CUTS International

COMPETITION DISTORTIONS IN INDIA – A CUTS DOSSIER

(CDI-37: July to September, 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: 37 for the quarter of July-September 2017. As always, we have attempted to capture interesting stories having an impact on competition, in sectors such as steel, renewable energy, digital payments, transport, telecommunications and pharmaceuticals.

In this issue, we highlight how continued protectionist measures in favour of domestic firms can alter collective firm behaviour to the larger detriment of a particular sector, thereby hampering consumer welfare and global competitiveness in the long-run. Furthermore, by drawing the readers' attention to prevalent competition distortions in sectors, such as digital payments and ridesharing, the dossier intends to highlight the importance of conducting cost-benefit analysis including competition impact assessment of prevalent/intended regulations. This edition also exemplifies present positive initiatives taken by policymakers and regulators to promote competition in sectors such as telecommunications, power and pharmaceuticals.

Contents

A. Trade Policies

1. Anti-dumping duty likely on some steel products from China, EU

India is expected to impose anti- dumping duty on imports of certain colour coated steel products from China and European Union (EU) to protect the interest of domestic players from below-cost in-bound shipments.

In its final findings, the Directorate General of Anti-Dumping and Allied Duties (DGAD) has recommended the duty on imports of 'colour coated/pre-painted flat products of alloy or non-alloy steel' from China and EU. In its findings, DGAD concluded that the product has been exported to India at below the normal value due to which the domestic industry has suffered material injury.

http://economictimes.indiatimes.com/articleshow/60310885.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

Food For Thought

Literature on traditional trade theory suggests that lowering of trade barriers and opening up of markets directly exposes firms to foreign competition and also leads to several opportunities for domestic firms to access foreign markets.[1] *This, in turn, leads to a free trade environment which ideally yields aggregate gains for all nations.*[2] *However, the underlying assumption is that firms in the global marketplace act competitively, which may not typically be the case. In order to tackle the negative impact of firms which exercise market power and seek to sell goods in export markets at less than their cost and 'fair value', nations have the option to impose measures, such as anti-dumping duties on said products. Notably, in the recent past, India has initiated maximum anti-dumping cases against below-cost imports from China, especially in the steel sector and has granted preferential treatment to steel made in India as per the recent National Steel Policy.*[3]

Although the rationale behind imposing anti-dumping duties is to create a level-playing field for domestic players to compete in the global market, the underlying disadvantage of such measures is that unlike competition law enforcement, it fails to address the issue of discriminatory pricing and exercising unfair market power in entirety.[4] *Moreover, in the long run, anti-dumping duties tend to distort market dynamics. This is because granting such*

[1] Wooton Ian and Zanardi Maurizio, *Trade and Competition Policy: Anti-Dumping versus Anti-Trust,* 1 (2002)
[2] *Ibid*
[3] We have covered these advancements regularly in previous dossiers, which can be accessed here
[4] Supra Note 1

protectionist benefits to domestic firms might encourage them to make decisions which improve their chances of receiving continued anti-dumping protection in the future.[5]

Notably, In April 2016, three major Indian steel producers, JSW Steel, Essar Steel and Steel Authority of India, had approached the DGAD asking for imposition of anti-dumping duties on imports of cheap steel.[6] *This might benefit upstream industries by reducing the competitive pressure from foreign steel producers, but might not necessarily favour downstream users of steel and consumers in the long run.*[7] *This is because anti-dumping law limits price competition and firms tend to utilise it as a measure to increase profits at the cost of downstream domestic consumers.*[8]

2. India initiates another anti-dumping investigation on solar cells and modules

India has initiated a new investigation to probe dumping of solar cells and modules from China, Taiwan and Malaysia.[9] The petition for this investigation was submitted by Indian Solar Manufacturers Association (ISMA) on behalf of Indosolar, Websol and Jupiter Solar. The investigation covers both crystalline and thin-film technologies and will affect all imports making up more than 85 per cent of total cell and module sales in India.

The latest petition follows an earlier probe in 2012-14 (which was unsuccessful) on dumping of solar cells and modules, which had recommended anti-dumping duties of US$0.11-0.81/Wp on cells and modules imported from China, US, Malaysia and Taiwan.

www.bridgetoindia.com/india-initiates-another-anti-dumping-investigation-solar-cells-modules/

Food For Thought

As mentioned above, anti-dumping duties have varied impact on competition in the upstream and downstream market of the importing country. The renewable energy market in India is a typical example where this scenario is currently playing out and the proposed investigation has left the industry players divided. On the one hand, Indian manufacturers of solar cells who tend to gain from such an imposition have backed the levy of anti-dumping duty on imports of

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5 Bruce A. Blonigen and Thomas J. Prusa, *The Cost of Antidumping: The Devil is in the Details,* The Journal of Policy Reform Vol. 6, Iss. 4,2003

6 *India confirms steel antidumping duties*, available at: *www.bnamericas.com/en/news/india-extends-antidumping-duties-on-brazilian-steel/?position=699934*

7 Chung-Fu Lai and Xi-Tsz Lee, *The Effects of Antidumping Duties in a New Open Economy Macroeconomics Model*, International Journal of Economics and Financial Issues, 2016, 6(3), 837-844.

8 Webb Michael, *The Ambiguous Consequences of Anti-Dumping Laws*, Economic Enquiry, Volume 30, Issue 3, 437–448 (1992)

9 Notification available at: *www.dgtr.gov.in/sites/default/files/SOLAR%20CELL%20Initiation.compressed.pdf*

cheap solar inputs while on the other hand, power developers have opposed it on grounds that it will come in the way of declining tariffs.[10]

The manufacturers' perspective is that protection from cheap imports will enable them to increase manufacturing capacity and investment and on the contrary, solar power developers believe that it would hamper their ability to offer competitive prices as tariffs will naturally increase. Reportedly, it would also increase the cost of solar modules and the same will impact ongoing projects and the ones which are expected to be up and running soon.[11]

Considering the fact that solar inputs remain one of the major determinants of deployment, effectiveness and affordability of solar power projects, the possible distortions to market competition will naturally impact the end-consumer who is expected to bear any accumulated costs. Thus, it becomes pertinent to take into consideration these additional yet integral factors into the investigative process and consider conducting a holistic Cost-Benefit analysis and utilise tools, such as Competition Impact Assessment to create conditions for increased competitiveness and sustained growth of India's solar power sector.

B. Policies Inhibiting Competition

3. Government extends cash back scheme for BHIM

The Ministry of Electronics and Information Technology extended till March a cashback scheme that offers incentives of up to Rs 1,000 to merchants for accepting payments through the Bharat Interface for Money (BHIM) application. BHIM is a digital payments application which uses the Unified Payments Interface (UPI). The cashback scheme was launched by Prime Minister Narendra Modi on April 14, 2017 for a period of six months for promoting cashless payments through the BHIM app. As per the scheme, a merchant can get cash back of Rs 50 for 20-50 transaction, Rs 2 for every transaction thereafter till Rs 950.

www.business-standard.com/article/economy-policy/bhim-app-govt-extends-cash-back-scheme-for-merchants-until-march-117082000189_1.html

Food For Thought

BHIM is a mobile application which runs on the UPI platform. Both BHIM and the UPI platform are owned and operated by the National Payments Corporation of India (NPCI), which is fundamentally a private entity, owned by a consortium of banks.[12] *Extending government support to select entities and applications might have a negative impact on competition and*

[10] *Industry divided over anti-dumping duty on solar inputs*, available at" *www.thehindubusinessline.com/economy/industry-divided-over-antidumping-duty-on-solar-inputs/article9821706.ece*

[11] *Ibid*

[12] www.npci.org.in/about-us-background

consumer welfare. It also hampers the growth prospects of other players in the field of digital payments who are currently utilising the UPI platform (for instance, applications like PhonePe and Tez, which run on UPI, are not owned by banking institutions). The extension of cashback schemes for BHIM is only one of many instances wherein the Government of India, through its policies and regulations has effectively distorted the level-playing field in the digital payments ecosystem.[13]

In this context, it is pertinent to recognise that regulation which disregards competition principles might impede the prospective growth and development of digital payments in India, which is currently trending towards increased diversity and popularity. This can have a cascading adverse effect on the potential of digital financial services to aid in the broader policy objective, i.e. to financially include the currently unbanked and underbanked population and replace cash as the leading mode of payment.

4. Delhi government mulls ban on sharing of cabs

App-based cab services, such as Uber and Ola may be barred from offering the ride-sharing option to customers in Delhi as per the City Taxi Scheme, 2017, the draft of which is being finalised by the Delhi government's transport department. Under the present legal framework, taxis are only allowed to be hired from one point to another and cannot pick and drop passengers. As per government officials, the City Taxi Scheme is likely to ban sharing of cabs because 'it is legally not permitted'.

https://timesofindia.indiatimes.com/city/delhi/sharing-a-ride-on-cabs-may-soon-be-banned/articleshow/59508308.cms

Food For Thought

Ridesharing and taxi aggregation has emerged as one of the most prominent success stories of the modern digital economy. Jurisdictions, including India have witnessed a significant increase in popularity of internet and network-based business models which have spurred competition in urban transportation and challenged the foundations of the existent regulatory frameworks and policies. Taxi aggregators particularly have innovated around present regulations and legal frameworks and have understandably made regulation of new businesses and incumbents a challenging task.

For instance, taxis in Delhi run on contract carriage permits, which only allow hiring from one point to another. This means cabs cannot pick up or drop multiple passengers. Only vehicles

[13] For more on such distortions, refer to CUTS' findings on "Competition Assessment in Digital Payments Infrastructure Sector" available here.

with a stage carriage permit, such as public buses, are allowed to pick and drop passengers at multiple points.[14]

Taxi aggregators which offer innovative sharing options to passengers have disrupted businesses of incumbent transportation service providers and also provided consumers with an affordable substitute to public transport. This new milieu of competition in urban and semi-urban transportation has benefitted the consumer immensely in terms of increased choice, better availability, and competitive pricing. Moreover, it has the potential to decrease congestion on roads and harmful impacts of environmental pollution, especially in populated areas, such as Delhi.

However, sub-optimal regulation and archaic legal provisions can lead to several adverse effects on competition and consumer welfare. These include disincentives to innovation, affordability of services and additional costs involved in providing policy support to otherwise inefficient firms (which raises barriers to entry/exit).

C. Policies Promoting Competition

5. TRAI lowers interconnect usage charges

The Telecom Regulatory Authority of India (TRAI) came out with the Telecommunication Interconnection Usage Charges (Thirteenth Amendment) Regulations, which effectively reduced the interconnect usage charges (IUC) by more than half and said the fee will be scrapped from 2020. The decision saw TRAI coming down on the side of new entrant Reliance Jio Infocomm, while rejecting the arguments made by incumbent telecom providers, such as Bharti Airtel, Vodafone India and Idea Cellular. IUC has been reduced to 6 paise a minute from 14 paise a minute and to zero starting January 01, 2020, based on the view that costs incurred by operators will drop.

http://economictimes.indiatimes.com/articleshow/60753011.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

Food For Thought

Interconnection has been defined as 'the technical and commercial arrangement under which service providers connect their equipment, networks and services to enable their subscribers to have access to the subscribers, services and networks of other service providers.'[15] *It has rightly been determined as the 'lifeline of telecommunications' because it enables seamless communication between diverse networks.*

[14] https://timesofindia.indiatimes.com/city/delhi/sharing-a-ride-on-cabs-may-soon-be-banned/articleshow/59508308.cms
[15] www.trai.gov.in/sites/default/files/IUC_Regulations_2017_Final.pdf

IUC are wholesale charges payable by a Telecom Service Provider (TSP) to another telecom service provider, for terminating or transiting/carrying a call from its network to the network of the receiving TSP. IUCs (termination, origination and transit charges), directly impact the call tariff.[16]

It is important to note here that with technological evolution and innovation in the telecom industry, there will be substantial cost reductions that TSPs will enjoy as they shift to new network technologies. As a result, the rationale behind having higher IUCs will become redundant as interconnection becomes cheaper and cost-effective (a rudimentary understanding of technological evolution can be understood from the fact that earlier, legacy calling networks included a dedicated single network for calling, which has now changed to a common network which can run data based parallel calling with the advent of Voice over Internet Protocol technology).

Hence, slashing termination charges would provide an incentive for TSPs providing legacy networks to shift towards more cost-effective networks and provide better services to consumers. It is expected to have a positive impact on competition and would expectantly benefit the consumer in the form of increasingly competitive and customer friendly tariff offerings. However, it is to be noted that currently, the newer VoLTE-based 4G network (Voice over IP) accounts for less than five per cent of the total voice traffic in India and slashing IUCs can act as a severe disincentive to TSPs which are responsible for providing traditional modes of voice calling (for instance, calling based on the 2G network), especially in rural and semi-urban areas where internet penetration is low.[17]

This has also made the timing of the move quite controversial as it effectively benefits new entrant, i.e. Jio and substantially harms pricing strategies of existent players in the market.[18]

6. India seeks end-to-end indigenous drug manufacturing

India's Department of Pharmaceuticals' (DoP) draft Pharmaceuticals Policy has been set out to further the key aims the Indian government of having a pharma sector that is stable in the long-term, and to boost the 'Make in India' programme. Other aims include making essential drugs accessible at affordable prices to what the draft document calls the 'common masses', making India sufficiently self-reliant in end-to-end indigenous drug manufacturing, ensuring world-class drugs for domestic consumption and exports, and creating an environment for research and development (R&D) to produce innovative drugs.

www.thepharmaletter.com/article/india-seeks-end-to-end-indigenous-drug-manufacturing

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[16] www.thehindu.com/opinion/op-ed/the-telecom-battle-lines/article19797708.ece

[17] www.livemint.com/Industry/hVC1wiXiOvvNchHh5Jt7hI/Reliance-Jio-prevails-over-Airtel-as-Trai-cuts-IUC-to-6-pais.html

[18] For more details, see www.livemint.com/Industry/BVkgFHMKyQHCblCWEcuY8L/IUC-cut-An-aggressive-Reliance-Jio-a-big-worry-for-Airtel.html

Food For Thought

Under the policy, there are several new initiatives which seek to promote end to end indigenous drug manufacturing including that of manufacturing of intermediates such as Active Pharmaceuticals Ingredients (APIs) and their precursor intermediates. For instance, it has been proposed that the formulations produced from indigenously produced API and its Intermediates (end to end indigenous production) be given preference in government procurements.[19]

Regarding affordable access to essential drugs, it has been proposed that the National Pharmaceutical Pricing Authority (NPPA) would be strengthened and would continue to introduce and enforce price caps on selected medicines and ensure that the same are available in the market in adequate quantities.[20]

It is also proposed that in addition to promoting affordability, drug pricing strategies would simultaneously ensure industry friendliness.[21] *To further promote innovation and competition, the policy proposes a concessional rate of customs duty of 0 to 5 per cent on import of specified goods and services required for R&D in pharmaceutical industry.*[22]

In totality, it seems that the draft policy's objectives are to inter alia ensure that incentives to innovate are encouraged, competition in the Indian pharmaceutical sector is promoted and the consumer benefits in terms of easy access and affordability of drugs. However, it also confers preference in procurement to indigenously produced API and its Intermediates, which might hamper competitiveness of indigenous producers in the long term. Also, the draft is naturally susceptible to influence of diverse interests of stakeholder groups and it will be interesting to see how the government and regulator maintain the fine balance while finalising the draft.

7. India plans legal route for power sector reforms

After launching the *Pradhan Mantri Sahaj Bijli Har Ghar Yojana* for universalising electricity access, the Indian government is readying a raft of power sector structural reforms including legal provisions to drive electricity demand, promoting retail competition and tariff slab rationalisation to drive manufacturing.

In addition to this, the Ministry of Power also released a Consultation Paper on Issues Pertaining to Open Access, which proposed linking tariff of open access consumers, with the cost of power and category-wise cross-subsidy surcharges. Moreover, it focusses on issues

[19] Draft Pharmaceutical Policy – 2017, page 10.
[20] Draft Pharmaceutical Policy – 2017, page 15.
[21] *Ibid*
[22] *Ibid*

faced by discoms due to open access, such as loss of business, inability to plan power scheduling, stranded assets and other operational difficulties.

www.livemint.com/Industry/A7B7HQgfrhM4LVCk5hkTUL/India-plans-legal-route-for-power-sector-reforms.html

Food For Thought

The Ministry of Power is looking to introduce the aforementioned scheme to provide 24X7 reliable electricity. The scheme will ensure fines for a distribution firm for not supplying electricity, which will hopefully improve electricity access. Moreover, the Ministry is also planning to separate the so-called carriage and content operations of existing power distribution companies. This separation will enable people and companies to buy electricity from a power company of their choice, and have it supplied to them by a distribution network that suits them best. This could result in increased choice for the consumers and would resultantly encourage tariff competition amongst suppliers.

In furtherance of this overarching policy aim of improving and providing reliable electricity access, the consultation paper on issues pertaining to open access was released.[23] The paper proposes a progressive tariff design with prudent cost-effective structure. Also, considering immense growth in number of open access consumers and the fluctuation in the energy withdrawal, the paper proposes modulation in frequency of switching. Frequency modulation is intended to prevent undue burden on discoms incurred due to their obligation to provide supply. Furthermore, the rationale of this measure is to ensure that while discoms try to bring in efficiency in their processes and respond to competitive constraints of open access, they are able to make accurate demand projections. By addressing constraints being faced by discoms, the Ministry has rightly sought to maintain an optimal level of competition by ensuring that doing business remains viable for final distributors of power and concurrently tariff competition for benefit of the end consumer is encouraged.

[23] http://powermin.nic.in/sites/default/files/webform/notices/Seeking_Comments_on_Consultation_paper_on_issues_pertaining_to_Open_Access.pdf