister's statement seems to have been aimed at appeasing the policyholders.[39] *It may also be noted that LIC's sovereign guarantee has never been exercised and therefore, the question also arises as to how valuable the sovereign guarantee is to the consumers.*[40]

Additionally, not all is rosy on the road to the public listing of LIC. It is certainly expected to face significant legal challenges, such as preparation of the valuation report, getting necessary approvals, amendment of the LIC Act by Parliament et al before the listing.[41] *Additionally, there are capitalisation related challenges.*[42] *To top it all off, LIC is facing a lot of opposition from its employees' union, which tends to be the case whenever a public sector enterprise is sought to be privatised.*[43] *Notably, the labour concerns have been successfully addressed in the previous disinvestments and therefore, these issues are short-term challenges which the government would be able to overcome.*

---

37 https://www.insurancebusinessmag.com/asia/features/interviews/indian-market-undergoing-wave-of-concentration-218251.aspx

38 Under Section 37, LIC Act, 1956.

39 https://economictimes.indiatimes.com/markets/ipos/fpos/lic-ipo-back-on-the-table-a-money-back-plan/articleshow/71286257.cms?from=mdr; https://www.businessinsider.in/business/news/lic-policyholders-could-lose-sovereign-guarantees-if-the-insurance-major-is-listed-say-experts/articleshow/73893102.cms.

40 The effect of exclusive sovereign guarantee to LIC policies, to the exclusion of other insurers, has been a widely discussed issue. CUTS International, in its biennial publication Competition and Regulation in India in 2013 discussed this issue too. *See* https://cuts-ccier.org/pdf/Competition_and_Regulation_in_India-2013_Leveraging_Economic_Growth_Through_Better_Regulation.pdf.

41 https://economictimes.indiatimes.com/markets/stocks/news/lics-mega-ipo-is-highly-unlikely-in-fy21-heres-why/articleshow/74101252.cms?from=mdr

42 https://economictimes.indiatimes.com/markets/stocks/news/lics-mega-ipo-is-highly-unlikely-in-fy21-heres-why/articleshow/74101252.cms?from=mdr

43 https://www.thehindubusinessline.com/news/lic-staff-union-to-hold-walk-out-strike-to-protest-against-ipo/article30732807.ece

End of monopoly? Urban gas supply could be just one move away from a major reset[44]

The downstream regulator is planning to end marketing monopoly of Indraprastha Gas, Mahanagar Gas, Gail Gas, Gujarat Gas and more city gas distributors in at least 30 license areas by declaring their network as 'common carrier', which would force them to reserve a part of their capacity for the third party, people familiar with the matter said. In the next few months, the Petroleum and Natural Gas Regulatory Board (PNGRB) will likely be ready with a regulatory framework for the elimination of monopolies, they said.

Food for Thought

The market for distribution of natural gas in India at present has a fair amount of concentration[45] after the PNGRB granted exclusive licences to distributors.[46] A dominant player in the sector is GAIL, the government-owned natural gas processing, and distribution company. The company directly or indirectly controls several distributors in the metro cities, such as Mahanagar Gas in Mumbai and Indraprastha Gas in Delhi. Declaring the networks of state-owned distributors as 'common carrier' would effectively halt this monopoly and induce competition in the sector.

Another laudable point in this decision is that the government intends to phase-out the existing distributors.[47] It may be noted here that the regulatory will to declare the monopolistic gas distributors as a common carrier has existed since 2015, but the same could not be achieved because PNGRB is required to make guiding principle regulations and based on those, only individual areas can be declared as common carriers.[48] PNGRB has now come out with the Draft for PNGRB (Guiding Principles for Declaring City or Local Natural Gas Distribution Networks as Common Carrier or Contract Carrier) Regulations, 2019.[49] As per the draft, the distributor will have to reserve a fifth of its capacity for third parties, including suppliers and customers after

44 https://economictimes.indiatimes.com/industry/energy/oil-gas/plans-redrawn-to-end-city-gas-distributors-monopoly/articleshow/74166973.cms

45 In their designated areas of distribution, they only compete with other government owned distribution companies.

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

47 https://www.thenewsminute.com/article/govt-may-bring-new-rules-phase-out-gas-distributors-monopoly-34-cities-105589

48 https://www.cnbctv18.com/videos/energy/regulations-for-city-gas-distribution-common-carrier-system-in-three-months-says-pngrb-5323561.htm

49 https://www.pngrb.gov.in/pdf/public-notice/NF_22082019.pdf

the common carrier principle is implemented. It is widely agreed that the introduction of a common carrier principle for city gas distributors will result in increased competition.[50]

One wishes if the same principle of a common carrier is applied to other sectors such as electricity and telephone so that there is better competition leading to better service and lower prices to consumers.

The panel gives green signal to 150 private trains on 100 routes[51]

A high-powered panel has cleared the road for rolling out nearly 150 private trains on 100 routes, including Mumbai-Delhi and Howrah-Delhi sectors, which will compete with Rajdhani.

While two Tejas trains have been handed over for running by Railways-controlled IRCTC on the Delhi-Lucknow and Mumbai-Ahmedabad routes as an experiment with the "private sector", the committee's report is likely to pave the way for a massive competition to the services currently being offered by the state transporter.

Food for Thought

In her last budget speech, the Finance Minister expressed that the government does not have enough fiscal space to make heavy investments in modernising the Railways, the cost of which was approximately Rs. 50 Lakh Crore till 2030, while the existing capital outlay stood just at Rs. 1.6 Lakh Crore. To offset that deficit, the government has slowly started allowing private trains. Given the lucrative opportunity that it creates, the decision has spurred several contenders.[52]

Arguably, the entrance of private operators will bring in state-of-the-art technology and innovative ways of providing passenger amenities and finding new luggage-handling solutions.[53] *With this decision, the government will be opening the sector to privatisation and competition if the panel's report is accepted and implemented. Up till now, the attempts were only pilot exercises whereby the government handed the*

50 https://www.orfonline.org/research/energy-news-monitor-volume-xvi-issue-37-61788/

51 https://timesofindia.indiatimes.com/india/panel-gives-green-signal-to-150-private-trains-on-100-routes/articleshow/73146750.cms

52 https://economictimes.indiatimes.com/industry/transportation/railways/private-trains-have-20-companies-interested-in-running-them/articleshow/73787388.cms

53 https://m.economictimes.com/industry/transportation/railways/there-will-be-150-private-trains-to-start-with-railway-board-chairman-vinod-kumar-yadav/articleshow/71237366.cms

command of two Tejas trains to IRCTC, a fully owned enterprise of the government. With the entry of private firms in the sector, there will be actual competition to both, the dominant IRCTC as well as other enterprises that take the contract to run trains which will likely result in better services for the passengers.

However, the decision is facing many challenges. First, the expected players have rejected major clauses in the proposal.[54] *Second, while several companies showed interest when the proposal first came up, no company is quoting any prices. Third, and perhaps the most significant, the railway employees union, which is the largest employees' union in India, is threatening with an indefinite strike if private participation is proceeded with.*[55]*Alas, this is the standard procedure by trade unions whenever competition is sought to be introduced in the sector. They are afraid that performance requirements will go up and they would be asked to perform.*

The government should go ahead with the idea while ensuring transparency and efficiency in the decision-making process. Additionally, the labour union should be taken on board and consulted with at the time of making any such decision, given that Indian Railways has one of the world's largest employee base.[56] *Furthermore, an independent tariff regulator should be established to determine tariffs and service standards, Like the Commission on Railway Safety reports to Ministry of Civil Aviation, the proposed regulator should report to any other Ministry but Railways. The recommendations of the Committee for Mobilisation of Resources for Major Railway Projects and Restructuring of Railway Ministry and Railway Board (Bibek Debroy Committee) in this light are also useful and deserve revisiting which highlighted key problems for the absence of private participation.*[57]

TRAI backs NTO 2.0, says an amendment to create a level playing field[58]

The Telecom Regulatory and Authority of India (TRAI) backing the amendments made in the New Tariff Order (NTO) claimed it to be consumer-friendly and will

[54] https://theprint.in/india/why-modi-govt-plan-to-run-150-private-trains-by-year-end-seems-like-an-impossible-task/358875/

[55] https://www.thehindubusinessline.com/economy/railway-unions-mull-indefinite-strike-against-privatisation/article29659436.ece

[56] https://www.weforum.org/agenda/2015/06/worlds-10-biggest-employers/

[57] Full Report: http://www.indianrailways.gov.in/railwayboard/uploads/directorate/HLSRC/FINAL_FILE_Final.pdf. Brief Summary: https://www.prsindia.org/sites/default/files/parliament_or_policy_pdfs/1449128662_Report%20Summary%20-%20Debroy%20Committee.pdf.

[58] https://www.indiantelevision.com/regulators/trai/trai-backs-nto-20-says-amendment-to-create-a-level-playing-field-200113

create a level playing field for all stakeholders in the broadcasting industry. The regulator believes that transparent mechanism needs to be adopted to encourage the market discovery of channel price, but any attempt to scuttle consumer choice through non-transparent pricing practices means need to be discouraged.

Food for Thought

The new amendment provides the broadcasters the complete freedom to price their services and also guarantees the freedom to consumers to choose the TV channels. Through NTO 2.0, TRAI has mandated provision of 200 channels in maximum fee (network capacity fee or NCF) of Rs 130 excluding taxes per month. At present, DTH or cable TV operators provide only 100 channels for a fee of Rs 153 (Rs 130 excluding taxes) a month. On top of this, the MRP for a channel has been brought down from Rs. 19 a channel to Rs. 12. Prima facie, this change in law will result in increased consumer freedom while also allowing all broadcasters, big and small, to play on a level field. It also restricts discounting on channel bouquets to promote a la carte offerings.

However, the move has attracted several criticisms and pushbacks from the industry. The broadcasters believe that this move will result in stifling content creation and raise bills for users.[59] *The grievance has also been rejected for a plea of stay on the NTO 2.0 by the Bombay High Court.*[60] *The response may not be entirely unjustified, as one of the studies has shown that people have increased their viewing time on video streaming platforms post NTO, some have even unsubscribed their DTH (direct-to-home) connections and moved completely online for content.*[61]

At this point, it is unclear whether the reaction of broadcasters is merely because they are set to lose on revenue[62] *or if they feel that this will be detrimental to consumer welfare. Notably, even if the discounting mechanism followed by the broadcasters was benefitting consumers to the detriment of smaller players, such a scheme of consumer welfare is now being rejected by competition experts for being short-sighted.*

---

59 https://www.thehindubusinessline.com/info-tech/cable-bills-will-rise-with-new-tariff-order-broadcasters/article30533249.ece

60 https://www.livemint.com/industry/media/trai-s-nto-to-come-into-effect-on-sunday-no-stay-from-bombay-high-court-11582899945229.html

61 https://www.livemint.com/industry/media/about-50-dth-users-moved-to-online-content-post-trai-s-new-tariff-order-study-11582872667520.html

62 https://www.business-standard.com/article/companies/trai-s-new-tariff-order-broadcasters-brace-for-subscription-revenue-dip-120011500043_1.html

Government to sell full stake in debt-ridden Air India[63]

New Delhi intends to sell its entire stake in the debt-crippled national carrier Air India, the government announced after failing previously to secure any bids for a majority share. The airline, which owes more than $8 billion, has been struggling to pay salaries and buy fuel, with officials recently warning that it would have to shut down unless a buyer was found. The Civil Aviation Ministry released a document inviting bids for a 100 percent stake, setting March 17 as the deadline for initial submissions. Potential buyers would have to assume around US$3.26bn in debt, the document said.

Food for Thought

Following the failure to sell off Air India in 2018 with a 74 percent stake, the government seems to have learned its lesson well that no prospective buyer would like a non-operative shareholder around after owning an enterprise.[64] With sweetened terms, the government is in a hurry to get rid of Air India. Further, the government has also proposed to reduce the debt burden on whoever agrees to acquire Air India by Rs. 23,286 Crore out of the total of Rs. 60,074 Crore of debt. This is a positive and welcome decision for reducing the taxpayers' burden. Under the European Competition Regime, this would have been treated as State Aid and stopped, is an unfair advantage given to a player in a competitive market.

However, there are several challenges associated with turning around Air India's performance that any prospective buyer would have to consider. First is that there is still a fear in the air whether or not the government will interfere after 100 percent divestment as the sale of Air India is likely to become a political issue.[65] For instance, BJP's very own MP, Subramanian Swamy hit back at the government for this decision threatening to take the government to court over the sale.[66] Swamy is an enfant terrible of the Indian polity and often shoots off from his hips to remain in the news.

Second, given the mammoth that Air India is, and also considering the decimated state of the domestic business houses that are currently focused on reducing their debts, it would be difficult for any one company to buy a 100 percent stake in Air India. In that

63 https://www.thejakartapost.com/news/2020/01/27/government-to-sell-full-stake-in-debt-ridden-air-india-.html

64 https://www.rediff.com/business/interview/sale-challenge-is-air-indias-huge-size/20200131.htm

65 https://economictimes.indiatimes.com/industry/transportation/airlines-/-aviation/a-fitter-maharaja/articleshow/71666385.cms?from=mdr

66 https://www.businesstoday.in/current/economy-politics/air-india-sale-subramanian-swamy-threatens-to-drag-modi-govt-to-court-calls-the-move-anti-national/story/394706.html

scenario, airline mergers have had a bad history in India. The Kingfisher-Air Deccan merger and the Jet Airways-Sahara merger both crashed and burned.[67]

Additionally, Air India has serious efficiency challenges at present. The airline performs poorly when compared with most Indian domestic airlines based on their cancellations (2.6 percent), on-time performance (53.5 percent), or airline load factor (80.9 percent).[68]

DoT Working on 3 Options for Telco Bailout[69]

The Telecom Department is working on at least three options to defer the Rs 1.47 lakh crore adjusted gross revenue (AGR) liability of telecom companies. The first option hinges on payment of 20 percent of the principal licence fee and the spectrum usage charges that are part of the AGR liability. If the proposal is accepted, the remaining amount will have to be paid over 16 years and will come with an annual interest rate that is 0.5 percent higher than what comparable government security costs. Besides, there will be a five-year moratorium on principal and interest payment.

The second option is an improvement over the first option and includes issue bonds and warrants, after the initial payment of 20 percent. Once this is done, a part of the liability will be converted into bonds based on the self-assessed value by telecom companies. The other component – the difference between the self-assessed value and DoT's claims – will come in the form of convertible warrants that companies will have to issue, sources explained.

Another option on the table is to have an arrangement between the government, the telecom companies, and banks, which provide funds against the bonds issued by the telecom companies. The money will then be used to settle the AGR dues and the funds will be set aside in a separate (escrow) account so that banks have a charge on it.

Food for Thought

For a heavily debt-laden telecom sector, this is a very welcome development. With this, the government has shown that it is conscious of the deterioration in competition in

---

67 https://economictimes.indiatimes.com/industry/transportation/airlines-/-aviation/a-fitter-maharaja/articleshow/71666385.cms?from=mdr

68 https://economictimes.indiatimes.com/industry/transportation/airlines-/-aviation/a-fitter-maharaja/articleshow/71666385.cms?from=mdr

69 https://www.communicationstoday.co.in/dot-working-on-3-options-for-telco-bailout/

the telecom sector and that it is prepared to support the sustenance of the ailing telcos, especially the few surviving ones that have been hit by the Supreme Court's AGR dues judgment. The government is walking a very tightrope by considering these options as, on one hand, they have been chided by the Supreme Court for failing to strictly implementing its AGR order,[70] and on the other hand, they are trying to ensure that the telecom sector does not end up in a monopoly or duopoly.

The bailout options have been very smartly designed to ensure that even the initial payment does not become overly burdensome as to hamper the survival of the telecom firms by limiting it to only the principal licence fee. Particularly for Airtel and Vodafone Idea, which has been gasping for air for a while now, this will mean great relief. The government is actively taking steps to protect these companies and the plan has reached the Cabinet and is likely to be approved soon.[71]

3. POLICIES INHIBITING COMPETITION

Govt may cap airport contracts at 2 per firm[72]

Private bidders vying for future airport privatisation projects are likely to be restricted to a maximum of two contracts in each round of auction, two government officials said. The proposed rules are set to be implemented before the next round of airport privatisation that the government is planning, the officials said on condition of anonymity.

"A list of projects to be bid out shortly and the modalities of the auction will be finalized very shortly. Discussions are on in the direction of limiting an award of concessions to two per developer,"[73] said one of the officials.

Food for Thought

While privatisation of the airports is a positive decision, the move to cap the number of airport contracts in each round of auctions may not be the best way to promote competition in the aviation sector. As it is, the aviation sector is highly capital-intensive and therefore, attracts very few players. Add to that, most of the domestic business

70 https://www.thehindubusinessline.com/news/agr-issue-supreme-court-comes-heavily-on-dot-telcos/article31097176.ece

71 https://www.moneycontrol.com/news/business/cabinet-likely-to-approve-rescue-plan-for-telecom-companies-this-week-report-5020321.html

72 https://www.livemint.com/news/india/govt-may-cap-airport-contracts-at-two-per-firm-11579455151363.html

73 In each round of auction.

houses are currently struggling to deleverage their existing debts.[74] *The review is understandably coming after Adani Enterprise gobbled all six contracts for upgrading Airports in 2019.*[75]

While a scenario like 2019 is a nightmare for competition in the sector, there could certainly be other approaches that the government may adopt to promote competition in the sector. For instance, learning from the 2019 example in which Adani Enterprises won all six bids despite being bereft of any expertise in managing airports, the government could perhaps start by setting the experience in the sector as a pre-requisite for bidding.

Considering that the government intends to privatise 30-35 airports over the next five years with investments around Rs 1.4 lakh crore airport infrastructure[76]*, this cap is likely to hinder competition in the sector by disincentivising efficiency by capping the number of airports for a private company as the firms currently holding airport contract would not be incentivised to perform better. A more hands-off approach would, therefore, be required to ensure better management of the airports after privatisation.*[77]

Disinvestment: Private container companies raise concerns over planned sale of railway land to Concor[78]

The disinvestment process of Container Corporation of India (Concor) has hit a roadblock with the Railway Ministry valuing the cost of its land leased to the mega-PSU at Rs 16,500 crore and private container companies objecting to any move by the government to "sell" the land to Concor at subsidised rates, raising multiple red flags to the plans.

The latest round of top-level deliberations within the Ministry, which happened end of February, has found that the 44 land parcels translating to some 220 hectares of land across India, that the Railways had given to Concor — mostly at subsidised lease rates since it was its PSU — to operate its container business, are valued currently at Rs 16,500 crore if the national transporter is to sell that to the PSU. A majority of the

74 https://theprint.in/opinion/privatisation-comes-to-rescue-modi-govt-accompanied-by-political-risk/304678/

75 https://asia.nikkei.com/Business/Companies/Indian-billionaire-Adani-snaps-up-6-pricey-airport-contracts

76 https://www.moneycontrol.com/news/business/govt-may-restrict-airport-contracts-to-2-per-firm-after-adani-ent-bags-6-report-4833791.html

77 https://www.flightglobal.com/private-persuasion-airport-privatisation/70769.article

78 https://indianexpress.com/article/business/disinvestment-private-container-companies-raise-concerns-over-planned-sale-of-railway-land-to-concor-6315957/

value is from the Inland Container Depot, Tughlakabad in Delhi, which accounts for 30 percent of Concor's business and is on railway land.

Food for Thought

Despite the presence of 15-odd private container operating companies in India,[79] Concor still controls 80% of the market share.[80] Therefore, Concor is at a substantial competitive advantage over its private counterparts which got access to the market only in 2006 and is relatively much newer. On top of holding such significant market shares, Concor also receives favourable support from Indian Railways, of which obtaining land parcels on lease at a subsidised rate is only one kind.

The contention of the Association of Private Terminal Operators (APTO, the representative body of private container companies) is hinged on the government policy from 2006 which stated that the government will maintain a level playing field for the private companies. While it is good that the government explicitly added a pro-competition clause in the policy, the government's conduct has not honoured the policy.

Government proposes health cess on import of medical equipment[81]

Finance minister Nirmala Sitharaman announced a five percent health cess on import of medical equipment, a move that is likely to make imported medical devices costlier, industry experts said.

The proceeds from the cess will be used for creating an infrastructure for health services in the aspirational districts. The health cess will be imposed on imports of medical devices, except those exempt from basic customs duty (BCD).

Food for Thought

The additional five percent health cess on imports of medical devices has been imposed in a bid to support domestic manufacturers and generate funds to create health infrastructure in India.[82] At present, 80-90 percent of the country's requirements in the

79 *Ibid*

80 *Ibid*

81 https://economictimes.indiatimes.com/industry/healthcare/biotech/healthcare/government-proposes-health-cess-on-import-of-medical-equipment/articleshow/73839367.cms?from=mdr

82 https://www.globaldata.com/level-playing-field-is-important-for-domestic-medical-device-makers-to-compete-with-multinational-companies-in-india-says-globaldata/

medical devices sector are imported and hence the cess will pinch the end consumer as the cost of imported medical devices will increase.[83]

What it does for the industry is that it makes it difficult for large multinationals to import newer technologies. Currently, most medical device imports attract a basic customs duty of 7.5 percent. With an additional 5 percent cess, the revised customs duty becomes 12.5 percent, in addition to the education cess levied on importers.[84]

While this move benefits the domestic medical device manufacturers, the government should refrain from adopting such approaches for reducing import dependence using distorting competition. Since the local medical device makers are mainly involved in the manufacturing of low-end products for domestic consumption a better way to promote domestic manufacturing could be to encourage multinationals to partner with domestic manufacturers by providing incentives and tax rebates.[85]

On a different note, medical devices imported from the USA face a price cap in the local market, due to their high prices, which the US opposes strongly. There are cross-sector implications of this. The matter is still under discussion as part of a trade package but not yet resolved.

[83] https://economictimes.indiatimes.com/industry/healthcare/biotech/healthcare/government-proposes-health-cess-on-import-of-medical-equipment/articleshow/73839367.cms?from=mdr

[84] https://www.moneycontrol.com/news/business/companies/cess-on-imported-medical-devices-to-make-healthcare-costlier-4905231.html

[85] https://www.globaldata.com/level-playing-field-is-important-for-domestic-medical-device-makers-to-compete-with-multinational-companies-in-india-says-globaldata/