CUTS International

COMPETITION DISTORTIONS IN INDIA – A CUTS DOSSIER

(CDI-46: October to December, 2019)

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,

New Year's Greetings!!

We are pleased to present to you the Competition Distortion Dossier for October to December, 2019 Quarter. In order to ensure that you do not miss any updates from this quarter, we have extensively covered most significant news stories from the three months that have an impact on the competition atmosphere in India.

As we ready the Dossier for you, there are some updates that we would like to share. While this dossier does cover stories on the distress of the telecom sector especially in the light of the Supreme Court's AGR dues judgement, the worst hit telcos (Vodafone Idea and Airtel) have approached the top court to modify the terms and timing of payment of their dues after their review petition was rejected by the top court, while Jio has paid off its relatively tiny due (Rs. 60 Cr). A lesser talked about issue in that light is the woe of PSUs like GAIL and Oil India who have been ordered to pay Rs 2.2 lakh crore, much more than their net worth, even though they were never in the telecom business.

Another notable news story is the abolition of anti-dumping duty (ADD) on Purified Terephthalic Acid (PTA), a necessary component for the textile industry. ADD had weakened competition in the domestic PTA market with a near monopoly of Reliance Industries Limited.

This Dossier covers developments regarding India's decision to opt out of RCEP, the problem caused by inverted duty structures in different sectors and particularly in the market for copper products and other international trade issues.

In pro-competition news, a large number of stories covering different sectors like aviation, telecom, railways etc. are reported of which, merger of some PSUs and divestment of others, and divestment strategy for Air India are some important pieces. The Govt. has also sweetened the terms of Air India sale by agreeing to sell off 100% stakes and granting some leniency in the buyers' capacity to bid and also reduced the debt by a third, although there still exist the challenge of old, fuel-inefficient technology in the existing planes which might dissuade a prospective buyer.

In anti-competitive stories, we have dealt with the cases of high 5G spectrum prices and Indian Railways meddling in the management of the so called "privatised" Tejas trains running under the control of IRCTC.

We hope you enjoy reading these stories as much as we enjoyed reporting them. Wishing you a very happy new year!

Cheers!

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1. Trade Policies

STEEL IMPORTS: JAPAN FLAGS CONCERN OVER DUMPING PROBE BY INDIA AT WTO[1]

Japan has raised concerns over an on-going anti-dumping investigation by India on import of certain steel products from the country and has asked Indian authorities to evaluate all 'relevant economic factors' before taking a decision. The matter was taken up by Japan at the meeting of the World Trade Organisation's Committee on Anti-Dumping.

Food for Thought

International trade in steel and steel products has been on the radar of the present government for quite some time now. In the last edition of this Dossier, we covered a story on how the steel-consuming small and medium enterprises (SMEs) were urging the government not to increase the import duty on steel products. Given that India has become a net importer of steel for the first time over the last three years, the government has lately been taking protectionist measures towards steel and steel products. However, the government should consider the competitiveness in domestic steel and steel products' markets before executing such protectionist measures as well as factoring in the needs of the domestic downstream consumers, especially SMEs who have been raising concerns against it as reported earlier.

The Japanese call for all relevant factors to be considered is therefore merited. Imposing an anti-dumping duty on imports at a time when the local industry is struggling has serious implications. Already, a greater problem exists in the fall of India's steel exports.[2] In addition, the anti-dumping duty can only work if it results in a shift in demand from imported steel to locally produced steel. If the capacity of the local steel industry does not meet the increased demand, users of steel will have no option but to continue importing, which would see the cost build-ups in production increasing due to the import duty.[3] The government should make an informed decision after minute assessment of issues rather than quickly bowing to pressure from steel producers.

[1] https://www.thehindubusinessline.com/economy/steel-imports-japan-flags-concern-over-dumping-probe-by-india-at-wto/article30041467.ece

[2] Union Minister for Steel, Dharmendra Pradhan, said in a written reply to the Lok Sabha that in comparison to 2017-18, India's total steel export has declined by 34 per cent in 2018-19 and stood at 6.36 million tonnes from 9.62 million tonnes last year. *See* https://economictimes.indiatimes.com/news/economy/foreign-trade/indias-steel-exports-fall-34-to-6-36-mt-in-2018-19.

[3] https://economictimes.indiatimes.com/blogs/et-commentary/steel-industry-the-real-steel-frame-of-india/

That Japan had increased its steel exports to India was reported early next year. This was seen to be taking place as a consequence of a global tariff war initiated by the US due to which the imports in US and EU nations of steel had taken a hit.[4] The deficit created was being shifted to India and the steel products were dumped at a very cheap price. In that light, an investigation may also be warranted into steel dumping.

IMPORT OF SRI LANKAN DESICCATED COCONUT POWDER MAY BE CURBED[5]

The Union Government is reported to be considering imposing restrictions on the rising imports of desiccated coconut (DC) powder from Sri Lanka so as to protect the domestic industry. The figures available with Coconut Development Board reveal that DC powder imports from the island nation have increased manifold, touching 7,450 tonnes in the first four months (April to June) of 2019-20 *vis-a-vis* 582 tonnes in the corresponding period of the previous year. The total imports during the 2018-19 were 5,340 tonnes.

Food for Thought

The figures presented above clearly highlight some issues that deserve immediate attention from the government. The surge in the number of imports is not only a consequence of the surge in demand but also the fall in the number of domestic manufacturing units from 150 to 50. This generally shows that only a third of the producers have remained in the market, hence it is understandable for intervention measures to be undertaken. Although it appears to be a cause of concern for the domestic industry, the role of the Coconut Development Board here would be to study and analyse the reasons for the lack of competitiveness of the domestic manufacturing units.

While the government is understandably believing that this is a competition challenge that can be managed by boosting local supply at the expense of imports, the production challenges can also be caused by the general operating environment and ease of running business challenges which cannot be resolved by putting import restrictions. The decline in profitability has been taking place for the past few years and there are several reasons attributable to it.[6] One major problem is adulteration in the

[4] https://www.financialexpress.com/market/trump-tariff-fallout-india-becomes-steel-dumping-ground-imports-from-china-jump-67-japan-47-and-korea-35/1270584/

[5] https://www.thehindubusinessline.com/economy/agri-business/import-of-sri-lankan-desiccated-coconut-powder-may-be-curbed/article29789794.ece

[6] https://www.thehindu.com/news/cities/bangalore/desiccated-coconut-powder-factories-in-doldrums/article23607022.ece

market for desiccated coconut powder. Also, the cost of setting up a manufacturing unit is high which results in significant loans that the manufacturers have to incur in the very beginning. Due to this, it is difficult for them to become profitable in the initial years.

Incentivising the local producers by enabling easy access to factors of production or simplifying the regulatory processes for starting and operating a DC powder unit should be considered. This also calls for the need for a more carefully assessed and informed intervention.

INDIA DECIDES TO OPT OUT OF RCEP, SAYS KEY CONCERNS NOT ADDRESSED[7]

India would not join the Regional Comprehensive Economic Partnership (RCEP) because concerns about getting swamped by imports under the agreement — putting its domestic industry and agriculture at risk — haven't been assuaged. The RCEP, which includes China and the Association of Southeast Asian Nations (Asean), aims to cover about a third of the world economy and half its population. "The present form of the RCEP Agreement does not fully reflect the basic spirit and the agreed guiding principles of RCEP," Prime Minister Narendra Modi said in his address at the RCEP summit in Bangkok. It also does not address satisfactorily India's outstanding issues and concerns. In such a situation, it is not possible for India to join RCEP Agreement.

Food for Thought

India's decision not to join the RCEP is likely to have wider ramifications for the Indian consumers. India missed the opportunity to profit from the US-China trade war as it failed to link its manufacturers with global and regional value chains. While it is true that India has a mounting trade deficit with different countries and particularly China, closing its borders to better trade opportunities for the domestic manufacturers might hamper the prospects of narrowing that gap.[8] There is also evidence to suggest that growth in imports of intermediate products enhances the capacity of the domestic industry to improve exports. In that light, the RCEP decision might need reconsideration and informed by a more evidence-based cost-benefit analysis of the different options.[9]

[7] https://economictimes.indiatimes.com/news/economy/foreign-trade/india-decides-to-opt-out-of-rcep-says-key-concerns-not-addressed/articleshow/71896848.cms

[8] https://economictimes.indiatimes.com/news/et-explains/rcep-agreement-can-india-get-a-good-deal/articleshow/71141008.cms

[9] For a detailed understanding of the issue, please check our Occasional News Wrap on the issue here.

Further, mere insulation of the domestic businesses from more competitive terms of RCEP is perhaps a short-sighted approach in developing the resource and capacity of the local businesses to compete effectively with their global counterparts. RCEP would not only have brought better competition and consequently greater economic welfare but also ensured that our enterprises would become globally competitive.

INVERTED DUTY STRUCTURE MAY COST GOVT ₹20,000 CR A YEAR[10]

The government has estimated that, annually, it has to shell out nearly ₹20,000 crore as a refund on account of inverted duty structure (IDS). IDS is an arrangement for manufactured items where raw materials have a higher duty, while the finished product attracts lower duty. Such an imbalanced tax structure results in an accumulation of tax credits (input tax credit or ITC) in the hands of the taxpayers. Under the GST regime, a registered taxpayer can claim a refund of unutilised ITC at the end of any tax period, where the credit has accumulated on account of the rate of tax on inputs being higher than that on output supplies. In a note prepared for the 38th GST Council meeting, it has been said that manufactured goods in lower rate slabs (5 percent or 12 percent) suffer IDS, which has led to a demand for a refund of ITC on services and capital goods. This has also led to litigations and distortions.

"Estimated refunds on account of IDS are ₹20,000 crores a year," the note said. There are indications that the Council might initiate measures to remove this anomaly in its next meeting expected to take place after the Budget is presented in February.

The note has listed nearly two dozen manufactured items and services which form a case study for IDS. These include mobile phones, footwear, fabrics, man-made yarn, readymade garments and made-ups, fertilisers, renewal equipment, tractors, pharma, generators/inverters, edible oil, job work, etc.

Food for Thought

The issue of inverted duty structure has been hurting the domestic industries in various sectors. Particularly, the downstream copper manufacturing industry has been complaining and appealing to the government to reduce the customs duty on the raw material. For India's "Make in India" goal to come to life, the problem of inverted duty

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[10] https://www.thehindubusinessline.com/economy/inverted-duty-structure-may-cost-govt-20000-cr-a-year/article30390390.ece

structures needs to be checked. Further, research is suggesting that there is a need to incentivise the export of copper products for some time.[11]

On top of that, there is the issue of ITC that accrues in the hands of taxpayers. Perhaps an approach is required to analyse the applicability of a system of uniform tax rates for all goods. However, even if such a system is envisaged, there would still be a need to expedite the ITC refunds process as the delay is causing serious distress to the domestic industry. More importantly, the SMEs are the most vulnerable in this regard as they lack the capital strength to withstand the delay in refund of ITC. The absence of significant measures in this direction also might hurt the competitiveness of domestic manufacturers.

2. Policies Promoting Competition

In a first, pvt sector gets coal blocks with freedom to sell 25% output[12]

The Coal Ministry allotted five coal mines to Birla Corporation, Vedanta, Prakash Industries and Powerplus Traders in the first block auction in four years, which for the first time gives operators the freedom to sell 25 percent output in the market. The freedom to sell a quarter of the output is seen as the harbinger of commercial mining in the country, which has been cleared by the government.

Food for Thought

We had reported in the last edition of this Dossier that the government was considering such a move. While private companies could get coal blocks earlier, they could not extract coal from those blocks for the purpose of trade. They were only permitted to use the extracted coal for their private industries like iron and steel, cement, or captive power plants. This move is likely to improve competition in the coal market since Coal India Limited (CIL) has so far enjoyed a near-monopoly in the business. This will also facilitate improved options for coal consumers within India 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.

The government has also announced that the private companies will be allowed to sell beyond 25 percent of the produce if its experience from this round is satisfactory. This is

[11] https://www.thehindubusinessline.com/news/iift-researchers-propose-national-sword-policy-to-restrict-import-of-hazardous-copper-scraps/article29920633.ece

[12] https://timesofindia.indiatimes.com/business/india-business/in-a-first-pvt-sector-gets-coal-blocks-with-freedom-to-sell-25-output/articleshow/72389223.cms

a good incentive for the first set of coal block awardees to encourage competition in mining and increase output. The government had nationalised all the coal mines in India vide the Coal Mines (Nationalisation) Act, 1973 and created a monopoly of Coal India Limited and a few other PSUs, with the objective of controlling the coal production in India to meet our energy demand. Several factors had contributed to the decision to nationalise the coal mines, such as inadequate investment from the existing mine holders, use of unscientific methods and technologies for extraction of coal that was hampering the long term prospects of mines, poor conditions of work for labourers including their safety and security. However, the nationalisation of coal mines and seizing them away from the hands of private players have not really helped achieve the goals for which the nationalisation had taken place.

Coal scams and the deep-pocketed mafia in the industry keep surfacing every now and then, often also finding their way into politics. Privatisation is expected to put a halt on this through better management and will also likely improve the efficiency and sustainability of the mines. However, the issue of labour welfare would continue to be dubious with privatisation, and a dedicated regulation in this regard may be required. There is also the need to reduce discretion in the hands of bureaucracy in managing the operation of mines to increase better facilitation of business.

RELIEF TO TELECOM SECTOR: CABINET GIVES NOD TO A TWO-YEAR MORATORIUM ON SPECTRUM PAYMENTS[13]

The Narendra Modi-headed Cabinet approved the recommendation of the Committee of Secretaries (CoS) on the relief to the stressed telecom sector and allowed telcos a two-year moratorium on spectrum-related dues. "In view of the current financial stress faced by major telecom service providers and in pursuance of the recommendations by Committee of Secretaries, it is decided to defer receipts of spectrum auction installments due from the telecom service providers from the years 2020-21 and 2021-2022," Finance Minister Nirmala Sitharaman said.

[13] https://economictimes.indiatimes.com/news/economy/policy/govt-gives-telcos-two-year-relief-from-paying-spectrum-dues/articleshow/72148350.cms?from=mdr

Food for Thought

This marks a positive step in the direction of supporting the ailing telecom sector. In particular, Airtel and Vodafone Idea (VI), which have been struggling to get out of their loss-making spree much needed such a breather. With this deferment, VI and Airtel will get a relief of Rs. 23,920 crore and Rs. 11,746 crore respectively.[14] Considering the substantial burden of Adjusted Gross Revenue (AGR) dues after the Supreme Court's judgement that widened the definition of AGR, these companies together owe the government about Rs. 89,000 crore. Notably, Jio, the only profit-making telco in the country, also received a relief worth about Rs. 7,000 crore .

While this deferment was much needed and much awaited for better health of the telecom sector, the real question is whether this is going to solve the woes of telcos. What this has done is only postpone the problem. The huge debts continue to exist and the telcos continue their loss-making spree quarter after quarter. Nonetheless, this does help sustain competition in the telecom market for the time being providing some space for the ailing telcos to survive. In the interest of improving competition and protecting consumer interest, it might do the government well to consider a similar approach for restructuring the AGR dues payment.

Modi Considers Excluding $7 Billion of Air India Debt to Lure Buyers[15]

India is considering a plan to exclude more than half of Air India Ltd.'s US$11n of debt in the government's latest attempt to lure investors to the struggling carrier. Prime Minister Narendra Modi's administration plans to ask proposed investors to take over 300 billion rupees of the airline's debt, which are backed by the carrier's aircraft, the people said, asking not to be identified, citing private information.

Food for Thought

Air India is not only unprofitable at present but also heavily debt-ridden. As Air India continues to bleed money with every passing day, its sustenance is only ensured by taxpayers' pockets. With the government's failure to attract any bidder for Air India in 2018, this can be seen as a positive move to incentivise the divestment of the sick national airline.

However, this move alone will not suffice to strengthen the domestic aviation market. As it is, with the fall of Jet Airways, competition in the industry has already waned

[14] *Ibid*

[15] https://www.bloombergquint.com/business/modi-mulls-excluding-7-billion-of-air-india-debt-to-lure-buyers

substantially. Particular areas that need focus for improving the competitiveness of the domestic companies could be a reconsideration of the tax on Air Turbine Fuel (ATF) and ensuring a mechanism to allow Airlines to charge Goods and Services Tax (GST) on ATF at the time of ticket booking.

More focused policy intervention in this regard is required to support the aviation sector, even after the successful disposal of Air India. The current state of India's aviation sector is showing a condition of pathological distress wherein one airline after another keeps sinking. Since 1996, nine major airlines have shut shop which indicates that there may be structural issues with the way the sector is managed in the country. A long term solution in this regard is therefore warranted. There is a need to maintain a regular check from the regulator in place to effectively resolve the identified risks. We have covered this issue at length in the 3rd edition of our publication Spotlight.

STATES SHOULD SCRAP APMCS, ADOPT ENAM FOR FARMERS' BENEFIT: SITHARAMAN[16]

Finance Minister Nirmala Sitharaman said that states are being cajoled to reject the Agricultural Produce Market Committees (APMCs) and adopt the electronic National Agriculture Market (e-NAM) so that farmers get a better price for their produce. "Together with this, we're also making sure that the states are cajoled to reject APMCs. It has served its purpose at one time there's no doubt. But today there are many difficulties associated with the Agricultural Produce Market Committee (APMC), which at every state level has become not so efficient in helping the farmers find better price points for their produce," she said. "We are talking with states to sort of dismantle that and move towards e-NAM for farmers," she added.

Food for Thought

APMCs were instituted in India vide a Central Act in 1963 with the aim of facilitating better market access to farmers and the promotion of agro-processing and agricultural exports. This was sought to be achieved by establishing regulated mandis. Today, the legislation is facing severe problems with farmers' income stagnating year after year.[17] APMCs have failed to regulate middlemen and the mandis have become hubs for middlemen exploiting the farmers.

[16] https://www.business-standard.com/article/pti-stories/states-should-dismantle-apmcs-adopt-enam-for-farmers-benefit-sitharaman-119111200960_1.html
[17] https://thewire.in/economy/economic-survey-2018

e-NAM or e-National Agricultural Market is a great way to regulate middlemen effectively and ensure better incomes for farmers. Perhaps more direct steps in this direction are also warranted to ensure that more and more farmers as well as Farmers Producers Organisations (FPOs) come on the platform. e-NAM can increase the diversity of options available and also improve competition between farmers from different states. e-NAM can help provide wide market access to all farmers and better bargaining power through an increased number of buyers.

However, a major challenge in this regard is the digital deficit which could possibly hinder the participation of farmers and farmer producer organisations on the platform. Some efforts in this direction could also be considered by the government.

US: PROPOSED SOCIAL MEDIA LAW WOULD LET DATA FLOW AMONG PLATFORMS[18]

A proposed law created to increase competition in the tech sector would allow users to move their data between social media platforms. The Augmenting Compatibility and Competition by Enabling Service Switching (ACCESS) Act, introduced by Sens. Mark Warner (D., Va.), Josh Hawley (R., Mo.) and Richard Blumenthal (D., Conn.), has three mandates for platforms with more than 100 million monthly active users. The first would require them to make it easy for users to move their data from one platform to another, while a second mandate would require 'interoperability' by competitors. And the third order would have platforms allow other firms to manage a user's account settings if given permission.

Food for Thought

The ACCESS Act assimilates the data portability systems that are being theorised in the tech space in the recent past. In lesser mature jurisdictions, the ACCESS Act serves as a good model law to emulate in order to ensure that consumers have rights over their personal data, although there are several implementation challenges in such jurisdictions. Data portability is a means to ensure competition among service providers and should result in numerous benefits for consumers. Just like mobile number portability (MNP) has allowed a consumer to switch between telcos for better services, data portability provides similar facility for our data entrusted with different internet companies although it is much different in the sense that there are much

[18] https://www.competitionpolicyinternational.com/us-proposed-social-media-law-would-let-data-flow-among-platforms/

greater complications involved in data portability and several layers of data would still need to be re-entered into the new platform.[19]

In India, the Personal Data Protection (PDP) Bill, 2019 has also just been presented before the Parliament. The PDP Bill provides under Section 19 for data portability. However, the provision is limited in scope and is not comparable to the ACCESS Act which is more elaborate. An in-depth analysis of these lines should be undertaken keeping in mind the specific characteristics of the Indian demography. Increased competition will allow consumers to shift to a more preferable platform without the worry of losing their data placed on one platform. As there would always be the option of shifting to the next best competitor if the terms of the platform are not satisfactory, the consumers will be able to get better services through an improved strength for shifting between alternatives.

'DoT TO MOVE PROPOSAL FOR CUT IN LICENCE FEE FOR TELECOM OPERATORS'[20]

The Department of Telecommunications (DoT) has brought the issue of cutting licence fee for the telecom operators back on the table, despite the committee of secretaries not approving it. Sources said that DoT would shortly move a proposal before the Digital Communications Commission (DCC) to reduce the Universal Service Obligation Fund (USOF) levy by two percentage points to three percent. If this happens, the licence fee which operators currently pay at eight percent of their adjusted gross revenue (AGR), would come down to six percent. If the proposal is passed, it would provide a relief of around Rs 3,000 crore annually to the operators.

Food for Thought

The payment towards the USOF is a part of the license fee. It is charged to the telecom operators to ensure that telecom services reach rural and remote areas as well. At present, the total license fee is eight percent of the AGR earned by a telecom operator. Of this, 5% is directed towards USOF and the other three percent goes to the exchequer.

This is a welcome move from DoT, especially at a time when telcos are experiencing immense stress to survive. Seeing this more in the light of poor disbursement of USOF by the government strengthens the need for a move like this. The USOF has gotten

[19] http://www.jenitennison.com/2017/12/26/data-portability.html

[20] https://indianexpress.com/article/business/dot-to-move-proposal-for-cut-in-licence-fee-for-telecom-operators-6157282/

accumulated year on year but the usage of funds for the dedicated purpose has been very low, with Telecom Regulatory Authority of India (TRAI) stating that more than 50 percent of it remained unused.[21] *The reduced licence fee will help sustain competition in the market which is nearing the verge of becoming a duopoly. Particularly, for Vodafone Idea and Airtel, the two firms that are worst hit in the telecom market, this would mean a relief which would help sustain competition in the market.*

TRAI ISSUES PUBLIC NOTICE ON REVISED MNP[22]

TRAI issued a public notice on the revised MNP process, which is slated to make the porting process fast and simple. The new process, which comes with conditions for generating unique porting code (UPC), entails three working days' timeline for port out requests within a service area, and five working days for requests for port out from one circle to another. There is no change in the porting timelines for corporate mobile connections.

Food for Thought

The new MNP rules which have been in the pipeline for a while now with several extensions to the implementation deadline has finally come to life. These rules further augment the consumers' ability to switch between various telecom operators based on the quality of service and their choice. The maximum wait time for all ports is now five days, reduced from seven days earlier.

MNP and these improved rules for MNP have a positive impact on the competition[23] *between telcos as it eliminates the hesitation of consumers to switch networks due to their fear of losing a widely circulated phone number. With this, the consumers would only need to wait three days to switch their telecom operators within their circle. This will assert a competitive pressure on the telcos to provide better services to their consumers or lose out on the number of subscribers.*

CENTRE TO ALLOW ALL TELCOS, VENDORS FOR 5G TRIALS[24]

Chinese telecom vendor Huawei heaved a sigh of relief as India has decided to provide spectrum for 5G trials and allow all telecom operators and equipment

[21] *See* https://www.emerald.com/insight/content/doi/10.1108/DPRG-07-2018-0035/full/html
[22] https://www.thehindubusinessline.com/info-tech/trai-issues-public-notice-on-revised-mnp/article30269151.ece
[23] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2265104&download=yes
[24] https://www.thehindubusinessline.com/info-tech/govt-will-give-5g-spectrum-for-trials-to-all-players-prasad/article30433124.ece

makers. In fact, another Chinese vendor ZTE can also participate in the trials thanks to this announcement.

Speaking on the sidelines of an event here, Ravi Shankar Prasad, Minister of Telecommunications and Information Technology (Meity), said, "We have taken a decision to give 5G spectrum for a trial to all players, all companies will be allowed for the trials."

Food for Thought

This is a welcome decision from Meity that has larger ramifications extending to geopolitics. For the domestic markets, it would help preserve competition between various telecom operators and vendors. However, it does put India in a spot with the US which has been advocating for a blockade against Huawei.

Since Huawei is extremely cost-competitive, a mere suspicion should not be enough to bar it from the trial process. Further, this stage is only for trials and not deployments. So, until a decision on deployment is made, any argument on its pros and cons cannot be made conclusively. However, it is clear that the presence of Huawei puts pressure on other vendors like Nokia, Samsung or Ericsson to keep their prices in India competitive.

SMALL PLAYERS CAN NOW ENTER THE FUEL RETAILING BUSINESS[25]

The Cabinet Committee on Economic Affairs (CCEA) opened up the fuel retail market by lowering the entry barrier and allowing all companies with a net worth of Rs. 250 crore to set up outlets. To boost investments in the domestic economy, which is battling a severe demand slowdown, the Centre also allowed companies the flexibility to stitch up a joint venture (JV) to meet the eligibility criteria. The existing rules required prior investments of Rs. 2,000 crore for companies to enter the fuel retail segment, which many believed, favoured state-run oil marketing companies (OMCs), including Indian Oil Corp. Ltd (IOCL), Bharat Petroleum Corp. Ltd (BPCL) and Hindustan Petroleum Corp. Ltd (HPCL). Private sector oil companies, such as Reliance Industries Ltd (RIL), Essar Oil Ltd and Shell India, have some presence in the fuel retail space, which is dominated by the state-run firms.

[25] https://www.livemint.com/industry/energy/small-players-can-now-enter-the-fuel-retailing-business-11571857411525.html

Food for Thought

In a significant move to disrupt the dominance of state-run oil-marketing enterprises, the government has now allowed relatively much smaller companies to enter the oil marketing business. So far, the state-run enterprises had few private competitors in the market like Reliance, Essar and Shell. The government has substantially lowered the entry barrier in the oil marketing industry from a prior investment of Rs. 2,000 crore to Rs. 250 crore as necessary criteria for marketing oil in India. With this, more and more companies can participate in the business and compete with other state-run companies and consequently improve the services to consumers.

BSNL, MTNL TO BE MERGED AS PART OF RS. 56,000 CRORE RESCUE PLAN[26]

India will merge its twin state-run telecom companies in an effort to turn around the money-losing firms, which it considers core assets. The strategy would also allow the government to look at ways to exploit the vast land assets of the two companies while paring their manpower by offering incentives to employees to avail of an early retirement plan.

Food for Thought

In the backdrop of an economic slowdown that India is currently undergoing, this is a welcome move aimed at rejuvenating the ailing state-run telcos. The merger is further coupled with other money infusion strategies to help the telcos survive these difficult times in the market. Although money infusion is not the best practice for improving competition in a market, given the backward condition of state-run telcos, it is useful to help them get back up on their feet. Voluntary Retirement Scheme (VRS) is also coupled with the same to rid the companies of the salary burden owed to its employees.

Other factors such as delay in providing a 4G spectrum have caused a substantial competitive disadvantage to these state-run enterprises. While private telcos are looking forward to 5G and strategising accordingly, BSNL is yet to launch its 4G services. More emphasis on these fronts is also warranted as part of the rescue plan. On top of its mounting debt, BSNL also has to bear Rs. 4,990 crore in AGR dues after the Supreme Court's decision. Restructuring of that liability might also be a positive move to support the state-run company.

[26] https://www.livemint.com/industry/telecom/union-cabinet-approves-bsnl-mtnl-merger-revival-plan-vrs-package-to-be-offered-to-employees-11571829508615.html

PVT-RUN TRAINS, STATIONS: SECRETARIES TEAM, NITI CEO WILL DECIDE, NOT RAILWAYS[27]

An Empowered Group of Secretaries under the CEO of the NITI Aayog, and not the Railway Ministry bureaucracy, will now decide how best to develop the country's railway stations through private participation and bring in private players to run 150 trains. The Railway Ministry ordered the formation of the Committee after NITI Aayog CEO Amitabh Kant mooted the idea in a letter to Railway Board Chairman V K Yadav. Along with Kant and Yadav, secretaries of the departments of Economic Affairs, Housing and Urban Affairs and the Railway Board Financial Commissioner will be the other members of the Committee. The Railway Board's Member (Engineering) and Member (Traffic) have been co-opted in the committee, as suggested by Kant since the subjects are the domains of the two Board Members.

Food for Thought

Drawing from the experience of implementing public-private partnerships in privatisation of six airports, this is a good move to oversee the implementation of the stations' redevelopment plan. With experts as part of the empowered Group of Secretaries, the privatisation of Indian Railways in small doses will boost the growth and development of railway infrastructure and also provide improved services to consumers.

This decision will ensure the faster and smoother shift to privatisation, create competition and challenge the abuse of power by different departments of Indian Railways at present. The Railway bureaucracy had clearly failed to meet its deadlines as well as to provide the quality implementation in most stations under the Railways' station redevelopment plan.[28] With the empowered group in the driver's seat, that is likely to change if the airports' privatisation is any example to go by.

On that note, it is also worthwhile to take our focus back to the idea of a railway regulator called Rail Development Authority (RDA) that the Cabinet had approved in 2017. Despite the approval from the Department of Personnel and Training, the idea has now been put in cold storage. For eliminating the bureaucratic inefficiency from the way railway affairs are managed, it is imperative that such reform measures are

[27] https://indianexpress.com/article/india/pvt-run-trains-stations-secretaries-team-niti-ceo-will-decide-not-railways-6063429/

[28] *Ibid.*

pushed. The government has also initiated moves to restructure the railway board in order to stop departmentalism and promote the smooth functioning of the railways.

GOVERNMENT APPROVES STRATEGIC DISINVESTMENT OF BPCL, 4 OTHER PSUs[29]

The government kicked off a blockbuster disinvestment plan, lining up the sale of five public sector units (PSUs), including majority stakes in blue-chip oil company Bharat Petroleum Corp Ltd (BPCL) and Shipping Corporation of India. Also on sale will be a 31 percent stake in Container Corporation of India (Concor) along with management control. Based on current market prices, the sale of stakes in these three firms will fetch the Modi government about Rs 78,400 crore, taking it close to the disinvestment target for the fiscal year. The CCEA, which met under the chairmanship of Prime Minister Narendra Modi, also cleared the sale of its entire stake in Tehri Hydro Development Corp of India and North Eastern Electric Power Corporation (Neepco) to NTPC.

Food for Thought

The disinvestment target for the fiscal year 2019-20 stands at Rs. 105,000 crore. Considering India's economic status at present, the focus of the government seems to be boosting the condition by disinvestment of Central Public Sector Enterprises. In the light of low GST collections, this is a positive move for withstanding the economic adversity of the current slowdown. This move will certainly bring the government much closer to its disinvestment target of Rs 1.05 lakh crore which has only managed to reach Rs. 12,359 crore till the end of September 2019.[30]

More private investment in the PSEs is not only likely to ensure better management and operation and improved efficiency, but also splitting the cost of losses incurred and debt owed before the disinvestment. Especially the companies in which the government has agreed to shed 51 percent or more of the stakes, the performance is likely to improve with private management of affairs. While it is a bold move to surrender the veto rights in CONCOR (government will retain only 24 percent share) with this disinvestment, it is also important for the government to ensure appropriate amount of oversight over the management of the company, given that competitors in the same market are few which may also result in insufficient competence.

[29] https://economictimes.indiatimes.com/news/economy/policy/cabinet-approves-of-strategic-disinvestment-bpcl-shipping-corporation-container-corporation-thdc-and-neepco/
[30] *Ibid.*

However, this also brings to light a need for a long-term strategy for making our PSEs sustainable and competitive. Year after year, different state-run enterprises are following broadly the same path, with the exception of those that enjoy a monopoly or some form of favourable treatment from the government. The government needs to analyse the long ailing issues like inefficiency and poor work culture in the PSEs among other factors that may be hurting their capacity to make a profit and contribute to the national income.

3. ANTI-COMPETITIVE POLICIES

INDIA'S FIRST "PRIVATE" TRAIN VIOLATES RAILWAY TARIFF LAW[31]

The country's first private train has contravened the Railways Act, 1989, since the Central government is the competent authority to decide on tariff and not the IRCTC, say, top railway officials. The much-publicised train service flagged off on the Lucknow-Delhi-Lucknow corridor charges a higher fare than the existing Shatabdi Express and other trains on the same route. The issue is being closely watched in the context of the move to run 150 more trains in private mode. The Indian Railways had entrusted IRCTC, its commercial tourism and catering arm, with the task of operating two premium trains using the fully air-conditioned rakes of the semi-high speed Tejas Express. The second private train will soon be run on the Mumbai-Ahmedabad-Mumbai sector.

Food for Thought

While the attempt at privatisation of Railways with two Tejas trains was a positive move, the current developments somewhat put to question the success of privatisation. To begin with, the current form of privatisation is merely a namesake since IRCTC is almost entirely owned by the Government of India (about 90 percent shares). Additionally, the two Tejas trains that were assigned to IRCTC have had to pay a fine for the delay in trains firstly, and secondly, the government is also trying to regulate the fair it charges. The issue of fares needs to be trodden with caution.

On one hand, if the government regulates the price to be charged, the whole idea of privatisation would be rendered infructuous. Considering that the Railways has a public service along with revenue generation as its goals, it would perhaps be necessary to define certain terms for charging the fees. On the other hand, over-regulation of the

[31] https://www.thehindu.com/news/national/first-private-train-violates-railway-tariff-law/article29674312.ece

fares being charged, especially characterised by the usual government bureaucracy and slow response to changes in market conditions, would also hamper the process of revenue generation. There is a need to carefully craft a response strategy, especially given that other private players' decisions in the future can be influenced by these measures; hence influencing the overall success or failure of privatisation.

In this light, too, the need for a Rail regulator can be felt. One of the important roles of the Rail Development Authority, as designed, was a tariff setting. Further, the Rail regulator was also assigned the job of facilitating a level playing field for investments by stakeholders, which clearly is the need of the hour if the government intends to go ahead with its gradual railway privatisation drive. Some significant steps in this direction are being undertaken as have been discussed in a previous story above.

NO CUT IN 5G SPECTRUM PRICE IN SETBACK FOR TELECOM FIRMS[32]

The Digital Communications Commission (DCC), the highest decision-making authority at the Department of Telecommunications (DoT), accepted the prices suggested by the TRAI, for spectrum auctions in March-April 2020 when the government will put on offer airwaves for 4G and 5G services. The DoT plans to put 8,300 megahertz of spectrum at a reserve price of Rs. 5.23 trillion under the hammer.

Food for Thought

As has been reported in the previous stories, the telecom companies have been clamouring the need to lower the spectrum prices in India. The telcos are yet to pay off their debts from 4G spectrum auction and on top of that, there are other significant issues like economic slowdown and the Supreme Court's AGR judgement, which are hampering the capacity of businesses to survive and operate.

In such tumultuous times for the telecom sector, the government needs to take care of concerns of the existing companies in the market which are, as it is, just a few. With essentially only three major operators in the market, competition is already quite diminished as is shown by the continuous decline in the number of subscribers in Vodafone Idea quarter after quarter and their shift to Jio. Therefore, proactive strategic steps are needed to support the telecommunications ecosystem in the country to prevent a monopoly or oligopoly in the market. Restructuring of their debts and permitting delays in their payments could be two easy steps that may be considered.

[32] https://www.livemint.com/industry/telecom/govt-to-auction-8300-mhz-spectrum-at-reserve-price-of-rs-5-22-850-crore-11576835850212.html

Deferment of the cost of the current spectrum auction could also be considered keeping in mind the need to develop a robust infrastructural base for telecom services in India as a priority. Notably, the cost of this huge AGR debt will be eventually passed on only to the consumers. If Vodafone Idea shuts down as the promoters of the firm had indicated earlier, it will lightly cause harm to consumer interest.

However, it is also worth noting that the operators had themselves bid at high rates. Also, in the pendency of their appeal, while it was a settled matter before the Telecom Disputes Settlement and Appellate Tribunal the operators continued to raise the appeal and the total value of AGR shot up because of the excessive delay in paying up of the already pending amount. Furthermore, a more participatory system for conducting such auctions should generally be considered whereby telcos are consulted before any such decision.[33]

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.

[33] https://www.gsma.com/spectrum/wp-content/uploads/2014/11/The-Cost-of-Spectrum-Auction-Distortions.-GSMA-Coleago-report.-Nov14.pdf