

Price Monitoring and Control under GST

Lessons from Australia

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The Central Goods and Services Tax Act, 2017 has an “anti-profiteering” clause aimed at ensuring that businesses pass on tax rate cuts and cost savings resulting from the adoption of GST to the consumers. In this context, Australia’s experience with price monitoring and control during the GST transition period is looked at to draw lessons for India. It is eminently possible to institute a comprehensive and effective price monitoring and control mechanism in India to enable benefits to consumers under the GST regime. However, the anti-profiteering rules in their present form have some lacunae and may not produce the desired results of containing profits and, thereby, price rise.

An issue that has gained attention in the context of implementation of the Goods and Services Tax (GST) is the impact of the tax on prices of goods and services. In fact, concerns about the inflationary impact of value added tax (VAT), a variant of GST, was a characteristic feature of the switchover to this tax in almost all countries (Tait 1988). As a result, both in the run-up to and in the aftermath of the introduction of VAT, most countries have adopted extraordinary interventionist policies not only to limit price revision, but also to prevent any unjustified increase in prices by the businesses.

Some of the important price intervention measures implemented across the world are (i) price freeze or control (in Belgium, Netherlands and Korea); (ii) price monitoring (in Germany and Ireland); (iii) freeze on profit margins (in Netherlands and Ireland), (iv) publicity campaign (in Korea, New Zealand, and United Kingdom); (v) enactment of counter inflation laws (in United Kingdom); and (vi) reduction of other taxes and subsidy payments to essential commodities (in Denmark) (Tait 1988).

Contrary to this worldwide experience, when VAT was introduced in India from 1 April 2005, no credible price monitoring and control mechanism was put in place by the government to protect the interest of the consumers. Instead, the Empowered Committee of State Finance Ministers (ECSFM)¹ publicised that VAT would have no adverse impact on prices because the VAT system, by way of effectively eliminating the cascading effects of commodity taxation, helps reduce the price level. Also, the changes brought out in the tax rate structure of the commodities by the VAT system involve a reduction in the rates of many commodities compared to the sales tax regime.

In reality, studies have found that the introduction of VAT has resulted in unexplained increase in prices. A study conducted by the Comptroller and Auditor General (CAG) of India, covering a basket of goods supplied by 13 manufacturers in the first three months of introduction of VAT, revealed that none of them reduced the maximum retail price despite the sharp decline in the tax rates with respect to their products (CAG 2010). As a result, benefits worth ₹40 crore were “illegally” retained by these manufacturers and dealers across the VAT chain, which otherwise would have benefited the consumers by way of lower prices.

According to the CAG, this situation has occurred due to the absence of a system to monitor the

impact of VAT on prices and to ensure that the benefits of reduction in tax rates and tax cascading were passed on to the consumers. The National Council for Applied Economic Research (NCAER) in its analysis found that the introduction of VAT has not resulted in the expected decrease in commodity prices (*Business Standard* 2005).

In an analysis of the changes in the retail prices of 37 groups of commodities in Chennai city after the introduction of VAT in Tamil Nadu from 1 January 2007, Sthanumoorthy (2009) found that (i) the prices of a majority of the commodities that were subject to significant reduction in tax rates under the VAT regime had not come down; (ii) in the case of commodities that were taxed at a higher rate under the VAT system, the prices of a majority of them had increased in the immediate post-VAT period; and (iii) the prices of commodities whose tax rates were similar under the previous sales tax regime and the new VAT regime had witnessed an unwarranted price hike after the introduction of VAT.

Anti-profiteering Clause

In this context, the inclusion of an “anti-profiteering” clause in the Central Goods and Services Tax Act, 2017 (CGST Act) assumes significance. The clause, included under Section 171 of the CGST Act states:

The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him. (Gol 2017: 98)

And, the authority “shall exercise such powers and discharge such functions as may be prescribed.” The aim of the anti-profiteering clause is to ensure that the businesses pass on to the consumers any tax rate cuts and cost savings² resulting from the adoption of GST.

To operationalise the anti-profiteering clause, the GST council has formulated the anti-profiteering rules (APR). These prescribe a three-stage anti-profiteering administrative structure and a three-stage mechanism to deal with consumer complaints about profiteering practices by the businesses in the wake of GST implementation.³ The administrative structure comprises a nine-member standing committee of the GST council, Director General of Safeguards (DGS), and a five-member National Anti-Profiteering Authority (NAPA). The standing committee will consist of centre and state tax officials and state-level screening committees.⁴ The NAPA will be chaired by a retired high court judge or a member of the Indian legal service who has served at least three years at the level of additional secretary or above in the central government. The other four members of the NAPA will be joint secretary-level commissioners in central excise and service tax either in the centre or the states. The NAPA will function for two years from the date of its inception.

The three-stage compliant redressal mechanism works as follows: In the first stage, the standing committee receives the written complaints of profiteering practices and verifies the accuracy and adequacy of the evidence provided in the complaints. After reviewing the prima facie evidence to support the complaints, the committee forwards them to the DGS for a detailed investigation.⁵ The second stage involves investigation of the complaints forwarded to the DGS, which can take up to three months. In doing so, the DGS could examine the balance sheets of companies to see if the

price benefits of GST are passed on to consumers. In the final stage, the DGS submits the investigation report to the NAPA, which will have three months to give its verdict.

The entire procedure, from investigation to verdict, could take up to nine months. If a company is found to have not passed on the benefits of lower taxes and input tax credit to consumers, (or) increased the prices not in line with tax incidence, then the NAPA could initiate any of the following actions: (i) cancel the registration of the company; (ii) impose a penalty on the company; (iii) order a reduction in prices; or (iv) order the company to refund the customer an amount equal to what it has earned by not passing on the price benefits from the time the GST took effect.⁶ Apart from the complaints received from the consumers, the NAPA can also take *suo motu* action.

Responses from the industry and commentators to the inclusion of the anti-profiteering clause in the GST law have ranged from caution to disapproval (Mukhopadhyay 2017; Hindu 2016; Business Standard 2017a, 2017b). While some doubted if the provision can be implemented on the grounds of lack of conceptual clarity and counter-productive interference in pricing decisions of companies, others felt that it would take India back to the era of socialist controls and harassment—in this case, by the tax authorities—that will make it difficult to do business. According to the critics, the best way to prevent businesses from making undue profits is to promote competition.

Australian Experience

Given this scepticism over the anti-profiteering provision included in the GST law, the following question emerges: is there any international experience with a similar provision that could throw some light on the feasibility of implementing anti-profiteering and related measures in the Indian context, with the primary goal of protecting consumers against improper price increases?

Australia leads by example in this respect. Australia introduced GST on 1 July 2000 to replace a number of existing indirect taxes, including the wholesale sales tax (ACCC 2000a). The GST implementation had a three-year transition period from 1 July 1999 to 30 June 2002, during which the national competition regulator and consumer law champion—namely, the Australian Competition and Consumer Commission (ACCC)—was legally entrusted with the responsibility for overseeing the pricing responses to the GST and taking action against businesses that adjust prices inconsistent with tax rate changes consequent to the GST implementation (ACCC 2000a, 2001a).

Towards this end, the government has conferred many statutory responsibilities on the ACCC. Important among them are the responsibility to (i) formulate guidelines about what constitutes price exploitation; (ii) seek information from businesses to effectively monitor the price movements; (iii) issue notice to the businesses in case they indulge in price exploitation; (iv) seek penalties before the federal court for breach of price exploitation provision by businesses and individuals; (v) accept undertakings from the businesses which are enforceable in a court; (vi) investigate complaints and issues of public concern; and (vii) provide information to both businesses and public on price exploitation provisions (ACCC 2000a, 2001a, 2003).

Initiatives of ACCC

Armed with these statutory responsibilities, the ACCC undertook several measures to ensure that due to the GST reforms consumers (i) would fully benefit from the reduction in tax rates and tax cascading; (ii) do not experience greater than necessary increases in the prices; and (iii) are not subject to price exploitation by the businesses (ACCC 2001a). The major initiatives taken by the ACCC are as follows.

Definition of price exploitation: To aid its task of overseeing the pricing responses to the GST, the ACCC defines a business as considered to be engaged in price exploitation in the process of GST implementation if (i) it regulates the supply; (ii) it increases net profit margin by not reducing its prices adequately or by increasing prices by more than the quantum of rise in taxes; and (iii) it charges unreasonably high prices even after taking into account supplier costs, supply and demand conditions, and exceptional circumstances like long-term non-reviewable price contracts entered into by businesses and the price regulation prevalent in an industry (ACCC 2000a, 2000d).

Information dissemination: A national telephone GST price hotline was established by the ACCC to deal with consumer complaints and to facilitate business and consumer inquiries. Information and guidance were provided to the businesses and consumers through a website (ACCC 2000a). In addition, to enable businesses to comply with its guidelines, the ACCC issued information bulletins. For instance, a detailed compliance guide titled "Small Business Pricing Kit" was issued to assist the small businesses in identifying and passing on the cost savings resulting from GST to the consumers (ACCC 2000a).

To inform the consumers and businesses about the price changes due to GST, the ACCC widely distributed a publication titled "Everyday Shopping Guide with the GST." The guide contained information on expected price movements for 185 common consumer goods and services over the six months from the date of introduction of GST. This move was aimed at making consumers vigilant about any price exploitation practices and report the same to the ACCC. For the businesses, the guide provided assistance to set prices that were less likely to attract the attention of the ACCC (ACCC 2001a).

Commitments from corporates: To check price exploitation, large corporates with turnovers exceeding \$100 million were invited to offer a Public Compliance Commitment (PCC) to the ACCC on a voluntary basis. The PCC required the chief executive officer of a company to submit a signed commitment/statement indicating to the public that the company is committed to complying with the ACCC's price exploitation guidelines. In doing so, the company is required to provide appropriate information to the ACCC in support of its commitment (ACCC 2000a).

The primary objective of the PCC is to provide an assurance to the consumers that businesses would not engage in price exploitation by taking undue advantage of the GST changes. However, it is to be noted that the offering of a PCC does not prevent a company from enforcement action by the ACCC in case the company provides misleading information to the ACCC (ACCC 2000b).

Retail price surveys: The ACCC collected prices from retail outlets and supermarkets for a range of goods and services, both before and after the introduction of GST, by way of specially commissioned monthly and quarterly surveys of retail prices (ACCC 2001a). The main purpose of this exercise was to collect information on price changes and thereby identify areas of potential price exploitation, including the possible increase in prices of goods and services in anticipation of the introduction of GST.

Price details were collected in all the eight capital cities and 100 towns across Australia (ACCC 2000c). In the monthly surveys called Monthly Supermarket Survey, prices of a "basket" of 100 branded items sold in over 300 supermarkets in the country were collected. The quarterly survey, General Survey, collected prices for about 700 goods and services commonly consumed by households (ACCC 2001a). This survey was conducted eight times during the GST transition period (ACCC 2000e, 2001b; Valadkhani and Layton 2004).⁷

Apart from retail price surveys, information gathered from other sources were used by the ACCC to study price changes and pricing behaviour. These include wholesale and consumer price indices, independent price databases, corporates who have signed the PCC, and complaints registered by consumers on the national telephone hotline (ACCC 2000c).

Ban on misleading pricing claims: To protect the consumers against unethical business practices, under the Trade Practices Act, 1974, businesses were prohibited from influencing consumer demand by making deceptive pricing claims.⁸ For instance, there were provisions in the act to take corrective action if a firm attempts to encourage consumers to make buying decisions before the implementation of GST by way of misleading advertisements claiming that the price would increase as a result of GST, though in reality it might come down. Another example of misrepresentation would include the claim by the businesses that the increase in the prices was due to an “anticipation” of the effect of tax rate changes due to GST introduction (ACCC 2000a, 2000d).

Dual ticketing norms: In the context of transition to GST, dual ticketing refers to a practice of displaying two prices: one applicable until the day before the introduction of GST in Australia, that is, 30 June 2000; and the other applicable from the date of introduction of GST, that is, 1 July 2000 (ACCC 2000a). The retailers were allowed to adopt dual ticketing subject to following broad conditions:

- (i) The consumers should not be misled. For instance, the retailer should not list a higher post-GST price for a product when there is no reasonable basis for the same.
- (ii) Dual ticketing should be adopted only for a month (that is, a month starting from 1 June 2000) before the introduction of GST.
- (iii) The pre-GST price has to be removed within a period of one month after the introduction of GST.
- (iv) While dual ticketing, retailers should display the price of all the goods whose prices would change due to the introduction of GST.

Price and profit margin rules: The ACCC devised a price rule as per which the prices charged by the businesses in response to the tax changes should not rise by more than 10% in any event due to two reasons (ACCC 2000a, 2000d). First, the net cost of inputs/raw materials used by the businesses was not expected to increase beyond 10%. Second, businesses were entitled to claim an input tax credit for the GST paid.

However, businesses were allowed to adjust their prices to the extent of recouping the compliance costs associated with GST, such as purchase of new accounting software, staff training, and seeking advice specific to GST compliance. Capital expenditures, such as installation of a new accounting system incurred by the businesses to comply with GST, were also permitted to be passed on to prices over several years in line with accounting depreciation rules. As per the profit margin rule, the businesses were barred from making undue profits by altering their profit margin, called the net dollar margin,⁹ in the process of implementation of GST (ACCC 2000a).

In any case, if required, businesses were expected to justify any change in prices due to the introduction of GST before the ACCC. While doing so, the businesses were expected to retain the official records on the basis of which pricing decisions were made by them during the GST transition period. The records may include accounting documents, invoices, minutes of directors’ meetings and diary notes.

Display of price changes: Businesses were directed to adjust their prices as soon as tax changes including reductions took effect (ACCC 2000a, 2000d). In the case of shelf prices displayed at the retail shops, they were expected to be updated within 10 days of the implementation of GST. If there were any practical difficulties in meeting this requirement, the retailers were required to display notices in their stores informing the customers that the displayed shelf prices have not yet been adjusted to reflect the tax changes due to GST, and the GST-inclusive actual prices to be paid would be calculated at the time of billing.

Penalty: The ACCC was given the power to seek penalties before the federal court for breach of the price exploitation provision by businesses and individuals. The court could impose penalties of up to \$10 million and \$5,00,000 per offence for companies and individuals, respectively. Interestingly, the advisers to businesses such as lawyers and accountants were also subject to imposition of penalties on the grounds of aiding and abetting price exploitation.

Outcome of these Initiatives

As regards the outcome of the ACCC's prices oversight regime, during the transition period, the ACCC (i) took into consideration over 51,000 GST-related complaints and investigated around 7,000 of them; (ii) obtained refunds of around \$21 million for the benefit of around 2 million consumers, mostly on account of overcharged GST; (iii) accepted 55 court-enforceable undertakings; and (iv) initiated court proceedings in respect of 11 GST-related issues (ACCC 2001a).

Thirty five companies responded to the ACCC's invitation and adopted acceptable PCCs. The ACCC reported its enforcement activities on a quarterly basis to the minister as well as in the *ACCC Journal* throughout the transition period (ACCC 2003). Also, several businesses had initiated corrective action when GST-related rule violations were brought to their attention by the ACCC.

Two examples would illustrate this outcome. First, consequent to the complaint registered with the ACCC, Australia's major discount department store Big W was asked to explain the display of dual ticketing in its stores five months prior to the introduction of GST, and that too indicating a 10% increase in the prices. In response to the concerns raised by the ACCC, Big W withdrew dual ticketing of about one million items (ACCC 2000f).

Second, when a home-building firm placed "Beat the GST Offer!" newspaper advertisements claiming that the prices of new homes and land would increase by up to 15% consequent to the introduction of the GST, the ACCC investigated the claim (ACCC 1999, 2003).

The ACCC was of the view that a 10% GST together with reductions in the wholesale sales tax would result in a less than 10% increase in the prices of new homes and land. The ACCC believed that the firm's advertisements might mislead the consumers about the impact of GST and, hence, as a remedial measure obtained a court-enforceable undertaking from the firm wherein it agreed to (i) place a corrective advertisement apologising for misrepresenting facts in their earlier advertisements; (ii) stop making any misleading claims in the future on the impact of GST; and (iii) institute a "trade practices compliance program" to ensure that misleading advertisements are not published by the firm in the future.

Lessons for India

Australia's experience reveals that in the process of GST implementation it is eminently possible to institute a comprehensive and an effective price monitoring mechanism to ensure that consumers

are benefiting from the reduction in tax rates, tax cascading, and tax compliance costs in the form of lower prices, and businesses are not deriving undue benefits from the new tax system. From a broader political economy point of view, price monitoring is required to protect consumer welfare and ensure public acceptance of India's biggest tax reform since independence. Terming it a draconian or retrograde measure is against the welfare of the common tax payers. The fact that introduction of VAT has not resulted in the expected decrease in prices further reiterates the need for price monitoring and control measures under the GST regime.

In the light of the Australian experience, the critical question to examine in the Indian context is whether the APR finalised by the GST council is robust enough to ensure that consumers benefit from lower GST rates and input tax credit by way of reduced prices of goods and services. The answer is probably no, unless the following areas of concern with the APR are addressed.

First and foremost, the formulation of an anti-profiteering administrative structure and a three-stage mechanism to deal with consumer complaints just 10 days before the roll out of GST make little sense. In contrast, in Australia the GST transition period started from 1 July 1999, precisely a year before the introduction of GST. During this period, the ACCC had undertaken several important measures that were necessary to prepare and guide the key stakeholders—namely businesses, consumers, and the ACCC—to face the price monitoring mechanism.

For instance, price exploitation guidelines meant for the businesses were released in July 1999, the compliance guide to small businesses was released a month before the introduction of GST, the information on the expected price movements for common goods and services was provided to the consumers more than a month before the introduction of GST, and the first retail price survey was conducted five months before the introduction of GST.

None of these critical initiatives have received the attention of the centre and GST council in India. Even the NAPA is expected to be set up only around two months after the GST roll out (Seth 2017). The Australian experience clearly suggests that for the APR to produce the desired results there has to be sufficient lead-in time to equip the relevant stakeholders to comply with and make use of the various provisions under the APR.

A close reading of the proceedings of the GST council reveals that a reasonable amount of time was available for the centre and council to educate the businesses and consumers. The anti-profiteering clause first found mention in the draft Model GST Law released in November 2016 (GoI 2016). Subsequently, some states, most notably Kerala, have placed two important proposals before the GST council to ensure that consumers benefit from lower GST rates and input tax credit (*Malayala Manorama* 2017a).

It was suggested that a list of commodities with details of existing and new GST rates be published along with their maximum retail prices under the GST regime. The centre was asked to hold discussions with apex industry associations to ensure that businesses transfer the benefits of tax rate reduction under the GST regime to consumers. Still, it took almost seven months for the council to come up with detailed guidelines about how the anti-profiteering provision would be made operational. Precious time could have been saved had the centre and council entrusted the responsibility to the already existing Competition Commission of India, whose duty, among other things, is to ensure fair competition, protect consumer interest, and create public awareness.

Second, global experiences show that the price impact of GST is mostly felt in the initial period of GST implementation. With the passage of time, non-tax factors start influencing price changes.

Hence, it is important that in the medium-term consumer complaints about incorrect pricing by the businesses are addressed. This is possible only if, like in the Australian case, (i) consumers are made aware of expected prices of goods and services after the introduction of GST;¹⁰ (ii) the proposed administrative framework, including the NAPA, to deal with consumer complaints is put in place without delay; and (iii) a GST price telephone hotline or a suitable digital platform is established to enable the consumers to reach out to the standing committee with their complaints. In the proposed three-stage mechanism, complaints have to be filed in written form, which may be cumbersome for many consumers.

Third, in the absence of detailed guidelines about what constitutes “anti-profiteering,” the fear expressed by the industry that the APR would take us back to an era of socialism, controls and harassment may become a reality (Dey and Dhasmana 2017). To resolve this issue, the price and profit margin rules followed in Australia might be adopted. Also, a detailed compliance guide has to be provided to assist the businesses in adhering to the APR.

Fourth, as per the APR, the NAPA can impose a penalty on companies that fail to pass on the benefits of lower taxes and input tax credit to consumers. However, the anti-profiteering clause as specified in the CGST Act has no provision for imposition of penalties in such cases. Here, it is important to note that the anti-profiteering clause in the draft model GST law had a provision “for imposition of penalty” in cases where the proposed authority “finds that the price being charged has not been reduced” (GoI 2016).

However, in the final GST law, namely the CGST Act, the provision to take penal action against the erring businesses was dropped. According to analysts, this could be due to the realisation that penal action cannot be taken without passing legislation at the central and state levels specifying such a power (Mukul 2017). Hence, it is not clear how the penalty clause would work in practice.

Fifth, instead of relying only on the consumer complaints of wrong pricing by the businesses, the NAPA should study price changes and pricing behaviour, both before and after the implementation of GST, by way of conducting retail price surveys and using price information available from other sources. The finding of the study would not only help in making consumers vigilant about any price exploitation practices, but also in identifying areas of potential profiteering and take necessary action on *suo motu* basis. Unfortunately, the APR has no provision for such an exercise.

Finally, the government is yet to take the industry into confidence on the APR. Instead, the government has been issuing warnings to various industries (for example, pharmaceutical, real estate) to refrain from hoodwinking the consumers (Hindu 2017a, 2017b). Holding discussions with apex industry associations might also help in transferring the benefits of tax rate reduction and input tax credit to the consumers. Here, it is good to recall the success of the PCCs signed by a large number of big companies in Australia. The interaction with the industry could also be used to seek information from them to effectively monitor the price movements.

Notes

1 The Empowered Committee of State Finance Ministers (ECSFM) was set up by the Government of India in July 2000 to facilitate indirect tax reforms in coordination with the state governments. Among others, the members of the ECSFM include the finance ministers of all the state governments and union territories.

2 GST can lead to an overall decline in prices due to the reduction in the (tax) cost of doing business

resulting from the reduction/removal of the cascading effect of taxes (Rao 2016). This is because the GST system allows businesses to deduct the tax paid on their inputs/purchases from the tax payable on their output. However, this can happen only if the businesses pass on to the consumers the benefit of the cost reduction arising out of the input tax credit available to them. In the existing commodity tax system in India, tax cascading occurs due to the (i) levy of multiple taxes at the central and state levels; (ii) absence of set-off for excise duty and service taxes paid (input tax credit) while paying the state value added tax; and (iii) absence of a provision for availing tax credit for taxes paid in one state in another state (Gol 2015).

3 The details of various aspects of the anti-profiteering rules were obtained from Seth (2017), Dhasmana (2017), *Times of India* (2017), *Firstpost* 2017, and Raghavan (2017).

4 The screening committees will have one central government official nominated by the chief commissioner and one state government official nominated by the commissioner.

5 It is to be noted that before the standing committee takes up complaints for consideration, the state-level screening committees would examine them and give their recommendations to the standing committee.

6 In case a customer fails to claim his/her refunded amount or cannot be traced, the amount would be credited to the consumer welfare fund (CWF), which is managed by the Department of Consumer Affairs functioning under the Ministry of Consumer Affairs, Food and Public Distribution, Government of India. The CWF is generally utilised for consumer awareness, strengthening of consumer movement, and protection of consumer welfare.

7 For more details, including findings of some of the retail price surveys conducted by the Australian Competition and Consumer Commission (ACCC), see ACCC (2001b, 2000e).

8 The objective of the act was “to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection.” From 1 January 2011, the Trade Practices Act, 1974 was replaced with the Competition and Consumer Act, 2010. For details, see <http://www.chartermerc.com.au/sites/default/files/media/documents/TradePractices%20act%201974.pdf>; <https://www.business.qld.gov.au/starting-business/licensing-obligations/legal-obligations/competition-consumer-act>.

9 Net dollar margin = sales price - cost of goods sold - (operating and selling costs)

10 It is to be noted that the government of Kerala has informed the GST council that it would publish a list of commodities with details of existing and new GST rates applicable to them and their maximum retail prices under the GST regime (*Malayala Manorama* 2017b).

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