New chapter in competition law probes

SC direction to the Competition Commission of India to investigate alleged predatory pricing by Uber disturbs the latter's policy position in market abuse cases

WITHOUT CONTEMPT

SOMASEKHAR SUNDARESAN

The interpretation of competition law in India could have unexpectedly received a vital course correction. The Supreme Court last week upheld a direction to the Competition Commission of India (CCI) to investigate alleged predatory pricing by Uber. But this is not just about predatory pricing, but about whether more than one player in the market can be "dominant" for the purposes of competition law.

To begin with, predatory pricing is a controversial subject of competition law across the globe. Predatory pricing involves, at least at first blush, selling of goods or services by enterprises that are "dominant" at prices that do not even recover the cost. In other words, it would be an evidently economically-irrational decision whereby a dominant player would supply goods or services at consciously loss-making prices, which would have the potential of burning competitors to death.

In many jurisdictions, this alone would not be enough — there has to be evidence to suggest that after killing competition, there would be an attempt to recoup the losses by raising prices for consumers in the market already captured by such predatory practices. In India, Section 4 of the Competition Act, which deals with abuse of dominance requires establishing that there is dominance by an enterprise, and that the dominance is being abused. Towards this end, the term "dominant position" is defined, among other things, as a position of strength enjoyed by an enterprise in the relevant market, which enables it to affect competitors or consumers in its favour, or, operate independently of prevailing competitive forces.

The complaint against Uber was that it was charging a price per trip in the Delhi market that was nearly half the cost incurred per trip. The CCI refused to hold that the matter needed investigation. On appeal, the National Company Law Appellate Tribunal, which hears statutory appeals from decisions of the CCI, held that the CCI ought to have investigated the matter on the ground that pricing was irrationally below cost and being a dominant player, the matter needed a probe.

The Supreme Court, rejecting Uber's appeal, has pithily ruled that if facts showed that the pricing is such that a loss is made for the trips made, there would be a prima facie case made out that the enterprise is in a position to dominate the market. According to the court, such pricing would certainly affect competitors in the market. The court also ruled that pricing of services at below cost (which is the definition of predatory pricing) would, prima facie, be an indicator of abuse by a dominant player. Therefore, the decision of the Appellate Tribunal to probe, was upheld, rejecting the decision of the CCI to rule out any need to even investigate, despite being faced with a consistent pattern of pricing policy that would accumulate losses on its balance sheet.

The allegation was that Uber would finance such repeated losses simply by infusing more capital — in other words, the capital was being infused to take advantage of a lax regulatory regime that enabled wiping out competition. The court ruled that it would be very difficult to say that there is no case for investigation made out. In its initial years, the CCI had been rather timid with its approach to enterprises that were technology-heavy, and typically, arguments about how innovative the technology was, or arguments on how state agencies should not stymie innovation would suffice to stave off investigation. The Supreme Court ruling puts paid to this approach.

Another policy position that the CCI has historically adopted in market abuse cases has also been finally disturbed with this ruling. It would invariably be argued (and accepted) that if more than one person were to price his offerings below cost, it would mean that there is no one with a dominant position. This is a rather piquant policy position because two enterprises may come together and become dominant and collectively abuse the market. Alternatively, each of the two enterprises could have the capacity to dominate and adversely affect competition, and thereby inflict injurious pricing policy on the market.

The CCI has historically endorsed the view that there cannot be more than one dominant enterprise in a market. With the Supreme Court ruling it is now evident that so long as any enterprise is able to consistently price itself below cost, it would be in a position to dominate. If more than one enterprise were to do so, it would then mean that there is more than one dominating enterprise. According to the court's rationale, every enterprise that is able to so dominate, is liable to be investigated.

The last court of the land has spoken. A new chapter in investigating market abuse under competition law will now be written.

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CHINESE WHISPERS

Under the hammer

Over 2,700 gifts received by Prime Minister Narendra Modi (*pictured*) will be auctioned online from September 14, culture minister Prahlad Patel said. The lowest base price of the mementoes is ₹200 and the highest is ₹2.5 lakh, he said. Over 1,800 gifts received by the PM were sold in a fortnight-long auction that began in January this year. The funds generated went towards the Namami Gange, a central government project, to clean the Ganga. The gifts the PM received in June and July of this year, according to the Ministry of External Affairs website, include a pair of Temma Kiriko cut glasses, one chatsubo (tea jar) made from "Osaka Naniwa Pewter Ware", one wooden chess board with chess pieces with an assessment value of ₹50,000, one large size Shydrak Kyrgyz carpet with an assessment value of ₹100,000 and another of ₹70,000 and a hand carved wooden platform of Samadhi of Buddha worth ₹100,000. An interesting gift received by the late Sushma Swaraj in April when she was still the external affairs minister was a piece of silver-diamond-emerald jewellery estimated at ₹6.7 crore.

Practise what you preach

The Bharatiya Janata party (BJP), which hasn't missed any opportunity to criticise the Congress for practising "dynastic politics", might have unwittingly offered a launchpad for the sons of some of its leaders in Madhya Pradesh. The state unit of BJP is putting together plans to start a movement against the ruling Congress party, which will be led by the young sons of many senior leaders. The names doing the rounds are Kartikeya Singh (son of former chief minister Shivraj Singh Chouhan), Tushmul Jha (son of BJP national vice-president Prabhat Jha), Devendra Singh Tomar (son of Narendra Singh Tomar, minister of agriculture & farmers' welfare and minister of rural development) and Samarth Chitnis (son of former minister Archana Chitnis) etc.

United by Vivekananda

Over the past two days, the Bharatiya Janata Party and the Trinamool Congress leadership have paid their respective tributes to Swami Vivekananda on the anniversary of his speech at the Parliament of the World's Religions in Chicago on September 11, 1893. In his speech in Mathura on Wednesday, Prime Minister Narendra Modi said September 11 is "a day etched in the history of humankind", when Swami Vivekananda delivered his outstanding address in Chicago. His message is more relevant than ever before but the tragedy is that 9/11 is now remembered more for the terror attack on World Trade Center, New York. On her part, West Bengal Chief Minister Mamata Banerjee said Vivekananda's message "of universal brotherhood is relevant even today".

A new road to end of life for cars

The success of the recycling movement for cars and white goods that has just begun in India will depend on the shape of the national scrappage policy

KUNAL BOSE

Why should the promoters of an equally owned vehicle recycling joint venture introduce their enterprise as Cero, a Spanish word that means zero? This in spite of the JV's incorporation as Mahindra MSTC Recycling Private Limited (MMRPL)

"Cero appropriately describes our zero pollution approach to recycling of end-of-life vehicle (ELV) from its collection to depolluting to dismantling to baling of metals. A vehicle on its dismantling generates much value by way of recovery of ferrous and non-ferrous metals, particularly steel, which constitutes up to 70 per cent of the structure. We are committed to creating an altogether new ecosystem for recycling of vehicles that have run their course from the environment-damaging way the work is done now in the sizeable unorganised sector," says MSTC Chairman BB Singh.

Whatever the reasons, the country that hosts the world's fourth largest automobile industry is a late starter in recycling of ELVs in an environmentally sustainable way. There are as many as 28 million vehicles of the pre-Bharat stage emission standards introduced in 2000 and these are a major source of pollution.

What has happened till now by way of operation of the country's only authorised recycling unit owned by MMRPL at Greater Noida is an eye opener to the enormous volume of wealth in the form of steel to be recovered in a scientific way for reuse by electric and induction arc furnaces (EAF & IAF).

Secondary steel industry officials agree with Singh that "a well developed authorised ELV, white goods and plant and machinery recycling industry could free India from its annual import dependence of steel scrap estimated at 7 million tonnes (mt)."

Secondary steelmakers get a supply of about 30 mt of steel scrap from informal recyclers of ELVs out of their total annual requirement of 37 mt. Mayapuri and Jama Masjid in Delhi, Grant Road in Mumbai and Mullick Bazar in Kolkata tell graphically as to how clumsily old vehicles are dismantled for scrap recovery in flagrant violation of the hazardous and other wastes (management & transboundary movement) rules, 2016.

A car or a truck needs to be depolluted by way of taking out burnt oil, grease, battery and tyres in a walled environment and then dispose these of in a regulated manner. But in Mayapuri or Mullick Bazar, one can find burnt oil spilt all over and piles of plastic and rubber materials fouling the environment.

Recycling of one tonne of scrap into metal results in a saving of 1.2 tonnes of iron ore, 630 kg of coking coal, 55 kg of limestone and 287 litres of oil

When a vehicle is handed over to an authorised recycler for a consideration approximating the value of scrap metal, the owner has the comfort of its deregistration with the regional transport authority and also a "certificate of destruction." But there is no certainty of extinguishment of registration and vehicle destruction when an unauthorised agency acquires an ELV, exposing the owner to risks of it being misused. Vehicles reach the end-of-life stage either in a natural way, that is when their life is over due to ageing and wear and tear or when they become unusable due to accident, vandalism and natural disaster.

"Recycling of ELVs should in all cases be driven by twin objectives of cleanliness of operation at every stage up to shredding and maximum recovery of steel and other metals from a ripped off vehicle," says Singh.

Next month will see the JV commissioning a second recycling unit in Chennai. "For the third venture, there will be a toss-up between Mumbai and Pune. The fourth one will be in Kolkata and my distinct preference will be a site at Budge Budge where you have the benefit of multimodal transportation by road, rail and river. The West Bengal government owns land there and we shall be seeking allotment of five acres from that holding," says Singh.

The entrepreneurial flame seldom burns bright among our bureaucrats. But the immediate past steel secretary Aruna Sharma is among the small group of officials who saw raw material security for secondary steel producers if only ELVs were recycled scientifically in large numbers. Before her superannuation, Sharma not only got the Mahindra and MSTC, which come under the steel ministry to form a 50:50 alliance but also gave the JV a road map for ELV recycling capacity creation in the country's four regions. The JV's recycling chain will include auctioning of baled metals and dismantled components using the e-commerce platform of MSTC.

"Actual users of steel scrap such as EAFs and IAFs and also traders are allowed to offer bids for materials put on auction. This makes the entire recycling chain of our JV transparent," says Singh.

The important question is this: Will this JV encourage others to set up ELV recycling plants? Recycling movement on scientific lines has just begun and ideally this has to go far, considering the country's large inventory of old rickety vehicles and other scrap generating items. But much will depend on the national scrappage policy, which is on the cards. Mahindra & Mahindra Managing Director Pawan Goenka rightly wants the policy to be voluntary rather than mandatory but the incentive should be such as to motivate people to give up ELVs for recycling.

Compared with steel made via the BF-BOF route, recycling of one tonne of scrap into metal results in a saving of 1.2 tonnes of iron ore, 630 kg of coking coal, 55 kg of limestone and 287 litres of oil. There is also a 58 per cent reduction in greenhouse gas emission and 17 per cent energy saving when steel is derived by way of scrap recycling, says the government's draft scrap policy. The compulsion to generate more quality scrap internally is linked to the official target of the EAF/IAF route of steelmaking having a share of 35 to 40 per cent of the 300 mt steel capacity to be built by 2030-31. Moreover, besides its use in EAF/IAF as the principal raw material — the other feedstock being sponge iron, hot briquetted iron and pig iron — primary integrated producers too use scrap in the charge mix of BOF as a coolant and for operational efficiency.

Singh says the demand for scrap will be around 55 mt by 2030-31, which can be had internally, provided the organised recycling industry — currently in its infancy — gains traction. In fact, because of its long coastline, India has the potential to become a big centre for scrapping of old vehicles that may be imported from south and southeast Asia and the Far East.

INSIGHT

RCEP & the opportunities for India

This is a critical opportunity for India to 'Act East' and help shape the Indo-Pacific trade architecture

HARINDER SIDHU

The Australia–India bilateral relationship has grown dramatically over the last decade. One of the large drivers behind that growth has been the common interests, values and concerns we both have in building a stronger Indo-Pacific region. A key element of this endeavour is our shared goal to strengthen the Indo-Pacific economic order — in particular, to build a rules-based trade and investment system from which we all stand to benefit.

The Regional Comprehensive Economic Partnership (RCEP), which includes India, China and ASEAN countries, as well as Australia and others, is a central vehicle for building this regional order.

RCEP countries represent nearly a third of the global economy and almost half of the world's population. This will be the first trade agreement between the major economic powers of the region and will contribute to regional economic development at a time when global trade growth has weakened.

Concluding a high quality RCEP will expand regional trade and investment and help shape the regional rules and norms governing trade, investment and the broader economy. It will strengthen regional supply chains. And it will create a platform to drive ongoing economic reform.

RCEP will contribute to regional and global stability. The agreement presents an opportunity to respond to the uncertainties in the international trading system by making a commitment to an open and inclusive global trading regime. It would demonstrate that the countries in the Indo-Pacific region — with their vibrant economic activity and massive potential for future growth — are rejecting the lure of protectionism. RCEP will be a powerful collective statement that the Indo-Pacific wants greater economic integration, trade and investment, not less.

Very importantly, RCEP deals India into regional economic integration. India is an Indo-Pacific powerhouse, essential to realising the full potential of the agreement.

This is a critical opportunity for India to 'Act East' and help shape Indo-Pacific trade architecture now and into the future. More than that, India's domestic economy stands to gain significantly.

RCEP offers India an opportunity to capitalise on its growth trajectory. The Indian economy is developing rapidly and becoming more globally oriented. RCEP has the potential to drive further domestic economic reform and the economic growth that is needed to fulfill the vision of India becoming a $5 trillion economy. By improving the regional business environment, RCEP will increase opportunities for Indian businesses to serve more markets and bring exporters even closer to more than the 3.6 billion consumers this agreement will cover.

RCEP will provide additional pathways for India's skilled migrants to access overseas markets and opportunities for businesses to achieve greater levels of competitiveness. It will help create jobs, raise living standards and provide consumers with more affordable products and services.

Under RCEP, Indian businesses will be better integrated into regional supply chains, increasing their market access across the Indo-Pacific and driving export growth. Goods, services and investment liberalisation are all critical to this. For businesses, lowering tariffs on goods means reducing the cost of inputs, while also still allowing India the necessary policy space to regulate in the public interest.

Beyond the increased trade in goods and services generated by RCEP, there is enormous potential for Indian businesses to digitally access international markets. Harmonised standards and modern rules will allow India to make the most of opportunities created by digital trade.

The stakes are high and the rewards clear. That is why in advance of the 28th round of expert negotiations later this month in Vietnam, a group of negotiators, academics and representatives from economic think tanks will meet on 13 September in New Delhi to discuss the economic and strategic opportunities that RCEP presents.

The roundtable meeting will reinforce the parties' commitment to concluding a commercially-meaningful deal and will assist in advocacy for ongoing trade liberalisation. Australia's chief negotiator will attend the meeting, demonstrating Australia's commitment to the agreement and to continuing our partnership with India to build a better, safer and more prosperous Indo-Pacific.

The author is Australia's High Commissioner to India

LETTERS

Do not compromise

This refers to the editorial "The rise of the extremes" (September 11). It places too much faith on compromise but compromises can sometimes be worse than doing nothing. For example, compromising on a half bridge is dumber than no bridge or a whole bridge. The decisions by Donald Trump (*pictured*) such as scrapping Iran deal and the policy of no-deal with dictatorial/tyrannical regimes in North Korea and Afghanistan are examples where a compromise is neither feasible nor advisable. A culture of coalescence, compromise and consensus cultivates group think, discourages dissent and leads to the continuation of bad economic policies such as the MGNREGA programme. Enhanced allocation to the leakage-prone programme by the Bharatiya Janata Party (BJP) — a party opposed to wasteful digging and filling pits activity — is an example of how the glorious middle ends in a muddle.

Extremes are required to put the brakes on liberal ideas that go too far, too fast. Mollycoddling terrorists in Kashmir or accepting too heavy a burden of the Bangladeshi/Rohingya refugees in the northeast are again examples where a well laid-out and clear-cut policy is the only and the best alternative instead of giving in to woolly-minded altruism of the *jholawallah* brigade.

We may rue that the BJP is no longer the party of Atal Bihari Vajpayee but it has to be conceded that Narendra Modi's decision for a surgical strike and the Balakot aerial bombings went a long way in protecting our strategic interest than Vajpayee's ill-advised, costly and eventual failed mission — Operation Parakram after the 2001 Parliament terror attack.

Ajay Tyagi New Delhi

Strike a balance

This refers to "No end to the govt's tax worries" (September 11). The article deals with various factors concerning the challenges of collecting tax revenue. Various data furnished by the author show declining tax revenue over the last two years after the implementation of goods and services tax (GST). The present huge target of tax revenue projected by the author in 2019-20 with 18 per cent growth rate is definitely a herculean task for the government considering the slow rate of tax collections. The huge shortage in GST collection last year has widened the fiscal deficit. Hence, the target for this year, of reaching 18 per cent growth rate, appears more stiff and difficult.

Most importantly, the shortage of tax revenue collections has had an adverse impact on the GDP as well as state finances. The shortage of revenue transfer will also be a big blow to the states that are already struggling to meet their revenue targets. The government must find ways to strike a balance between its savings and expenditure to keep to the fiscal deficit target of 3.3 per cent of GDP.

Partha Sarathi Mukhopadhyay Nagpur

Defend our democracy

This refers to the editorial "Truth to power" (September 11). What is shocking about the ongoing blatant violation of our constitutionally-granted right to freedom of speech and expression is that all this is happening in a country that calls itself the biggest democracy in the world. Artistes known for their liberal worldview are put behind bars by the police for lampooning leaders indulging in sectarian politics. Some public-spirited people have even been killed allegedly for their fight against religion- and caste-based politics by bigoted vigilantes. In this Stygian situation, all right-thinking people must align themselves to the cause of defending the democracy and our right to speak fearlessly. They are inseparable and unavoidable for enduring peace and prosperity in the country.

Tarsem Singh Hoshiarpur

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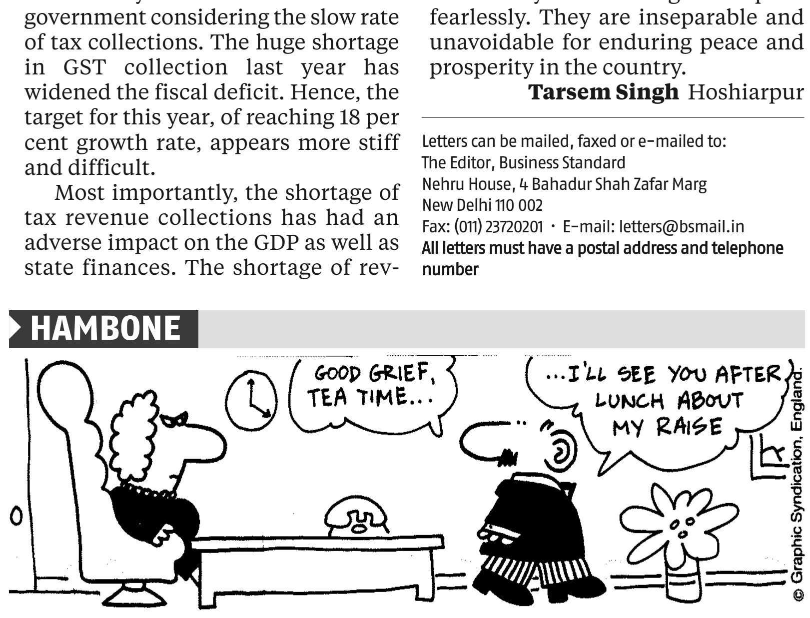
HAMBONE



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Chancellor's Foot syndrome

A former Supreme Court judge calls out the collegium

A respected high court chief justice resigns in protest over a humiliating transfer to a much smaller court. Advocates' associations in two states go on strike over the transfer of others. The sixth senior-most Supreme Court judge has written requesting the collegium to respect seniority in elevating high court judges to the apex court after the third senior-most high court judge in nationwide seniority is overlooked for elevation to the Supreme Court in favour of a judge who is 42nd in the rankings. The Supreme Court collegium has been no stranger to controversy over appointments to the higher judiciary.

But the recent developments have been serious enough to draw a rebuke from former Supreme Court judge Madan B Lokur in a signed article in *The Economic Times*. Justice Lokur, who retired from the Supreme Court in December last year, has pointed to the arbitrary and non-transparent nature of the collegium's functioning. He is currently serving on the Supreme Court of Fiji, the first Indian to be appointed to that position. But his credentials in the Indian judicial system make him uniquely positioned to comment on the current set of controversies over appointments and transfers in the higher judiciary. For one, he has a history of speaking truth to power, being one of the four "rebel" Supreme Court judges who held an unprecedented press conference in January last year to protest the manner in which then Chief Justice Dipak Misra was allocating critical cases. The year before, he had been part of a four-judge panel, which included Justice Misra and current Chief Justice Ranjan Gogoi, who finalised a Memorandum of Procedure (MoP) to govern appointments and transfers in the higher judiciary. This came two years after the apex court declared as "unconstitutional and void" the constitutional amendment Bill that the Narendra Modi government introduced in 2014 mandating a National Judicial Appointments Commission (NJAC) in place of the current practice of the judge-controlled collegium.

The MoP is yet to be approved by the government but the collegium considered it as final and resolved to abide by it. Any change to this MoP has to be cleared "unanimously" by five of its senior-most judges. There is no indication that the deviations from the MoP have gone through this process of checks and balances. Final collegium decisions have been put up on the Supreme Court website with no explanation on the nature of discussion preceding them. Justice Lokur likens these decisions to the "Chancellor's Foot syndrome," a reference to an ironic observation by a 17th century jurist about the arbitrariness of the English judicial system. His article also invokes a song by Nobel laureate and singer-songwriter Bob Dylan — *Ballad of a Thin Man* —to suggest that there is more to these deviations than meets the eye. "Something is happening here but you don't know what it is," the line goes. The oblique but unmistakable message from Mr Lokur's article is serious. In 2015, the Supreme Court staved off a greater executive role in judicial appointments via the NJAC. But the patently questionable decisions of recent months have immeasurably weakened its case for whatever independence it enjoys. Transparency and consistency are the cornerstones of a robust judicial system. The Supreme Court should follow those basic precepts.

Safety on road

Higher penalty alone will not help

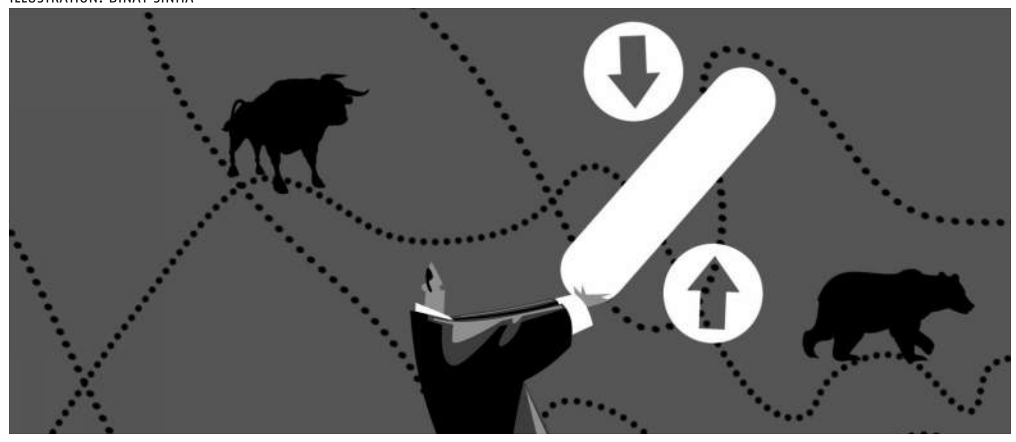
The Motor Vehicles (Amendment) Act, 2019, which came into effect at the beginning of this month is making headlines, thanks to the steep fines for violation of traffic rules. Some state governments have opposed it, primarily because of the provision of higher penalties. The Gujarat government, for instance, has decided to reduce penalties for a number of offences including not wearing a helmet and seatbelt. While the Act has several provisions, such as the constitution of a motor vehicle accident fund to provide compulsory insurance cover to all road users and the possibility of developing a national transportation policy, it's the higher level of penalties that is being debated the most.

The idea is that higher penalties will lead to better driving discipline and help make Indian roads safe. It's true that the quantum of punishment does affect human choices. Economist Gary Becker, for instance, in his Nobel lecture (1992) narrated that while running late for an examination many years ago, he had to quickly decide whether to park his car in the parking lot or leave it illegally on the street, and possibly pay a fine. Becker calculated the possibility of paying a fine, the size of the penalty and the cost of going to the parking lot. In the end, he decided that it paid to take the risk and leave the car on the street. It is reasonable to believe that common people violating traffic rules also make such calculations. It is possible that if the penalty and the possibility of getting penalised were reasonably high, Becker would have arrived at a different conclusion. News reports show that the number of violations, at least in the national capital, has come down significantly because of the higher penalties.

But sustaining this may require more than just fixing fines arbitrarily. Some states are clearly not comfortable with the level of penalties. In order to avoid such differences and confusion, the Centre should have provided the basic structure of the Act and left it to the states to take a call on implementation details. It is possible that this law might be more effective if penalties are decided by states, depending, for example, on the per capita income.

Further, it is not clear how all states government will ensure that the law is effectively implemented to make roads safer. Law enforcement with limited resources is always a challenge. A new research paper by economists Abhijit Banerjee, Esther Duflo and others, published by the National Bureau of Economic Research, looks into this problem. In Rajasthan, sobriety checkpoints of police stations were either kept fixed at the best location or rotated among three locations. While fixed checkpoints didn't show any significant impact, rotating checkpoints helped reduce night accidents by 17 per cent and night death by 25 per cent. This clearly shows that the police need to use resources more effectively. Higher penalties for violating traffic rules will itself not help if policing is not effective. The police should also use more technology, which will not only help reduce monitoring cost over time but also eliminate the possibility of people being harassed and lead to better results.

ILLUSTRATION: BINAY SINHA



Growth prospects dim

Given India's policy and institutional constraints, it will be difficult to significantly accelerate economic growth from present rates

Eight months ago, in "Some macroeconomic musings for 2019" (*Business Standard*, 10 January, 2019) I speculated "it is likely that economic growth will remain below 7 per cent, possibly closer to 6 per cent, in the coming year". At that time I was upbraided by some fellow members of the economists tribe for being too pessimistic, since most contemporary projections (domestic and international) were indicating 7-8 per cent growth for 2019 or 2019/20. As recently as this July, the Economic Survey projected 7 per cent GDP growth for 2019-20 and the Budget numbers implied 8 per cent. And, in early August, the Reserve Bank exemplified spurious precision by forecasting 6.9 per cent! Now, after the icy shock of the official 2019-20 Q1 GDP growth estimate of 5 per cent, such projections look absurd. Even my earlier expectation of 6 per cent plus looks improbably rosy. The discourse has shifted abruptly to issues such as: Can the slowdown get worse? How long will it last? What are the prospects for the medium-term? Here are some preliminary thoughts, which I shall undoubtedly revise in the course of the coming months and quarters.

A PIECE OF MY MIND

SHANKAR ACHARYA

Yes, the official GDP growth estimates for the next two or three quarters could well be lower than 5 per cent for three sets of reasons. First, the global economy has softened further in recent months as major players show clear deceleration, notably, the US, China, Germany, the UK, France and Japan. International organisations (such as the IMF, World Bank and OECD) are busy revising down their growth projections for 2019 and 2020 as trade wars take their toll, the decade long American expansion runs out of steam and the threat of a hard Brexit looms large. How long the global slowdown will last and how deep it will be are questions that yield no clear answers at present. Second, on the home front, the post-June prints of high frequency indicators (HFIs), such as corporate earnings, the index of industrial production, purchasing managers' indices, foreign trade data, tax revenues, financial credit numbers, sales of automobiles, trucks and cement and various service sector indicators, all point to a worsening situation. The extent to which these HFI trends will reflect in the official GDP estimates for the remaining quarters of 2019-20 is an open question, especially given the frailties of the 2011-12 base national income series (see "How fast is India Growing?", *Business Standard*, August 8, 2019). Third, the government's public recognition of the deepening growth crisis has come unconscionably late and the policy responses, thus far, have been somewhat unconvincing. The rather directionless Budget and subsequent rollbacks of several proposals testify to this, as does the seemingly pointless, and possibly damaging, exercise of public sector bank consolidation.

Medium-term prospects

What about beyond 2019-20? Will we see robust economic growth in the next five years? With the abolition of the erstwhile Planning Commission five years ago, the public institutional capacity for framing medium-term growth projections and scenarios has vanished. Announcing the target of a \$5 trillion economy by 2024 (implying over 8 per cent average annual growth), without accompanying serious analysis, does not shed much light.

Aside from the slowing world economy, there are many institutional and policy impediments to India recovering her high-growth performance of 2003-2011. Some of the more important ones are listed below:

- A substantially worse employment situation (than in 2011) where less than half the working-age population is actually working or seeking jobs. This is India's lowest labour force participation rate on record and the lowest among G20 economies. It is a result of both supply side weaknesses of poor education (mostly in government schools) and skilling, and demand suppressing factors of complex and rigid labour laws and regulations which hugely discourage fresh employment in the formal sector. The new Code on Wages, with its higher minimum wages, may further reduce formal sector job creation! India's demographic dividend is being squandered.
- A significantly overvalued exchange rate, which has contributed to export stagnation over the past seven years and discouraged import-competing domestic production, leading to high trade and current account deficits, which make India vulnerable to volatility in oil prices and capital flows. The currency overvaluation has also helped trigger a surge in protectionist customs tariff increases in the last two years and amplified an unfortunate antipathy towards regional trading arrangements, including the Regional Comprehensive Economic Partnership.
- A public sector dominated banking system, stressed by a high legacy burden of non-performing assets, which limits the capacity for fresh lending. Modest recent improvements have been outweighed by new problems in non-bank finance companies following the recent collapse of the hydra-headed Infrastructure Leasing and Financial Services Company. Debt-stressed corporate balance sheets also discourage investment.
- A decade of high fiscal deficits and public sector borrowing requirements, which have helped shore up interest rates and crowd out private investment. This pattern of fiscal laxity is likely to continue, given the narrow revenue base and burgeoning demands for populist spending programmes.
- A seriously distorted framework of agricultural marketing, including a very costly and inefficient public system of foodgrain pricing-procurement-storage-distribution. The high subsidies for food, fertiliser and irrigation water starve public investment in productive, rural infrastructure. Agriculture is also increasingly stressed by water scarcity and climate change.
- Relatively weak and inefficient infrastructure services. An example is the mostly government-owned and loss-making system of electric power distribution, weighed down by large subsidies for agriculture and other privileged consumer segments (at the cost of manufacturing and service enterprises) and endemic operational weaknesses.
- A colonial legacy of complex, heavy-handed and unresponsive government bureaucratic structures, which take a big toll on economic enterprise and activities. An increasingly centralised approach to administrative decision-making is further compounding the problems.
- Highly stressed and inadequately resourced judicial and police systems, which weaken basic law and order and significantly undermine enforcement of commercial contracts.

Against this challenging background of policy and institutional constraints it will be difficult for India to significantly accelerate economic growth from present rates. While the future is inherently uncertain, average GDP growth over the next five years may well remain in the 5-6 per cent range. Such modest growth rates will have profound, negative implications for job-creation, inter-regional disparities, political stability, social stress, India's international role and external and internal security. These are subjects for another day.

The writer is Honorary Professor at ICRIER and former Chief Economic Adviser to the Government of India. Views are personal

Will Mr Goyal get lucky once again?

A couple of days ago, a colleague forwarded a photograph of Naresh Goyal coming out of the Enforcement Directorate headquarters after seven hours of what was obviously an intense grilling. He looked frightened and was seen clinging to an ED official, as if desperately seeking protection from the world outside. The picture said it all: The man, who not so long ago watched the world from 30,000 feet above the ground, had truly been grounded.

At the end of it all, he has nobody but himself to blame for this spectacular downfall that led to his exit from Jet Airways in March this year. And this time around, the situation has turned so much against him that even important friends on his speed dial — politicians, policymakers, chief executives, etc — may find it difficult to do anything to bail him out.

POWER POINT

SHYAMAL MAJUMDAR

Or can they? Going by Mr Goyal's chequered track record, it's a difficult question.

Before searching his residential premises and offices over the past few days, the ED made a series of charges against him: That it has detected foreign bank accounts linked to him with substantial money in them. According to the probe agency, prima facie, these transactions involve various violations under the Foreign Exchange Management Act.

The business empire of Mr Goyal includes 19 privately held companies of which 14 are registered in India and five abroad. The ED says preliminary investigations so far indicate that Mr Goyal has "siphoned off huge amounts in foreign jurisdictions through dubious and fictitious transactions" through inflated commission to group entities in Dubai which acted as Jet's exclusive overseas general sales agents.

That's not all. A few months earlier, look out notices were issued against him after the ministry of corporate affairs directed the Serious Fraud Investigation Office to launch an enquiry into the charges that the Jet founder had siphoned out over ₹5,000 crore from the airline through a skein of transactions involving its subsidiaries. The SFIO probe against Jet Airways was initiated just a day after the ED had launched a separate investigation into partner Etihad's investment in the airline's frequent flyer programme, Jet Privilege.

But Mr Goyal faced more serious charges earlier — without any closure. In fact, the financial dealings of Jet Airways have been under scanner from way back in 1997 when he bought back the stakes of Gulf Air and Kuwait Airlines, both of whom owned 20 per cent stake in the airline. The suspicion was that the source was his Gulf money, hidden behind the Isle of Man curtain of secrecy. One of the most telling examples of the government's suspicion about Jet's ownership was the statement made by former disinvestment minister Arun Shourie. Speaking in Parliament, Mr Shourie referred to Mr Goyal as the "so-called" owner of Jet Airways as nobody had been able to tell him who owned Jet Airways.

Then in 2016, media reported about journalist Josy Joseph's book, *A Feast of Vultures: The Hidden Business of Democracy,* which had raised questions about his links with mafia in Dubai. The book had triggered a debate on the rise of Jet and the influence of overseas mafia on the business since the nineties. "There is strong suspicion that parts of Goyal's investments may have accrued through the help of underworld groups..." the book had quoted a single-page note to Sangita Gairola, then joint secretary at the Union ministry of home affairs.

On his part, Mr Goyal was able to defend himself against these government inquiries into the source of his finances. Each investigation hit a dead-end, possibly because no information about source of funds could be extracted from the Isle of Man.

But one thing is for sure: Mr Goyal knew how to use his considerable clout in successive governments of the past. Rules were indeed tweaked to ensure that he always had his way. And there are examples galore: The 5/20 rule that required an airline to operate for five years and have a fleet of 20 aircraft before it can fly international routes was entirely designed to keep Jet's competitors at bay. Also, just days before his initial public offer in 2005, he got the government's approval to fly overseas. That's too much of a coincidence.

Mr Goyal's acquaintances remember him as a boy who was always yearning for more in life — a trait that perhaps never left him. He rebuilt his life after his father, a prosperous jeweller, fell into bad days. But while his hard work and canny business sense earned him the sobriquet "King of the Air", his obsessive greed for more caused him to ruin everything he built. By the time he was unceremoniously booted out of his own airline, he had run up a huge debt, unpaid salaries and a reputation in tatters.

It's anybody's guess whether investigating agencies would be able to pin him down this time. But it's certain that it may be quite a while before Mr Goyal can return to his sprawling townhouse in a secluded road with sweeping views of Regent's Park in north-west London.

His-Story of India

BOOK REVIEW

M S SRIRAM

This is the first book written by A K Bhattacharya (popularly known as AKB) who is not only the Editorial Director of *Business Standard* but also the author of a consistent column, New Delhi Dairy. It is surprising that this is AKB's first book. Given the breadth and depth of his insights and the regularity with which he writes his columns, one would have thought that a book should have been out much before. Nevertheless, this is a welcome book and like most of AKBs' columns, it is straight, monotonic and non-partisan.

I say non-partisan after I read the Chapter 22 on demonetisation. The expectation would be that he followed the popular folkloric narrative: It was a whimsical decision; done with the Uttar Pradesh elections in the backdrop; nobody knew it; it was not planned at all. AKB discusses the merits and demerits of demonetisation, but he seems to argue that this was not as whimsical as it is made out. In putting this aspect across, he does not appear to have bought into the Modi narrative. Instead, he picks bits and pieces of data from Budget speeches, manifestos and timelines of past actions. He gives some insights into the role of Raghuram Rajan by picking up indications from his speeches; and more particularly from R Gandhi, who was the deputy governor in charge of currency at that time. The sequence of the events AKB narrates without sensationalism make it a compelling argument. This is the style and profundity that AKB gets to the narrative.

It is this meticulousness that makes his writing prescient. In Chapter 27, the last chapter of the book, AKB talks about India of the future and picks up multiple sub-themes: India going Presidential; simultaneous elections; and, importantly abrogation of Article 370 and associated actions on 35A; and citizenship. This book possibly went to press at least six months ago. AKB reads the manifesto and almost predicts that this is going to happen in the next few years! This insight cannot be because of the rhetoric that the ruling dispensation, but more about AKB's reading of patterns and making meaning of these patterns. If his prediction on Article 370 has turned out to be true, one shudders to think of the other disruptions he has listed for the future — some of which are deeply worrying and many of which may be welcome. Ram Mandir, one country-one language, are worrying issues; while there is hope about universal basic income. There are also insignificant and token disruptions like the change in the financial year to January-December cycle.

Chapter 27 is about the future and there may be discussions on what would happen and in what sequence. However, the rest of the chapters are the economic and financial history of India narrated with clinical analysis. It looks at the fall-out of each of the actions that AKB calls disruptive. The events are: partition; food crisis; nationalisation of financial institutions; oil crisis; the payments crisis; the Emergency; the reservation debate; the telecom revolution; and the recent happenings of non performing assets, RBI autonomy, demonetisation and GST. While AKB describes these as major disruptions, one wonders whether he is caught up with the term disruption. If we were to look at each one of these events most have had a long build-up before the event and, therefore, what one calls as a disruption was possibly just a culmination (example: NPAs; payments crisis; reservations; and the introduction of GST). Possibly the disruptive and unexpected events were just the oil crisis, the Emergency and demonetisation. In this sense it would have been more convincing if this was the economic history of India narrated through the most significant and impactful events.

Because he calls it disruptions, AKB tends to use the word disruption and disruptor quite often, as if to justify the title. This is just a distraction in an otherwise seamless book.

The things that stand out in this book are the objectivity that AKB gets to the table. He just does not jump to conclusions, is not judgmental and neither leans towards the right or the left. He is there unpacking each event, explaining what it did and how it impacted us without for a moment saying whether it was right or wrong. He does not even provide a "what if" counter narrative. Since AKB does not interfere between the events, unpacking of the events and the analysis, the reader gets an uncluttered sequence and we are able to build up our own story of how we emerged after independence and where we have reached. This is one of the rare books that keeps one engrossed, in spite of not being flamboyant and having the flourish of narration.

In this dispassionate event-based narration, there enters suddenly a brief personal story of Ranjit Sarkar and his ushering in of a baby boy into the family and this world. We do not get to know who Ranjit Sarkar is nor why his personal story comes in. This is not the style AKB adopts anywhere else and one is at a loss to understand the significance of the first two paragraphs of page 172. This may be an editorial oversight, which is surprising, because the author himself is an editor.

Nevertheless, this is a book I cherish having read and it did give me greater insights into where we are and why we are where we are.

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