Competition Distortions in India – A Dossier

(CDI-22: October-December, 2013)

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 bring before you the Competition Distortions Dossier Edition No: 22 for the fourth quarter: October-December 2013. As always, we have captured several interesting stories, a mix of good and bad. There are instances of potential competition distortions caused due to ignorance of the principle of competitive neutrality and trade policy tools such as import duties and adopting protectionist approach.

There is a case of reverse competitive neutrality where public sector unit has been kept deprived of level playing field just because it is a PSU and not private owned company. On the other hand recommendation made by Ministry of Agriculture to impose tax on import of pulses lacks merit as it would have adverse impact on supply of pulses in domestic market and would further encourage Indian pulses producers to seek protection rather than becoming more competitive.

Similarly, in order to boost local manufacturing, the government is planning to increase the custom duty on several telecom products which could be considered as quick-fix that do not serve a long term goal of encouraging competitiveness of domestic industry.

We have always held the stand that while such policy tools are necessary to assist the domestic industry, they may not be ideal from a competition policy point of view. In some cases, we can agree that some local factors inhibit their competitiveness, and thus they need protection. But such protectionism needs to be rationally analysed and the fundamental problems be resolved.

There are instances of violation of competition owing to lack of level playing field for private players, which can be seen in this edition as well. The case pertains to mining sector where the Coal Ministry has raised its eyebrows over the idea of allowing private companies to participate in exploration of coal-bed methane.

We also welcome some of the steps taken by the government in terms of encouraging competition in certain sectors. There is a case involving the aviation sector where the government is pondering over the idea of simplifying the norms for Indian carriers to fly abroad. Likewise guidelines introduced by the Reserve Bank of India for foreign banks to start their operations in India through the subsidiary route would definitely improve competition in banking industry.

Such procompetitive measures would create an environment for new players to enter the market, ultimately leading to benefits for consumers. There are other instances also such as government owned ports to be allowed to set market rates for their services, allowing them to better compete with private players. Furthermore, the Telecom Regulatory Authority of India's recommendation to restrict concentration in cable industry at the state level is also welcome.

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A. Trade Policy

1. Import duty proposal on pulses lacks merit

In a move that is sure to raise the hackles of pulses traders and draw loud protests, the Ministry of Agriculture has reportedly proposed imposition of customs duty to the Department of Revenue, Ministry of Finance, on the ground that some imported pulses, such as *urad* and *tur* are cheaper than domestic produce. Since 2006, pulses imports are permitted duty-free in order to meet domestic shortfall and contain rising prices.

The Agriculture Ministry's rationale for proposing a tax on imported pulses is specious. It lacks merit for a variety of reasons, not the least of which is that our country is still far from being self-sufficient in pulses production.

www.thehindubusinessline.com/opinion/columns/g-chandrashekhar/import-duty-proposal-on-pulses-lacks-merit/article5297492.ece

Food for Thought

The recent move on part of Ministry of Agriculture in which it has recommended imposition of custom duty on imports of pulses has drawn flak from traders across the country. The argument put forth by the Ministry in favour of adopting such measure is that market price of some of the imported pulses is less than that of pulses produced in India and the move would provide level playing field to Indian producers to compete in the market as it would raise the price of imported pulses at par with domestic produce. According to the Ministry, tax free import of pulses is resulting in losses being faced by Indian producers.

According to experts, the step cannot be considered as a wise one and will definitely create stir among pulses traders. The decision lacks rationality also because it has potential of adversely affecting supply of pulses in the country still very far from being self-sufficient in pulses production. It would further dent per capita nutrition availability as pulses are the most economical source of protein for the common people, especially vegetarians.

On the whole, it would be better if government reconsiders this idea of imposing tax on imports of pulses. Rather, approach should be to build capacity of Indian farmers and provide optimum infrastructural support, such as irrigation facility, electricity, market connectivity etc. leading to increase in domestic production of pulses. It would further result into reduction in price of pulses produced in India enabling Indian farmers better compete with foreign producers of pulses.

2. Float glass makers seek duty on Pak, Saudi Arabia imports

The Directorate-General of Anti-Dumping and Allied Duties in the Commerce Ministry is investigating complaints of dumping filed by the domestic glass sector, represented by Gold Plus Glass Industry Ltd, HNG Float Glass Ltd and Saint-Gobain Glass India Ltd.

According to industry representatives, a number of float glass lines came up in West Asia during the boom period, thanks to cheap funds and the extraordinarily low cost of gas. These companies are now selling glass in India, shipped mainly through Mumbai, at prices lower than their cost of production.

www.thehindubusinessline.com/companies/float-glass-makers-seek-duty-on-pak-saudi-arabia-imports/article5317935.ece

Food for Thought

The float glass industry in India has urged the government to impose anti-dumping duty on glass imports from Pakistan, Saudi Arabia and the United Arab Emirates (UAE). The industry has been experiencing lean patch for some time now due to fall in demand and cheap imports of float glass from West Asia and Pakistan is making the situation worst.

The main reason behind cheap import from these countries is that the price of gas for float glass makers in West Asian countries and Pakistan is just about US$0.75 a million British thermal unit, whereas it is about US$16.5 for Indian manufacturers. In addition to this, glass manufacturers in West Asian countries also enjoy cheaper interest rate which is as low as two percent.

The Commerce Ministry has agreed to the point raised by domestic float glass manufacturers that manufacturers from Pakistan, Saudi Arabia and the UAE are selling their products below the cost of production in India. The Indian industry is waiting for relief from the Commerce Ministry so that imports from West Asia and Pakistan are curbed.

It is quite obvious that Indian manufacturers are under enormous pressure due to cheap imports and it is necessary for the government to adopt some protectionist measures to salvage the domestic float glass industry. Manufacturers in West Asian countries and Pakistan do enjoy upper hand due to availability of cheap inputs required for producing float glass as well as cheap credit. Situation is not the same in India and hence manufacturing cost for Indian companies is bound to be much higher than that of their foreign counterparts. Government can think on the line of supplying cheap inputs and providing credit at lower interest rate to Indian firms in order to provide them a level playing field for competing with foreign manufacturers, however it would lead to adverse impact on other industries such as banking.

Thus, government should impose tax on import of float glass to provide much needed relief to domestic manufacturers in short term and gradually can build their capacity to be more cost-effective and competitive in the long term.

3. Govt plans 17.5% duty on wireless equipment to dissuade imports

To encourage domestic manufacturing of information technology (IT) products and reduce India's import dependency, the government may impose customs duty up to 17.5 percent on certain wireless telecommunication equipment used for third and fourth generation mobile networks.

India is a signatory to the first Information Technology Agreement (ITA-1) under the World Trade Organisation (WTO), under which customs duty was abolished on many technology products.

According to the Finance Ministry, however, the government believes certain telecommunication equipment was not covered under the agreement, and that it can levy customs duty on these.

www.livemint.com/Politics/194FAhwdes7sATL7ZrXbrK/India-plans-175-duty-on-wireless-equipment-to-dissuade-imp.html

Food for Thought

In order to boost local manufacturing, the government is planning to increase the custom duty on several telecom products, mainly network equipment, required for broadband and wireless services. In a recent discussion of an inter-ministerial panel, the duty is likely to be around 17.5 percent. The panel has proposed custom duty in the range of

10-12 percent as considerable portion of telecom equipment are imported from other countries. Also, during the past few months, the government has been discussing a proposal to make it mandatory for telecom companies to buy a percentage of their requirement of such products from local manufacturers.

However, according to the Department of Telecom (DoT), proposal to impose customs duty might have negative implications as there are possibilities that tariffs rates would increase for consumers. The Department of Revenue had also objected to the proposal saying the government should take legal advice on what would be the implications of such move considering the fact that India has signed the ITA-1 under the WTO in 1997 and hence cannot impose any tax on import of technology equipment.

Experts related to sector have warned the government that such move might not meet its intended goal of enhancing domestic manufacturing of telecom equipment as it requires high capital investment and technology transfers. Also custom duty would raise the cost of production for telecom companies forcing them to increase the tariff rates affecting consumer interest.

Government should avoid adopting such regressive measures in the name of enhancing domestic manufacturing. Rather the approach should be to build the capacity of telecom equipment industry in terms of producing cost effective and quality products so that they could compete with their foreign counterparts. Further, government should adopt policies to attract foreign investment so that they meet the capital requirement for enhancing domestic manufacturing of telecom equipment.

B. Sectoral Reform

4. It may soon get easier for airlines to fly abroad

The Civil Aviation Ministry will soon approach the Cabinet to relax norms for overseas flying by domestic airline companies.

Currently an Indian carrier can fly abroad only if it has completed five years of flying in the domestic skies and has a fleet of at least 20 aircraft. Any change in norms will not only benefit GoAir but could also be beneficial for the two proposed start-up airlines – AirAsia India and Tata-SIA.

"I personally feel that there should not be any cap, but I will ask the Directorate-General of Civil Aviation (DGCA) to look into the issue and make appropriate suggestions. After which we will approach the Cabinet for a final view," Civil Aviation Minister Ajit Singh told reporters.

www.thehindubusinessline.com/industry-and-economy/logistics/it-may-soon-get-easier-for-airlines-to-fly-abroad/article5210716.ece

Food for Thought

Indian carriers operating within the domestic boundaries might be having something to rejoice upon in the coming year as the Aviation Ministry is thinking on the lines of simplifying the norms to operate in foreign countries.

At present any Indian carrier is required to have experience of at least 5 years of flying in India and fleet of at least 20 aircraft for getting permit to start oversees operations. Currently, Air India, Jet Airways, SpiceJet and IndiGo are the Indian carriers flying abroad as they meet the existing norms whereas carriers like GoAir and Air Costa still have to wait as they do not fulfill eligibility criteria to fly abroad, according to present rules.

As per the Civil Aviation Minister Ajit Singh, the proposal of relaxing the norms for flying abroad is at initial stage and requires proper groundwork before getting finalised. He has asked the DGCA to look into the matter and make appropriate suggestions.

Reform in terms of introducing progressive policies in any sector improves competition in that sector. The recent development related to aviation sector would certainly provide edge to the domestic carriers in terms of competing with the foreign airlines and utilise our bilateral flying rights. It would also be helpful for airlines to attract fresh investment as it would be lucrative for the foreign investors to invest in the airlines with larger operational and consumer base. Further, allowing more domestic carriers to fly abroad would enhance competition in the field of providing overseas services. This will further encourage airline companies to provide better services to consumers and at lower costs.

5. Subsidiary route for foreign banks will provide level playing field

The new Reserve Bank of India (RBI) guidelines that allow foreign banks to set up operations in India in the form of independent subsidiaries will lead to level playing field and could alter the banking landscape in the country, say analysts.

They expect the setting up new foreign banks, which will happen over the next three-five years, to lead to more competition among banks. "With this framework in place, there is now much greater likelihood of foreign banks looking to seriously expand their operations in India," said Vaibhav Agarwal, VP-Research, Angel Broking. "In the next three-five years, the entire banking landscape in India is likely to change. India is a very attractive growing market."

www.thehindubusinessline.com/industry-and-economy/banking/subsidiary-route-for-foreign-banks-will-provide-level-playing-field-say-analysts/article5326459.ece

Food for Thought

The RBI seems to be all set to infuse some serious competition in the Indian banking industry. Through newly introduced guidelines, the central bank has extended permission to foreign banks to start their operations in India through the subsidiary route. Foreign banks deciding to opt for opening up independent subsidiary for functioning in India would be treated almost similarly as any other national bank for expanding their business in India. The RBI guidelines also allow for the wholly-owned subsidiaries to enter into merger and acquisition with any private sector bank in India up to permissible limit of 74 percent foreign investment.

Banks, like Citibank, HSBC and Standard Chartered have shown their interest in overall proposition, however they are still wary of mandatory provision such as 40 percent lending to the priority sector which they have to meet in order to get treated at par with domestic banks. According to these banks it would take at least two to three month to evaluate the guidelines and then only they would be in position to share their opinion regarding subsidiary route.

Experts, on the other hand, have applauded the stance adopted by the RBI and are confident that it would lead to improved competition in the sector. Considering the fact that banking sector at present is in dire need for capital, such move would definitely be helpful in scaling-up investment in the sector. These guidelines could also play a critical role in terms of motivating banks to introduce innovative banking products leading to consumer welfare.

6. Govt-owned ports to get freedom to set market rates for services

The trusts that run the 12 ports owned by the Union government will have the flexibility to raise rates for services every year based on market conditions if they adhere to certain performance standards, according to a plan being worked out by the Shipping Ministry.

The Shipping Ministry's move forms part of an overall plan to migrate the rate regime for existing services governed by the 2005 guideline to the market-linked rate regime announced on 31 July for new projects to be run both by government-owned port trusts as well as private firms.

……The guideline announced in July for new projects is based on the normative approach where tariffs are worked out on the basis of certain defined criteria and assumptions on capital costs and operating expenses that are unrelated to actual cost of the projects.

www.livemint.com/Companies/zytaacPSK39UuaMQl6JNpL/Govtowned-ports-to-get-freedom-to-set-market-rates-for-serv.html

Food for Thought

The Shipping Ministry has decided to provide some relief to the government owned ports by allowing them to decide upon their prices based on market conditions. However, ports would be required to meet certain performance standards set by the ministry itself in order to avail this benefit

At present, rates being charged by trusts operating 12 ports owned by the government, for cargo and vessel-related services are figured out on the basis of a guideline framed in 2005 and are not determined through market forces i.e. demand and supply. According to experts from the industry, it is a welcome step and will help government-owned ports compete better against private operators provided the policy is implemented effectively. Of late, it has been observed that private ports operating in India are taking away business from the port trusts mainly because they are not restricted by any rule or regulations for setting rates which is the case with port trusts.

Further, the performance parameters for the port trusts will be in the form of annual targets set by the shipping ministry in the Result Framework Document for cargo and vessel-related services. (RFDs are a Ministry's commitment to the government to achieve good performance).

The performance standard for services run by the port trusts will be benchmarked against annual targets set by the ministry in the RFD. This is because for private firms running cargo terminals, the performance criteria are written into their contracts with the port trusts. This is not the case with services provided by the port trusts themselves.

The step adopted by the shipping ministry is progressive in every sense. It targets not only at enhancing competition among ports through ensuring level playing field for both government owned and private ports but also at improving the quality of services provided by the government ports through making them liable towards meeting certain performance standards.

7. Restrict market share to curb cable monopolies

To curb dominance of a single player in the cable sector, the Telecom Regulatory Authority of India (TRAI) has recommended restrictions on the market share that a single Multi System Operator (MSO) can hold.

As per recommendations made by the broadcasting sector regulator, rules should be amended to ensure that market share of MSOs is restricted up to 50 percent.
TRAI made the recommendations after Information & Broadcasting Ministry sought its advice saying that the cable TV distribution had been virtually monopolised by a single entity in some states.

www.thehindu.com/business/Industry/restrict-market-share-to-curb-monopolies-in-cable-sector-trai/article5397602.ece

Food for Thought

The TRAI has recommended measures to curb monopoly in the cable TV market, after the information and broadcasting ministry asked for its views on the whole matter. According to the recommendations, no single MSO can have more than 50 percent of the market share in a state. The authority has also recommended for the use of Herfindahl-Hirschman Index (HHI) to measure the level of competition or market concentration in a relevant market.

Cable Operators Federation of India has welcomed the move and is hopeful that I&B ministry would accept the recommendations made by TRAI. According to the federation it is very important that recommendations talk about monopoly in the states and the federation also wants TRAI to recommend on cities where maximum monopoly exists.

TRAI has also said that all mergers and acquisitions in the sector would have to be brought to the notice at the beginning and should be taken forward after approval from the authority. The pre-requisite for getting approval in such a case would be that the market share of the resultant entity should not be more than 50 percent.

The recommendations made by the TRAI could play a vital role in terms of restricting monopoly in cable industry. However, it would be required for Information & Broadcasting Ministry to ensure effective and timely implementation of these recommendations to initiate long pending reform process in the cable TV industry.

C. Anticompetitive Practices

8. Praful questions IAF bar on PSUs

Upset over Indian Air Force's (IAF) decision to bar public sector units (PSUs) like Hindustan Aeronautics Limited (HAL) from participating in a mega tender, heavy industries minister Praful Patel has questioned why state-run units were being kept out and demanded they be given an equal opportunity.

Patel shot off letters to Prime Minister Manmohan Singh and Defence Minister AK Antony, saying many PSUs who meet all prescribed criterion for participating in the tender for supply of 56 transport aircraft to the Indian Air Force are being denied the opportunity to participate only because they are PSUs. The deal is estimated to be worth Rs 12,000 crore.

www.financialexpress.com/news/praful-questions-iaf-bar-on-psus/1180481

Food for Thought

A very interesting case of reverse competitive neutrality has come into light where PSUs are being deprived of level playing field just because they are PSUs and not private owned companies. The case involves state-owned units like HAL, where it has been disallowed by Defence Acquisition Council (DAC) to participate in a tender which amounts to Rs. 12,000 crore.

The issue got highlighted when the Heavy Industries Minister Praful Patel showed his dissent over the entire development. In a letter written to the Prime Minister and Defence Minister, he inquired as to why PSUs have been barred from participating in even though they fulfill all the requirements to take part in tender for supplying 56 aircraft to IAF. AK Anthony who is also the head of DAC had approved the proposal of IAF to procure aircraft from private companies overlooking the offer made by the PSUs.

In India, we have seen similar cases of lack of competitive neutrality, but in this particular case PSUs were disadvantaged due to the discriminatory practice adopted by the Defence Ministry. In order to facilitate competition and developing local manufacturing capacities in the defence sector, it is important to revisit the steps being adopted by the Defence Ministry ensuring equal opportunity for both private and public undertakings.

PS: The case reminds us of two similar cases of reverse neutrality, of which one involves Praful Patel himself. As the Civil Aviation Minister (2004-11), he had shown favouritism to a private carrier: Jet Airways against the interests of the national carrier: Air India. Reasons for that are obvious. Now Patel is batting for PSUs which poignantly reminds us of: 'One stands, where one sits'.

9. Coal-bed methane: Ministries spar over entry of private players

Private players may lose out on the opportunity to explore coal-bed methane, as two key Ministries – Petroleum and Natural Gas, and Coal – hold divergent views on them.

Oil Minister M Veerappa Moily has proposed that private players be allowed to explore coal-bed methane (CBM) – a form of gas found in coal beds) along with Coal India in its existing mines. But, Coal Minister Sriprakash Jaiswal has contested this.

"The proposal to allow private companies to take out CBM in Coal India blocks was floated by the Petroleum Ministry twice in the past one-and-half years. But, the Coal Ministry has objected to it, as it is not comfortable allowing private players to foray into Coal India's mines," a government official said.

www.thehindubusinessline.com/economy/coalbed-methane-ministries-spar-over-entry-of-private-players/article5383846.ece

Food for Thought

Stubborn attitude of the Coal Ministry is once again creating barrier in providing equal opportunity and creation of level playing field for private companies involved in exploration of CBM. The idea floated by the Oil Minister M. Veerappa Moily that private entities should also be given chance to enter the business of exploring CBM has been vehemently opposed by the Coal Minister Shri Prakash Jaiswal as the Ministry is not comfortable with private players entering the backyard of the state-owned Coal India Limited (CIL).

The stand taken by the Coal Ministry which is in complete favour of awarding entire contract to CIL, does not hold ground considering the fact that CIL does not have the required experience of exploration of CBM. Hence, in any case it would be required to rope in private expertise for working in this field. The Cabinet is supposed to take the final call on the whole matter after hearing arguments from both the sides.

It is highly recommended for the government should allow private players to participate in exploration of CBM. Such stand on part of the government would be beneficial in terms of infusing much needed competition in coal mining and exploration sector in India. The stand taken by the Coal Ministry would further allow CIL to strengthen its monopoly position in the field of mining and exploring coal and coal related byproducts. It would also dent confidence *of the private players whose participation is very crucial in terms of injecting fresh investment and technology in the sector.*

Being a monopoly it is quite natural for CIL to abuse its dominance. Quite recently, the Competition Commission of India (CCI) has levied huge penalties on CIL for its abusive practices, though the matter is in appeal. The CCI has also recommended that CIL should be broken up into subsidiaries so that there is some competition.

D. Mixed Bag

10. Govt orders sale of gas at uniform price to CNG projects in cities

After a rap from the Gujarat High Court, the government has decided to allot natural gas at a uniform price to retailers of the fuel in different cities.

Presently, cheaper domestically produced gas is mostly allocated to firms in Delhi and Mumbai for sale to automobiles and households, while costlier, imported gas is sold to such suppliers in other cities. Compressed natural gas (CNG) is used by automobiles and piped natural gas (PNG) is supplied as a cooking fuel.

The Gujarat High Court, had on July, 2012, ordered that gas be made available for city gas distribution (CGD) projects in Ahmedabad at the same rate as in Delhi and Mumbai.

www.financialexpress.com/news/govt-orders-sale-of-gas-at-uniform-price-to-cng-projects-in-cities/1196932/1

Food for Thought

Consumers of CNG and PNG of cities other than Delhi and Mumbai would be benefitted with the latest decision of the government in which it has decided to supply CNG and PNG to retailers across the country, at a uniform rate. Under the present regime, retailers in Delhi and Mumbai procure both forms of fuels which are produced in India and cheaper as compared to imported fuel which is being supplied to retailers in other cities. It creates significant difference in price being paid by consumers for buying fuel in two metros and other cities.

The issue was first raised by the Gujarat High Court in July last year. The court recommended that the fuel should be provided to the CGD projects in Ahmedabad at a similar price as in Delhi and Mumbai. However, the order was not implemented which prompted the court to again intervene in the matter. The court gave clear instructions to the government for proper implementation of the order latest by November 18, 2013 else it has to appear before the court.

Following this, the Oil Ministry released the guidelines for allocation of CNG and PNG to CGDs in all cities without any discrimination. Public sector unit, Gas Authority of India Limited (GAIL) which enjoys monopoly in transportation and marketing of natural gas in India has been directed by the Ministry to ensure proper and uniform supply of fuel to CGDs in all cities.

It took more than a year for the government to follow the order of the court which definitely affected millions of consumers in the country. However, it is appreciable that fault has been realised now and the government is on right track of relinquishing discriminating policies like this one. Role of judiciary is commendable in this case as it played the pivotal role in initiating such policy reform which would help enhancing consumer welfare in the country.

11. Union against move to privatise passenger trains

…………………..All-India Railwaymen's Federation President Shiv Gopal Mishra stated that the union would not allow any kind of privatisation, especially of trains and sections that net revenue for the Railways. That would be disastrous not only for the Railways but also for the passengers, who, he said, would be made to pay more on the pretext of shorter journey times.

By privatising trains, such as the Rajdhani, the Duronto and the Shatabdi, or starting better trains on viable routes would mean that the Railways would have to forgo the money-earning trains and routes, Mishra contended, wondering why the Railways was not talking about handing over the operation of branch lines to private players. Privatisation, he said, would eat into the Railways' revenue and prove disastrous for its health.

www.thehindu.com/todays-paper/tp-national/tp-newdelhi/union-against-move-to-privatise-passenger-trains/article5298794.ece

Food for Thought

Union of railways employees has protested against the ambitious plan of the government to privatise the passenger segment of the Indian railways. The union has clearly indicated that any such move would lead to disruption in the day to day functioning of the world largest railway network and will never get consent from the union.

According to the union such move would lead to additional burden in the form of increased passenger fare for common people. It would also adversely affect revenue earned by the railways and would be disastrous in terms of its overall growth.

Raising the point of privatisation of the cleanliness in trains and stations, Shiv Gopal Mishra, President of All-India Railwaymen's Federation has cautioned government that it has led to increase in cases of theft in trains and railway equipment in yards. He has also given example of food being served in trains, quality of which has deteriorated after the catering services were awarded to private players.

Concerns shown by the union are justifiable to certain extent, however, one should not use such excuses to restrain the government from introducing progressive reforms in railways. Opening-up passenger segment for private players would lead to flow of funds which is very essential for introducing next generation technologies in Indian railways. Further, railways as business could be of huge potential and private entities interested to invest in it would definitely compete against each other resulting into improved services for consumers. As far as theft and poor quality of food in trains is concerned, proper monitoring and proactiveness on the part of supervisory agencies would be helpful in addressing such issues.

Protest by unions on privatisation is a fashionable thing to do, as we have been witnessing in other sectors for some time. This could be due to several factors, including vested interests. When the airline sector was deregulated in the 1990s, union employees in Calcutta even went on the airport tarmac to prevent private airlines from landing. Now, they do not protest after having seen the benefits of competition in the airline services.

12. Ban likely on Non-Compete Clause in Pharma M&A

Multinational pharmaceutical companies keen to acquire Indian drug firms may no longer be able to forbid them from making and selling similar generic drugs in the domestic market by inserting a 'non-compete clause' in their merger and acquisition agreements. Most stakeholder ministries have backed a Department of Industrial Policy and Promotion (DIPP) proposal recommending a ban on 'non-compete clauses' in brownfield pharma deals in the country.

Experts say mandatory exclusion of non-compete clauses from pharma acquisitions may prove to be a 'deal breaker' and seriously hit premium valuations that domestic drug firms have commanded in the recent past.

http://articles.economictimes.indiatimes.com/2013-10-17/news/43144470_1_indian-drug-firms-pharma-mncs-dipp

Food for Thought

The latest proposal floated by the DIPP has created stir within the pharmaceutical industry, in which they are thinking of abolishing the non-compete clause at the time of merger or acquisition of Indian pharmaceutical company by foreign entity. As per the non-compete clause, foreign companies buying stake in any Indian pharma firm can bar that particular Indian firm from marketing and selling similar generic drugs in Indian market.

According to DIPP, the policy if and when implemented would ensure that competition in the pharmaceutical sector is not sacrificed due to applicability of non-compete clause and interest of consumer is taken well care of. This is because competition in the generic drugs market would maintain pressure on both Indian as well as multinational companies to keep check on price of drugs they produce.

However, according to the experts such move might prove to be hazardous in terms of affecting growth of merger and acquisition between Indian pharma companies and multinational pharmaceutical companies. Foreign companies are already apprehensive of the intense competition, they face in Indian markets. Doing away with the non-compete clause would further dent their confidence which would ultimately affect flow of foreign money in pharmaceutical sector.

Government in this case should adopt a middle path in order to ensure both consumers as well as producers welfare. Removing non-compete clause is certainly helpful in improving competition in the pharma sector, however at the same time it is also affecting overall growth of the industry in adverse manner, in the long run. As far as pricing of the drugs is concerned, National Pharmaceutical Pricing Authority (NPPA) should be allowed to frame policies to keep prices under control.