

Competition Distortions in India – A Dossier

(CDI-9: August-September 2010)

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

This periodic dossier produced by CUTS looks at the interface of policy issues having an impact, both negative and positive, on competition in India. The dossier relies on published news from reputed sources but at the same time CUTS does not guarantee its 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. Judgments would require greater analysis particularly in terms of cost and benefits therewith.

This is the 9th volume of the bi-monthly dossier that we are producing to report and comment on policy induced competition distortions in India, as reported in the print media during August-September 2010.

As stated earlier, the purpose of this periodical report is to highlight the need for a holistic competition policy in the country that can take care of such distortions which cannot be tackled under the Competition Act, 2002 – for example, the issue of competitive neutrality. Alas, this has been constantly under attack in several ways!

In this volume, we report about the Reserve Bank of India once again asking state governments to give their business to public sector banks only. In the past, a similar advice was criticised by the Competition Commission of India under its advocacy powers. But, the powers do not seem to heed the same.

Our case is not that competition distortions cannot exist. It can be tolerated only if there are significant offsetting welfare gains in terms of employment, on grounds of public interest, etc.

The debate on reduction in import duty on natural rubber and its corresponding effect on various interest groups such as domestic rubber growers, tyre manufacturers and of course consumers, continues in this dossier as Union Minister for Commerce and Industry, Anand Sharma, rules out cut in the import duty on natural rubber. On the other hand, cartelisation in the tyre sector has been spoken about again by their consumers.

Other issues which find mention in this dossier for their positive effects on competition are – introduction of competitive bidding in coal mining and electricity sector and easing of foreign direct investment rules for joint ventures.

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A. Trade Issues

1. Anand Sharma rules out cut in import duty on rubber

"The Union Minister for Commerce and Industry, Anand Sharma has ruled out cut in the import duty on rubber from 20 percent", said Sajen Peter, Chairman of the Rubber Board.

...However, he said that the government would be implementing the recommendations of the expert panel constituted under the directive of the Delhi High Court to look into the demands raised in a petition by rubber consuming organisations.

The expert panel had recommended that the import duty be retained at 20 percent, but a maximum ceiling of `20.46 be fixed which is based on the average domestic price of rubber during the last three financial years.

...The Minister also said that import with the duty cap would be allowed only in a phased manner in lots of 25,000 tonnes.

<http://www.thehindubusinessline.com/2010/08/26/stories/2010082650671800.htm>

<http://www.thehindubusinessline.com/2010/08/31/stories/2010083151691800.htm>

<http://www.financialexpress.com/news/commerce-min-rules-out-cut-in-natural-rubber-import-duty/672691/>

Food for thought

If the import duty on natural rubber is slashed, domestic rubber growers will be hurt, as they might not be able to face competition from abroad. On the other hand, in view of high import duty the prices of raw rubber are high in the domestic market. As a natural corollary high price of tyres lead to contraction in demand, thereby adversely affecting the domestic tyre manufacturers, as tyre dealers prefer to buy cheaper imported tyres.

High import duty is also resulting in consumers shelling out hefty prices for tyres.

A reduction in import duty will curtail employment significantly in the local rubber growing industry because it is labour intensive but at the same time employment in tyre manufacturing industry will grow because of rise in demand and consumers will also have to pay less.

This conundrum can be solved by weighing the positive effects of reduction in import duty on employment in rubber growing sector vis-à-vis its negative effects on employment in domestic tyre manufacturing industry and consumers.

The move to cap duty at `20.46 and allow imports in quotas needs analysis to ascertain its viability. CUTS has recommended lowering the import duty in calibrated manner so that interests of both, rubber growers and tyre dealers can be maintained.

For more discussions on this issue please refer to the story: Tyre companies seek import duty cut on Chinese lines, at: <http://www.cuts-ccier.org/pdf/CDIDossier-June-July10.pdf>

2. Government for easing foreign investment rules for joint ventures

The Department of Industrial Policy and Promotion (DIPP) has sought views on whether the restrictive conditions on foreign and technical collaborations in the case of existing ventures and tie-ups in India should be abolished or relaxed gradually.

...Under the current policy, a foreign investor that entered into a joint venture or technical collaboration before January 12, 2005 not only required government approvals but also had to demonstrate that fresh investments in the same field would not affect the interest of their existing joint venture partner.

The new policy aims at protecting the interests of joint venture partners of agreements entered before January 12, 2005. Foreign collaborations entered after this date are exempt from the stipulation.

...“Competition today is not only between domestic players *inter se* but also between international and domestic players. In such a situation, if an industry is discouraged from being set up in India, it could be set up in a neighbouring country with which a trade agreement exists or is being negotiated”, it said.

“The conditions may be restricting a number of investors who may not be able to reach agreement with their Indian partners on their future investment plans, thereby restricting inflows of foreign capital and technology into the country”, the paper said.

<http://www.thehindubusinessline.com/2010/09/11/stories/2010091153530100.htm>

<http://www.business-standard.com/india/news/investment-norms-for-foreign-firmsindia-ties-may-ease/407745/>

Food for thought

The requirement to take No Objection Certificate (NOC) is a regulatory hurdle which puts restriction on foreign investment. The contemplated action by DIPP would provide level playing field to joint ventures entered into before and after January 2005. Doing away with the requirement of NOC will not only result in increased foreign investment but would also ensure competition to domestic entities by foreign players. In addition, a strict interpretation of “same field” will also bolster competition, by limiting the requirement of NOC to a small number of ventures.

The argument that, more than five or 10 years having elapsed, the issue of jeopardy is no longer relevant is correct as the Indian partners would be in a position to competitively face the increase in capital and be in a better position to engage with the foreign partners in joint venture. However, there can arise situations in a joint venture entered into either before or after January 2005, where the interests of local partners are jeopardised owing to increased power of foreign partner. In such cases, to redress the concerns and safeguarding the interests of Indian partners ombudsman can be appointed.

3. Anti-dumping duty on narrow woven fabrics may continue

The Designated Authority in the Commerce Ministry has recommended that anti-dumping duty be continued on narrow woven fabrics, generally made from man-made fibres (yarns), nylon, polyester, being imported from China and Chinese Taipei, following a sunset review it undertook at the instance of the original petitioner, Sky Industries Ltd., Mumbai.

...It may be noted that a definitive anti-dumping duty on the subject goods had been in force since July 25, 2005, and the sunset review was undertaken after the petitioner said that the circumstances that existed at the time of original probe were still continuing, causing material injury to it and other manufacturers at home.

The Designated Authority, in its probe as to whether revocation of existing duty is likely to lead to continuation or recurrence of dumping and injury to indigenous industry, found

that the subject goods are entering the Indian market at dumped prices and dumping margins from the subject countries continue to be significant and above the *de-minimis* limits prescribed. Having come to the conclusion that if the present anti-dumping duties are revoked, injury to the domestic industry would persist and intensify, it has recommended that the anti-dumping duty should be extended and modified.

<http://www.thehindubusinessline.com/2010/08/23/stories/2010082351730300.htm>

Food for thought

The 'sunset review' obligation under World Trade Organisation (WTO) commitments requires that all anti-dumping orders be terminated for five years after their initiation unless the importing country government makes a determination that revocation would lead to renewed dumping and material injury to the domestic industry.

As we have maintained earlier also, the case for levy of anti-dumping duty should be reviewed carefully because the sole justifiable motive behind anti-dumping duty is prevention of predatory pricing. Since in this case it has been established that goods entered into the Indian market at dumped prices and were causing injury to domestic manufacturers, it was justified to impose anti-dumping duty to protect the domestic manufacturers of narrow woven fabrics and create a level playing field.

B. Other Issues

1. RBI tells states to stop new business to private banks

The Reserve Bank of India (RBI) has asked several state governments not to give new businesses, which could generate thousands of crores of income, to private sector banks. ...The central bank has not spelt out the reason for its decision, but private banks think it is driven by their comparatively lower lending in government-sponsored programmes – schemes that carry a slice of subsidy and are aimed at job creation and poverty reduction.

...A senior official of one of the private banks stated that they were trying to convince the government that how competition has helped to quicken fund transfer and cut costs.

The tax money that took two-to-three weeks to reach government coffers became possible in a few days with the entry of private banks. In electronic payments, funds are transmitted within a day. Earlier, banks charged more than 11 paise for transferring every `100 of tax collected and this has dropped to a flat rate of `45 per challan now.

...Over the past few years, the Central Government and public sector undertakings (PSUs) have been shutting their doors to private banks. In 2006, the Central Government stopped giving fresh mandates to private banks even though ministries like railways, rural development and education were interested to handover some of the money transfers to these institutions for transactions. And, about one-and-a-half years ago, PSUs were told to park at least 60 percent of their surplus cash with government-owned banks, after which the private sector lenders started tapping state governments for business.

... "Private banks have initiated financial inclusion programmes, fulfilled priority sector lending obligations and have engaged in government-sponsored schemes wherever possible...Most of us do not have the reach that PSU banks have", he said.

<http://economictimes.indiatimes.com/news/economy/finance/RBI-tells-states-to-stop-new-biz-to-pvt-banks/articleshow/6632805.cms>

Food for thought

The direction of RBI is anti-competitive for it restrains new business being granted by government bodies to the private banks. Even in 2007, the Competition Commission of India (CCI), under its advocacy functions, had observed that banking sector would reap the full benefits of competition only if the RBI restricts itself to framing prudential norms for banks and leaves all other issues to market forces. Significantly, the CCI had suggested that public sector banks should not be given any preference over private sector ones.

On the other hand, this move of RBI could be a result of promoting economic interest by creating jobs, alleviating poverty etc. because public sector banks engage in government sponsored schemes and have good outreach (financial, geographical, etc.).

However, if the claim by private sector banks that they have started engaging in government-sponsored schemes is correct, than RBI's direction will only stifle competition in the banking sector as reduction in competition will not be offset by gains in public welfare. Thus, there is a need to first check the veracity of claims made by private banks and only if it is found wrong, then there is a need to weigh between the anti-competitive effects of RBI's direction, vis-à-vis its positive effect on the economy.

2. Ministry puts temporary curbs on Jet Airways to help Air India

The Civil Aviation Ministry has decided to temporarily stop granting Jet Airways (India) Ltd. any new code-share agreements with foreign carriers that are members of Star Alliance until national carrier Air India joins the international grouping next year.

Air India was invited to join Star Alliance, the biggest of the three global airline alliances, in 2007 and is expecting to join by March.

"There cannot be two people in the same boat", said a top ministry official, who asked not to be named. "They can join (Star Alliance) after Air India has completed the process".

...Code-sharing is a ticket-selling agreement that allows travellers to connect seamlessly to destinations on flights of more than one airline.

...Jet also wants to expand its international operations to more destinations such as Rome and Paris, said a second ministry official who also sought anonymity. Those permissions have also been put on hold at the moment, as destinations such as Paris are served by Air India already. An increase in capacity would hurt its interests.

<http://www.livemint.com/2010/08/24221515/Ministry-puts-temporary-curbs.html?type=tp>

Food for thought

The decision of Civil Aviation Ministry of not granting permission for code sharing and international expansion to Jet Airways results in grant of monopoly status to Air India. Hence, the regulation itself is creating bias in favour of the national carrier by giving it a competitive edge over the private carrier.

Not permitting code-sharing with foreign carriers adversely affects consumers, as it imposes a burden on the consumers to purchase multiple tickets for a single journey. Prohibiting the private carriers to expand their international operations also jeopardises their financial interests.

Quite ironically, this move works against the stated mission of draft Civil Aviation Policy which is to maintain a competitive aviation environment and one of the strategic objectives states that all players and stakeholders are assured of level playing field.

3. Coal ministry to frame rules for competitive bidding

The coal ministry will soon start framing new rules for competitive bidding of mining blocks.

...Competitive bidding will be a significant development for the coal industry as it would replace a system of allocation of coal blocks that fails to boost production.

...In an interview in March, Coal Minister Sriprakash Jaiswal said that the government wants to give coal blocks for captive mining via competitive bids in a transparent manner to boost coal production. Jaiswal had said foreign companies could be allowed to participate in the bids as joint venture partners. The government has allocated 208 blocks since 2003, but only 26 are producing the resource. India is deficient in coal production as its power, steel and cement plants that need coal as a raw material are expanding much faster than coal output can catch up, necessitating imports.

<http://lite.epaper.timesofindia.com/mobile.aspx?article=yes&pageid=9&edlabel=ETM&mydateHid=24-08-2010&pubname=&edname=&articleid=Ar00901&format=&publabel=ET>

Food for thought

Allowing competitive bidding of mining block is a good move by the Coal Ministry. One of the motives behind nationalisation of coal mines was to enhance efficiency and increase output of coal because of rising demand. In view of present high demand, competitive bidding would boost efficiency by promoting competition in the coal mining sector and increase output.

4. BHEL likely to lose price preference in government orders

BHEL, the state-owned power equipment manufacturer, could lose the preference it enjoys in the purchases by public sector companies such as National Thermal Power Corporation (NTPC) under a host of measures being considered by the government to encourage domestic private manufacturing.

Under the price preference policy, state-owned companies such as NTPC have to give a preference to domestic equipment companies such as BHEL in their purchase tenders if the price quoted by them is within 15 percent variance of the price of the lowest bid.

...A power ministry official said that price preference policy would discourage private players that are considering big capacities in India.

...The government wants to reduce the reliance on imports with higher domestic manufacturing and has also decided to increase the import duty to reduce the price difference between cheap Chinese equipment and those produced locally.

...The steep increase in duty will increase the price of imported equipment by over 20 percent, forcing power projects to source locally. In this scenario (of high import duty), price preference policy would have worked against the interest of developing a robust domestic equipment manufacturing market with a large number of players, said another official from the Planning Commission.

...The purchase preference policy (PPP) was started long ago to help state owned companies withstand competition from global equipment suppliers, especially from Chinese companies such as Dongfang, Shanghai Electric, which have made major inroads in the Indian market by winning international competitive bids through aggressive price quotes.

<http://lite.epaper.timesofindia.com/getpage.aspx?articles=yes&pageid=9&max=true&articleid=Ar00900§id=7&edid=&edlabel=ETBG&mydateHid=19-08-2010&pubname=Economic+Times+-+Bangalore+-+Finance&title=Bhel+likely+to+lose+price+preference+in+govt+orders&edname=&publabel=ET>

Food for thought

Government's move to do away with PPP and hiking import duty on imported equipment is motivated by the desire to reduce reliance on imports and develop a robust domestic power equipment manufacturing industry.

Increase in import duty would result in reduced competition from foreign manufacturers but it will provide opportunities to the domestic manufacturers to grow their business.

Scrapping of PPP would increase competition between public and private sector significantly within the Indian market resulting in increased efficiency of domestic power equipment manufacturers.

Through research it needs to be assessed as to what will be the net gain or loss for reduction in import duty and scrapping of PPP. If it results in creation of employment and enhanced competition in the Indian market, than the government should go ahead and take relevant action. However, quantum and duration of import duty needs to be analysed as higher import duty for longer period might result in overprotection which might lead to increase in price and inefficiency on the part of the domestic manufacturers.

5. CERC: switch to competitive bidding

The Central Electricity Regulatory Commission (CERC) is likely to ask all power supply companies, including those from the public sector, to switch to competitive bidding for supply of power from January 2011, a move that could lead to lowering of power tariffs for consumers.

The advice by CERC to the government comes despite a move by NTPC and National Hydroelectric Power Corporation (NHPC) to get the Tariff Policy amended to get this deadline postponed. "The tariff based competitive bidding route is a preferred one if it is leading to lower tariffs which obviously is in the interests of consumers", the CERC said in its advisory.

At present, PSUs like NTPC and NHPC charge cost plus tariff, a lump sum fee as well as a per-unit charge from the distribution companies or discoms. At present, Tariff Policy 2006 allows PSUs to adopt the cost plus tariff structure and this permission expires in January 2011 after which they have to compete with the private firms for supplying electricity.

The discoms would ask for quotes from the generating companies and the lowest bidder would supply power.

<http://hindu.com/2010/09/23/stories/2010092356042000.htm>

<http://www.thehindubusinessline.com/2010/09/16/stories/2010091652910400.htm>

Food for thought

The move by CERC to ensure determination of tariff on the basis of competitive bidding is the right step to ensure competition in the market to the benefit of the consumers. Competition with private players will ensure lower tariffs and would further the national interest, as cost of power constitutes a substantial part of output in all manufacture activities.

However, it should be ensured that PSU suppliers do not undercut prices to push out private competitors from the market by using their financial muscle, which is the result of protected treatment by the government in the past.

C. News & Views

1. 'DTH interoperability not possible'

In response to the consultation paper issued by the Telecom Regulatory Authority of India (TRAI), direct-to-home (DTH) operators said the proposed interoperability of set-top boxes (STBs) faced serious limitations.

"There are issues, as older operators like Dish TV and TATA Sky use the MPEG-2 technology, while new operators use MPEG-4. So, interoperability does not look like a feasible option," said the managing director of a DTH company on condition of anonymity.

...Industry watchers said there are other operational issues as well. While some companies (like TATA Sky) sell STBs, others (like Dish TV) rent it. So, subscribers might find it difficult to change the service provider while retaining STBs.

<http://www.business-standard.com/india/news/%5Cdth-interoperability-not-possible%5C/405446/>

Food for thought

Interoperability of STBs serves the consumer interest by providing them the choice and convenience to change service providers, in case of deficiency in services, increase in price etc., while retaining the STBs. The number portability, made possible by interoperability in telecom sector, is now poised to benefit telecom consumers by giving them the option to change telephone service provider while retaining the number.

Interoperability will result in increase in competition and hence better services, which is now being thwarted on the pretext of technological limitations. Through research it can be ascertained if technological barriers really exist and, if yes, than what are the ways to tackle it. The other operational issue of renting or selling of STBs can be solved through making uniform guidelines to this effect.

2. Detergent makers threaten price rise over soda ash duty

Detergents manufacturers in the country said prices of their products could see a hike of up to 12 percent if a move to impose anti-dumping duty on soda ash goes ahead.

... Soda ash is a key ingredient for making detergent, accounting for around 30 percent of the total product formulation cost for low-priced detergents and 15 percent for premium detergents.

...the move to impose anti-dumping duty came after the Alkali Manufacturers Association of India (AMAI) filed an application.

...“It (rise in price of soda ash) represents a great threat to the large, medium and small scale detergent manufacturers and related supplying industries in the country”, said Rajiv Mathur, General Secretary, All-India Detergent Association.

<http://www.business-standard.com/india/news/detergent-makers-threaten-price-rise-over-soda-ash-duty/409517/>

Food for thought

As detergent is common consumer good, any rise in prices of soda ash will affect consumers adversely. Therefore, there is a need to carefully ascertain predatory pricing and injury as imposition of anti-dumping duty in the absence of predatory pricing and injury will burden the consumers and also hamper growth of domestic soda ash manufacturers. The need to ascertain dumping and injury correctly becomes more compelling, keeping in view that AMAI has a vested interest in restricting the supply of imported soda ash.

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