CUTS International

COMPETITION DISTORTIONS IN INDIA – A CUTS DOSSIER

(CDI-51: January to March 2021)

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

This periodic dossier produced by CUTS International looks at the interface of policy issues that impact 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 and 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 the Competition Distortion Dossier for the first quarter of the year i.e., January to March 2021. To ensure that you do not miss any updates from this quarter, we have extensively covered the most important news stories from these three months that impact the competitive landscape in India. Taking forward from previous editions, we have divided the dossier into three parts: Trade Policies; Policies Promoting Competition; and Policies Inhibiting Competition.

In the first part, we cover developments regarding current trade policies where we discuss anti-dumping duties and the revised guidelines on the Public Procurement Policy (PPP). For the former, we analyse how India's decision to impose anti-dumping duties on intermediate goods harms the consumers as it raises the price of the finished goods and harms the competitiveness of the whole industry. For the PPP amendment, we discuss how the revised guidelines could either be an opportunity for the domestic market to grow or a challenge for India to compete globally.

In the dossier, the Mega Privatisation Drive as part of the Union Budget 2021-22 has been highlighted, and how it will increase the overall competition and fairness in the market by creating a level playing field for the private players. Further, the SEBI has released a discussion paper on revised ownership rules to lower the barriers for entry in the stock exchanges and depositories arena. The delicensing of electricity distribution companies has been undertaken with the motive of opening it up to the market. The decision of setting up a coal trading exchange is also a step ahead in minimising the dominance of Coal India Limited, thereby accelerating competition. Keeping the *Atma Nirbhar* vision in mind, there have been changes recommended in the National Mapping Policy.

The dossier also contains policies inhibiting competition. The government nudged the Public Sector Banks (PSBs) to issue only RuPay cards to promote the home industry. While this protects our domestic sector, it hinders freedom of choice. Not only is it seen to place RuPay in a dominant position, but it also hinders the competitive spirit of the market. Further, the Steel Ministry has decided to utilise domestic production of steel and iron for public projects against imports from nations that do not enable Indian companies to participate in their public procurement schemes. We look at it as a roadblock to improvement to the product manufactured. Amidst already strained relations, this move is seen to place the bilateral trade of India with certain nations in jeopardy.

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

Cheers!

Contents

A. Trade Policies 3

Hardly any finished goods incur anti-dumping duties 3

Revised Guidelines of Public Procurement Policy added 19 Medical Devices 4

B. Policies Promoting Competition 5

Mega Privatisation Drive 5

Govt announces radical changes to mapping policy 7

SEBI releases a discussion paper on liberal ownership rules 8

Vehicle Scrapping Policy 10

Grant of Government Business to Private Banks 12

One Market Code for ease of doing business 13

Delicensing the electricity distribution companies 15

Head start of coal exchange 17

C. Policies Inhibiting Competition 18

Finance Ministry and Niti Aayog had raised red flags before Adani's clean sweep of six airports 18

Public Sector Banks push for RuPay cards 19

Indian steel and iron items preferred for public works 21

A. Trade Policies

Hardly any finished goods incur anti-dumping duties

Nearly 85 percent of anti-dumping and countervailing duties imposed by India are on intermediate products, with only a minuscule proportion of the actions on final products. Capital goods constitute around seven percent of the products that face remedies against cheap, subsidised imports causing injury to the domestic industry. In contrast, only two percent of the finished products face these levies.

India is among the biggest imposers of an anti-dumping tool, with 972 of the 5944 global actions. However, such levies have yielded very little revenue, indicating these tools are predominantly used to protect domestic producers against unfair trade practices.

Most such actions are against Chinese goods. Globally also China is the biggest recipient of anti-dumping and countervailing duties. As far as countervailing duty, imposed against subsidies, is concerned, the US is the largest imposer.

Food for Thought

While anti-dumping duty may be justified to some extent, its continuous imposition can have long-term adverse consequences on the industry and consumers. Domestic industry can become uncompetitive, leading to inefficiencies being passed on to the end consumers.

It does not matter much whether goods upon which such duties are levied are finished goods or intermediate goods or even capital goods. If such duties are levied on intermediate or capital goods, the overall cost goes up for the finished products, hurting consumers and the competitiveness of the domestic industry. More so, the revenue earned from such duties is very small. According to one estimate, such trade measures yielded around Rs.3000 crore during 2019-20, which is a small fraction of the gross tax revenue of Rs.20 lakh crores.

In 2018, the Parliamentary Standing Committee on Commerce found anti-dumping measures ineffective in checking imports from China. The Committee also found a general reluctance on the part of the government to carry out an impact assessment of anti-dumping or countervailing duty imposed by India.

Therefore, the answer is to employ a whole of government approach, both at the national and state levels, to enhance the competitiveness of Indian industry, which will

benefit the national economy and consumers. It is time that we conduct an impact assessment of imposing anti-dumping duties.

Revised Guidelines of Public Procurement Policy added 19 Medical Devices

In pursuance to 'Make in India' and 'import substitution policy, the Department of Pharmaceuticals (DoP) issued a revised notice on the Public Procurement Order (PPO) on March 25, 2021. With the revised notice, DoP has further added 19 items of medical devices to the list of 135 items notified vide order dated February 16, 2021, for which only class-I local suppliers having local content of at least 50%, shall be eligible to bid irrespective of purchase value.

This order will be applicable in respect of the procurement made by attached or subordinate offices or autonomous bodies under the Central, State or local bodies, including government companies, making procurement under all central schemes or where the Government of India wholly or partially funds by the scheme.

Food for Thought

The revised notice on the PPO is being looked at differently by two industry associations. While the Association of Indian Manufacturers of Medical Devices (AiMeD) has welcomed the revised notice, the Medical Technology Association of India (MTaI) expressed disappointment at the move.

According to AiMeD, this is a real boost to Make in India and will help in domestic manufacturing of medical devices, reducing imports bills by nearly 10 percent. This will benefit actual manufacturers who do the real value addition in India and not to those who just stick labels or do repackaging.[1]

COVID-19 has shown the spirit of Indian entrepreneurs to 'Make in India' rather than to import into India, which can get disrupted.[2]

The MTaI viewed the present notice as one without proper due diligence. According to MTaI, a blanket declaration is made that 19 HSN codes will be procured from only class I local suppliers, overlooking the fact that each of these codes may comprise many categories, several of which may not even be manufactured in India.[3]

---

1 https://www.biospectrumindia.com/news/22/18365/revised-ppo-to-boost-domestic-medical-device-manufacturing-in-line-with-make-in-india-.html

2 *Ibid*

3 http://www.pharmabiz.com/NewsDetails.aspx?aid=136489&sid=2

The omission of several global companies in the notice, which have invested deeply in manufacturing, could be a regressive step pushing down foreign direct investment (FDI). It is crucial for the government first to understand the engineering complexity and the import substitution time scale needed for the sub-sectors and identify those spheres where such advances can be made without disrupting patient access.[4]

The two industry groups have raised contrasting yet, valid issues, thus calling for a balanced approach. While domestic manufacturing and more local value addition is essential, so is FDI and technology transfer in the medical device industry.

Though India is not a party to the Plurilateral Agreement on Government Procurement of the World Trade Organisation (we are a paid observer), it still should respect the non-discrimination principle between domestic and foreign goods and services. Also, any policy change needs to follow a multi-stakeholder consultation process, which, among other things, will also prevent competition distortions in the market.

There is a conflict with US manufacturers as they cannot compete and thus has escalated that into the whole trade calculus among the two countries. When two parties strike a bigger trade deal, trade-offs will be negotiated, only if we have flexible local procurement rules.

B. Policies Promoting Competition

Mega Privatisation Drive

Continuing with the Modi Government's resolve for 'minimum government, maximum governance,' the Union Budget for 2021-22 has promised an aggressive privatisation policy of public sector units (PSUs). As per the new PSUs policy, the government aims to privatise all non-strategic public sector companies or otherwise close them.

Even in strategic sectors, like atomic energy, space, power, defence, telecoms, transport, oil, insurance, banking, coal and minerals, the government intends to have a bare minimum of PSUs, getting rid of the rest. In sum, the government promises to privatise around 300 PSUs, which could yield up to half a trillion dollars (Rs. 36 lakh crores as per the current exchange rate of 1 US$=INR 73.32) in public coffers.

4 *Ibid*

Accordingly, the NITI Aayog has submitted its first list of around 12 PSUs to be privatised, including those in strategic sectors, which will be reviewed by the Department of Investment and Public Asset Management and the Core Group of Secretaries on Disinvestment. The list includes public sector banks and insurance companies and would suffice to meet Rs.1.75 lakh crore disinvestment targets for the next financial year.[5]

Food for Thought

Though the government has a roadmap, it would still be politically difficult to execute this mega privatisation plan. A clear and consistent articulation of the benefits that citizens can expect from the privatisation programme may be necessary to create a broader consensus. Privatisation alone is insufficient to democratise its benefits. There is a need for a healthy dose of competition in the privatisation process for not distorting the principles of competition. A coordinated approach by the Finance Ministry, Competition Commission of India (CCI) and sectoral regulators would be mooted to ensure this. Privatisation should be perceived as market-friendly rather than just business-friendly reforms.[6]

The CCI should act whenever the government decides to shield some sectors from market competition, whatever the pretext, be it the delivery of public goods, a strategic interest, a matter of national security, an absence of private-sector expertise, or any other. To ensure optimal competition, there is a need for transparent and dispassionate assessment of government claims, including examining alternate market-based mechanisms for the delivery of public goods and steps needed to remove barriers impeding local capacity creation.[7]

The CCI must also ensure that privatisation should not unfairly grant big firms the kind of market dominance that could be abused. Entry barriers, eligibility criteria and threshold limits, all of which may unnecessarily restrict the number of bidders, should be reviewed. In Oman, for instance, the privatisation authority selects bidders through procedures that consider the principles of transparency, publicity, equal opportunity, non-discrimination and free competition.[8]

---

5 https://www.businesstoday.in/latest/economy-politics/story/centre-kicks-off-privatisation-drive-niti-aayog-submits-list-of-12-psus-290668-2021-03-12

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

7 *Ibid*

8 https://cuts-ccier.org/let-the-principles-of-competition-guide-privatization/

The CCI, relevant government departments and agencies like the Niti Aayog should work on reforms to attract global expertise, technology and capital to plug the gaps. While there is no one-size-fits-all formula, robust regulatory and competition regimes are essential to ensure that the benefits of privatisation flow to all, not just a few.[9]

Further, it is also necessary to address the pitfalls in the current privatisation model. For instance, valuation of assets needs to be fair; workers fearing layoffs need to be convinced with incentives, generous stock options, or voluntary exit packages; and skilling bureaucrats to understand the market complexity involved and are open to consult experts if needed. The Maruti model could also be an alternative way, where the government did not sell but transferred control and created massive value.[10] *Retrenched workers must be provided skills training and put into new jobs.*

Govt announces radical changes to mapping policy

Pursuing the *Atmanirbhar Bharat* vision, the Centre announced sweeping changes to the National Mapping Policy, liberalising the restrictive rules governing the acquisition and production of geospatial data.

"The existing regime imposed significant restrictions on the mapping industry – from creation to dissemination of maps, requiring Indian companies to seek licenses, follow a cumbersome system of pre-approvals and permissions. Compliance with these regulatory restrictions has subjected start-ups in India to unnecessary red tape, hindering Indian innovation in map technologies for decades," the Ministry of Science and Technology said in a release.

Most importantly, according to the policy changes, the geospatial data readily available globally will now be freely available in India. Firms and innovators are no longer subject to restrictions, nor do they require prior approvals before they collect, generate, prepare, disseminate, store, publish, update digital geospatial data and maps within the territory of India.

With the easing of doing business, this reform is expected to provide huge impetus to Digital India by unlocking opportunities for Indian start-ups, private sector, public sector and research institutions to drive innovations and build scalable solutions. Not only can it generate employment and accelerate economic growth, but it also emerges as a global mapping power.

9 *Ibid*

10 https://www.thequint.com/voices/opinion/raghav-bahl-on-alternative-privatisation-model-maruti-disinvestment-modi-govt-air-india-psu-banks#read-more

Food for Thought

Geospatial data is referred to as the data on the location information about the natural or man-made, physical or imaginary features of the location, whether above the ground or below, including boundaries, points of interest, natural phenomena, weather patterns, and more.

As far as the creation of maps is concerned, the central challenge is obtaining the spatial data, for which the main source is satellite images. These images often faced the barrier of creating geospatial data of spatial accuracy up to one metre. Since the announced policy changes have removed such barriers, it will give Indian start-ups and companies the opportunities to enter into mapping and related businesses. For instance, they can tie up with institutions like the Indian Space Research Organisation and continuously obtain access to a huge database and technology. Accordingly, India can have its own company having local maps, which can compete with Google Maps. Thus, the present reform will promote competition in this niche sector.[11]

However, there seems to be policy discrimination favouring domestic firms against foreign firms – based on the principle of India's data for India's development – which goes against the general competition and WTO's Most Favoured Nation principles. Although it is understood that India wants to promote domestic tech firms to grow and grab a larger pie in the emerging global digital economy, such policy discrimination needs to be temporary and should not become a norm.

SEBI releases a discussion paper on liberal ownership rules

The Securities and Exchange Board of India (SEBI) released a discussion paper proposing new and liberal ownership rules to facilitate new entrants to set up stock exchanges and depositories.

Promoters setting up a new stock exchange or depository may hold up to 100 percent shareholding, which should be brought down to 51 or 26 percent in 10 years. Similar limits will apply for persons acquiring a shareholding in an existing stock exchange or depository. Acquisition of more than 25 percent shareholding will require SEBI approval. Currently, individuals (whether resident or foreign) cannot have more than five percent shareholding. While certain institutions, domestic or foreign (such as stock exchanges, banks) can hold up to 15 percent, other institutions cannot hold more than five percent.

11 *Ibid*

In the case of foreign individuals or entities, they can set up a stock exchange or depository with up to 49 percent shareholding. The shareholding must be brought down to either 26 or 15 percent in 10 years. Acquisition of more than 25 percent shareholding will require SEBI approval. Combined holdings of all foreign residents cannot exceed 49 percent, which is in line with the existing norms.

These reforms come in the backdrop of market concentration by dual entities in both the stock exchange – National Stock Exchange (NSE) and Bombay Stock Exchange (BSE) – and depository space – Central Depository Services Ltd. (CDSL) and National Securities Depository Ltd. (NSDL) – collectively called the Market Infrastructure Institutions (MIIs) and the need for competition as a reason for review of ownership norms.

Food for Thought

This move by SEBI aims at encouraging competition by lowering the entry barriers in a market that is a duopolistic one. Such a market could become prey to excessive concentration and institutional delay in efficiently responding to the changing market dynamics. This could reduce the pace of trading, record-keeping, supervision and risk management practices.

These traditionally-driven stock exchanges are oblivious to new technology like distributed ledger, artificial intelligence and machine learning. New tech-oriented entities would consistently challenge the already established MIIs, thus creating a competitive landscape open for innovation. A case in point is product innovation like tokenised securities, which are cryptographic representations of traditional shares and whose presence in blockchain enables features like a built-in smart contract system that can incorporate regulations in the token— something missing in the current stock certificate. Stock exchanges like the Swiss Stock Exchange have already formed partnerships to enable the trading of digital assets.[12]

These new norms do not reform the commodities market and trading within that arena. The reason could be SEBI's wariness in permitting new exchanges in this market reinforced by the National Spot Exchange Ltd. (NSEL) fiasco. In July 2013, NSEL defaulted on payments to its investors. Customers of certain favoured NSEL brokers had been allowed to take long-term, 30-40 day forward contracts in commodities like sugar

12 https://timesofindia.indiatimes.com/business/india-business/sebi-for-100-stake-in-ses-depositories/articleshow/80142222.cms

and wheat despite the exchange being allowed only to handle spot contracts. Investors in National Spot Exchange Ltd. (NSEL) lost US$950mn.[13]

While this was a case of worry, the misuse of rules cannot be attributed to excessive players in the market. It requires high-end supervision. If there is a concern about abuse of rules, that should be tackled through better supervision, rather than clamping down on the market with burdensome rules. Now that SEBI has deciphered the core problem, it must tackle it with elegant solutions. Exchanges can be freed from this responsibility and the same can rest upon an independent organisation.

Vehicle Scrapping Policy

The Union Ministry for Road Transport and Highways announced the government's vehicle scrapping policy, released as part of the Budget 2021. Under the policy, personal vehicles will undergo a fitness test after 20 years, while commercial vehicles require it after 15 years. Currently, around 17 lakh commercial vehicles are older than 15 years and do not have a valid fitness certificate. Similarly, there are about 51 lakh private vehicles that are more than 20 years old.[14]

The testing facility, which will be set up on a public-private partnership (PPP) basis, will hold automated tests and certify whether a vehicle is fit or not to ply on roads. The states will impose a green tax over and above the road tax, which the vehicle owner will have to pay for a renewal of registration.

If any vehicle fails to pass this automated test, such vehicles will be automatically deregistered from the central database. Driving such unregistered vehicles will attract stiff penalties, and the vehicles would be impounded. Consumers who junk their old vehicle and buy a new one under the Vehicle Scrapping Policy will get around 25 percent rebate on road tax for personal vehicles, 15 percent for commercial vehicles and a 5 percent discount on the purchase of new vehicles against the scrapping certificate, from automobile companies. In addition, the registration fees may also be waived off for the purchase of a new vehicle against the scrapping certificate.

Food for Thought

The automobile industry has recorded a decline in sales by nearly a fourth in the first nine months of the fiscal year of 2020-21. The Vehicle Scrapping Policy, which aims to

---

13 https://www.forbes.com/sites/saritharai/2014/09/24/commodities-crash/?sh=231445734483

14 https://indianexpress.com/article/opinion/editorials/scrapping-vehicles-road-safety-nitin-gadkari-ngt-7241998/?utm_source=newzmate&utm_medium=email&utm_campaign=opinion&tqid=l_2yZXwlChABtzt9uWEFfonZDDlWrfVjwT0arkRu

create an eco-system for phasing out of unfit and polluting vehicles, is expected to provide a big leap in the automobile industry indirectly. Scrapping of old vehicles would boost the availability of low-cost raw materials for the automotive, steel and electronics industry, thus reducing the country's import bill. The cost of manufacturing for auto manufacturers is expected to come down by around 30-40 percent.[15]

The states and automakers are yet to provide their comments if they are willing to extend the leverage of rebate and discount to the consumers, as the same has only been 'advised' by the scrapping policy. Further, while the policy is expected to boost the automobile industry, the initial years are going to be capital intensive with minimal returns primarily due to low awareness amongst consumers. For instance, there are no old vehicles available today because people are not aware of environment-friendly recycling companies like CERO.

However, a joint venture between Maruti Suzuki and Toyota Tshusho Corporation called Maruti Suzuki Toyotsu India has also entered this space and is building its first plant. Therefore, the policy has already given impetus to the used-car business. The draft Motor Vehicles (Registration and Functions of Vehicle Scrapping Facility) Rules, 2021, lay down the procedure for establishing a registered vehicle scrapping facility (RVSF). With the process streamlined under RVSF, consumers are expected to be less scared of scrapping the vehicle lying in their garage.

Additionally, a Rs. 18,000 crore scheme will be launched for a city bus system to increase the availability of public transport in urban areas. It will be run on a PPP basis. This shall facilitate the deployment of innovative models to enable private sector players to finance, acquire, operate and maintain over 20,000 buses.[16] *This shall provide a fillip to economic growth, create employment opportunities for the youth, and enhance mobility for urban residents.*

Furthermore, such discarded cars, after refurbishment, can also be exported to the poorer countries of Asia and Africa. They usually import pre-owned cars from rich countries, such as UK, USA, Japan and Germany, for their own markets because of low affordability. In many of the Commonwealth countries of Africa, consumers would be happy to buy a right hand driven car, which are common in India, rather than a left hand driven car from rich countries.

15 https://timesofindia.indiatimes.com/india/scrap-old-car-get-5-discount-on-new/articleshow/81458294.cms

16 https://timesofindia.indiatimes.com/business/india-business/india-enters-scrap-age-gets-18000-crore-bus-boost/articleshow/80640501.cms#:~:text=NEW%20DELHI%3A%20The%20government%20on,public%20transport%20in%20urban%20areas.

Grant of Government Business to Private Banks

The Centre has lifted the restrictions on the grant of government businesses to private banks. All private sector banks will now be allowed to conduct government-related banking transactions. The transactions include revenue payment facilities such as taxes, pension payments and dealing in small savings schemes.

In 2003, three private sector banks: HDFC Bank, Axis Bank and ICICI Bank, were permitted to undertake government business. RBI had allowed all private sector banks to undertake government business in 2012. However, the Ministry of Finance reversed this decision to provide further authorisation for banks in September 2012.[17]

With the lifting of the embargo, there is now no bar on the Reserve Bank of India (RBI) for authorisation of private banks for government business, including government agency business. For undertaking government agency business, the RBI pays a commission to banks.

The central bank carries out the general banking business of the central and state governments through agency banks appointed under Section 45 of the RBI Act, 1934. The government transactions eligible to the commission are revenue receipts, payments on behalf of the central and state governments, pension payments, and any other item specified by the RBI. The current directive relates to the central government's business.

Food for Thought

Earlier, only a few private banks, including Axis Bank, were permitted to participate in government businesses.[18] Not only was that, but only public sector banks (PSBs) allowed a small subsidy on their farm loans. However, now, even private banks can be equal partners in developing the Indian economy and assist in furthering the government's social sector initiatives and enhancing customer convenience. This will also benefit customers in specific instances like businesses and firms that maintain accounts with PSBs to pay tax. Working together with public and private banks towards a sustainable Indian economy would enhance spur competition and deliver high efficiency in the standards of customer services. Private Banks have been known to

17 https://journalsofindia.com/using-private-banks-for-government-business/

18 https://www.livemint.com/industry/banking/private-banks-can-get-govt-business-embargo-lifted-11614163997150.html

foster, embrace and internalise newer technology and systems. This move will allow those processes to be efficiently used for government spends and projects.[19]

The government's policy to enhance competition by including private players in the development of the economy remains crystal clear as it comes in the backdrop of the two banks being privatised, other than IDBI Bank, as announced in the budget. As Niti Aayog has suggested, the other two banks would be the Central Bank of India and the Indian Overseas Bank.[20]

Whether state governments take a cue from this action and become open to engaging closely with private banks remains to be yet witnessed. Additionally, PSBs will get impacted by the move, as this is a substantial business for them. There is a strong chance that a good chunk of this business will move to private banks over some time. However, time and again, private banks have proved to be competent to handle mandates for public benefit with a robust digital backbone. One most likely thing to be expected is that there will be better efficiency and faster service, and it could even push some of the public sector banks to improve.

One Market Code for ease of doing business

In an attempt to further 'Ease of Doing Business' policies in India, the Finance Minister, Nirmala Sitharaman, in her Budget 2021-22 speech, has proposed introducing a unified Securities Market Code.

This unified code will aim to consolidate multiple laws that currently regulate the market for securities and stocks in the country – namely the Securities and Exchange Board of India (SEBI) Act, 1992, the Securities Contracts (Regulation) Act (SCRA), 1956, the Depositories Act, 1996, and the Government Securities Act, 2006.

The SEBI has also been notified of the authority for regulating a proposed gold exchange in the country. In addition to this new role, SEBI may now additionally also regulate government securities, taking over from the RBI, which has, thus far, been authorised to do so under the Government Securities Act 2007.

The proposed securities market code is in tune with previous discussions on the National Financial Reporting Authority (NFRA) — an independent regulator to oversee India's auditing profession and accounting standards.

19 https://pib.gov.in/Pressreleaseshare.aspx?PRID=1700463
20 https://www.zeebiz.com/india/news-psu-banks-privatisation-news-central-bank-indian-overseas-bank-iob-among-top-contenders-in-niti-aayog-list-get-full-details-here-158120

Food for Thought

The merger of the four laws above into one unified market code would eliminate duplication, simplify the law and improve ease of doing business in India. Further, it is also expected to identify outdated laws and modernise them. It will provide clarity to all stakeholders, including market intermediaries and the investor community at large and remove possible conflicts in the regulatory framework. Though SEBI is the implementing body of these four acts, the courts have, on several occasions, interpreted the effect of one or more of these acts on each other, which resulted in a very complex process.[21] *It will present a cohesive rubric of law instead of the piecemeal approach we have had till now.*

There have been some discrepancies within the four laws themselves. For instance, under the SCRA, there is no specific provision where any order passed by a clearing corporation can be challenged before the Securities Appellate Tribunal (SAT). However, SAT has held in landmark judgements like IL&FS Securities Services Ltd. v. NSE Clearing & Ors.,[22] *that decisions of clearing corporations are appealable under Section 23L of the SCRA.*[23]

Therefore, what has been evolved has been from the precedents of the Indian courts. Hence, there is scepticism if the unified code would resolve the concerns apparent in its constituent Acts or would just consolidate the problems into a single code.

There are many regulations in which one needs to look at various securities law statutes to ensure regulatory compliance. For instance, dematerialised securities are governed by both the SEBI Regulations and the Depositories Act.[24]

A single market securities code will make compliances easy and transparent, making the Indian securities market a globally friendly one. This code, along with an Investor Charter,[25] *shall instil confidence in domestic and foreign investors through customisation of laws to provide for a flexible approach to international equity investing in response to changing market opportunities.*

SEBI has time and again batted for forward-thinking measures. For instance, SEBI initiated to establish Social Stock Exchanges and encourage adoption and usage of

---

21 https://economictimes.indiatimes.com/news/economy/finance/budget-2021-one-country-one-securities-code/articleshow/80640680.cms?from=mdr

22 Appeal No. 262 of 2019, The Securities Appellate Tribunal

23 https://www.corridalegal.com/publications/2021/06/17/unified-securities-code/

24 https://www.financialexpress.com/market/single-securities-code-to-ease-compliance-say-experts/2186666/

25 http://www.businessworld.in/article/A-Securities-Market-Code-On-The-Anvil-For-New-India/05-02-2021-374170/

FinTech through the latest revised framework for Innovation Sandbox.[26] Considering *SEBI's evolution, a renewed Code making SEBI an 'omnibus regulator' may auger well, compounded by the added consumer advantage that the announced Investor Charter may usher in for India.*

Delicensing the electricity distribution companies

The government has undertaken to delicense the electricity distribution sector and allow any company to supply power in any area. Electricity Act (the Act) currently provides for distribution infrastructure sharing by eligible licensees.

The proposed amendment to the Act is to omit the word 'distribution licensee' to allow private players to enter the sector. The existing distribution companies will remain as they are. They will continue functioning, but now they will be open to others entering the market. This has been brought about in the footsteps of delicensing of electricity generation, which took place in 2003.

New power suppliers would have to get registered with regulators and meet set standards. There will be a price ceiling. As per the Supreme Court's directive, there has to be a Member (Law) appointed in the regulatory commission. The same shall be incorporated in the delicensing reforms as well.

There will also be more benches of the tribunal. Against the previously proposed separate Contracts Enforcement Authority, the proposed bill will provide for a separate bench headed by legal members in central and state regulatory commissions to tackle issues related to parties reneging on power contracts. The budget has accommodated a Rs. 3.00 lakh crore distribution reforms scheme will require the loss-making distribution companies to access funds for revival.

Food for Thought

Lowering the entry barriers in the electricity distribution sector would allow a fair interplay between established monopolistic entities and the private players to provide services to the consumers. This will end the monopoly of the existing players. This serves the aim of consumer welfare as not only will it induce competition in the industry, but it will also empower consumers to switch from their existing distribution company to a more efficient one if need be. This shall not affect the existence of the current players; it only opens them to a greater market.

26 *Ibid*.

Barring few states in India, most were in favour of the policy. The minority ones are averse to losing monopoly control from their hands to the private sector. However, such a monopoly, even if without the check of the government can induce them to quote exorbitantly high prices or provide inadequate service, which negates the whole aim of consumer welfare.

For instance, the private distribution company in Kolkata has one of the country's highest tariffs and must be checked to protect the consumers.[27] Thereby, the government has allowed new power suppliers to get registered with the regulators and meet set standards to compete with the existing players within the price ceiling. To ensure the scheme's implementation in the sense that there is no resistance to new players in the market, in any state, heavy penalties (going up to Rs. 1 crore) are sought to be imposed. This is as per Section 42 of the Act, which invites penalty in dissatisfactory implementation of 'open accesses'.[28]

The provision for loss-making distribution companies to revive is subject to the companies meeting certain conditions, like, implementing smart meters and giving a roadmap to reduce losses. Disbursements would continue based on the targets completed.[29] The policy could pave a pathway for a larger scheme of things as with the advent of private players in the sector, the efficiency may be enhanced to bring about path-breaking reforms.

For long, the government can take lessons from Mumbai, where two private sector operators have functioned in the same territory. This happened due to an error and has never been corrected. Both companies use others' wires to transmit to their customers' existing in other's geography, rather than string their wires. Once, Reliance started charging high wheeling charges to Tata's customers because they had to be given power through Reliance's infrastructure. The Maharastra State Electricity Regulatory Commission stepped in and reduced the wheeling charges to a reasonable amount.[30]

---

27 https://www.livemint.com/news/india/whether-they-are-govt-monopolies-or-pvt-monopolies-they-are-monopolies-singh-11628525762694.html

28 https://economictimes.indiatimes.com/industry/energy/power/penalties-will-make-discom-delicensing-a-success-rk-singh/articleshow/85082004.cms

29 https://economictimes.indiatimes.com/industry/energy/power/will-delicense-discoms-to-end-monopolies-rk-singh/articleshow/80655717.cms?from=mdr#:~:text=200%2B%20Deals-,NEW%20DELHI%3A%20The%20government%20will%20delicense%20the%20electricity%20distribution%20sector,minister%20R%20K%20Singh%20told%20ET.

30 https://www.business-standard.com/article/economy-policy/mumbai-consumers-caught-in-reliance-tata-power-play-110042600031_1.html

Head start of coal exchange

The Indian government is launching its first coal trading platform on the lines of commodity or energy exchange. Entire coal produced in the country would be traded on this coal exchange, an online platform where demand and supply make pricing transparent.

The government proposes to start a coal exchange to trade coal mined from private commercial mines along with Coal India Ltd.'s (CIL) spot auctions. It further proposes to trade a certain amount of CIL's spot auctions on the exchange for volumes. CIL sells 20 percent to 25 percent of its coal through an auction mechanism that can migrate to the trading platforms and help it achieve some volume. Presently, imported coal is settled on markers from Indonesia and Australia.

The country's coal import fell by 20 percent to 18.93 million tonnes (MT) in May 2020. The government is planning to bring the country's 'avoidable coal imports' to zero by 2023-24. The country's coal imports had increased marginally by 3.2 percent to reach 242.97 MT in the fiscal year of 2019-20. CIL, which accounts for over 80 percent of the domestic fuel output, has been mandated by the government to replace at least 100 MT of imports with domestically-produced coal in the fiscal year 2021-22.[31]

Food for Thought

This scheme of action intends to set up a mature coal trading market by the time the commercial mines (the private players) become operational. As against the gas trading exchange set up only in 2020, while the first major commercial gas supply from non-government sources started in 2009 (KG basin), the coal exchange is on a speedy pace. It is expected that in about 5-7 years, 40 percent of the coal will be produced by companies other than CIL. By that time, the exchange would have matured to provide a transparent platform for discovering prices and selecting buyers.

An obvious conclusion of this framework would be to limit, if not eliminate, the dominance of CIL in the market, as its output target is one billion tonnes by 2024.[32] It throws open the sector to market forces of demand and supply. This would possibly mark an end for the Fuel Supply Agreements (FSA) regime of CIL, where the state-owned miner signs coal supply contracts with customers. Not only did it have a

31 https://www.businesstoday.in/latest/corporate/story/india-gears-up-to-launch-first-coal-trading-exchange-260579-2020-06-08

32 https://powerinsight.vision-media.co.in/india-plans-to-start-its-first-coal-exchange/

dominant position in the market, but CIL also went a step ahead to abuse its position by inserting unfair clauses in the FSA during the spot e-auction scheme. It imposed penalties on those bidders who failed to fulfil their obligations while remaining aloof from any liability of its own if there is a failure from the supplier's end.

Other countries already have coal trading exchanges.[33] *It will allow the Indian market to leverage real-time pricing potential. With the barriers gone, the coal sector will become more competitive and transparent.*

C. Policies Inhibiting Competition

Finance Ministry and Niti Aayog had raised red flags before Adani's clean sweep of six airports

Overruling the objections from the Finance Ministry and Niti Aayog regarding the 2019 airport bidding process, the government cleared the way for a clean sweep of six airports – Ahmedabad, Mangalore, Lucknow, Jaipur, Guwahati and Thiruvananthapuram – by the Adani Group.

More so, in 2018, before the bids for these six airports were invited, a note from the Department of Economic Affairs (DEA) said: "These six airports' projects are highly capital-intensive projects. Hence, it is suggested to incorporate the clause that not more than two airports will be awarded to the same bidder, duly factoring in the high financial risk and performance issues. Awarding them to different companies would also facilitate yardstick competition."

These six airports are in addition to the clearance given to the takeover of the country's second-largest airport in Mumbai. Together, these airports handled 7.90 crore passengers during the last fiscal (2019-20), nearly a fourth of the 34.10crore domestic air passenger traffic. Furthermore, the Mundra airport has also been cleared to be converted into a full-fledged international commercial airport. Adani also has a controlling stake in the upcoming Greenfield airport in Navi Mumbai, following the GVK deal.

Food for Thought

There are at least two issues involved with the clearance given for the Adani group to take control of six airports plus the Mumbai airport – competition and crony capitalism – which seems to have been ignored by the competent authority.

33 https://www.angelone.in/blog/plans-on-table-to-launch-indias-first-coal-trading-exchange

The matter of competition was also raised by the DEA. A discussion on the bidding process cited the examples of the Delhi and Mumbai airports, where GMR, the only qualified bidder, was not given both the airports. DEA had also referred to the privatisation of Delhi's power distribution, for which the city was carved out into three zones and given to two companies.[34]

Interestingly, the CCI had earlier approved Adani Group's proposed acquisition of controlling stake in the Mumbai airport from GVK Airport Developers under the green channel route (automatic approval of certain deals subject to various conditions). In the notice, Adani Group said there is no overlap in the relevant geographic market and vertical or complementary linkages between the activities of the group and GVKADL in India.[35]

Crony capitalism can be inferred when one finds ignorance of certain information placed on record while finalising the bid process. For instance, DEA had recommended incorporating the clause that not more than two airports will be awarded to the same bidder. Similarly, the NITI Aayog had raised a concern that a bidder lacking sufficient technical capacity can jeopardise the project and compromise the quality of services that the government is committed to provide.[36]

Ironically, the competent authority responded that the Empowered Group of Secretaries had already decided that "prior airport experience may neither be made a prerequisite for bidding nor a post-bid requirement. This will enlarge the competition for brownfield airports, which are already functional".[37]*This is quite a pity and will haunt us in the future.*

Public Sector Banks push for RuPay cards

RuPay cards are issued with savings accounts opened under the Pradhan Mantri Jan Dhan Yojana (PMJDY), which has led to a soaring in the number of such cards issued. Under the PMJDY scheme, free RuPay debit cards were given to all bank account holders.

34 https://indianexpress.com/article/business/adani-airports-finance-ministry-niti-aayog-7146853/?utm_source=newzmate&utm_medium=email&utm_campaign=morningbrief&tqid=i__mc350UhMB5zeKNjoAASNpVg..LaowkywFm3Cr

35 https://www.business-standard.com/article/companies/adani-s-acquisition-of-mumbai-airport-from-gvk-gets-cci-green-signal-120092401172_1.html

36 https://indianexpress.com/article/business/adani-airports-finance-ministry-niti-aayog-7146853/?utm_source=newzmate&utm_medium=email&utm_campaign=morningbrief&tqid=i__mc350UhMB5zeKNjoAASNpVg..LaowkywFm3Cr

37 *Ibid*

As of November 30, 2020, banks have issued 603.6 million RuPay cards, constituting about 60 percent of all the cards in the market. Of this, 970,000 are RuPay credit cards and the others are debit cards. State-owned banks have stopped issuing non-RuPay debit cards unless specifically requested.

Further, currently, merchants pay up to 0.9 percent of every transaction as Merchant Discount Rate (MDR), a part of which goes to banks issuing non-RuPay debit cards like Visa and Mastercard. MDR is the charge paid by the merchant to the bank, card network, and the point-of-sale (PoS) terminal provider for offline transactions and to the payment gateways for online purchases. However, the government removed MDR on RuPay cards from January 01, 2020.

Food for Thought

RuPay, the Indian card payment network, is a product of the National Payments Corporation of India (NPCI), the country's organisation in charge of retail payments. The government has been trying to promote India's home-grown card network. Due to this push, the lenders have stopped issuing non-RuPay debit cards. On the customer end of the spectrum, it has affected their freedom of choice.

As given by the Finance Minister Nirmala Sitharaman, the basis is that RuPay's global network has made it unnecessary for Indian customers to be given other cards. However, the global capability of RuPay is still in its formative years, which is why some do not want RuPay as they often travel abroad. Public Sector Banks have been telling customers that RuPay has everything that a Visa or Mastercard payment instrument has. However, there have been complaints regarding transaction failures in RuPay cards abroad, that is why other card networks are preferred in certain cases.[38]

Further, banks spent a certain amount to issue a plastic card with an embedded chip that earns no revenue. Now, even the revenue which was being generated from MDR has been halted. Certain private banks continue to issue cards other than RuPay.

If a customer wants a Mastercard or a Visa, the bank cannot deny it. However, in a world where UPI transactions are growing and merchants are switching to QR code stickers and mobile payments, plastic cards are already losing their importance, except in rural markets. On top of this, the government has invariably pushed to reduce competition to establish a dominant position of the RuPay cards. Having low efficiency in terms of transactions taking place abroad, such a policy offers little incentive for

38 https://bfsi.economictimes.indiatimes.com/news/financial-services/all-about-rupay-indias-payments-network/84969331

improvement due to the reduced number of players in the market with a better product.

Indian steel and iron items preferred for public works

In a move from the 'Make in India' to Atmanirbhar Bharat (self-sufficient India), the campaign has taken a huge incremental step. The government mandated the use of domestically manufactured metal and alloy items.

As per this directive, locally made metal products are to be preferred in public projects. Preference would be given to 49 domestically manufactured iron and steel products in public contracts, tubes, pipes, railway tracks, wires, tables and household items, tanks, containers, railway coaches and rolling stock. "Domestic" will be interpreted on the basis of whether a company is incorporated in India.

The norms apply to all centrally-sponsored schemes. Local bodies, which execute public contracts, will have to act as per the order if the procurement value is more than Rs. 5 lakh. The government has specified minimum local value addition ranging from 20 percent to 50 percent for various steel products.

Food for Thought

This move of the government is aimed at boosting domestic production, with steel into special focus.[39] The Steel Ministry had earlier pushed the Indian Railways to utilise domestically produced rails when it was citing the shortage of capability within the nation and was arguing for imports.[40] However, this time, the policy is one with a mandate aiming directly at safeguarding the home industries, but an indirect effect of the same is going to cause strain in the bilateral trade relations of India with other nations.

Besides, the Ministry has armed itself with powers to limit the import of iron and metal from nations that do not enable Indian corporations to participate in their public procurement schemes resulting from restrictive situations. This power can "restrict or exclude" bidders from that nation-state from the eligibility norms.[41]

For an extended period, Indian companies have complained about facing harsh treatment in governmental contracts in China and the ASEAN countries. This act of the Ministry is seen as being counter-offensive. While the Indian government cannot limit

39 https://timesofindia.indiatimes.com/business/india-business/49-indian-steel-iron-items-to-be-preferred-for-public-works/articleshow/80127094.cms

40 https://thegreaterindia.in/news/business/49-indian-steel-iron-items-to-be-preferred-for-public-works/

41 *Ibid*

imports resulting from its commitments at World Trade Organisation (WTO), it has not provided to bind itself by signing the general public procurement regime in the multilateral body.

While this may be a "fair" treatment in the sense of "an eye for an eye", the opportunity cost of the same is facing a backlash from the international trading community. It shall "over protect" the domestic manufacturers and reduce the scope of improvement in terms of both quality and quantity. Quantity is directly proportional to the domestic capacity, which has been a point of contention between procurement managers, including public ones like the Railways and the manufacturers. Given the supply-price matrix, the price of steel and other related items is expected to rise in the coming months.

DISCLAIMER:

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