

COMPETITION DISTORTIONS IN INDIA – A CUTS DOSSIER

(CDI 54: October to December 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 have an impact on competition in India, which can be both negative and positive. News, as published, is used without verifying their accuracy. The purpose is to flag issues to the layman as well as to the specialised policymakers and regulators, rather than be judgmental about them. This would require greater analysis particularly in terms of cost and benefits therewith.

Dear Reader,

Greetings!

We are pleased to present to you the Competition Distortion Dossier #54 for the final quarter of the year i.e. October-December 2021. 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.

In the first part, we cover developments regarding recent trade policies. We discuss anti-dumping duties on untreated fumed silica to offset the impact of dumped imports from China and South Korea on the domestic industry. In light of the pandemic, we have discussed how the government has been reviewing custom trade keeping in mind the recent crisis wherein local supply chains were disrupted, affecting bulk drug supplies to the local pharmaceutical industry. Many Indian public sector drug companies had become sick as they could not compete with cheap imports from China.

In the dossier, keeping in mind the Mega Privatisation Drive as part of the Union Budget 2021-22, the next steps of the sale of Air India to the Tata Group has been discussed at length, giving a backdrop on the roller coaster ride that Air India has had. We believe that this step will improve upon the airlines' backlashes and enhance healthy competition in the market. We have further discussed how in light of data becoming the new *oil*, there has been a confidentiality ring provision proposed by the Competition Commission of India. This, along with taking forward 13 airports on a Public-Private Partnership (PPP) model, will increase the overall competition and fairness in the civil aviation market by creating a level playing field for the private players.

The dossier also contains comments on the policies inhibiting competition. With the upcoming collaboration and joint efforts in the telecom sector by Reliance's Jio, Airtel and Vodafone-Idea representatives, we have discussed how mutual working can cause to abstain any firm from a competitive edge, hence inhibiting competition in the overall market.

We have further gone ahead to shed light upon the tender for the government's strategic Rs 1,072 crore Kochi-Lakshadweep Islands (KLI) optic fibre project. We agree that the tender document has been deliberately designed to bar Indian companies from participating, which could compromise the project's security, cost-effectiveness, and reliability.

Additionally, we have also discussed how the draft e-commerce rules seek to burden manufacturers, service providers, sellers, and e-commerce entities with additional layers of compliance requirements.

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

Cheers!

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A. Trade Policies

Imposition of Anti-Dumping Duty on Untreated Fumed Silica

India has imposed anti-dumping duty on untreated fumed silica to offset the impact of dumped imports from China and South Korea on the domestic industry. The complaint was made by Cabot Sanmar Limited, a joint venture between Cabot Corporation, US, and the Sanmar Group, India as a "domestic industry" to the Directorate General of Trade Remedies (DGTR). The duty is applicable on imports originating in or being exported five years from the date of notification issue.

Untreated fumed silica is used to produce pharmaceuticals, cosmetics, dyes, and food additives. The period for investigation is from April 01, 2019-March 31, 2020.

Food for Thought

Dumping is an unfair trade practice that aims to create dominance in other markets by distorting trade and killing the competition. Dumping is said to have occurred in an international trade regime when a country or a firm exports certain goods or items to another country at a lower price than the price of that product in its domestic market. Secondly, it should have injured the domestic firms.

Anti-dumping duty is imposed as a protectionist tariff by the home country to offset the harm in terms of market distortion that resulted from dumping the product in the domestic market and protecting its domestic industry. The World Trade Organisation (WTO) allows anti-dumping duties to be imposed by countries after conducting a thorough investigation. Anti-dumping duty is valid for five years from the date of notification by the authority, and it may be revoked and amended at any time in its duration. Where dumping still exists in the domestic market for that specific product, it will be reviewed under the sunset clause for extending the duty for another five years.

Countries use this as a mechanism to prevent cheap imports from around the world from entering their domestic market by creating an effective barrier to protect their local industries. Anti-dumping duty is mainly used against countries like China, known for using dumping as an effective trade practice for establishing its hold in new markets. Besides, China is not yet a market economy, making it difficult for the Indian authorities to get reliable data.

The government has been reviewing custom trade keeping in mind the recent crisis witnessed during the COVID-19 pandemic wherein local supply chains were disrupted, affecting bulk drug supplies to the local pharmaceutical industry. Many Indian public sector drug companies had become sick as they could not compete with cheap imports from China.

Further, to strengthen the local production of drugs and develop domestic manufacturing facilities, the government is proposing several incentives for investing in local drug manufacturing units, making raw material imports cheaper and the imported finished product costlier through duties so that local producers get an edge over imports. One such incentive introduced is production linked incentive (PLI scheme) that will help cut down imports of key raw materials, thereby reducing import dependence and boosting domestic production.

B. Policies Promoting Competition

Attempt to Counterbalance Dominance in E-Commerce Ecosystem

The Government of India is in the process of setting up a non-profit company for the rapid implementation of the proposed Open Network for Digital Commerce (ONDC), a scheme by the Department for Promotion of Industry and Internal Trade (DPIIT).

The Union Trade Minister, Piyush Goyal, while talking about the ONDC initiative, highlighted the company's non-profit nature, which will be responsible for the administration of ONDC as a successful model. This is because the non-profit nature will remove all possible incentives for the owners or the management to move for profit maximisation and facilitate their ethical and responsible behavior.

The ONDC platform is being designed to curb the dominance of the e-commerce giants and at the same time further the standardisation of e-commerce market spaces. The Quality Council of India (QCI) has established a team of experts along with representation from small and medium enterprises for volunteering in the implementation or execution of the said network.

The ONDC will establish a rule book concerning consumer protection, fair trade and regulatory conformity for the standardisation of digital commerce.

Food for Thought

India has been making tremendous advancements in digital transformation and population scaling of technology. One such example of using technology for socio-economic development is Aadhar, the digitisation of identity for Indian citizenry. Aadhar capacitated world's largest digital benefit transfer system and development of Aadhar enabled payment system.¹

Fast Tag, Ayush Bharat Digital Mission and Unified Payment Interface (UPI) are some of the other cases that accentuate Government of India's commitment to make use of technology for the development. ONDC is the next step which is modeled on the success of UPI scheme. UPI has been a breakthrough as it led to the transformation of the payment system in India.

The Indian customer has experienced a preferential shift from offline to online, departmental store to door step delivery. Giant players like Amazon, Flipkart, etc. have been trying to ingrain the market by developing robust supply chain and warehouse networking.²

This increasing potential of e-commerce has necessitated the government to look into democratising and modernising Indian digital market space. The government proposed to set up a non-profit company that will be responsible for administration of ONDC on similar lines with the National Payments Corporation of India (NCPI) for UPI. ONDC is an open-sourced e-commerce platform that will facilitate onboarding of local vendors, competitive product price, and product cataloguing.³

ONDC will connect buyers of a product to local sellers through a common open framework. This will help traditional retailers to reach their potential customers breaching the nets of big e-commerce companies for competitive prices. ONDC aims to provide a level playing field to small and medium size merchants by ending monopolistic practices through open networking.

¹ [Shri Piyush Goyal reviews Open Network for Digital Commerce A non-profit entity to be established by private sector participation ONDC to be scaled up and deployed rapidly](#)

² [How Open Network for Digital Commerce will enable 'digitally transform' of SMEs, retailers - The Financial Express](#)

³ [Govt To Set Up Private Sector-Led Non-Profit Firm To Fast-Track Implementation Of Open Network For Digital Commerce](#)

New Confidentiality Regime of the Competition Commission of India

The Competition Commission of India (CCI) has developed a confidentiality regime in line with the European Union's (EU) antitrust law for maintaining the sanctity of information related to enterprises during its proceedings. The regime would establish a guided mechanism for dealing with the request of confidentiality against the right of parties to disclose information under natural justice properly.

The existing practices under the Competition Act, 2002 have been unsatisfactory and laid back for both – parties and the CCI, making the proceeding overlong.

Food for Thought

The new age market expands through multiple verticals in a metaverse universe, such as search engines, online marketplace platforms, app stores, payment gateways, online travel, food aggregators, cab aggregators and social media networking. As our market opens up and adds more space to play in, there lies an underlying challenge of more anti-competitive practices. It is required of the Indian antitrust body to effectively regulate the dynamics of such a market to be abreast with this development, to evolve and refine its operational mechanism accordingly.

The investigation of anti-competitive practices under the Competition Act, 2002 requires dealing in competition-sensitive information of various companies. Considering how valuable this information is, the act provides for the protection of such confidential information. Section 57 of the act provides for the legislative intent of securing the sensitive information from reaching public domain as directed by the party. But the provision is in conflict with the right of defense under the principles of natural justice. Right to defense is also the essence of fair trial.⁴

The Competition Act, 2002 balances the two rights and lays down the need to establish a due process for the same. In the existing confidentiality regime practiced by CCI, the demand for access to sensitive information by parties and protection to confidentiality is done through a tedious and sluggish process. The review for the application of access to information from the confidential version of the pleading is done on a clause-to-clause basis. In the proposed amendment, an attempt to do away with this cumbersome process and streamline the process to facilitate fast adjudication of cases is made.

⁴ [Recommendations On The Review Of Extant Confidentiality Regime Under Regulation 35 Of The Competition Commission Of India \(General\) Regulations, 2009 - Anti-trust/Competition Law - India](#)

The concept of 'Confidentiality Ring', an adoption from EU's antitrust jurisprudence, is sought to be introduced in the Indian regime, which will essentially be bodies comprising authorised representatives (internal and external) of parties who wish to secure access to confidential and commercially sensitive information. Such access will be granted subject to appropriate non-disclosure agreements.⁵

This will further enable timely interventions by the competition regulator against anti-competitive practices.⁶

Air India the Rest

After more than two decades and a few attempts, the government finally sold Air India, its flagship national airline. Déjà vu for Maharaja, indeed, as it returned home to the Tata group, its founding father. The airline was founded in 1932 by Jehangir Ratanji Dadabhoy Tata (JRD) and named Tata Airlines.

In 1948, Air India was launched internationally with flights to Europe. Such international services were among the first PPP in India, with the Tatas keeping 25 percent, with the government holding 49 percent, and the public owning the rest. In 1953, Air India was nationalised and for the next four decades became the prized possession for India, commanding a majority in the domestic airspace.

The litmus test of the GOI's aim to privatisation has been cleared with the sale of Air India, and it has been finally handed over to the Maharaja. 69 years since it was nationalised and 20 years since the disinvestment process began, the flag carrier Air India (and its sister AI Express) is back to the original promoter Tata Group.

A glaring mistake of the outdated Nehruvian economic model is finally corrected, and the national exchequer is saved from financing Rs 20 crores losses a day.

Food for Thought

This disintegration of Air India marks the biggest consolidation in the aviation space of India. The Tatas now own two full-service and two carrier brands- Air India and Air

⁵ <https://indiacorplaw.in/2021/08/confidentiality-rings-under-competition-law-need-for-ironing-out-wrinkles.html#:~:text=Section%2057%20of%20the%20Act,any%20other%20law%20for%20the>

⁶ [Confidentiality Ring Fencing: Pitfalls Competition Commission of India must avoid](#)

Vistara, AirAsia India, and AI Express, respectively. Going back to the year 1986, even after the bombing of Air India flight, the company's profits remained intact.⁷

Part of the reason could be attributed to the monopoly it was enjoying in the sector. With no competition whatsoever, the airline enjoyed its supremacy in the Indian skies. For over five decades, Air India cemented its position in the Indian market. Even with the entering of the private players, Air India was the only airline to cater abroad. It marked ₹300 crores profits in the financial year 1992-1993.⁸

Under the given circumstances of the airline and shift to privatisation, encouraging a deal with the Tata group could be the best possible home for Air India. It has the financial structure, management depth, and other necessary resources for a restructuring exercise of the airlines. It can ultimately leverage its global reach to stitch up an international aero political network allowing invincible competition at both national and international levels. Air India has been a roller coaster ride until it picked the sky route.

With the Tata group winning the Air India bid, it must make considerable efforts to rebuild it. However, the unseen benefit is that it will provide the Tata group a market opportunity to strengthen its presence in the Aviation sector, hopefully not to the extent of market dominance.⁹

In terms of privatisation, we have often advocated that all deals undergo a review by the Competition Commission of India on the likely impact on competition in the market. Still, the government does not follow this process in India. On the contrary, the CCI can suo moto examine the sale and pronounce its approval with or without conditions to the deal.

The task ahead is not merely a fast implementation of other disinvestment proposals but to create a framework for transparent yet time-bound decision making in all spheres of governance and public policy, including competition impact assessment.

The need of the hour is the strong planning for future privatisations and other embarking policies. But that may not be sufficient reason to rejoice.¹⁰ The delay in disinvestment had cost India tens of billions of dollars. Approximately Rs 110,000 crores (US\$14.7bn at

⁷ <https://economictimes.indiatimes.com/industry/transportation/airlines/-aviation/air-india-finds-a-new-address-chronology-of-air-india-privatisation/articleshow/89157779.cms>

⁸ <https://www.airindiaexpress.in/en/about-us/our-company>

⁹ https://www.business-standard.com/article/companies/govt-paying-rs-20-cr-daily-on-air-india-wants-quick-handover-dipam-secy-121101700233_1.html

¹⁰ [Nationalisation did not kill Air India, politics did. Tata's challenge lies beyond fixing it](#)

current exchange) was infused in Air India in cash and loan guarantee since 2009-10. The country must take a lesson from this colossal wastage and stop incentivising delays in decision-making.

Eyes Shipping Four More Strategic Sell-offs

Having finalised two strategic privatisation deals, the government is looking to clinch at least four more transactions before the end of the financial year 2021-22. While oil marketing company Bharat Petroleum Corporation Limited (BPCL) is a major company on the sell-off list, its privatisation is expected to spill over into the coming fiscal year of 2022, along with the sale of a general insurer and IDBI Bank.

It was announced that the two nationalised banks namely, Central Bank of India and Indian Overseas Bank, will also be seen for privatisation once it moves in for legislative amendments. Further, NITI Ayog, the government think tank, has recommended privatisation of NALCO (National Aluminum Co. Ltd) and HCL (Hindustan Copper Ltd) and a few other non-strategic public sector entities.

Food for Thought

Privatisation meant drastic restructuring of the company. The success of any policy rests on gauging the intent behind such a policy. The government's right-wing ideology did not drive privatisation, nor will it be driven by classical economic theories. It is primarily driven by an intrinsic uncompetitive business model, the monopolistic structured sector, and fiscal imbalances in the highly competitive global industry sector.

Privatisation involves selling state-owned assets to the private sector. The private sector tends to run a business more efficiently because of the profit motive. However, critics argue private firms can exploit their monopoly power and ignore wider social costs. Often privatisation of state-owned monopolies occurs alongside deregulation – i.e. policies to allow more firms to enter the industry, increase the market's competitiveness, and ensure that there are no entry barriers. This increase in competition can be the most significant spur to improvements in efficiency. For example, there is now more competition in telecoms and gas and electricity distribution.¹¹

It is a step towards better and more efficient competition, improved efficiency, and a lack of political interference. It is an important step towards allowing healthy competition.

¹¹ [IDBI selloff: Potential investors want Rs 34kcr NPAs given to bad bank - The Economic Times](#)

Still, privatisation should be planned and done to avoid more losses to the government while looking for a party to sell the organisation off to.

Strategic Importance of Noida International Airport

Prime Minister Narendra Modi laid the foundation stone for the upcoming Noida International Airport. The airport, roughly 80 km from Delhi's Indira Gandhi airport, is in line with the Centre's vision of boosting connectivity and creating a future-ready aviation sector. The government expects investments of Rs 34,000 cr to come to Noida International Airport, with the first phase to be completed in 2024.

The airport will develop a Ground Transportation Centre that will feature a multimodal transit hub, housing metro and high-speed rail stations, taxi, bus services and private parking.

Food for Thought

The airport will be linked to the planned Delhi-Varanasi High-Speed Rail, enabling the journey between Delhi and the airport in only 21 minutes. Spread over 1,330 acres of land, the Noida airport is expected to handle most of Lucknow's international traffic to Delhi apart from the 15 percent traffic from western Uttar Pradesh.

The airport is strategically located and will serve the people of cities including Delhi, Noida, Ghaziabad, Aligarh, Agra, Faridabad and neighbouring areas. This will be the first time an airport in India has been conceptualised with an integrated multimodal cargo hub. The airport will develop a Ground Transportation Centre that will feature a multimodal transit hub, housing metro and high-speed rail stations, taxi, bus services and private parking.

With this airport, UP will become the only state in India to have five international airports. The Noida airport will be India's first net-zero emissions airport, and this will be the second international airport to come up in Delhi-NCR.

It will help decongest traffic from Delhi Airport. All major nearby roads and highways, such as the Yamuna Expressway, Western Peripheral Expressway, Eastern Peripheral Expressway, Delhi-Mumbai Expressway and others, will be connected to the airport. The airport will also house a state-of-art MRO (Maintenance, Repair & Overhauling) Service. The dedicated cargo terminal will have a 20 lakh metric tonne capacity, which will be expanded to 80 lakh metric tonne. Once completed, this will be Asia's biggest airport.

Such strategic features are expected to enhance ease of living and, subsequently, doing business in India. It is only when cargo materials are transported at an accelerated rate and human resources are nurtured to facilitate their ease of living and increase their living standards that there is openness in terms of industrial and business development in the region.

C. Policies Inhibiting Competition

New Telecom Collaborations

For long, India has seen bitter contests between telecom biggies. It now looks like they are up for some coaction. There have been indicative talks on collaboration and joint efforts in the telecom sector by Reliance's Jio, Airtel and Vodafone-Idea representatives.

Even in the recent India Mobile Congress in 2021, this was the highlighted point of concern. India's Biggest Mobile Network Operator, Jio's begetter Mukesh Ambani, who has crushed its competitors in the past, too thinks that it is time for some cooperation to effectively evolve and adopt upcoming high-tech technologies.

The out-stretching of technology to the greatest number of people in India, even in the remotest of places is what needed to be achieved. Airtel's Sunil Mittal too has shared his concerns regarding duplicity in many areas like mobile tower or fibres, which adds up the cost for all the telecom companies. He suggested the way forward is co-building as it has been long practiced around the world.

There exists a general agreement on collaboration for lowering the cost of infrastructure that will help serve the people better at an affordable tariff and thereby furthering the Digital India Vision.

Food for Thought

The Telecom industry is one such sector that has successfully shown enormous growth potential. Even in the COVID-19 quandary, where almost every sector was on its all-time low, telecom grew to be the new idea of mobility and connectivity through virtual reality.

It emerged to be world's economic engine as when connectivity became critical, it was only through telecom services that businesses could think of running, making "work from home" a new normal. Adapting to this new normal, the world is making a major digital

transformation into a technological era, the techade popularly referred to by India's Prime Minister.¹²

Emerging technologies like 5G, artificial intelligence, development of metaverse require effective deployment to reach their potential success. India has its own sets of challenges when it comes to deploying technologies due to a serious lack of infrastructural setup. The setting up of infrastructure for end-to-end networking will require high cost investments which is possible only through mutual maturing.

Collaborative working of competitors may lead to the diminishing of competitive edge in the market, unless the telecom regulator or the competition authority does not keep an eye on the evolving market. Telecom wars in India have far long benefitted billions of mobile users. This pro-consumer arrangement can be hampered because of concerted-working as seen in recent sectorial tariff hikes by all the major players, such as Airtel, Jio and Vodafone-Idea.¹³ Competition is the essence of market economics and, therefore important to exist at all times.

The Amazon-Reliance War

The issue of Amazon and Future Coupons, an ordinary commercial dispute, has stretched too long. It all started with Future Coupons-Amazon's investment deal where Future Group, in much desperation, gave up its stake in an attempt to channelising funds for its debt-laden retail business. The CCI had approved the transaction, assessing it to have no adverse impact on the Indian Market.

With the outbreak of the COVID-19 pandemic, where economies worldwide were experiencing a point of stagnation, the Indian economy was no exception. The downfall of the Indian market and retail being the worst affected sector, Future Group was getting in a difficult space as its cash count deteriorated, but much more serious this time.

Reliance came to help by making a deal to buy Future Group's 1500 plus stores. Amazon could not sit back and let its competitor take the upper hand; therefore, it quickly responded by dragging Future Group to arbitration at Singapore International Arbitration Centre (SIAC) for breach of contract. Amazon intelligently termed its deal

¹² <https://www.hindustantimes.com/india-news/techade-of-india-pm-modi-says-jan-16-to-be-celebrated-as-national-start-up-day-101642233015562.html>

¹³ <https://www.deccanherald.com/opinion/second-edit/telecom-tariff-hike-will-hurt-millions-783386.html>

with the Future Group, restricting it from selling its assets to a list of parties, including Reliance Industries.

Amidst a severe cash crunch, Future Group is determined to try everything possible to execute its deal with Reliance Industries. It had gotten the national antitrust body to dissolve its 2019 transaction with Amazon. This means that CCI will have to question its assessment for the 2019 deal of Future-Amazon and declare its evaluation erroneous to then revoke the order, nullifying the deal.

Further, it has also knocked the doors of the country's judiciary to challenge the International Emergency Arbitration in favour of Amazon on its non-applicability per national law.

Food for Thought

The legal tussle of Amazon and Future Group, with Reliance Industries being somewhere in the middle, highlights India's regulatory convolutions that are causes of concern for investors. Indian regulators have rigorously practiced protectionism and attempted to restrict international competition in the Indian market, promoting its domestic players. This is why India keeps reviewing its regulatory framework and makes necessary amendments towards a rigorous regime. Amazon has been high on the radar of India's economic, regulatory agencies.

The Government of India in 2016 came up with new Foreign Direct Investment (FDI) regulations which had adversely affected Amazon's business. De novo regulations barred the US-based Amazon from acting as a retailer that owns and discounts inventory in India. Lately, it is the Future Group chaos and the Indian antitrust authority's role in vexing the US e-commerce giant.

Future's attempt to circumvent Amazon with the help of a regulatory framework is blatantly incorrect. The application for revoking CCI's approval, based on misrepresentation only, after a lapse of two years period is also farfetched. Firstly, CCI is an independent national agency that works with its resources. It is to say that while determining the appreciable adverse effect of competition due to a transaction, CCI could rely on information furnished by the parties.

CCI will assess the market and accordingly ask parties for clarifications. For understanding the intent of concerned law regarding the powers of CCI to revoke orders to be perpetual, section 20 of the Competition Act. The section dictates that it does its

market assessment and is rather also expected to do the same and then ask parties for clarifications.

The proviso clause under the section incorporates a limitation: the Commission shall not initiate any inquiry under this subsection after the expiry of one year from the date on which such combination has taken effect. What law does provide in cases of misleading information to the Commission, the CCI is empowered to impose fines on such parties under section 43A of the Competition Act, 2002.¹⁴

Further, India has maintained its strict stance on not recognising International Arbitration, making them non-enforceable in Indian jurisdiction. Recently, in another such case between Vodafone International Holding and Government of India, an arbitration award in favour of Vodafone won against the government was questioned for its applicability. All of these lead to implications that further India as an unfriendly jurisdiction for arbitration and affect the country's attractiveness in terms of business investment.

The Delhi High Court, wherein the original petition for challenging arbitration was made and even the Supreme Court of India has also reprimanded parties for the redundant practice of challenging arbitration. The courts believed that when the parties at the time of agreement have mutually agreed to the terms or agreement, which includes arbitration rules, then the parties have no right to challenge such arbitration award.

Airport Privatisation under the National Monetisation Plan

The Government of India has announced its plan to further privatise 13 other airports, which the Airports Authority of India (AAI) currently administers. A list of 13 such airports to be auctioned on the PPP model has been prepared, clubbing seven small airports with six big airports. The successful bidder will be decided based on the highest per-passenger revenue rate.

¹⁴ <https://www.ndtv.com/business/amazon-future-retail-deal-competition-commission-of-india-suspends-amazon-future-2019-deal-on-suppression-of-information-2656942#:~:text=The%20ruling%20by%20the%20Competition,with%20now%20estranged%20partner%20Future.&text=The%20CCI's%20order%20said%20Amazon,incorrect%20statements%22%20while%20seeking%20approvals>

These clubbed airports are Varanasi, clubbed with Kushi Nagar and Gaya, Amritsar with Kangra airport, Bhubaneswar and Tirupati, Raipur with Aurangabad Indore with Jabalpur and lastly, Trich and Hubli airport.¹⁵

Food for Thought

Under the Central Government's National Monetisation Plan, the whole privatisation process has come under scanner. There have been some red flags raised, highlighting serious discrepancies in the auction process. This concern was raised through Airport Authority Employees Union's open letter to the Prime Minister pointing to the huge difference between the asset valued and contract price for the abovementioned 6 airports sold to Adani Group of Industries (asset valued at 1300 crore but sold for 500 crore).

As per the Records of Discussion of the 85th meeting of PPPAC (Public Private Partnership Appraisal Committee) held on December 11, 2018 the value assessed for Mangalore Airports was at 363 crores, 583 crores for Lucknow and 384 crores for Ahmedabad. The contract signed between Adani Enterprises and the AAI costs these three airports, Mangalore, Lucknow and Ahmedabad, at 74.5 crores, 147 crore and 277 crores, respectively.¹⁶

Further, even the auction terms have also been twisted because before the bidding in a note issued by the Department of Economic Affairs, it recommended that "not more than two airports should be given to the same bidder because of the huge financial risk involved. The DEA further substantiated its point by citing Delhi and Mumbai Airports examples that both were not given to GMR despite it being the only qualified bidder for the deal. Unfortunately, without paying any heed, the government made the sale of six airports to a single entity.¹⁷

Adani Airport Holding Ltd. today is India's largest Airport Infrastructure Company. AAHL also recently acquired 74 percent stake in Mumbai Airport by buying 50.5 percent stake from Hyderabad's GVK group and another 23.5 from two foreign companies Airport Company of South Africa and Bidvest. The allegation of proposed bypassing of the norm

¹⁵ [13 more airports to be privatised; 7 small airports to be clubbed with 6 big ones for this PPP round - Times of India](#)

¹⁶ <https://www.thehindu.com/news/national/aai-assets-worth-1300-cr-at-3-airports-sold-to-adani-for-500-cr-claims-union/article36835561.ece>

¹⁷ <https://indianexpress.com/article/business/adani-airports-finance-ministry-niti-aayog-7146853/>

for choosing the bidder and other claimed irregularities in privatisation of airports requires serious consideration and thinking.¹⁸

Perceived Differences in Quality of Drugs Stifle Competition

The CCI has found a perceived difference in the quality of the various brands of drugs that are generic and can be prescribed interchangeably in a market study. It can be seen as one of the major barriers to effective price competition in the pharmaceutical industry.

CCI found that the top-selling antibiotic formulation amoxicillin and clavulanic acid 125mg and 500mg tablets are currently sold by 217 companies fewer than 292 brands, with prices ranging from Rs 40-Rs 336 a pack of six tablets. Notable variation in price is also found between two brands of the same medicine sold by the same company in some instances.

Food for Thought

Unlike in Western markets, where patented drugs are branded, and off-patent ones are mostly generic drugs sold by their chemical names, Indian drug makers give brand names to generic copies, known as branded generics, to get a market edge. The formulations sold by the chemical name are referred to as trade generics or generic generics in India and amount to only 10 percent of the generic drug and are mostly public procurements.¹⁹

An escalation in price variation among the generic brands of the same formulations by different producers and even among two brands of the same formulation sold by the same producer was seen in the study done by CCI.²⁰

The study nails the trend in the retail drugs market — although low-priced generic copies of drugs are available for most originator drugs, asymmetric information about the generic quality and penchant for branded medicines undermine price competition.

¹⁸ <https://economictimes.indiatimes.com/industry/transportation/airlines/-aviation/adani-takes-over-mumbai-international-airport-becomes-indias-largest-airport-operator/articleshow/84380504.cms?from=mdr>

¹⁹ [Perceived differences in quality of drugs stifle competition: CCI](#)

²⁰ [Explained: CCI market study on pharma sector](#)

Proposed Amendments to the E-Commerce Rules

The e-commerce sector is expected to grow to US\$188bn by 2025 from US\$64bn in 2020. The Central Government had notified the Consumer Protection (E-Commerce) Rules, 2020, which fall under section 101 of the Consumer Protection Act, 2019 (COPRA), with effect from July 23, 2020.

However, since the notification of the rules, the government received several representations from aggrieved consumers, traders and associations complaining against widespread cheating and unfair trade practices being observed in the e-commerce ecosystem.

The Prime Minister will weigh the consultations of the Consumer Affairs Minister with the stakeholders regarding proposed amendments to the e-commerce rules. The draft guidelines seek to strengthen consumer protection and tighten rules for e-commerce marketplaces, including barring affiliated entities from selling on their platforms and restricting flash sales - the discounts or promotions that e-commerce firms offer for a short duration.

Food for Thought

The emergence of global supply chains, rise in international trade and the rapid development of e-commerce has led to new delivery systems for goods and services and have provided new opportunities for consumers. On the other hand, the development of the e-commerce sector has rendered the consumer vulnerable to new forms of unfair trade and unethical business practices and violation of personal data and information secrecy. Misleading advertisements, tele-marketing, multi-level marketing, direct selling, flash sales and e-tailing pose new challenges to consumer protection. The difference of views has delayed a decision on the proposed changes.

Despite being one of the biggest job creators, the online retail sector has faced flak from small traders and offline retailers for alleged predatory pricing, preferential treatment to related parties, and flouting of several regulations. The rules have all the sides of a faucet, the good, bad and the ugly.

It is good that it seeks to balance the uneven relationship between the individual consumers and manufacturers, service providers, sellers, and e-commerce platforms. COPRA does not seek to burden manufacturers, service providers, sellers, and e-commerce entities with additional layers of compliance requirements. The draft e-

commerce rules do. Further, the third set of changes to the e-commerce rules is most troublesome. They have nothing to do with consumer protection or COPRA. Legally, they are untenable. For consumers, they are harmful.²¹

Suppose the idea is to ensure that e-commerce platforms do not engage in anti-competitive practices or follow the investment rules. In that case, the Ministry must engage with the CCI or the Enforcement Directorate and Reserve Bank of India to plug the gaps. The Competition Act, 2002 contains an express provision to facilitate such conversations. A collaborative understanding and work of the regulators will curb anti-competitive practices in the market.

Indian Salesmen Threaten Supply Disruptions

India's household goods salesmen have threatened to disrupt supplies to mom-and-pop stores if consumer companies provide lower-priced products to Reliance Industries. Indian salesmen representing companies such as Reckitt Benckiser, Unilever and Colgate-Palmolive said their sales had dropped 20-25 percent in the last year as mom-and-pop stores were increasingly partnering with Indian billionaire Mukesh Ambani's Reliance.

Ambani's deeply discounted offerings were prompting more stores to order them digitally from his JioMart Partner app. This will pose an existential threat to more than 450,000 company salesmen who served every corner of the vast nation for decades by going store-to-store to take orders.

The All India Consumer Products Distributors Federation (AICPDF) has 400,000 members - has written to consumer companies demanding a level playing field, saying they must get products at the same prices as other big corporate distributors.

Food for Thought

Reliance's strategy of offering deep discounts encouraged stores to order digitally from the JioMart Partner app. This threatens the livelihoods of more than 450,000 company salesmen who, for decades, made their living by going store-to-store to take orders.

Unable to compete with Reliance's pricing, traditional distributors are forced to cut vehicle fleet and staff due to dwindling business. It is thus also creating a "monopoly"

²¹ [Govt to revisit draft e-commerce rules as liability, grievance redressal norms draw backlash](#)

that threatens to “destroy the traditional trade”. A monopolistic market can distort competition giving the market demand and supply powers to that monopolistic source.

Further, JioMart turns to Whatsapp to break Amazon’s buyers' grip on the grocery stores. Now people can use Whatsapp to order groceries via a new “tap and chat” option, while Reliance Industries challenges the domination of Amazon and Walmart-owned Flipkart.²²

AICPDF president Dhairyashil Patil said that they are not against benefits to the consumer, but the “predatory pricing” offered to retailers is driving up unemployment. The remedy lies only under competition law. The unfair trade practices by the large e-commerce platforms which have become digital gatekeepers, like deep predatory discounts through massive cash burns, absence of platform neutrality, etc. are now well known.

Such practices should be investigated to promote competition in the market, and policies should come up to allow kirana stores and small sellers to increase their revenue by increasing sales.

However, unless the competition law in India relating to abuse of dominance is amended to include an attempt to dominate, and the government comes out with other such policies, the abuse is not going to stop and the sellers are going only to get affected in terms of their revenue for living.²³

This only highlights the impact that multi-national e-commerce companies have on small traders and retailers.

Tenders Designed to Bar Indian Firms

A top scientist and a Niti Aayog member, V K Saraswat raised questions and sought to hold the tender for the government’s strategic Rs 1,072 crore Kochi-Lakshadweep Islands (KLI) optic fibre project. Saraswat expressed reservations over the tender — which has also been challenged in Delhi High Court by lobby group Telecom Equipment Manufacturers Association (TEMA) — through a communication sent to the Telecom Ministry in April 2021.

²² [Indian salesmen threaten supply disruptions in protest against Reliance Industries - BusinessToday](#)

²³ [Traders, online sellers protest against e-commerce brands](#)

Food for Thought

Announced by Prime Minister Narendra Modi on August 15, 2020, the 1,772km project aims to lay submarine cables between Kochi and 11 islands of Lakshadweep. It is aimed to provide a bandwidth of 100 GBPS in the areas, improving mobile services and boosting e-governance and e-commerce initiatives. While the overall motive is pro-competitive, the approach has anti-competitive elements.²⁴

Saraswat contended that the tender document has been deliberately designed to bar Indian companies from participating, which could compromise the security, cost-effectiveness, and reliability of the project. Competitiveness, too, is compromised. When India is trying to build its capabilities in the telecommunications sector, there are no provisions in the Detailed Note for Inviting Tenders (DNIT) to facilitate and support the development of indigenous capabilities. It appears that the eligibility criteria mentioned in the DNIT are deliberately designed to bar Indian companies from participating in the said project.

Given that the connectivity between the mainland and the Lakshwadeep Islands is a matter of strategic and national importance, the network developed must be ensured to be robust, reliable, secure, indigenous, and cost-effective. This can only be ensured in case of a level playing field wherein all the firms pool their input to build holistic connectivity. This should be done to promote participation by Indian companies and for a better output.

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.

²⁴ <https://timesofindia.indiatimes.com/business/india-business/key-tender-designed-to-bar-indian-firms-niti-member/articleshow/86544250.cms>