Competition Distortions in India – A Dossier

(CDI-34: October–December, 2016)

For earlier Dossiers please see: http://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 used without verifying its accuracy. The purpose is to flag issues to the layman as well as to the policymakers and specialised regulators, rather than pass any opinion. That would require greater analysis, particularly in terms of cost and benefits.

We are pleased to present to you the CUTS Competition Distortion Dossier Edition No: 34 for the quarter of October-December, 2016. As always, we have attempted to capture interesting stories having an impact on competition, in areas such as trade, finance, e-commerce, pharmaceutical and other key economic sectors. The stories reflect a mixed bag of both good and bad policies affecting the economy.

The theme for the present issue is Open Access. Open access to markets could be impacted by various policies including trade-related measures. It is also a key factor which influences the level of competition in markets, such as finance and e-commerce. In this edition, we shed some light on the anticompetitive effects of continuing import restrictions.

The importance of open access, free markets and infrastructure sharing in national policies and regulations which have a direct influence on competition and consumer welfare is pointed out. We also highlight the potential positive effect of FDI on domestic competition and the role that free markets play in achieving consumer welfare and economic efficiency. This edition tries to draw a parallel between the competitive benefits of encouraging open access within domestic and international markets.

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A. Trade Policy

1. Protectionist Measures on Iron and Steel Imports

The Indian government has been regularly imposing and extending minimum import price (MIP) on imports of certain iron and steel products in the past year. In February, India imposed MIP of 173 products for six months, which was later extended twice for two months. In December, the government extended MIP on 19 products till February 04, 2017.

This did not bode well with other countries and specifically Japan, which filed a complaint with the World Trade Organisation (WTO) in December and notified the WTO Secretariat requesting dispute consultations with India in the dispute 'India-Certain Measures on Imports of Iron and Steel Products.'

www.thehindu.com/business/Industry/Japan-drags-India-to-WTO-against-steps-on-iron-steel-imports/article16934465.ece?utm_source=true&utm_medium=Email&utm_campaign=Newsletter

Food For Thought

Protectionist measures such as levying and extension of MIP are generally introduced to artificially decrease imports of cheaper products from overseas markets. In the short run, these measures might help domestic players to increase their efficiencies and compete against their overseas counterparts, but unnecessary protection might backfire. Continuous protectionist measures by the Indian government particularly in the steel industry have been highlighted in the previous versions of this dossier as well (available at: www.cuts-ccier.org/pdf/CDIDossier-Jul-Sep16.pdf and http://www.cuts-ccier.org/pdf/CDIDossier-Apr-Jun16.pdf). India imposed continuous measures such as MIP because growing imports from steel surplus countries like China, Japan and Korea with predatory prices had been a major concern for the domestic industry since September 2014.

Such measures in the long run can have negative effects on the businesses that rely on steel as it might increase the costs of their primary inputs. In the long run, there is also the probability that automobiles and white goods may become more expensive, thus impacting ultimate consumer/user welfare. Already, Indian manufacturers of steel have planned to hike prices in the month of January 2017, which is worrisome.

2. Anti-dumping Duty on Chinese Products Extended

The Indian Revenue department extended anti-dumping duty on import of certain Chinese products, used in garment, footwear and toys manufacturing, for another five years. The anti-dumping duty on 'narrow woven fabrics hook and loop velcro tapes' will be charged at the rate of US$1.87 per kg. These products have wide industrial application and are mainly used in garment manufacturing, surgical and orthopaedic apparatus, and various other industrial segments. Earlier also in October 2010, the Finance Ministry had extended the levy till October 2015.

http://indianexpress.com/article/business/govt-extends-anti-dumping-duty-on-certain-chinese-products-3073403/

Food For Thought

Anti-dumping duty is a measure generally used by governments to protect domestic players from foreign competition and prevent dumping of goods which harm domestic players' ability to compete in the market. It is usually a temporary measure imposed for a certain period of time so that domestic manufacturers can gain from a temporary relief.

However, imposing an additional anti-dumping duty for another five years could cause problems for the consumers and is not necessarily beneficial for the producers as well. If domestic manufacturers are protected from external competition for a prolonged period of time, it might create a business environment which is susceptive to anticompetitive practices such as regional or product allocation, collusive bidding and cartelisation. Such practices may have an adverse effect on prices and quality of goods and services and the consumer tends to lose in the end.

The Central Board of Excise and Customs (CBEC) imposed the duty based on recommendations of the Directorate General of Anti-Dumping and Allied Duties (DGAD) which reviewed whether the expiry of duty on import is likely to lead to continuation or recurrence of dumping and injury to the domestic industry.

B. Policies Inhibiting Competition

3. Mobile Wallet Cos. Seek Open Access to UPI Framework

The National Payments Corporation of India (NPCI) launched the unified payment interface (UPI)-based mobile app BHIM (Bharat Interface for Money). The UPI is a payments system which enables financial transactions between multiple bank accounts by integrating it into a single mobile application of participating banks and also merges several banking features. The BHIM app relies on this payments highway.
Notably, NPCI does not allow direct access to non-banks and some mobile wallet players have called for an open access to the UPI infrastructure, citing the recently-released Ratan Watal Committee report.

http://tech.economictimes.indiatimes.com/news/internet/after-bhim-mobile-wallet-cos-now-ask-for-open-access-to-upi/56266341

Food For Thought

The payments ecosystem in India being largely bank-centric has almost all the major payments systems including UPI being operated by NPCI (members are only banks) and governed by the Reserve Bank of India (RBI). Direct and open access, interoperability and level-playing field are key factors which play a major role in safeguarding constant innovations and satisfying user experience.

Moreover, payment systems such as UPI rely on network externalities and interoperability is necessary to broaden the user base on both sides of the multi-sided platform. The end objective of such payment systems is to increase financial inclusiveness through quality services to the consumer and any regulation distorting competition between banks and non-banks might lead to inefficiencies and subsequent underachievement of the end goal.

The argument that limiting access of payments systems to banks enhances security in the sector does not appear to be based on sound logic. Clear regulations on consumer protection, security and privacy standards, which also promote competition, are vital to growth of the payments space.

4. Relaxing FDI Norms in Pharmaceutical Sector could harm Generics

While continuing with 100 percent foreign direct investment (FDI) in the pharmaceutical sector, the government allowed foreign investors to pick up to 74 percent equity in domestic pharma companies through the automatic route — a change aimed at making the investment process easier. The 2016 FDI policy disallows non-compete clauses in pharmaceutical deals and insists that for up to five years after the investment or acquisition, the production of essential or National List of Essential Medicines (NLEM) drugs and research and development (R&D) expenditure be maintained at the highest level achieved in the three years prior to the acquisition.

www.bloombergquint.com/business/2016/10/15/are-conditionalities-choking-indias-fdi-policy

Food For Thought

The Union government's decision to allow up to 74 percent FDI in pharmaceutical companies through the automatic route could threaten competition in the pharmaceutical sector and India's role as a supplier of low cost, life-saving drugs across the developing world.

In addition to this, mandating overseas investors to maintain production of NLEM drugs post-investment could lead to further consolidation in the generic drugs industry through mergers and acquisitions. For companies in the pharma sector that are engaged in different spaces within pharma and foreign investors which are keen on one but not all parts of the pharmaceutical companies' business, such a condition may compel foreign investors to acquire a business or vertical, rather than invest in the parent pharmaceutical company. Consolidation is more probable because a lot of the overseas corporations actually have much more focused operations than Indian pharma companies do and more often than not, companies outside India are bound by non-compete provisions for sub-spaces of the pharma industry that they cannot invest in.

Consolidation of generics with big pharmaceuticals could reduce competition in the Indian pharmaceutical space which is currently the largest provider of generics worldwide exporting nearly 20 percent of the global generic drugs.

C. Policies Promoting Competition

5. Govt Eases FDI Rules: Startups to Raise US$3mn

The Indian government has allowed every startup to raise US$3mn or Rs 20 crore from foreign investors and lenders within a financial year. Technically, this funding can be done as an external commercial borrowing (ECB) from foreign-based investors and lenders, and every startup (both B2B and B2C) can participate in this. While access to funds has never been a significant problem for large sized corporations, small and medium enterprises,

including start-ups, have been facing shortage to funds to grow. This also impedes competition between large sized corporations and small scale start-ups.

http://trak.in/tags/business/2016/10/05/fdi-rules-startup-raise-funding-overseas-investors-lenders/

Food For Thought

The Indian startup industry has huge potential and easing FDI norms would boost their growth prospects. This move aims at encouraging new market entrants and also aid startups which are currently at their early stages to garner financial support. Opening up the startup sector to more competition would also exponentially increase innovations and complementarily aid in job creation. Such measures would also increase the potential of Indian startups to grow bigger and compete globally as their working capital and productivity would increase. By opening up a door for ease of access to FDI, the government has given a strong signal about more reforms to come in this sector.

6. SEBI Seeks Level-Playing Field for All Commodity Exchanges

The Securities and Exchange Board of India's (SEBI) Chief, U K Sinha expressed concern that the way in which commodity exchanges are competing against each other, is resulting in a disproportionally higher business for one of the exchanges and could affect the stability of the markets. According to Sinha, the government and SEBI are of the opinion that there should be competition in the exchange space.

www.livemint.com/Money/iVKlcf06fCBrUiT3C5wT7N/Competing-commodity-exchanges-not-good-for-market-stability.html

Food For Thought

At present, the National Commodity and Derivatives Exchange (NCDEX) and Multi Commodity Exchange of India (MCX) are two main nationwide commodity exchanges. However, NCDEX has an average monthly turnover of 10.61 percent. Thus, effectively MCX is the dominant player in the commodities market with close to 90 percent of total trades occurring on its platform. It is an open question whether this wide gap is a natural competitive result of the functioning of the market or is result of some policy induced competition distortion.

Nevertheless, it raises concerns regarding competitive nature of the commodities exchange sector and leaves scope for a detailed competition analysis. The possibility of creating a competitive environment was felt by SEBI and in order to construct a level playing field, the regulator has expressed its intention to make sure that there are uniform rules and transparent mechanism for all commodity exchanges. Sub-optimal competition in sectors such as the commodity exchanges needs to be looked into carefully as it has the potential to affect stability of the Indian financial and commodity markets.

7. Government Unveils UDAN Scheme

The Union Government launched the regional air connectivity scheme *Ude Desh ka Aam Naagrik* (UDAN) which seeks to get more people to fly in the smaller towns. The scheme was launched by the Union Civil Aviation Minister Ashok Gajapathi Raju in New Delhi. It will be rolled out by January 2017 and will be in operation for a period of 10 years.

Under the scheme, fares were capped at Rs. 2,500 for half of the seats in one-hour flights. The cap on fares will be reviewed periodically based on Consumer Price Index for Industrial Workers and would also vary in tune with the duration of a flight.

http://indianexpress.com/article/india/india-news-india/udan-scheme-takes-off-fares-capped-at-rs-2500-for-one-hour-domestic-flight-3095013/

Food For Thought

The intention behind the UDAN scheme is to improve regional air connectivity by connecting unserved and under-served airports in India. The objective is to make flights an affordable alternative vis-à-vis other modes of transport for consumers who are currently suffering from geographical as well as financial constraints. This move could improve competition by creating a viable business model for regional and smaller players who would be offered subsidies to reduce their cost of operation, which, in turn, will give them the leeway to reduce fares.

Consequently, the government's move to impose a 'very small' levy on every departure on major routes to fund the scheme seems to have not gone down well with many of the existing airlines as they feel that such a move could push the airfares higher. However, such measures are to be carefully implemented as they might cause an adverse effect on quality of services which are harmful to the consumer. Regulatory capping of fares might drive players out of the short-route markets, or they might compromise with quality and efficiency to comply with the low fare directive.

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