Competition Distortions in India – A Dossier

(CDI-17: July–September, 2012)

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.

Herewith please find the latest edition of the quarterly Competition Distortions Dossier (#17, at: http://www.cuts-ccier.org/pdf/CDIDossier-July-Sep12.pdf) from CUTS for your kind perusal. As always it carries both good and sad news.

The latest violation of the principles of competitive neutrality comes from the government, which has barred private telecom providers from accessing customers in a new government accommodation complex, according to the Indian Express (Political Pulse, October 15), for ostensibly security reasons.

In the newly built New Moti Bagh complex in New Delhi, the Ministry of Urban Development (MOUD) is only allowing the state owned Mahanagar Telephone Nigam Ltd, and not the private providers which are otherwise functioning throughout the country including government buildings. In this complex, senior bureaucrats of Home, Defence and Finance Ministries are being relocated, hence the MOUD thought that private providers will be a security hazard. Wonder what makes the MOUD think that mischievous elements cannot peep into with the MTNL system, and that the government can tap telephones in all systems, public or private. The residents are not exactly happy with this limitation because MTNL is unable to offer the same quality of service as private providers can.

This dossier carries seven items. Two are on the insurance sector: one is good news, and the other sad news. The good news is a proposal by the Financial Sector Legislation Reforms Commission (FSLRC) to end the monopoly of Life Insurance Corporation and to remove the hold of the Finance Ministry mandarins by transferring licencing powers to the Insurance Regulatory and Development Authority. The bad news is the same mandarins are asking the four state owned general insurance providers to desist from competing with other, share information and not take on a client from another SOE.

The FLRSC has suggested sweeping reforms in the financial sector including creating one cognate regulator for all financial sector players, but not touching the governance role of the RBI. Their paper is up for discussions. In a related news, the RBI is the best known regulator in the country, according to 40 percent of the 11,499 respondents in a nation-wide survey done by CUTS. This and other facts emerged from a recent study by CUTS International: "State of Indian Consumer, 2012". For more, please see: *www.cuts-international.org/CART/ConsumersUp/*

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A. GOOD NEWS!

1. UP switches to e-tender route for mining leases

Apprehensive that the now-infamous first-come, first-served policy for allocation of natural resources comes with risks, states are now wiser and embracing the safer option of auctions for these allocations.

The newly-elected Akhilesh Yadav government in Uttar Pradesh has introduced an e-tendering system for all leases on mining projects. The decision could impact the future of liquor baron-cum-mining czar Ponty Chaddha, who was seen as closely linked to the previous Mayawati government.

www.financialexpress.com/news/up-switches-to-etender-route-for-mining-leases/976451/1

Food for Thought

Newly elected Uttar Pradesh government seems to be all set to take some progressive steps towards improving the condition of law and order in the state, simultaneously creating competitive environment in various sectors. The recent decision to adopt the method of e-tendering for awarding contracts for mining could be termed as one major step towards providing level playing field to different players in the mining sector. The new system also include provisions for the lease holders to have environmental clearance for mining which would help in keeping bad fish out of the pond.

Earlier the lease for mining was granted on a first-come, first-served basis which was obviously a deterrent in the way of establishing competition in the sector raising structural entry barriers in the sector. It also gave way to creation of a mining mafia in the state.

The present government in Uttar Pradesh certainly deserves kudos for coming up with such positive changes which would not only help in creating the environment of competition in the market, it would also help in generating greater revenue through competitive bidding. The endeavour should be to continue with similar reforms in other sectors also.

2. Govt should end CIL monopoly

Member of the Prime Minister's Economic Advisory Council, M Govinda Rao, wants the government to take steps to break Coal India Ltd's (CIL) monopoly if it cannot ensure seven-eight percent increase in coal production every year for the next 10-15 years. In an interview with Santosh Tiwari, he stressed that the government should stop fire-fighting and take quick action to enhance production. Edited excerpts:

www.business-standard.com/india/news/govt-should-end-cil-monopoly-m-govinda-rao/481082/

Food for Thought

In an interview, M Govind Rao, Member of the Prime Minister's Economic Advisory Council has strongly advocated for breaking the monopoly enjoyed by Coal India Limited. According to him, if India wants to continue with the growth rate of more than eight percent, we need to take some immediate steps towards overhauling of entire economic system.

According to him, fiscal deficit, current account deficit and infrastructure problems are some of the major areas which require immediate consideration from the part of the government.

He rightly stressed on the fact that issues related to infrastructure are mainly because of the poor state of the power sector due to shortage of coal production. This is the reason many *steel and power companies have to import coal which is twice the price of domestic coal and in some cases, acquiring mines overseas in order to meet their production needs.*

Coal India Ltd has been failing to meet the production targets leading to a big gap between the demand and supply. It would, therefore, be vital to take appropriate measures to address the demand-supply gap which cannot be done by way of acquiring mines overseas. It is also important to enhance competition at the domestic level by opening the sector to more players and not just for captive purposes.

But, the government will have to be careful on how the privatisation programme is implemented, so that we do not end up into the fire from the frying pan. Competitive bidding will be the way forward, but with the caveat that public interest is not sacrificed.

Also read: CDI-14: October-December 2011

www.financialexpress.com/news/column-coal-indias-monopoly-has-to-go/878332/7

3. Private Indian Carriers Get Govt.'s Nod to Fly Abroad

Domestic private-sector carriers are set to increase flights to the Gulf and Southeast Asia, cashing in on the Civil Aviation Ministry's move to do away with national carrier Air India's right of first refusal on overseas flights. "We are granting approvals for whatever routes the private carriers are applying for, but that does not mean Air India's interests are not kept in mind," a senior official of the Civil Aviation Ministry said.
http://articles.economictimes.indiatimes.com/2012-07-31/news/32961889_1_gulf-carriers-air-india-express-overseas-flights

Food for Thought

Under the right of first refusal granted to Air India, a private-sector airline was allowed to operate on an overseas route only after the national carrier refused to fly the same. According to the Civil Aviation Ministry, IndiGo has received approval for 63 new international flights every week, of which 28 are to Dubai and seven to Jeddah and Spice Jet to 49 new overseas flights, including seven each to Dubai and Riyadh.

Similarly, Jet Airways has been given the nod for 56 new flights every week, including 14 to Kuwait. Private carriers must make these routes operational by October 2012.

The right of first refusal was clearly a competition distortive provision that gave first preference to Air India to fly overseas. Similar provisions are also there in the Motor Vehicles Act favouring state transport over private passenger transport operators. It is a forward looking step on the part of the Civil Aviation Ministry to do away with this regulatory barrier and distortion of competitive neutrality between the public and private players in the aviation industry.

India can gain tremendously from this step by reducing its dependence on Air India and Gulf carriers by making use of its other private domestic carriers.

P. S. This policy response has possibly arisen from a study on competition enhancing reforms conducted by Nathan Associates in the civil aviation sector following a smaller study done for CUTS Institute for Regulation & Competition and Indian Institute of Corporate Affairs under a bigger project to study competition distortions in 14 sectors as part of a project on a National Competition Policy (NCP).

***Also read:** CDI-15, January-March 2012: www.livemint.com/2012/02/17002254/Airlines-may-get-international.html*

4. Digitalisation aims at breaking monopoly

The proposed digitalisation of cable TV network will break monopoly of service providers by giving more options to the consumers, Union Information and Broadcasting Minister Ambika Soni said.

Terming the move as the biggest reform in the broadcasting sector, she said the "must carry, must provide" clause will invite action against operators not showing a particular channel.
http://articles.economictimes.indiatimes.com/2012-07-14/news/32675048_1_digitalisation-of-cable-tv-ambika-soni-broadcasting-sector

Food for Thought

According to Ambika Soni, Union Information and Broadcasting Minister, the upcoming policy regarding digitalisation of cable TV network could prove to be a revolutionary step towards ending the monopoly of cable service providers in the country. She said the whole process would be the greatest reform in the broadcasting sector leading to improved quality of service for consumers. It would also allow consumers to have more choice and variety.

The process of digitalisation of cable TV network would be executed in four phases in the entire country and is supposed to be completed by the end of 2014. The entire framework would have provisions such as "must carry, must provide" which would help in taking action against the cable service providers not showing any particular channel.

This step by the government should be termed as one of the major initiatives towards maximising consumer welfare in the country. However, government should be cautious over timely enactment and proper implementation of the policy. Otherwise, the proposed reform in the broadcasting sector would bite the dust like several other progressive policies meant for securing and improving consumer welfare.

5. Government considers complete makeover for insurance laws

The government's financial reforms panel is considering a complete makeover of the country's insurance laws that would end the monopoly of state-owned Life Insurance Corporation of India (LIC), shift control of the government to the insurance regulator, and create a legal system to deal with any failure of insurers.
www.livemint.com/Companies/99UgmFeFFCuXlyg2NTxEUM/Govt-considers-complete-makeover-for-insurance-laws.html

Food for Thought

The proposal is aimed at ending the discrimination to state-owned insurers at the cost of private insurers. An official said, "LIC vs. private sector insurers is an issue. The Commission feels that exemptions are heavily loaded in LIC's favour, which needs to be changed." To achieve this, the Financial Sector Legislative Reforms Commission (FSLRC) also looked at the possibility of shifting certain powers from the government to the Insurance Regulatory and Development Authority (IRDA) to avoid monopoly of any insurer in the industry.

The policy is likely to end the monopoly of state-owned insurers such as LIC and generate much needed competition in the insurance sector. Currently, LIC enjoys exemption from several rules of the Insurance Act which applies to others. Not only that, but its policies also enjoy a sovereign guarantee, which is not available to private insurers. Providing life insurance cover is not a sovereign activity, like defence etc. These are flagrant distortions of the competitive neutrality principle which mandates providing level playing field to all players, public and private.

To further deepen the reform process which is already underway in the insurance sector, the Cabinet recently hiked the level of foreign direct investment in the insurance sector to 49 percent from an existing 26 percent which will help companies meet their capital requirements.

6. Adhaar for direct cash transfers: Jharkhand leads the way

Jharkhand is all set to put in place direct cash transfer leveraging Aadhaar (Unique Identity Number). Jharkhand was the first State to adopt micropayments, using the Aadhaar linked bank accounts in 2011. This was used in paying National Rural Employment Guarantee Act (NREGA) wages, scholarships, and old age pensions in some of the districts.

The Prime Minister said "such a move aims to improve targeting, reduce corruption, eliminate waste, control expenditure and facilitate reforms."

www.thehindubusinessline.com/industry-and-economy/article3951896.ece

Food for Thought

The introduction of direct cash transfers through Aadhaar is a welcome step from a competition perspective. The cash transferred directly to the targeted beneficiaries will give them freedom to buy rations from any shop of their choice as opposed to the subsidies mechanism, where people were bound to buy only from fair price shops. This will increase competition amongst the sellers to offer better quality products and sell at competitive prices. It will also encourage new players to enter the market which will further increase competition in the market.

This step will eliminate inefficiencies, wastage of resources and corruption prevalent in the earlier subsidy mechanism. But it is important to note that direct cash transfers with regard to basic commodities will be more effective when there are a number of sellers in a particular commodity market like food, fuel etc. In rural areas, direct cash transfer might not have the intended effect because of limited number of shops. But transferring cash for paying NREGA wages, scholarships and old age pensions will be helpful in any case.

The success of direct cash transfer through Aadhaar will depend largely on its implementation. Issues like misuse of identity, opening up of bank accounts and amount of dependency on the government need to be seriously considered before putting it finally into place. But in terms of competition, direct cash transfer is an efficient way to channelise the government revenues as it eliminates the probability of distortions.

Also read: CDI-13: July –September 2011
http://articles.economictimes.indiatimes.com/2011-09-14/news/30154448_1_cash-subsidydirect-cash-kerosene

B. BAD NEWS!

1. Steel ministry likely to hike import duty on manganese ore

The Steel Ministry is planning to seek a higher import duty on manganese ore to discourage its rising imports that threaten the domestic industry including the public sector Manganese Ore India (MOIL). Currently, manganese ore, which is used for steel manufacturing, attracts an import duty of two percent.

"I have told the secretary (steel) to work out a policy. Despite MOIL supplying almost 41 percent of the manganese ore requirement of the country, the imports have gone up significantly and that needs to be stopped," Beni Prasad Verma, Steel Minister told.

www.financialexpress.com/news/steel-min-likely-to-hike-import-duty-on-manganese-ore/969886/

Food for Thought

The government is thinking about increasing the import duty on manganese ore in order to protect the domestic manganese ore industry. The proposed stance of the Steel Ministry could be attributed to the fact that import of manganese ore has increased by leaps and bound in the recent past and present import duty of two percent has not been able to keep it under control. Steel Minister, Beni Prasad Verma, in one of his statements, informed that he has given instruction to Secretary (steel) to come up with a proper policy to materialise the proposed change in import duty.

The intentions of the government to shield domestic manganese ore producing companies against increasing foreign threat cannot be doubted however the manner in which it seeks to execute the same may raise competition concerns in the market by increasing entry barriers for foreign players and distorting the level playing field. On the other hand, a more welcome policy would be efforts to enhance the efficiency of the domestic players such that they lower production costs, enhance quality etc. Such measures would equip the domestic players to meet the challenge of increased imports without distorting competition in the market.

2. Finance ministry cover for PSU insurance 'cartel'

At a time when the Competition Commission of India (CCI) has come down hard on 11 cement companies for what it termed "price collusion" and cartelisation, the Finance Ministry has asked the four government-owned general insurance companies to "avoid any competition" among them.

A Finance Ministry letter addressed to the chairmen and managing directors of these companies in May 2012 said, "All Public Sector Undertaking (PSU) insurers shall necessarily share the data concerning premium, claims, etc., with respect to major accounts and ensure that there is no competition between them in any corporate/group account."
www.business-standard.com/india/news/finance-ministry-cover-for-psu-insurance-cartel/479441/

Food for Thought

The decision taken by Finance Ministry to prevent four state-owned general insurance companies from competing against each other could be termed as another example of policy induced distortion of competition as in this instance it facilitates cartelisation. The Ministry has passed an order asking these four companies to share all the information regarding premium, claims etc. for avoiding any competition between them thus giving way to a cartel within the industry. The order also includes a clause of not quoting lower prices at the time of renewal by any company to attract a client of another company.

According to experts, the step taken by the government is completely against the spirit of free competition in the insurance sector and intended to raise the price by government through adopting unfair means.

It could also be termed as the case of abuse of dominant position as these four state-owned insurance companies together account for more than 56 percent of non-life insurance market in India. The policy adopted by the government would surely hurt private players in the sector as they would not be having level playing field for competing against these PSUs.

It is highly recommended that a body be created that would be empowered to bring government rules, regulations, orders, policies under a scanner that checks their impact on competition. At present, the CCI primarily looks at practices of private players that distort competition in the market deriving its powers from competition law. Such a body, however, should come under the NCP currently under discussions in the government.

3. SEBI to prefer PSU banks for deposit of surplus funds

Capital market regulator, Securities and Exchange Board of India (SEBI), has decided to park its surplus funds in fixed deposits of PSU banks, even if the returns offered by them are lower than that of private banks by up to 10 basis points (0.1 percent).

The current investment policy of SEBI is guided by the sole criteria of highest return, but it has been now proposed to change to the consideration of return as well as 'safety of funds'
www.thehindubusinessline.com/markets/article3815921.ece?css=print

Food for Thought

This could be termed as yet another case of a government-backed institution implementing policies that effectively distort competition. The recent decision taken by SEBI, solely responsible for regulating the capital market in India, to invest its surplus funds into PSU banks is prima facie discriminatory and highly likely to impact competition in the banking sector.

According to the decision taken, SEBI would prefer to deposit its surplus funds with the public sector banks even if the rate of interest offered by them is less than returns offered by the private sector banks. The recommendations came from the Committee of Executive Directors of SEBI which intends to scrap the current pro-competitive policy that involves competitive bidding between both public as well as private sector banks. The argument offered in favour of the amendment adds insult to injury by saying that this is being done "to ensure safety of funds".

A similar directive was also once issued by the Reserve Bank of India to PSUs that they should park their funds only in state-owned banks.