

COMPETITION DISTORTIONS IN INDIA – A CUTS DOSSIER

(CDI 59: January to March 2023)

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

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

Dear Reader,

Greetings!

We are pleased to present the Competition Distortion Dossier #59 for the first quarter of the year, i.e., January to March 2023. To ensure that you do not miss any updates from this quarter, we have extensively covered the most significant news stories from these three months that 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.

The first section discusses the new trade policy which was unveiled in March 2023. The introduction of the policy has been delayed by three years due to the COVID-19 pandemic. Moving into the second section of the dossier, this part discusses pro-competitive policies such as the increasing market share of the Big 5 companies in India, Tata Group's plan to invest in Air India Vistara, the Ministry of Corporate Affairs rollout of the facility for e-adjudication of company law violations entirely in the virtual mode. This section also discusses the government's confidence in meeting the divestment target and ease of installation of telecom infrastructure on defence land.

The last section of the publication deals with policies inhibiting competition in the market. It discusses issues, such as the Indian government's proposed ban on e-pharmacies, predatory pricing and protectionism in the airline industry, Vodafone's financial distress and the impact on the telecom sector. It also discusses the privatisation of public sector banks and tweaks in the insolvency code.

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

Cheers!

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A. Trade Policies

India's Foreign Trade Policy 2023

The government released the Foreign Trade Policy (FTP) 2023 on April 01, 2023. The policy aimed at increasing the country's exports to US\$2tn by 2030 and focuses on international trade settlement in Indian rupees. It also proposes to shift from an incentives-based regime to a remission and entitlement-based one to achieve this goal.

Unlike the previous practice of announcing a 5-year FTP, the new policy does not have an end date and will be updated periodically as per the requirement. The previous five-year policy had come into effect on April 01, 2015, but due to the global pandemic's impact on the economy, it was extended multiple times. The last extension was granted in September 2022 until March 31, 2023.¹

Food for Thought

The FTP is based on the Foreign Trade (Development and Regulation) Act, 1992 when trade policy instruments catered to restricting and regulating trade. In the 21st century, the role of international trade has changed. Trade policy needs to focus more on trade facilitation than procedures. It focuses on export incentives. However, in contemporary times, India's exports need to incorporate technology to improve product quality and production efficiency. This will enable the country to engage better in international trade agreements such as the Indo-Pacific Economic Framework.²

The policy introduces four more Towns of Export Excellence (TEE) - Faridabad, Moradabad, Mirzapur and Varanasi - in addition to the already existing 39 TEEs. If implemented well, this initiative would promote a much sought balanced regional development in the country. India's e-commerce sector is expected to grow by US\$200- US\$300bn. Hence, the extended benefits to the e-commerce sector are a welcome move. Thus far, India has strayed away from trade agreements, such as Regional

¹ <https://www.indiatoday.in/information/story/india-new-foreign-trade-policy-2023-all-you-need-to-know-2353926-2023-03-31>

² <https://indianexpress.com/article/opinion/columns/foreign-trade-policy-2023-old-policy-for-new-world-8538615/>

Comprehensive Economic Partnership (RCEP)³ and WTO's e-commerce negotiations due to incompatibility with its data protection laws.⁴

India needs a trade policy that focuses on export competitiveness. Achieving high growth calls for action on multiple fronts. This was discussed in a series of meetings organised by CUTS International with groups of economists and experts, and there was a consensus that no country has achieved high growth without robust growth in exports. This relationship is likely to remain valid in the future.⁵

B. Policies Promoting Competition

Should India Break up Its Big Conglomerates?

India should break its large conglomerates-the 'Big Five'-to increase competition and reduce their ability to charge higher prices, former Deputy Governor of the Reserve Bank of India, Viral Acharya argued in a new paper for Brookings Institution, an American research group. The share of India's 'Big Five' conglomerates - the Reliance Group, Adani Group, Tata Group, Aditya Birla Group and Bharti Airtel - in total assets of non-financial sectors rose from 10 percent in 1991 to nearly 18 percent in 2021. This has led to an increase in industrial concentration.⁶

The share of the Big Five's mergers and acquisition deals has also doubled since 2011, even though the aggregate number of deals declined. Hence, their presence lies across different industries and the market power in that industry is high.

Food for Thought

Part of Acharya's reasoning was that the Indian consumer could not fully benefit from the declines in input prices of goods such as metals, coke, refined petroleum products etc. as well as services such as retail trade and telecommunications because of the control of India's Big Five on manufacturing. From the perspective of economic theory, the link between the level of competition and inflation is tenuous. Inflation is affected by volatile

³ <https://thewire.in/economy/india-rcep>

⁴ <https://m.economictimes.com/news/economy/foreign-trade/india-seeks-talks-before-wto-fixes-ecommerce-rules/articleshow/97808617.cms>

⁵ <https://economictimes.indiatimes.com/opinion/et-commentary/india-should-adopt-flexible-interest-based-negotiations-not-oppose-trade-plus-links-with-policy/articleshow/97926249.cms?from=mdr>

⁶ https://cfo.economictimes.indiatimes.com/news/break-up-indias-biggest-firms-says-former-rbi-deputy-governor-viral-acharya/99105283?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etcfo_news_2023-03-30&dt=2023-03-30&em=cHNtQGN1dHMub3Jn

components such as food, oil and energy, not all of which can be attributed to the monopoly of the Big 5. However, the market structure of an economy as a whole affects macro variables such as inflation, exchange rate etc.⁷

The more significant concern is to analyse whether market power is becoming more concentrated in India due to the dominance of the Big 5 in various sectors. According to a report by wealth management firm Marcellus, this is the case. The top 20 profit generators earn a staggering 80 percent of the nation's profit. Crony capitalism and protectionism by the Indian government have a role to play. For instance, Reliance Jio (one of the Big 5), the largest mobile network operator in India, offers its services at predatory prices in the telecom sector.⁸

Significant Efforts of Air India for a Turnaround

In January 2022, Air India was privatised when the Indian government sold 100 percent of the company along with its subsidiary Air India Express to the Tata Group. Till that time Air India has become a chronically sick, loss-making public sector undertaking (PSU). It cost the taxpayer around US\$1bn a year to keep the state-run airline's aircraft flying.⁹ This becomes one of the best examples of how privatisation can help deliver positive turnarounds in a short span.

In the year of its privatisation, the airline placed the biggest order of aircraft in India's aviation history. At present, after completing a year under the Tata Group, Air India's management has charted out aggressive plans for the second year aimed at making it the best carrier in the country. The plan has been charted in the context of the merger of Air India and Singapore, which aimed for one of the most ambitious turnarounds in international aviation history. The idea was to create an airline that ranks amongst the best in the world. With this merger, Air India will have the potential to be a leading Indian airline to represent the new India on the global stage. According to the CEO, there has been remarkable progress in a very short space of time.¹⁰

While improving Air India, the airline has undertaken certain other ambitious actions such as merging Air India Express with Air Asia, kicking off the establishment of a new

⁷ <https://thewire.in/business/break-up-big-5-reduce-tariffs-bring-ibc-back-on-track-what-all-viral-acharya-said-in-new-paper>

⁸ <https://www.livemint.com/opinion/columns/is-monopoly-pricing-by-india-s-big-5-stoking-inflation-11680722231455.html>

⁹ [Privatized Air India's takeoff can lead other PSUs to thrive as well | Mint](#)

¹⁰ [Air India has made remarkable progress in a short space of time: CEO - The Hindu BusinessLine](#)

InfoTech Centre, and an Aviation Academy. Furthermore, they have done a much-talked-about short- and-medium term fleet expansion. In December, Air India said it would spend more than US\$400mn to refurbish the interiors of its entire wide-body fleet. It is looking at a 30 percent market share in international operations over the next five years as it taps into new routes, ramps up its fleet and brings in a host of changes in passenger services.

Overall, there has been a high priority on improving policies, practices and support systems, not just benefits. A culture of fostering integrity, accountability, collaboration and trust can be seen.

Food for Thought

There have been further signs of the formerly government-owned carrier's whirlwind transformation under its new owner Tata Group. Air India is testing ChatGPT, OpenAI's popular chatbot, to replace paper-based practices. Till now Air India was tied to an antiquated manual pricing system when setting airfares, so shifting to algorithm-based software long used by rivals will help to squeeze out more revenue from each flight.¹¹

The push to modernise underscores the decay left by years of under-investment as Air India looks to shed decades-old bureaucratic processes and recapture customers from Dubai's Emirates and powerful domestic rival IndiGo. Air India's success is critical to India's success, as it will play a crucial role in harnessing the scale and reach to turn India into a global aviation force¹² like Dubai or Singapore. Therefore, these are steps towards revitalising not just the airline, but the aviation sector as a whole.

MCA to Roll out E-adjudication

The Ministry of Corporate Affairs (MCA) will roll out the facility for e-adjudication of company law violations entirely in the virtual mode. The key proposed features of the proposed portal include e-adjudication, e-consultation and compliance management among others. The Ministry is also setting up a new national centre, the Centre for Processing Accelerated Corporate Exit, to act as a single window facility for companies that wish to voluntarily exit from the business. The e-adjudication facility will be available for compoundable offences and help in preventing litigation from reaching

¹¹ [Analysis: From manual pricing to ChatGPT - How Air India is transforming under Tata | Reuters](#)

¹² [Exclusive: India resists calls for more air access in drive to be global aviation force | Reuters](#)

the National Company Law Tribunal (NCLT), which already has a high load of cases. E-adjudication is expected to improve the ease of doing business.

The MCA played a proactive role in enabling the hassle-free functioning of businesses during the pandemic by allowing virtual board meetings through video conferencing and other audio-visual means by amending the rules on conducting board meetings. The MCA had also relaxed mandated physical meetings on specified matters and allowed all the matters in board meetings to be dealt with through video conferencing or other audio-visual means. Annual general meetings and extraordinary general meetings have also been allowed virtually. Therefore, the way the MCA has leveraged technology and established linkages with other agencies in facilitating single-window approvals has helped in the corporate sector's growth.

The number of new company registrations has grown from over 64,300 in FY15 to over 167,000 new registrations in FY22. MCA has also linked the MCA21 system with the Central Board Direct Taxes (CBDT) for the issue of the permanent account number (PAN) and Tax Deduction and Collection Account Number (TAN) within a day on an average for companies incorporated using a facility offered by it.¹³

Food for Thought

The planned rollout of the e-adjudication facility follows the decriminalisation of offences under the Companies Act. Once implemented, the facility is expected to lower the compliance burden of businesses. For decriminalised offences, a designated government official will be the adjudicating authority. Since these are procedural or technical lapses, they will be resolved within the ecosystem of the MCA. Version three of MCA21 envisages the introduction of artificial intelligence and machine learning which will further facilitate ease of doing business.

DIPAM Confident of Meeting ₹51,000 crores Divestment

The government is confident of meeting the target of ₹51,000 crores for the next financial year, as it expects many divestment processes initiated in the current fiscal to be closed by the next fiscal year. These include the disinvestment of IDBI Bank, Shipping Corporation of India and NMDC Steel Ltd.¹⁴

¹³ [MCA to roll out e-adjudication before March-end | Mint](#)

¹⁴ <https://economictimes.indiatimes.com/news/economy/finance/dipam-confident-of-meeting-rs-51000-crore-selloff-target-for-fy24/articleshow/97588350.cms?from=mdr>

The Department of Investment and Public Asset Management (DIPAM) has termed the FY24 budgeted estimate for disinvestment receipts as "realistic" as it was based on practical considerations as divestment was dependent on many factors, including market conditions, the status of transactions and global economic outlook. The budget has pegged disinvestment receipts at ₹ 51,000 crores for the next financial year, marginally higher than the current fiscal's downwardly revised ₹50,000 crores.

Food for Thought

There has been criticism that the government had shifted the focus away from divestment with the budget speech omitting any mention of stake sales or privatisation. But DIPAM and government officials have termed this business-as-usual approach about disinvestment and pointed out that several line items in the budget are not mentioned in the budget speech. The government is now focused on calibrated disinvestment. The budget also provided clarity on the carry forward of losses for state-owned entities and their subsidiaries under the income tax.¹⁵

The government has so far raised ₹31,106 crores from the divestment in the current financial year and out of which ₹21,000 crores came from Life Insurance Corporation's initial public offer. The government is expecting to meet the revised target for FY23 from minority stake sale and mainly offer for sale (OFS) of part of its residual stake in Hindustan Zinc Ltd by next month. The exact proceeds will also depend on the timing and size of the offer, which will depend on the market conditions. The government is not looking at divesting a company at any cost; it needs to take into account dividend receipts that come from state-owned entities.

The performance of Central Public Sector Enterprises Exchange Traded Fund (CPSE) indices has been very good in recent years and it has outperformed both the Nifty and the Sensex. The Centre has so far received ₹36,957 crore from the dividends of CPSEs. There has been a delay in the demerger of the Shipping Corporation of India, but the demerger process is expected to clear soon. DIPAM was working closely with the Railway Ministry on the disinvestment of Container Corporation of India Ltd and the transaction is expected to be closed by the next financial year.

¹⁵ [Govt takes 'pragmatic' view on disinvestment targets | Mint](#)

Defence Ministry Eases Rules on Telecom Infra Rollout

The Defence Ministry has revised its 2018 rulebook to allow the installation of telecom infrastructure on defence land for improving communication network quality and facilitating 5G rollout. The revised regime will be aligned with the Indian Telegraph Right of Way (Row) Rules. Cantonment boards and station headquarters will get the authority to approve within a deadline installation of telecom infra on defence land. The new regime has taken into account national security-related caveats.¹⁶

For areas inside a cantonment, cantonment boards will seek prior NOC from agencies under whose charge the defence land falls and for locations outside civil areas, the boards will seek NOC from station headquarters in view of security concerns. The NOC processing will be made time bound which is not the case at present. The NOC granting agency will decide in 30 days, failing which the cantonment board will process the application.

All such applications for telecom infrastructure installation by a service provider will be available on an online portal to be developed by DGDE and given automatic 'deemed sanction' if not processed in 60 days. The deemed sanction, however, will be given only if the application is also on the Gati Shakti Sanchar portal and if an alert is sounded to the DGDE/Army HQ if the cantonment board or station HQ fails to respond to an application after 45 days.

Food for Thought

The policy shift was to ensure no one is denied network connectivity benefits and services due to defence land-related restrictions. The new framework has simplified the existing regime which was found 'tedious', multi-layered and time-consuming. The changes came after rounds of inter-ministerial meetings to create a smooth, predictable and time-bound framework across ministries, departments and states for disposal of Right of Way (RoW) permissions which have delayed projects.

The Telecom Department has been at odds with several sister ministries such as defence, road transport and railways, over charges to be paid for use of land for developing telecommunication infrastructure for nationwide 5G rollout and the flagship Bharatnet project for rural tele-connectivity. Nearly 500 projects were held up by mid-2022 alone

¹⁶ <https://economictimes.indiatimes.com/news/defence/installing-telecom-infrastructure-on-defence-land-made-easier/articleshow/97148619.cms?from=mdr>

due to inter-ministerial variations. The bulk of the stuck telecom/optical fibre projects were related to defence land, either in border areas or cantonments.

Team Gati Shakti had also stepped up on the subject after assessing that several projects, from laying of utilities like electric cables, water pipelines and telecom towers to road expansion were stuck or delayed due to procedures, timelines and charges for RoW over another department/ministry land. The problem persisted even after the Telecom Department amended its RoW rules late last year to pave the way for the 5G rollout.

C. Policies Inhibiting Competition

Centre Plans to Ban E-pharmacies

Recently, the government issued notices to over 20 e-pharmacies for non-compliance with the Drugs and Cosmetics Act 1945. The notices were also sent to big players in the sector such as Tata 1mg, Practo, Apollo Amazon, Flipkart, etc. The government intends to have an outright ban on e-pharmacies instead of formulating a regulatory framework to govern them. Misuse of patient data and irrational prescription of drugs are the main reasons for banning e-pharmacies.¹⁷

Food for Thought

The protection of consumer data is a legitimate concern while regulating any e-commerce platform, including e-pharmacies. In alignment with the government's vision of Digital India, it must have a robust regulatory framework in place for e-pharmacies instead of an outright ban. Also, e-pharmacies are a subset of e-commerce platforms. Hence, these regulations for e-pharmacies would require an overarching strong foundation of governance of data and the digital economy.

E-pharmacies lead to increased consumer welfare. Patients who are unable to go to a brick-and-mortar store and purchase medication would find it very convenient to use the services of an online pharmacy. Also, certain medicines may not be available in the consumer's vicinity. In such situations, an e-pharmacy would be the alternative to rely on. Given the recent advent of the COVID-19 pandemic, the virtues of e-commerce have been emphasised all across the globe.

¹⁷ <https://www.indiatoday.in/technology/news/story/government-may-soon-ban-pharmacy-apps-like-tata-1mg-netmeds-medibuddy-and-more-here-is-why-2346584-2023-03-14>

An outright ban on e-pharmacies would be economically damaging as well. Data estimates that the potential of India's e-pharmacy market is over US\$344 million and it is expected to grow at a rate of 40-45 percent. E-pharmacies provide competitive pricing as they have lower working capital and overhead costs resulting in higher margins compared to brick-and-mortar pharmacies. As with all digital platforms, e-pharmacies benefit from a broader customer base. Each new customer would add no cost but be a value addition in terms of turnover. This would enable the e-pharmacy to take advantage of this scaling up and provide lucrative discounts and prices to the consumer. Hence, consumers can avail the convenience of buying medicines online at better prices.¹⁸

Airlines Adopt 'Predatory Pricing' in the Name of Free Market

The Ministry of Civil Aviation tabled a report titled '[Demands for Grants 2023-24](#)' in Parliament. The Parliamentary Standing Committee on Transport, Tourism and Culture took up the issue of the affordability of air tickets for the common man. The Committee has also asked the Civil Aviation Ministry to cap the upper and lower levels of airfares. This is to ensure that the predatory pricing mechanism is not adopted by airlines under the garb of following the market mechanism. The Committee recommends that the Ministry should formulate a pricing mechanism for airfares to ensure that passengers are not charged exorbitant prices.¹⁹

Food for Thought

The current government has not agreed to any new flying rights since 2014. However, requests for an increase in foreign flying rights used to be approved earlier. The rationale behind this favouritism is to let Indian airlines become large network carriers. Protectionism by the government ensures that India's dependence on foreign carriers for connectivity does not grow. According to the existing Aircraft Rules 1937, as the prices go beyond the acceptable or justifiable limits of reasonable profit and generally prevailing tariff, the Ministry has a responsibility to intervene. The Ministry has not attempted to control the surge in airfares.²⁰

A distorted market dynamic is at the core of the ability of the airline sector to indulge in predatory pricing. Though the government plans to make air transport affordable for the

¹⁸ <https://inc42.com/buzz/health-minister-to-meet-epharmacy-executives-to-discuss-data-privacy-concerns/>

¹⁹ [Parl panel asks govt to ensure airlines do not practice predatory pricing | Mint \(livemint.com\)](#)

²⁰ <https://www.livemint.com/companies/news/no-more-rights-to-foreign-carriers-in-india-why-11679509655662.html>

common man, there is no commensurate expansion of the capacity to bring in aircraft. Hence, the excess demand of travellers is not being met by the supply of airline tickets. Also, the market is characterised by asymmetric information. While booking an airline ticket online on their website, the same number of seats shows even after the last ticket has been sold. This implies that the airline companies are misleading the public and forcing the passengers to pay more.²¹

Vodafone Woes to Lead to Duopoly

Vodafone Idea's (VI's) inability to raise funds has put the company in a precarious financial position. It is likely to lead to a duopoly in the Indian telecom market. This increased industrial concentration and the resulting lack of competition would impact consumers negatively. This implies that the Indian government may have to intervene to ensure that there is healthy competition in the telecom market. The lack of investment in VI is deteriorating its position in the market as it is unable to invest in 5G equipment and infrastructure.²²

Food for Thought

*The reason behind the government bailout was to stop the sector from slipping into a duopoly of Reliance Jio and Airtel, though a fourth player, the government-owned BSNL also exists and operates. However, it is not an efficient organisation and has been losing money for a long time. Such a bailout has been in the works since 2021, but the government's insistence on fresh financial commitments by private promoters seems to have caused a delay. For the arrangement to fulfil its purpose, VI, which has lately been losing subscribers, must leap back into contention as a player that can rival the big two. Telecom is not a sector in which we can afford lost competitive intensity. The country's digital future depends to an extent on wireless data services offered by a multiplicity of providers.*²³

The imminent duopoly in the telecom industry will impact the backward linkage of the industry, i.e. the telecom towers. It will massively shrink profits for tower companies such

²¹ [free market: Airlines should not adopt predatory pricing under cloak of free market economy: Parliament panel - The Economic Times \(indiatimes.com\)](#)

²² <https://www.livemint.com/opinion/quick-edit/duopoly-avoidance-11675703244747.html>

²³ https://telecom.economicstimes.indiatimes.com/news/policy/telecom-department-considering-bringing-private-players-to-manage-c-dot-report/98790633?utm_source=Mailer&utm_medium=newsletter&utm_campaign=ettelecom_news_2023-03-20&dt=2023-03-20&em=dnMxQGN1dHMub3Jn

as Indus Towers and American Tower Company. These tower companies, which are already in a bind as a result of non-payment of dues by Vodafone Idea, are likely to encounter further troubles in case the telecom player becomes insolvent since they will lose out on multiple shared tenancy contracts.

Privatisation of PSBs After the 2024 Polls

The plan to privatise two banks and a government insurer may be put on hold until the general election in 2024, and then the proposal will be re-assessed by the new administration. The privatisation process of the banks requires changes to the Banking Regulation Act. This has been put on hold as further work remains to be done before proceeding with the plan. The process has been suspended indefinitely because the bearish market conditions and concerns of a global recession might also depress valuations.

The Union budget for the year starting April 01, proposed amendments to the Banking Regulation Act, the Banking Companies Act and the Reserve Bank of India (RBI) Act. But such amendments will only be carried out to improve bank governance and boost investors' protection, and not to let the government reduce its equity in PSBs and remove the 20 percent foreign investment cap in PSBs. The amendments are needed to allow the privatisation of PSBs.²⁴

Food for Thought

There's no plan to privatise banks in FY24. Till the time the government brings in the required legislation to privatise, any plan in that direction is immaterial. Till now no such amendment to the legislation has been initiated to facilitate PSB privatisation, and the amendment proposed in the budget was aimed at improving investor protection.

In the FY22 budget, Finance Minister Nirmala Sitharaman announced that two state-run banks, along with IDBI Bank, would be privatised in the year. NITI Aayog has shortlisted two PSBs for privatisation but did not name them. Additionally, the Finance Minister had stated that a general insurance company would be sold in FY22. But little progress since the announcement was made, while opposition to privatisation by PSB bank employees grew, complicating the process. The decision to postpone PSB privatisation is also in the

²⁴ <https://www.livemint.com/companies/news/privatization-of-psbs-now-likely-only-after-2024-polls-11675796862339.html>

wake of stiff resistance that came from bank employees, and the possibility of public ire before elections.

The government is also monitoring investor interest in IDBI Bank's strategic sale to iron out any regulatory issues involved in the privatisation of the two public sector lenders. Separately, consultations with the RBI are on to fast-track the resolution of all regulatory matters.

The government had earlier indicated that banks under prompt corrective action (PCA) framework or weaker banks would be kept out of privatisation as it would be difficult to find buyers for them. This would have left three PSBs, Indian Overseas Bank, Central Bank and UCO Bank, out of the government's disinvestment plan. But UCO and IOB both were taken out of PCA in September 2021 on improved financials, with the banks reporting profits while significantly reducing bad loans. The Central Bank came out of PCA in September 2022.

Prior to the privatisation process, the government also undertook a merger of state-run banks, amalgamating weaker banks with the stronger ones. A total of 10 public sector banks were merged with effect from 1 April 2020. India currently has 12 public sector banks, down from 27 in 2017.

Do Not Expect Much from Insolvency Code Tweaks

India's promulgation of the Insolvency and Bankruptcy Code (IBC) in 2016 was hailed as a magic bullet for a sustainable, legally-sound, democratic and utilitarian solution to a persistent problem that couldn't be resolved. The Code proved the Centre's resolve to undertake meaningful policy and resolve problems that had eluded India's regulation for long.

The Code failed in parts as it could not predict India Inc's ingenuity in not only influencing policy but also subverting due process through legal means. India's flawed campaign finance system allowed wilful defaulters and interlopers to bend and game the system. This substantially added to the existing capacity problems at the administrative and judicial levels.²⁵

It is not surprising that the Ministry of Corporate Affairs has proposed a raft of changes to the IBC. These proposed changes are an incremental attempt at speeding up the

²⁵ <https://www.livemint.com/opinion/online-views/dont-expect-much-from-insolvency-code-tweaks-11674405936369.html>

resolution and increasing realisation for creditors. The new bankruptcy resolution process has not delivered significantly improved outcomes from older debt recovery mechanisms although it has increased overall institutional capacity.

The fast track for freeing up capital locked in zombie companies is not fast enough, and it is getting slower as traffic increases. The number of cases entering legacy debt recovery channels is growing five times faster than in the IBC, but it is still the most efficient channel available, handling the biggest chunk of soured credit. The government is justified in seeking further efficiencies in the IBC framework by aligning better the incentives of stakeholders. Alongside the law, government attention needs to be directed at administrative and resource constraints affecting the process.

Timely resolution is difficult to achieve with no deadlines applicable to judicial review. The proposed changes to the IBC try to work around this by addressing bottlenecks in admission and information processing. Communication channels are being widened among stakeholders and greater transparency is sought over consideration of competing resolution plans. A relatively underused pre-packaged solution for small enterprises is to be offered to a wider set of companies.

The rate of recovery is expected to improve with an improving business environment and by restricting value erosion. The changes suggested to improve realisation involve a proportionate distribution of proceeds realised beyond the liquidation value. This could, however, have implications beyond making the process efficient. Adjudicating resources and creditor cooperation are proposed to be more efficiently leveraged and the pool of assets widened to include those of guarantors. Real estate gets an exception from the more efficient group resolution framework because of divergence in the interests of homebuyers and creditors. Project-level real estate insolvency resolution could, however, distort supply in specific segments.²⁶

Food for Thought

Two shortcomings, however, still threaten to stymie the proposed amendments in the Code, from becoming an effective piece of legislation. A capacity deficit in the IBC process that leads to delays and results in suboptimal outcomes has been noted. But the proposed changes do seem like an attempt to improve the efficiency and speed of the resolution

²⁶ [New IBC clippers for shorter haircuts - The Economic Times](#)

process without addressing head-on the issue of vacant benches or better-qualified adjudicators.

Alternatively, as a second-best option, rule changes are proposed so that lenders, mostly commercial banks, can recover their dues, or at least part of it, and get on with the job of fresh credit creation, which is a vital task for economic growth. But in trying to do so, the proposals leave wide gaps for creative interpretation by all parties. For example, the suggestion that adjudicators should be "empowered" to penalise those filing "frivolous" applications before the bench fails to define what would qualify as such. This would grant excessive power to adjudicators, and could even result in the miscarriage of justice. Even the suggestion to redesign the fast-track corporate insolvency resolution process looks like a slippery slope that could be twisted to favour one set of applicants over another.

The second issue lies in the way IBC proposals try to recast the adjudication process to reduce the legal agency of operational creditors, especially individuals. This is visible in the suggestion for resolving real-estate insolvencies. Herein, the logic of ring-fencing a real estate company's ongoing projects from the resolution process initiated by families in another beleaguered project shows an institutional bias towards the sector. It would be bizarre to allow a builder to plead insolvency for a specific realty project, and at the same time allow them to deploy funds on other projects.

This could allow for a system where some homebuyers will be allowed to suffer so that a larger cohort is relieved. Another of the Ministry's recommendations that operational creditors must forage for complete information on the defaulter from institutions before filing for resolution seems unprogressive as it would shift the burden on the wronged rather than the wrongdoer. Policymakers must examine the system's structural deficiencies for providing more concrete solutions.

No More Rights to Foreign Airlines

The Indian government says that it has no plans to provide any more flying rights or 'bilateral rights' to foreign airlines. The country wants Indian airlines such as Air India to become significant players in the global market. Since the current government came into power in 2014, it has not agreed on any new flying rights. The rationale is to let Indian airlines become large network carriers so that India can attain self-sufficiency in

the airline sector. Hence, the government has insisted that Indian airlines fly to destinations, such as Europe and the Americas from India.²⁷

Food for Thought

Bilateral air service agreements are between two countries. These agreements regulate the number of flights the airlines can operate. At present, India is a party to such agreements with 116 countries. These agreements can either limit the number of flights operated between two countries or allow unlimited access. For instance, India has open skies agreements with the US and UK, which allows carriers from both sides to operate an unlimited number of flights between the two countries. However, the number of flights India can operate with most other countries is restricted.

The government's policy of self-sufficiency could be perceived as protectionism. This is likely to have an adverse impact on consumer welfare. The airline fares are subject to the market forces of demand and supply. Protectionism in the market reduces competition. The demand for airline tickets would be serviced by Indian airlines only. Hence, the absence of foreign flights would mean high fares in the near to medium term for consumers. Especially, popular routes such as India-Dubai which have strong demand are likely to experience higher fares due to supply shortages.²⁸

The Indian government needs to perform the difficult balancing act keeping the airline industry competition and ensuring that the airline industry is globally competitive. The next few years would be crucial for Indian airlines.

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.

²⁷ <https://www.livemint.com/companies/news/no-more-rights-to-foreign-carriers-in-india-why-11679509655662.html>

²⁸ https://simpleflying.com/why-india-refusing-allow-foreign-carriers-more-flights/?newsletter_popup=1