Competition Distortions in India – A Dossier

(CDI-29: July – September, 2015)

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

Periodic dossiers look at the interface of policy issues which has an impact on competition in India, which can be both negative and positive. News as published is used without verifying their accuracy. The purpose is to flag issues to the layman as well as to the specialised policymakers and regulators, rather than be judgmental about them. This would require greater analysis particularly in terms of cost and benefits.

We are pleased to present to you the Competition Distortion Dossier Edition No: 29 for the third quarter: July-September, 2015. As always, we have attempted to capture interesting stories ranging from trade, anticompetitive practices, reforms, and developments in various economic sectors and industries. The stories reflect a mixed bag of both good and bad policies affecting the economy.

This edition focusses on the ongoing steel crisis that is not only affecting India but globally due to economic downturn in China and increased exports at cheaper prices. According to Chinese customs data, steel exports have surged 28 percent to 52.4 million tonnes in the first half and Yuan devaluation has further aggravated the situation. India has imported 4.522 million tonnes of steel this year, a 51 percent increase over the same period last year. As per reports, 3.379 million tonnes of hot rolled flat steel products have been imported in 2015-16. This has adversely affected the Indian steel industry.

Developed countries like Japan and UK are also facing the heat. For instance, POSCO, one of the top steel producers had to cut prices and Tata Steel, UK is slashing almost 1200 jobs to cope with this stress. The steel crisis has come as a major blow to various countries and authorities are urging for emergency measures.

The Directorate General of Safeguards (DGS), Government of India has released a preliminary report after conducting investigation in the Indian steel sector which can be accessed at http://goo.gl/d0tqHK. Further, the DGS has summoned all interested parties for public hearing to further understand the impact of the huge imports into India and take necessary steps to protect the domestic steel industry being ruined by cheap quality Chinese steel.

In another matter, to revive the Kerala State Road Transportation Corporation (KSRTC) which is currently operating under losses worth about ₹107crores annually, the government released a circular by restricting private bus operators to provide services once their permit expires. K S Suresh, Officer Bearer, Kerala State Private Bus Operators Federation (KSPBOF) says "The government needs to understand that if private buses are the milking cows, KSRTC is cancer".

Absence of level playing field in the bus service operations is affecting daily commuters as many use private busses for travelling to remote areas, because services are not provided by the state-owned operators. Therefore, it is suggested the Kerala government must introduce procompetitive measures in the bus transportation sector which will increase the number of participants, eventually resulting in an improvement in quality of services.

We welcome the move by the government to privatise around 90 primary health centres (PHCs) in Rajasthan. The idea of running state's PHCs on public private partnership (PPP) has come after grim condition of the medical facilities at the grassroot level in the state. This would help the public receive better medical facilities and access better diagnostics technology. Introduction of PPP will ensure a level playing field, thereby encouraging healthy competition where private companies and public entities can work towards catering to the needs of common man.

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A. Anticompetitive Practices

1. COAI seeks equal opportunity for members in BSNL pacts

GSM-based telecom companies' lobby, The Cellular Operators Association of India (COAI) which includes mobile carriers such as Bharti Airtel, Vodafone India and Idea Cellular has written a letter to the Telecom Minister Ravi Shankar Prasad. The letter pleaded for equal opportunity for its members to participate and enter into spectrum sharing and trading as well as intra-circle roaming arrangements with state-run BSNL.

Such an action was taken to conform to the principle of right to equality as well as follow the doctrine of level playing field. Hence, creating such a platform would not only encourage competitive commercial offering to consumers but also enhance the quality of service.

http://articles.economictimes.indiatimes.com/2015-08-04/news/65204642_1_anupam-shrivastava-bharat-sanchar-nigam-bsnl

Food for Thought

The Indian wireless market is one of the world's most competitive and overcrowded markets, with 12 operators and 23 wireless circles where each circle consists of at least six to eight operators. This has led to intense competition and cut throat pricing, leading to decrease in average revenue per unit (ARPU). Hence, in September, the government cleared the much awaited spectrum trading guidelines with the intention to provide agility and flexibility to operators to revive the telecom sector. As the spectrum is limited and players are excess in number, government approved spectrum sharing. According to the guidelines, Telcos will have to inform the government 45 days before the transaction and have to pay one percent of the transaction amount as trading fee. This is a welcome move which is going to spur consolidation in India's fragmented telecom industry as well as improve the quality of service by reducing the number of call drops.

On similar lines, the state-owned Bharat Sanchar Nigam Ltd. (BSNL) decided to enter into deals for spectrum trading and sharing pacts with other licenced service providers. However, no intimation was made to the COAI in this regard. Hence, a letter was written, urging the telecom minister, Ravi Shankar Prasad to allow private service operators to enter into spectrum sharing and trading pact with state-run BSNL and no favouritism be done to just a 'single telco'. Allowing competitive bidding would not only allow private operators to compete on a level playing field but also enhance transparency. Encouraging fair competition amongst several private players including Bharti Airtel, Vodafone, Idea Cellular, would provide access to modern technology, eventually delivering best of facilities to the end users. Given the wide coverage of network of BSNL, choosing the appropriate private player would surely assure quality of services to consumers, such as eliminating call drops.

To conclude, with more number of players in the market and limited spectrum to share, consolidation of telecom operators through spectrum sharing comes out as an effective solution that would provide operators an alternative to acquire more airwaves than only through auction. However, the decision by BSNL to enter into such ventures must comply with the objectives of fair competition, eventually creating a more competitive market. This would subsequently help build better and innovative communication services sector in India.

2. Private players cry foul over 'unfair' project allotment to BHEL

Presently, the Indian power Engineering, Procurement and Construction (EPC) industry has booked an order of 20,000 MW which is worth ₹90,000crores. Out of the total contract value, Bharat Heavy Electricals Limited (BHEL) holds 40 percent share. Unfortunately, during 2014-15, India received only six big-ticket EPC orders of which half went to BHEL without providing any reasonable explanation. Such actions are hindering the smooth working of private equipment manufacturers.

Also, subdued demand from the power sector has been adversely affecting the private sector companies. Therefore, awarding tenders through competitive bidding rather than awarding contract to central public sector undertaking (PSU), i.e. BHEL, on a nomination basis, would help provide quality service products at competitive prices, eventually enhancing the demand for such products.

http://www.business-standard.com/article/companies/private-players-cry-foul-over-unfair-project-allotment-to-bhel-115080700053_1.html

Food for Thought

With no new projects coming in the near future, the hiatus in the power sector has begun to negatively impact the whole supply chain. The EPC players are also feeling the pinch of these reduced orders. To add to their trouble, BHEL, a government company and dominant entity in the relevant sector, has won more than half of the existing tenders being floated in the market. Unfortunately, only six big EPC orders were placed in 2014 in the power sector, half of which went to BHEL on nomination basis. The private players have been denied an opportunity to compete for such projects resulting in loss of business when demand in this sector has already declined significantly. Instead of following the competitive bidding process, contracts were randomly awarded to BHEL. Lack of level playing field in the sector would eventually hamper the equipments industry, thereby having an adverse impact on the economy.

Further, lack of healthy competition in the EPC market has caused reluctance among private entities to enter into this sector which is adversely affecting the proper functioning of the relevant market. In the financial year 2014-15, Larsen & Tourbo, considered as one of India's largest players in the power equipment market, witnessed its profits decline marginally to ₹5,056.18 crore. Similarly, Alstom India, one of the world's leading EPC players in the power sector witnessed decline of 23 percent from a year ago to ₹177.07 crore.

It is suggested that, EPC players could focus on diversifying into new emerging sectors including railways, smart cities, port-based Special Economic Zone (SEZ) and renewable energy. This would help them revive their position in the market. To conclude, the Indian power equipment manufacture sector can be recovered by encouraging fair competition in a transparent and non-discretionary manner. Introducing competitive bidding will assist in discovering the actual price of a product or a service. Encouraging domestic players both private entities and public entities would surely ensure greater participation in the power equipment manufacture industry, ultimately enhancing the quality and efficiency in services.

B. Trade Reforms

3. Breather for steel companies as safeguard duty proposed

Domestic steel companies have been struggling to stay profitable due to a pricing pressure from cheap imports from China. With the ongoing steel crisis in the country, the DGS under the Finance Ministry has proposed an imposition of 20 percent safeguard duty on select steel products for a period of 200 days to curb cheap imports.

It is a temporary step imposed for a specific timeframe so as to protect the domestic industry from the sudden rise in imports. In India, the safeguard duty has been recommended by the DGS for hot-rolled flat products as there is significant rise in imports from countries like China, Korea and Japan. Such a decision will help arrest a further fall in domestic steel prices.

http://www.financialexpress.com/article/markets/commodities/india-imposes-20-safeguard-duty-on-steel-imports/133105/

Food for Thought

Most of the developed countries, such as US and the European Union (EU) were traditionally the biggest importers of steel, but eventually reduced their dependence on imported steel. This adversely affected exports from countries such China, Russia and Ukraine. According to World Steel Dynamics, the steel production in 2014 was 1.66 billion tonnes of which 382 million tonnes were excess global steelmaking capacity. Therefore, to dispose off their excessive production, India with better demand prospects and high domestic prices ensued to be a good choice. As a result, the market share of imports in India has steeply increased from 6 percent to 12 percent and, consequently, market share of the domestic industry has declined from 45 percent to 37 percent.

Due to increased imports on low prices, the domestic industry has not been able to increase its production and sales as compared to the rate of increase in demand/consumption in India. Other major issues include lack of investments, poor technology, low productivity, low utilisation, shortage of metallurgical coal, inferior quality of products etc. that the present steel companies in India are facing. To make things worse, consumers prefer imported steel as it is cheaper than the one domestically produced. Even major steel companies such as Steel Authority of India Ltd (SAIL), JSW and Jindal Steel and Power Ltd (JSPL) posted net losses in Q1 of FY16, while Essar Steel and Tata Steel saw lower net profits partly due to cheaper steel imports by user industries. In order to survive competition from foreign imports of steel, native steel producers are forced to sell their products at a cost below cost of production which has lead them to face heavy losses.

Not just India, but local steel producers all over the world have been imploring their governments to impose tariffs to help their industries survive and many governments have implemented tariff protection. Chile also launched safeguard investigation on steel wire after such rise in heavy imports into the country. South Africa is also adversely affected by the increase in imports. The second largest steel producer, Evraz Highveld Steel & Vanadium, has been planning to undergo business rescue and could momentarily shut down its production. Arcelor Mittal SA on similar lines is threatening to close its specialised Vereeniging mill in Gauteng, South Africa which might affect 600 employees. Redcar, steel producer in the UK, is facing tensions as it is about to shut its production with loss of 1700 jobs.

In India, earlier in 2015, certain actions were taken by the Ministry of Finance, such as imposing anti-dumping duties between US$180 and US$316 per tonne on certain industrial-grade stainless steel imports to protect the local industry from import surges from China,

South Korea and Malaysia. Also, in August, the Ministry increased import duty on some of the steel products from 10 percent to 12.5 percent. But the domestic steel industry was not satisfied with these measures and is lobbying for a further hike in import duty to 15 percent.

However, the DGS initiated safeguard investigations into alleged increased imports last month. It was confirmed through preliminary reports that the domestic steel industry was suffering from serious injury or threat to serious injury by the increased imports of steel into the country. DGS recommended imposition of provisional safeguard duty at the rate of 20 percent ad-valorem, for a period of 200 days on "Hot rolled flat products of non-alloy and other alloy steel in coils of a width of 600mm or more".

Imposition of such duties would help the domestic industry revive from the crisis, and compete fairly in the market. Eventually, increase in domestic production of good quality steel will directly contribute towards the development of economy.

4. Government to allow foreign players in special categories of local shipping

The Shipping Ministry is keen to encourage coastal shipping to reduce the logistics cost and also bring down the country's carbon footprint. In this regard, it has relaxed the cabotage law which was used to protect as well as give preference to Indian ship companies by only allowing Indian ships to be hired for carrying cargo within the country's ports. This was also applicable in those places especially where the local players do not have a presence.

Relaxing the laws would give Indian shipping companies a platform to compete against the big international players. With a vast coastline of around 7500kms, such a move will surely encourage healthy competition among players in the sector which would eventually enhance transportation of automobiles, large project cargo and thereby boost tourism.

http://www.thehindubusinessline.com/economy/logistics/government-to-allow-foreign-players-in-special-categories-of-local-shipping/article7712781.ece

Food for Thought

With an enormous coastline, India has 13 major ports and around 180 minor ports spread across nine maritime states which are considered as the economic drivers for the country. However, the coastal shipping industry presently accounts for only seven percent of overall cargo movement in India.

Cabotage law in India makes it mandatory to use Indian ships for transporting cargo between different ports along the country's coast and is generally applied to protect domestic shipping industry players from the competition by foreign shipping companies as well as for national security reasons. Cabotage restrictions could hamper the growth of India's coastal shipping when the country does not have adequate capacity. Therefore, the Indian government has decided to relax cabotage law for five years. It has done so to increase coastal traffic movement and increase aggregation of export import containers (EXIM).

States such as Gujarat and Andhra Pradesh have been consistently seeking relaxation in cabotage to help ports such as Mundra, Hazira, Visakhapatnam becoming transhipment facilities to cut India's dependence on neighbouring hub ports such as Colombo, Singapore to send and receive cargo shipped in steel containers, which consumes both time and money. Such a positive effort would expand coastal shipping and make it competitive, desirable to allow foreign ships to compete for coastal cargo. Also, to ensure a level-playing field for domestic ship operators, the shipping wing proposed charging foreign carriers handling intra-India traffic a 'cost differential' fee of US$50 per laden TWU and US$25 per TEU for empty as paid by Indian flag ships.

Relaxing the law would encourage participation of domestic as well as foreign players thereby encouraging healthy competition eventually driving up the region's container volumes and reducing congestion plaguing its west coast ports. It is suggested that government must ensure dedicated facilities at major ports and non-major ports with different rates for coastal ships so that they are able to face international competition. To conclude, relaxation of cabotage laws would encourage transport of automobiles, large project cargo and boost tourism. The development of coastal shipping will provide a huge spin-off benefit for related maritime sectors.

5. Inverted duty on rubber needs to be addressed: DGFT

Presently, the import duty on raw natural rubber is between five and 70 percent, while import duty on finished rubber goods is below 10 percent. As the import duty on raw material is higher than the finished goods, it naturally disincentives the domestic production. Further, the government has hiked the import duty for commercial vehicles, thereby discouraging imports of vehicles.

Therefore, there is a need to address and improvise the existing inverted duty structure as it impacts the production domestically and thereby exports in any sector. Proposing to rectify an inverted duty structure will make it cheaper to import inputs to domestically produce goods at competitive prices.

http://articles.economictimes.indiatimes.com/2015-08-07/news/65317547_1_rubber-sector-import-duty-rubber-industry

Food for Thought

Rise in import duties on raw materials such as natural and synthetic rubber has adversely affected the growth of rubber sector in India. Currently, import duty on raw natural rubber is between five and 70 percent, however, import duty on finished rubber goods is below 10 percent. Unfortunately, import of rubber products in India has gone up almost 100 percent from ₹3,810crore to ₹7,608crore in three years between 2009-10 and 2012-13. This has adversely affected several small rubber goods manufacturers who have turned into rubber goods traders as they find it difficult to compete with cheaper goods imported from China and other countries.

During the last five years, 990 units, constituting about 40 percent of the total rubber products manufacturing units in Punjab, Maharashtra, Kerala and Tamil Nadu, have closed down. Increasing the import duty of raw materials at a time when the local market does not have the capacity to supply them has increased the threat of large scale dumping of tyres in India. It impacts the domestic production capacity and hence exports.

Given the continuous emphasis of Modi Government on Make in India, it is essential that the inverted duty structure is corrected to encourage domestic manufacturers for healthy competition. Offering preferential treatment to local manufacturers would help the existing players to revive and grow with the industry. There is a lot of potential for growth of rubber manufacturing industry in India as consumption of rubber in India is amongst the lowest in the world. Correcting inverted duty through waiving off import duty on those raw materials which are not available domestically would help revive the poor state of the rubber manufactures.

Therefore, it is suggested that government must take swift measures to boost domestic industries and balance the interest of consumers and producers. However, increase in duties on raw materials of rubber will also add to the cost of production making it hard for Micro, Small and Medium Enterprises (MSMEs) to compete both in domestic and international

markets Further, it is suggested that the government should undertake a cost-benefit analysis and formulate new policies that are pro-competitive in nature, thereby boosting investment into the sector.

C. Miscellaneous Reforms

6. Payments bank: RBI offers 'on tap' licence hope for those who lost out

Paving the way for revolutionising cashless payment services in the country, the Reserve Bank of India (RBI) has introduced guidelines for providing licenses to payments banks and 41 entities applied to obtain such license. RBI granted 'in-principle' approval to 11 applicants such as Aditya Birla Nuvo, Airtel M Commerce Services, Cholamandalam Distribution Services for a period of 18 months. Later, it released guidelines that opened the interested parties to apply for payment bank license.

This is certainly a procompetitive move by RBI that would further financial inclusion, however, not providing any suitable reasons or rationale for choosing 11 applicants as unfair as it lacked transparency in its procedure.

http://www.thehindubusinessline.com/money-and-banking/payments-bank-rbi-offers-on-tap-licence-hope-for-those-who-lost-out/article7558232.ece

Food for Thought

On November 27, 2014, to further financial inclusion, the RBI released Guidelines for Licensing of Payment Banks. The primary objective of establishing a payment bank is providing (i) small savings accounts; and (ii) payments/remittance services to migrant labour workforce, low income households, small businesses, other unorganised sector entities and other users. Out of the 41 entities that applied for license to open payment banks from RBI, 11 applicants were given 'in principle' approval for a period of 18 months during which the applicants have to comply with the requirements under the Guidelines and fulfil the other conditions as stipulated by the RBI. Further, to encourage competition, RBI plans to grant such licences 'virtually on tap' for those who could not make to the selected list.

RBI provides for a level playing field to interested parties thereby encouraging healthy competition into the sector. It would eventually bring unbanked masses under the ambit of formal banking and also expedite financial inclusion. Fair competition would encourage competent parties to open up payment banks, thereby giving more choice to customers to choose depending on the facilities provided.

Also, major banks could actually make use of these banks to spread their reach as payment banks can function as business correspondents too. Some of them have already tied up with existing licence holders. For instance, SBI, the country's largest lender, will take as much as 30 percent in RIL's proposed bank while Bharti Airtel, India's largest telecom operator, plans to give 19.9 percent stake in the bank to Kotak Mahindra Bank Ltd. Meanwhile, Aditya Birla Nuvo Limited has tied up with Idea Cellular which will have 49 percent stake in the joint venture. By encouraging more number of entities to open payments banks for new as well existing banks will not only help get digital banking act together but also improvise better schemes so that the consumers get more choices.

However, the manner in which 11 payments banks were provided in-principle approval lacked transparency, violating the principles of fair competition. Thus, to conclude, RBI needs to ensure fair and healthy competition in the sector to deepen financial inclusion which would eventually boost India's economy.

7. Govt approves bailout package for road builders

Acting upon the ease of doing business in India, the government has recently relieved bailout route for road developers and use the proceeds to retire corporate debt or for investment in other road projects. It has approved conditional bailout package to help road developers exit highway projects in two years later competing such projects. Such an initiative will catalyse the process of highway projects by making additional funds available for investment in projects.

Also, it will allow developers to sell projects with a predictable revenue stream to investors looking for risk-free returns. Such a lucrative offer from the government will boost up investments into sector and more players would be interested to participate.

http://www.livemint.com/Politics/zUURGLZi6m5Km2wVfme4tI/Govt-approves-bailout-package-for-road-builders.html

Food for Thought

Slow highway development was turning into an Achilles heel for the government. In 2013-14, the National Highways Authority of India (NHAI) could only award contracts for 1436kms of highway development against a target of 4000kms. Even in 2014-15, it could only award contracts for 1116kms against a target of 7500kms.

Most developers in the infrastructure sector are carrying highly leveraged balance sheets at their holding companies level, as they have been simultaneously supporting various infrastructure special purpose vehicles (SPVs) which are under severe stress. Subsequently, as a relief package, the government has approved a conditional bailout package to help build-operate-transfer (BOT) road developers. The package offers these developers to exit highway projects two years after completion of such projects, irrespective of the year when the project was awarded. This is a welcoming move by the government which will improve the existing state of road sector.

The approval would allow the concessionaire(s)/promoter(s) to use proceeds from the sale of divested equity in one or more of the following: (a) Incomplete NHAI projects, (b) any other highway projects, (c) any other power sector projects; and (d) to retire their debt to financial institutions in any other infrastructure projects This bailout package is expected to enhance fair competition thereby benefiting more than 80 BOT projects.

After the announcement of such a procompetitive package, Gammon Infrastructure Projects Ltd has agreed to sell six road and three power projects to BIF India Holdings Pte. Ltd for about ₹563crores, subsequently, easing the exit of developers from operational road projects. There would be further participation, eventually creating a competition environment which would escalate investments into the sector. Fair and healthy competition in the market will surely improve the quality of roads constructed, thereby adding to the overall development of the economy. Further, it will help in government's mission to speed up highway projects by making additional funds available for investment in other projects. The decision will allow developers to sell projects with a predictable revenue stream to investors looking for risk-free returns. To conclude, this will incentivise developers to ensure physical completion of the languishing infrastructure projects.

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