Competition Distortions in India – A Dossier

(CDI-5: December 2009-January 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 5th volume of the bimonthly dossier that we are producing to report on distortions to the competition process in India.

In this volume, we continue to report on issues which have cropped up in the printed media with likely adverse effects on competition and growth.

For example, in this Volume we deal with the possible competition distortions that may be produced by the imposition of anti dumping duty in various sectors as well as the regulatory response to possible anti-competitive effects of price discrimination by the National Commodities & Derivatives Exchange (NCDEX). Existing and potential schemes towards market rationalisation of prices of petrol, diesel and fertilizer are also examined.

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A. Trade issues

1. Plea for safeguard duty on hot-rolled products rejected

The Director-General Safeguards (DGS) has rejected a petition filed by Ispat Industries and Essar Steel to levy safeguard duty on import of hot-rolled coils, sheets and strips. The DGS reasoned that the applicant's industry is not a "domestic industry" as it accounts for a mere 33 percent of cumulative production of hot-rolled coil products. Moreover, vital information needed to support the duty levying decision was absent.

The list of products for which safeguard duty was demanded in the initiation notice was different from the list specified in the subsequent petition. To illustrate, the petition did not demand safeguards for plates and universal plates – items which were listed in the initiation notice.

Notably, the DGS concluded that as the petition also includes goods that are not produced in India, imports of such articles cannot be considered as competing with domestically produced articles and thus deemed as injurious to the local industry. http://www.blonnet.com/2009/12/15/stories/2009121552801500.htm

Food for Thought
The DGS considers imported hot-rolled coils, sheets and strips to be non-identical to any articles produced by domestic industry and thus not liable for safeguard duty. Efforts may well be initiated to generate domestic production capacity for producing identical products so as to compete with imported products. Only after getting hot-rolled coiled products termed as a 'domestic industry' the petitioners would be in a better position to advocate levy of safeguard duty on such imports.

2. Indonesian CTV picture tubes attract dumping duty

The Finance Ministry of India has slapped anti-dumping duty of US$21.76 per unit on imports of 14-inch cathode ray colour television (CRT) picture tubes from *PT LP Displays Indonesia*. The duty is being levied for five years from March 2009 onwards. Notably, colour picture tubes account for 40-45 percent of television production cost. Given that the monthly capacity of the domestic tube industry is short of a million pieces or significantly less than the domestic market size for colour TV, the mentioned high cost share has significant implications for the welfare effects of anti-dumping duty.

The revenue department has also advocated levy of anti-dumping duty on colour television picture tubes sized 15, 20, 21 and 29 inches.
http://www.thehindubusinessline.com/2009/05/18/stories/2009051851470300.htm
http://www.business-standard.com/india/news/anti-dumping-duty-slappedcolour-tv-picture-tubes/329676/

Food for Thought
The important question which needs to be addressed in this regard is whether the Indonesian picture tube producer is providing unfair competition to domestic producers in the Indian market. Unfair competition can arise from subsidies from the Indonesian government, predatory behaviour by the Indonesian producer or exclusive agreements with dealers. If these or similar factors are not present, the mentioned import is not the result of anti-competitive action. Instead, the anti-dumping duty can be construed as anti-competitive.

One of the results of such anti-competitive action (anti-dumping duty) would be higher input cost for domestic manufacturers of colour television sets, irrespective of whether they buy the picture tubes domestically or from Indonesia, resulting in higher consumer prices for television.

3. Definitive dumping duty on phosphoric acid from Korea

Following the petition filed by *Gujarat Alkalies & Chemicals Ltd*., and *Solaris Chemtech*, the Finance Ministry of India has levied anti-dumping duty of US$221.64/tonne on phosphoric acid from South Korea. The duty shall be applicable for five years from June 22, 2010.
http://www.thehindubusinessline.com/2009/12/21/stories/2009122152580300.htm

Food for Thought
The moot question that needs to be answered in this regard is whether the South Korean phosphoric acid producer is granting unfair competition to domestic producers in the Indian market. Unfair competition can arise from subsidies from the South Korean government, predatory behaviour by the Korean producer or exclusive agreements with dealers. If these or identical factors are not present, the mentioned import is not the result of anti-competitive action. Instead, the anti-dumping duty can be interpreted as anti-competitive.

Possible outcome of dumping duty in such a case may be increased input cost for domestic producers of the user industries like pharmaceutical applications, beverages, calcium phosphate etc. resulting in higher consumer prices of the finished products.

B. Other Issues

1. Nil derivative fees anti-competitive?

The Forward Markets Commission (FMC) recently issued an order to the National Commodities & Derivatives Exchange (NCDEX) to cease the concessional levy of a mere 0.05 Rs per 1 lakh Rs of turnover for its evening trading session which is vastly different from the rate of 1-4 Rs charged in the regular session. FMC clarified that the band of variation in turnover levies charged must be within the ratio of 4:1.

FMC maintains that NCDEX does not have the sovereignty to revise the transaction charges in the absence of a regulatory nod. The exchange retaliated saying that the regulator is not empowered to prevent it from revising its fees.
http://economictimes.indiatimes.com/Opinion/ET-Debate/Nil-derivative-fees-anti-competitive/articleshow/5316727.cms
http://economictimes.indiatimes.com/Opinion/ET-Debate/Predatory-pricing-only-for-introductory-phase/articleshow/5316718.cms
http://www.commodityonline.com/news/NCDEX%E2%80%99s-predatory-transaction-charge-upsets-FMC-14697-3-1.html
http://www.blonnet.com/2009/01/31/stories/2009013150392200.htm

Food for Thought
The regulator in this case is trying to simulate competition to the extent possible by controlling fees in a sector characterised by natural monopoly characteristics. It can be argued that it is well within its rights in preventing price discrimination of the mentioned magnitude which is often associated with the actions of a monopolist. Discriminatory pricing for the two sessions, as it relates to different sets of clients, might be considered as anti-competitive.

2. The spectrum Licence raj

The policy makers, according to some, still aim to restrict the number of firms that can afford to pay for the 3G spectrum.

The government decides precisely how much spectrum capacity each firm can have and the precise number of firms that can play in the field as well as the methods that firms can legitimately employ to compete with each other.

Experts opine that India may also face a situation similar to that experienced in the recent US 3G spectrum allocations in which AT&T and *Verizon* paid US$6.64bn and US$9.63bn respectively to capture 80 percent of the total capacity. Such behaviour will ultimately marginalise the small market participants.

The 3G auction to determine four licensees along with one state-owned operator in each circle for a 5 MHz spectrum is anticipated to conclude in 2011. The new 3G licensee will have to spend Rs 1,650 crore for a universal access license (UAL). The government, according to some, is merely interested in short-sighted revenue generation from the auction rather than the creation of healthy competition in the domestic market through the design of an incentive based and participative bidding process.

Notably, in the absence of a 2G spectrum, only 3G handset owners can access pure voice services on the 3G network of a new participant. This implies that foreign players will not be able to capture any of the large 2G market segments. This inability, it is argued, will render them economically unviable. Thus, it can be claimed that an auction for 3G spectrum allocations does not lead to risk of domination of the market by foreign players.
*http://economictimes.indiatimes.com/opinion/editorial/3G-woes-continue/articleshow/5367852.cms*0
http://www.thehindubusinessline.com/2010/01/09/stories/2010010950110800.htm
http://economictimes.indiatimes.com/news/news-by-industry/telecom/Foreign-cos-cant-bid-for-3G-in-CDMA-space/articleshow/5446576.cms

Food for Thought

Auctions will render the 3G market competitive. However, the government fears that there is a risk of foreign entry and domination of this sector in the case of an auction. The counterargument is that entry by foreign 3G service providers lacking access to the 2G spectrum is not economically viable. Research, however, needs to establish that the 3G market segment on its own is so small that it is not economically viable. Such research has to be based on an exhaustive all India market survey.

3. Centre not likely to fix fertiliser prices

The government intends to initiate a paradigm shift in fertiliser pricing by allowing manufacturers to decide retail prices for Urea, Diammonium Phosphate (DAP) and Muriate of Potash (MoP).

Now pursuant to the new policy, a fixed amount of "nutrient-based subsidy" will follow from the government for each nutrient, i.e. nitrogen (N), phosphorus (P) & potash (K). The subsidy will be calculated on the basis of the difference between the cost of production and selling price per unit of the fertiliser.

At present, the maximum retail price (MRP) of urea is Rs 483 a quintal, and that of DAP and MoP Rs 935 and Rs 445.50 respectively. The new proposal's suggestions for per nutrient subsidy are based on estimated consumption, prevailing global price and targeted retail price of fertilisers.

However, it is yet to be decided as to who will receive the subsidy – the farmer, retailer or producer.
http://www.financialexpress.com/news/centre-not-likely-to-fix-fertiliser-prices/558785/

Food for Thought

The new policy might not serve to introduce more competition into the system but might increase distortions if the subsidy is provided to fertiliser producers or retailers. The subsidy calculated on the basis of difference between the cost of production and selling price per unit can lead to producers inflating their recorded costs of production in order to get more subsidy from the government. This amounts to a distortion of competition and will result in reduced government expenditures in other areas. Even if the cost levels of the most efficient producers are used to calculate the level of subsidy there might be collusion among producers to maximise subsidy accruing from the government.

Free but fair competition among fertiliser companies determining fertiliser prices coupled with a per unit subsidy on purchase of fertilisers by farmers (subject to a ceiling on fertiliser purchase which would depend on area and crop type cultivated) might be a good idea.

4. Centre to give trucks national permits

The Central Government is all set to issue national permits to truck operators which would allow them to utilise national routes by paying a mere Rs 15,000 as a composite fee per truck per annum.

The move will reduce economic losses resulting from time taken in transiting through check posts. The proposal, agreed to by the All India Motor Transport Congress (AIMTC) and the Centre entails issue of a license for five years and accrual of proceeds from licensing fees to the Transport Development Council (TDC). The payment shall be via an e-payment system.

The proposed move would lead to faster movement of vehicles and help to unify the market as well as increase availability of vehicles for transport service seekers. It shall also eliminate the temporary permit system which is affected by bribes at entry points.
http://www.financialexpress.com/news/Centre-to-give-trucks-national-permits/554999/
http://economictimes.indiatimes.com/News/Economy/Policy/Centre-may-bring-down-truck-national-permit-cost-to-Rs-15000/articleshow/5053352.cms

Food for Thought

The unification of the market will enhance the strength of competitive forces in determining prices or enhancing quality. The reduction in costs of transporting produce will also result in lower prices for the consumer which will move closer to the competitive level. The enhanced availability of vehicles will stimulate greater competition in the market for transport services. The economic feasibility of this move to boost competition needs to be scrutinised, i.e. whether the procedure would meet all the involved costs needs to be examined.

C. News & Views

1. Private oil company lobby for free pricing of petrol and diesel

The petroleum and gas sectors mandated to be regulated by the Petroleum & Natural Gas Regulatory Board (PNGRB) comprises of downstream sub-sectors, viz. oil refining and marketing, natural gas transportation and marketing and crude oil and petroleum product pipelines.

Oil majors like *Reliance Industries*, *Essar Oil* and *Royal Dutch Shell* advocate the adoption of 'free market pricing' (FMP) to ensure a competitive petroleum retail market for better consumer welfare. The administered pricing mechanism (APM) was dismantled by a notification on March 28, 2002, but marketing and pricing of petroleum products, motor spirit (MS) and high-speed diesel (HSD) is still controlled by the government.

The shift to FMP shall, however, trigger a rise in petrol and diesel prices by Rs 3.85 and 3.71 per litre respectively. Public Sector Undertaking's (PSU) like Indian Oil Corporation (IOC) and Oil and Natural Gas Corporation (ONGC) have extended support for the FMP but under the condition that a formula for subsidy on domestic cooking gas and kerosene sold by the public distribution system is implemented.

Notably, while public sector oil marketing firms avail a special treatment to offset their losses from the sale of petroleum products through a government stipulated formula, the same advantage is not provided to private sector firms.
http://economictimes.indiatimes.com/News/News-By-Industry/Energy/Oil-Gas/Private-oilcos-lobby-for-free-pricing-of-petrol-and diesel/articleshow/5277214.cms
http://www.business-standard.com/india/news/iim-a-study-suggests-deregulationoil-sector/81742/on

Food for Thought
The 'administered pricing mechanism' has already been dismantled on paper. However, the relevant order has not been implemented properly as subsidies to PSUs imply that these control the market entirely. In other words, the PSU monopoly on the sale of petrol and diesel continues. As the government has a huge say in the prices charged by PSUs, petrol and diesel prices continue to be effectively administered.

The regulator needs to be suitably empowered so that it can ensure that the dismantling of the APM is actually implemented. Research is also needed to ascertain whether subsidies in any form are justified. In case these are justified, the challenge before researchers and policy makers would be to design a system in which subsidisation does not negate competitive forces.

2. Scrap coal monopoly

Despite India's acute power shortage, Coal India Ltd. (CIL) has decreased its yield target for 2012 on account of failure to get environmental and forest approvals on 17 of its mining projects.

As a result, the deficiency of domestic coal is projected at 70 million tonnes (mt) for this fiscal and 34 mt for 2012.
http://economictimes.indiatimes.com/articleshow/5490715.cms?prtpage=1

Food for Thought

Dependence on a sole coal monopolist to meet the power needs of a huge economy like India is not at all advisable. While coal mining needs to be made more environment friendly, the effective PSU monopoly on coal mining needs to be brought to an end by scrapping the Coal Mines (Nationalisation) Act, 1973. Such injection of competition will help to reduce coal scarcity and ensure that environmental guidelines relating to coal mining do not have a drastic effect on coal availability.