COMPETITION DISTORTIONS IN INDIA – A CUTS DOSSIER

(CDI-36: April to June, 2017)

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

Periodic dossiers look at the interface of policy issues which have an impact on competition in India. Such impact could be negative, positive or mixed, depending on sectors and markets. In these dossiers, news as published is utilised without verifying its accuracy, but ensuring its veracity.

The purpose is to flag issues and provide food for thought to the layman as well as to the policymakers and regulators. A detailed analysis has not been undertaken as it would require deeper examination of the issues, particularly in terms of cost and benefits.

We are pleased to present to you the CUTS Competition Distortion Dossier Edition No: 36 for the quarter of April-June 2017. As always, we have attempted to capture interesting stories having an impact on competition, in sectors such as steel, oil, finance, civil aviation, pharmaceutical and telecommunications.

In this issue, we highlight how extended persistence with preferential policies in select markets can adversely impact competition and global competitiveness of market players. In addition, the dossier seeks to point out how price interventions by government can affect incentives to invest and possibly inhibit competition. Further, we try to demystify the competition issues involved in public procurement mechanisms. This edition also focuses on exemplifying the possible benefits of policies which promote fundamental principles underlying competition, and highlights the need to conduct robust *ex-ante* cost benefit analysis in policy formulation.

Contents

A. Trade Policies

1. Cabinet approves National Steel Policy 2017

The Union Cabinet chaired by the Prime Minister gave its approval for the National Steel Policy (NSP) 2017 for India. The policy seeks to enhance domestic steel consumption, ensure high quality steel production and create a technologically advanced and globally-competitive steel industry. Policy measures for ensuring availability of raw materials, including iron ore, etc., at competitive rates will be adopted. Energy-efficient technologies in the Micro, Small & Medium Enterprises (MSME) steel sector will be encouraged.

http://pib.nic.in/newsite/PrintRelease.aspx?relid=161491

Food For Thought

The NSP 2017 seeks to provide impetus to domestic manufacturing and hopes to achieve 300 million tonnes (MT) of steel-making capacity by 2030. Moreover, according to the Finance Minister, preference would be given to domestically-manufactured steel products in government tenders to make sure that surplus capacity is consumed.[1] *The rationale behind providing policy support to domestic manufacturers seems to be multi-pronged, which includes attainment of self-sufficiency, increasing global competitiveness, improving domestic steel consumption and simultaneously tackling weak demand. Markedly, other jurisdictions, such as the European Union and the US have also engaged in a similar approach vis-à-vis steel imports and have levied or are proposing to levy anti-dumping measures/import duties on the same.*[2]

It is important to note here that the global steel market recently underwent a phase of low demand and overproduction with countries like China increasingly offering steel exports at extremely competitive prices. To safeguard domestic manufacturers from cheap imports, the Indian government levied measures such as anti-dumping duties and conditions of Minimum Import Price (MIP), which sought to boost local production and protect the domestic manufacturers from global headwinds (see coverage of previous measures in CUTS competition distortion dossiers, accessible here). It appears that this protectionist approach has evidently continued and found its place in the NSP. Protectionism in this form may become counterproductive as Indian manufacturers might not be able to reach and maintain global standards in terms of technological advancement and efficiency.

[1] See, Shukla et al, *Cabinet clears National Steel Policy that favours Indian steelmakers,* Live Mint, May 04, 2017, at *https://goo.gl/B4J1T3*. Last accessed on July 03, 2017.

[2] See *http://uk.reuters.com/article/eu-steel-tariffs-idUKL5N1K94KP* and *www.livemint.com/Politics/wGGaCOeHcCHDbo8LlesEGO/US-push-for-hefty-steel-import-duties-draws-titfortat-thre.html*

In the short run, the implications of such an approach appears positive, but it is important to recognise that it banks on the assumption that domestic demand will constantly rise in the future which might not be the case.[3] *In addition, meeting the envisaged steel capacity (300 MT by 2030-31) would require substantial targeted efforts towards providing basic resources such as infrastructure, finance and raw material. The intent to create a globally competitive steel industry is principled, but a long term approach of protectionism might just have the opposite effect. This point towards the need for a National Competition Policy which could ensure that sector specific policies adhere to pro-competitive principles and long-term growth and competitiveness of domestic producers is safeguarded.*

2. Anti-dumping duty imposed on Chinese chemical, aluminium foil

The Indian government imposed anti-dumping duty on a Chinese chemical used in pharmaceutical industry and aluminium foil to protect domestic industry from cheap imports. While an anti-dumping duty of up to US$1.63 per kg was imposed on aluminium foil, up to US$8.71 per kg duty was slapped on imports of amoxicillin, used in pharmaceuticals. The duty on both the products would be effective for a period of five years.

www.livemint.com/Industry/7bpdkboDILRt9VOVnfCgAP/Antidumping-duty-imposed-on-Chinese-chemical-aluminium-foi.html

Food For Thought

This measure embodies the thought-process of a separate probe conducted by the Directorate General of Anti-Dumping and Allied Duties (DGAD, investigation arm of Ministry of Commerce & Industry, Government of India) which concluded that these products were dumped into India, causing material injury to the domestic industry. Notably, the intention behind levying anti-dumping duty is to ensure fair trade and provide a level-playing field to the domestic industry.

It has been well documented that although the intent of anti-dumping duties is to tackle unfair trade practices, the proliferation of anti-dumping has turned out to be a problem for global trade itself.[4] *Considering Indian government's cross-sectoral efforts to protect domestic manufacturers (for similar measures levied on other product segments, see previous CUTS*

[3] It has been observed that projections of rise in domestic steel demand may not be accurate as most of the steel for the public sector is already sourced from domestic steel companies (steel imports amount for only 8-9 percent of domestic steel demand). Further, achieving ambitious targets of capacity expansion and increase in production might be tough and the industry might not have the resources to do so. For more details, see http://www.firstpost.com/business/national-steel-policy-protectionism-wont-last-long-make-local-cos-globally-competitive-instead-3424164.html and http://www.businesstoday.in/opinion/perspective/government-new-steel-policy-sets-bold-targets-but-does-not-outline-the-way-forward/story/244432.html

[4] See, Lloyd, *Anti-Dumping and Competition Law*, The World Trade Organisation: Legal, Economic and Political Analysis, 2005, at https://goo.gl/omtPCw. Last accessed on 03 July 2017.

competition distortion dossiers, accessible here) it appears that anti-dumping measures have been used quite frequently and flexibly. Considering that there is no guarantee that these will have the desired result (increased global competitiveness of Indian industry, et al), it might be useful for the government to regularly revisit such policy measures and conduct sector specific cost-benefit analyses (evidence of such analyses by various government departments, policymakers, etc., seems to be absent in the public domain).

Reconsidering (and removing if need be) such measures through well tested tools, such as Regulatory Impact Assessment and Competition Impact Assessment can aid the policymakers to make objective decisions on the basis of evidence and can also ensure that the Indian industry gradually gets accustomed to an optimally competitive environment, making its growth organic, sustainable and one that it is devoid of sustained governmental support.

B. Policies Inhibiting Competition

3. Drug-Pricing Regulator wants Medical Devices Added to Price Control List

The National Pharmaceutical Pricing Authority (NPPA), a government body established to fix and enforce prices of controlled bulk drugs and formulations, has asked the Health Ministry to add four more medical devices to a list of products eligible for price controls to reduce costs to patients, which if agreed could be another blow to the country's US$5bn-a-year medical-technology industry. According to reports, NPPA Chairman Bhupendra Singh stated that the essential medicines list – comprised of more than 350 items, most of them drugs – should include balloons, cardiac catheters, and covered as well as peripheral stents, 'as soon as possible'.

http://profit.ndtv.com/news/industries/article-drug-pricing-regulator-wants-medical-devices-added-to-price-control-list-1708934

Food For Thought

Price control and levying price caps on drugs through regulatory mechanisms aims to decrease healthcare costs incurred by patients and seeks to tackle problems of accessibility and affordability of medicines. Notably, after capping the price of cardiac stents and evidently wanting to add more medical devices to the price control list, the regulator has also asked manufacturers, importers and marketers of 19 out of 23 medical devices that have been notified as 'drugs' under the Drugs and Cosmetics Act to submit price movement data on these devices.

With growing inclusion of medical devices in the price control list and monitoring of price movement data, it will become easier for the regulator to cap prices of devices which were previously not included in the list. Markedly, if such a move affects quality of drugs and makes pharmaceutical companies wary of entering the market, it could have an adverse effect on competition and consumer welfare. Notably, empirical research suggests that cost and quality of medical care can be negatively impacted by price regulation.[5] Furthermore, price regulation could also disturb the incentives to invest and reduce expected returns of research and development activities in the pharmaceutical industry, possibly distorting entry of innovative firms and inducing the exit of existing ones.

4. Oil PSUs to give preference to domestic companies in procurement

The Union Cabinet recently approved a policy to provide purchase preference to domestic manufacturers in procurements done by state-owned oil and gas companies. Under the policy, the targets of Local Content (LC) will be stipulated for certain oil and gas business activities. The manufacturers/service providers who meet the local content targets and whose quoted price is within 10 percent of the lowest valid price bid would be eligible for purchase preference for a stipulated portion of the purchase order on matching such price. The policy will be applicable for five years.

http://energy.economictimes.indiatimes.com/news/oil-and-gas/oil-psus-to-give-preference-to-domestic-cos-in-procurement/58150534

Food For Thought

The new policy is expected to encourage suppliers and service providers to progressively adopt 'Make in India' practices and add value to their goods and services within the country. Notably, the policy will apply to all the public sector enterprises and their wholly owned subsidiaries, joint ventures wherein 51 percent or more equity is held by one or more public sector enterprises, attached and subordinate offices of Ministry of Petroleum and Natural Gas, Government of India.

Governmental preference to Indian manufacturers appears to be in line with the overarching, cross-sector policy goal of increasing domestic capacity and production. However, proposing measures which require oil public sector undertakings (PSUs) to abide by conditions of procurement which essentially favour domestic companies over foreign ones have the potential to significantly disturb the level-playing field in the oil and gas sector or input market for oil and gas sectors and further elevate the barriers to entry.

[5] Kessler, *The Effects of Pharmaceutical Price Controls on the Cost and Quality of Medical Care: A Review of the Empirical Literature*, PhRMA, at https://goo.gl/EpMzxX. Last accessed on July 03, 2017.

This measure might also deter foreign companies to invest in India, thereby, decreasing the sector's growth potential. In addition to implications on investment, the government should also be weary of long-term adverse effects of such measure on technology advancement and possibility of sub-optimal resource allocation. Lastly, India also needs to be weary of compatibility issues of such moves with WTO requirements.

5. Government issues Public Procurement (Preference to Make in India) Order, 2017

The Ministry of Commerce & Industry recently issued the Public Procurement (Preference to Make in India), Order 2017 as part of the policy of Government of India to encourage 'Make in India' and promote manufacturing and production of goods and services in India with a view to enhancing income and employment.

Essentially, the Order seeks to give purchase preference to local suppliers in all procurements undertaken by procuring entities[6] in the manner specified. As per the order, the minimum local content shall ordinarily be 50 percent.

http://dipp.nic.in/sites/default/files/publicProcurement_MakeinIndia_15June2017.pdf

Food For Thought

There are several perceived benefits which lead governments to contemplate and implement potential discriminatory practices of procurement. Mandating minimum local content requirements, being one of these practices is normally implemented with the aim of stimulation of infant industries, and to increase productivity of local manufacturers and foster development of underdeveloped regions of the country. However, there are several benefits of opening up government procurement processes and making them non-discriminatory. These include enhanced competitiveness, efficient public resource utilisation and augmented trade activity.

Governments of developing and emerging economies are often faced with the dilemma wherein they have to choose between the two and it seems that through this Order, the Ministry of Commerce & Industry has decided to promote domestic manufacturing by giving purchase preference to local suppliers. Evidently, the rationale supports the economic theory that less government expenditure on imports and preference to local content will enable India to be self-sufficient. However, the fact that the government is the chief procuring entity in India, such a policy can eventually diminish competitiveness of local manufacturers and can also

[6] A Procuring entity is defined in the order as "*a Ministry or department or attached or subordinate office of, or autonomous body controlled by, the Government of India and includes government companies as defined in the Companies Act*"

have a marked impact on India's trade patterns. Needless to add, careful implementation of the order through cost-benefit analysis can help in finding the right balance between promotion of domestic manufacturing and enabling a level-playing field in procurement processes. Here too, it is important to mention that India needs to be mindful of compatibility issues of such moves with requirements of World Trade Organisation (WTO).

C. Policies Promoting Competition

6. RBI calls for account number portability

The Reserve Bank of India's (RBI) Deputy Governor S S Mundra pushed banks to allow customers to move seamlessly between banks without having to change their account numbers. He also mentioned that the central bank would soon come out with final guidelines on customer protection to limit their liability in case of fraud in electronic banking transactions. Notably, bank account portability has previously been mulled by regulators in other jurisdictions (See Report commissioned by the Financial Conduct Authority).

www.livemint.com/Industry/ftrBhMuJfdOvysWEHf30RJ/RBI-calls-for-account-number-portability-banks-wary.html

Food For Thought

Account number portability is expected to allow customers to seamlessly transfer their accounts, inclusive of deposits, from one bank to another using the same account number, a practice similar to the one followed in the telecom sector. This proposed feature is expected to empower the consumer and if successfully implemented, it can significantly supplement competition between the banks and persuade them to improve quality of financial services, adopt transparency vis-à-vis bank charges, enhance consumer protection mechanisms, and ensure accountability.

However, on the other hand, it has been reported that bank account portability can also negatively impact the banking industry by imposing unnecessary and excessive costs of compliance such as development of a uniform system of transition, standardising account number formats, changing core filing structures, which might hit the consumer adversely in the long run. Furthermore, it might result in operational challenges and contradictions regarding regulatory liabilities such as Know Your Customer (KYC) norms. Also, it might make the banking system susceptible to unknown challenges related to fraud, thereby impacting the security of the financial system. A careful cost-benefit analysis before adopting such measure and focus on addressing implementation and operational concerns will be necessary.

7. Cabinet approves Plan to Sell Stake in State-Owned Air India

The Union Cabinet has approved the plan to privatise loss-making Air India and set up a committee of Group of Ministers to work out how this decision would be implemented. This decision has come after *NITI Aayog* suggested that the taxpayers' money being pumped into the airline should instead be used on health and education. Notably, the airline is staying afloat on little over Rs. 30,000 crore bailout packages which was extended by the previous United Progressive Alliance (UPA) regime.

http://economictimes.indiatimes.com/articleshow/58929278.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

Food For Thought

As pointed out by the Finance Minister, Air India's market share lays just around 14 percent whereas its debt burden is at a staggering Rs 50,000 crore. Furthermore, keeping in mind that the air carrier has been fraught with debt and faces challenges related to service costs, privatisation is expected to provide a fillip to its recovery, improve efficiency, and also aid the competitive growth of the Indian civil aviation sector.

However, it has been pointed out by policymakers that this will not be an easy task and the government would eventually have to write off some of the debts of Air India. In furtherance of this, it has been reported that the government is unlikely to allow a foreign investor to participate in the process (the committee is expected to decide on this matter). In light of this, it is essential to realise that the general objective of privatisation should always be to bring in optimal level of investment and if the same is strategically allowed only for domestic investors, it can increase the burden of debt on the government as it would mean that only few domestic investors can partake,[7] *which could further lead to a sub-optimal market outcome.*

8. TRAI issues consultation paper on mobile data speeds

The Telecom Regulatory Authority of India (TRAI) released a consultation paper regarding internet speeds wherein it considered the possibility of having nutrition labels for internet services, among other reforms like disclosing minimum speeds, disclosures regarding tariff plans, and other mandatory Quality of Service (QoS) parameters. QoS regulations on telcos *vis-a-vis* internet speed were required in light of increase in number of consumer complaints regarding slow internet speed. One of the important reforms proposed is mandatory nutrition labels, which basically require a telecom or internet service provider to disclose

[7] Bhattacharya, *Air India Sale*, Firstpost, June 29, 2017, at https://goo.gl/eP1586. Last accessed on July 03, 2017.

network performance indicators to consumers such as latency, average speeds, peak time speeds, etc., similar to US regulator's 'Broadband Facts' label.

www.medianama.com/2017/06/223-trai-data-packs-nutrition-label-format/

Food For Thought

The consultation paper issued by TRAI titled 'Data Speeds Under Wireless Broadband Plan' looks at various issues, such as minimum speeds, disclosures to users regarding tariff plans, methods to audit Internet speeds offered by mobile service providers, and revision on mandatory QoS parameters.

QoS requirements like broadband labels are important means for ensuring consumer trust and maintenance of optimal QoS standards across internet service providers. Moreover, measures such as mandatory broadband labels set a platform for comparison of QoS with the Standard/Regulatory benchmarks. They simultaneously instil competition in the market and create incentive for providing better QoS to consumers (See CUTS' Presentation on Benefits of Broadband Labels). Mandating QoS requirements imparts competition on merits, encourages transparency and considerably empowers the consumer. Such measures could additionally tackle information asymmetry and generate awareness about consumer rights and obligations while availing broadband services.

The approach of issuing consultation paper to obtain inputs from different stakeholder groups is indeed appreciable. However, it would also be useful for the regulator to design different regulatory options, estimate respective costs and benefits, and release such information in public domain to enable informed debate and discussion on the subject.