CIRC RegTracker

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RegTracker is a quarterly publication which will be tracking the current policy changes and proposals on economic regulation in the country, particularly on the dynamics of the same as and when a news report appears. It does not aim to provide an in depth analysis of the happenings, but raises some points to ponder, as food for thought and deeper analysis by policy makers and researchers.

1. Broadcasters urged to vet content on children's channels

(Livemint, May 17, 2013)

The Broadcasting Content Complaints Council (BCCC), a self-regulatory agency, has told broadcasters that run channels aimed at children to exercise caution in selecting content following complaints against programming that was deemed inappropriate for youngsters by some viewers.

"While the BCCC wishes to avoid being a censoring agency, it advises all IBF (Indian Broadcasting Foundation) member channels, particularly children's/cartoon channels, to be more cautious in the selection of the content shown, considering the impressionable minds of their target viewers. The emphasis should be on the best interest of the child," BCCC said.

The self-regulatory body for general entertainment channels issued the advisory to all IBF members.

The complaints related to content with a parental guidance rating, such as horror and action programming

www.livemint.com/Consumer/p55BSVhlRuuNAJYBVr1USP/Broadcasters-urged-to-vet-content-on-childrens-channels.html

Points to Ponder

The BCCC's appeal to broadcasters to vet content on children's channels opens the doors once again for the age old debate on censorship and government regulation vis-à-vis an individual's right to freedom of expression.

The BCCC has been receiving complaints against 'objectionable' content, visuals, themes and animations, use of 'inappropriate' language and the streaming of promos of shows meant for adults or action/ horror movies deemed inept for children on kids' channels.

While many broadcasters contend that there are no such channels that cater exclusively to children, others assert an individual's freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, through any other media, even if that individual is a child. The development is a reflection of the fact that BCCC maintains that there are indeed channels that target children as their primary audience and since unsuspecting parents allow their children to watch these channels, it is the broadcasters' responsibility to telecast age- appropriate content.

Moreover the fact that BCCC is unwilling to regulate the sector directly by implementing constricting binds, and has only appealed to the broadcasters for self-regulation and to exercise caution, is a clear indication towards acknowledging a liberal approach, while doing what is best for the children's interests.

The information in this newsletter has been collected through secondary research and CIRC is not responsible for any errors therein. The press clippings used here have been suitably adapted and summarised to convey their essence to the reader without any distortion of content. For earlier issues, please visit: http://circ.in/CIRC_RegTracker.htm

Your views and comments are welcome at: circ@circ.in

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2. DoT for abolition of cross-holding

(Business Standard, May 31, 2013)

The Department of Telecommunications (DoT) has moved a proposal to prohibit direct or indirect cross-holding by a telecom company or its promoter in a competing firm in the same circle. In a recent note, DoT has proposed to include this clause in the upcoming Unified Licensing (UL) regime.

The existing Unified Access Service Licence (UASL) norms allow promoters of a telecom company to have up to 10 percent equity stake in another firm in the same circle.

If the new clause mooted by DoT gets incorporated in the UL, companies such as Vodafone Plc, which holds 4.4 percent stake in Bharti Airtel, will have to exit as it holds a majority stake in Vodafone India. According to the UASL norms, no single company or legal person, either directly or through associates, can have 'substantial equity' holding in more than one licencee company in the same service area for the basic, cellular and unified access services.

'Substantial equity' means equity of 10 percent or more. The 10 percent cross-holding cap had earlier triggered controversies. The Ruias of Essar Group came under the lens of the Central Bureau of Investigation (CBI) for the Group's alleged links with Loop Telecom. CBI had claimed the group held more than 9.9 percent stake, violating the current policy.

www.business-standard.com/article/companies/dot-proposes-abolition-of-cross-holding-in-telecom-113053001045_1.html

Points to Ponder

Cross holding occurs when a firm holds passive ownership rights in a competing firm. This imparts a percentage of profits of the rival firm to the former firm. Consequently, the firms take decisions ensuring that they do not adversely affect each other's profits, leading to a monopoly like situation.

The possible anti-competitive effect of such practices has prompted the DoT to scrap the current cross holding norms which specify that no single company or person can have substantial equity holding (10 percent or more) in more than one licensee company in the same service area. It has also been suggested that telecom companies should be mandated to report their holding structure to Securities Exchange Board of India (SEBI) and under the Companies Act, 1956. The development comes in the light of allegations that several companies have cross holding stakes in multiple operating firms.

However, a counter argument being forwarded against the new policy is that the fears of consolidation in the sector leading to anti-competitive practices are ill-founded since collusion is highly unlikely in a scenario where there are several major operators. Further, the Telecom Regulatory Authority of India (TRAI) has sweeping powers to determine tariffs and interconnection charges, allowing it to combat price-fixing. Finally, the Competition Commission of India (CCI) exists to prevent abuse of market dominance.

Even so, this move by the DoT may prove beneficial for the telecom sector and consumers in general and is a major step by the government in recognising the prevalence of anti-competitive practices.

3. Regulator offers bailout to Tata Power

(Livemint, April 15, 2013)

India's apex power sector regulator offered a bailout package to Tata Power Co. Ltd for the electricity generated from its imported coal-based Mundra plant in Gujarat, in a repeat of its earlier judgement on Adani Power Ltd's petition for a tariff revision.

Tata Power had approached the Central Electricity Regulatory Commission (CERC) to consider an increase in its power tariffs after customers didn't want to pay higher charges. Tata Power's special purpose vehicle, Coastal Gujarat Power Ltd (CGPL), had signed agreements to sell electricity generated from its 4,000 megawatts (MW) Mundra plant to Gujarat, Maharashtra, Haryana, Punjab and Rajasthan at Rs.2.26 per unit.

CERC ruled that the company will be allowed to temporarily increase tariffs to compensate for the additional fuel costs it is incurring on account of coal imports becoming expensive when the Indonesian government in 2012 started levying higher royalty and income tax, affecting the financial viability of the project.

One of the five CERC members dissented with the regulator's majority verdict, which paves the way for similar compensation to other power projects in the country, including Reliance Power Ltd's (R-Power) imported coal-based project in Krishnapatnam, Andhra Pradesh, work on which has been halted because of the unexpected rise in fuel prices.

However, state utilities may approach the Appellate Tribunal for Electricity against the order.

www.livemint.com/Industry/FzleR63TNpJF3eyYHsEqlL/Regulator-offers-bailout-to-Tata-Power.html

Points to Ponder

The CERC determines the tariff at which a central generating plant will sell electricity to a procurer. CERC makes annual escalation rates available in public domain for the aid of firms to take into account fluctuations in fuel prices, transportation costs, exchange rates, inflation, etc., when quoting bid prices. Thus all generators participating in the bid process have an option to hedge risks by encompassing any future changes in costs that might be anticipated. The system generated by CERC was expected to be fairly transparent but has begun to run into rough waters.

Coal is imported from Indonesia by several power generators, like Adani, Reliance and Tata because the Indian coal sector, monopolised by the government-owned Coal India Ltd, is unable to meet demand and quality standards of electricity producers. This imported coal, up until now was a viable option because of ease of import and better economies of mining. However, a tax hike on coal producers levied by the Indonesian government in 2010, keeping in line with the new international mining benchmarks, has raised *input costs for Indian generators, making it unfeasible for them to supply electricity at the present rate.*

CERC, in accordance with petitions filed by generators feeling the fiscal brunt of the coal price hike has given them a compensatory tariff plan citing the occurrence of the hike as a temporary phenomenon which could not have been prognosticated, either by CERC or by power generators. The burden of this tariff rise first granted to Adani and thereafter to Tata is expected to fall ultimately on the consumer.

Exceptions granted by CERC after the bid has been acquired may pose moral hazard problems in the future, may be unfair to consumers and may open up a Pandora's Box due to possible opposition from bidders who had lost.

Though it is true that the rise in price of imported coal was unexpected, but certainly could have been foreseen and accounted for and hence CERC's leniency may still mar consumer interests. The regulator must have ensured that the fall is borne by both the power generator and the consumer, one way of which may be bifurcating the additional cost, such that the burden is equally shared by both parties. Also, the instant predicament must at least ensure that future bids, through appropriate amendments, take into cognisance such incidences. Other than bifurcation, future bids may also be made circumspect by way of introduction of near-to-surcharge mechanism, wherein the consumer remains immune from the fluctuations in the price of coal.

4. Ministers' Group Finally Okays to Set Up Coal Regulator

(The Hindu Business Line, May 29, 2013)

After nearly one year of discussions, the Group of Ministers (GoM), headed by Finance Minister P. Chidambaram, finally cleared the Coal Regulatory Bill, paving the way for an independent authority to tackle issues of pricing, supply and quality.

The Bill will now go to the Cabinet for approval before being placed in the Parliament. As Parliament is not in session, the Cabinet may consider an Ordinance so that a Coal Regulator can be set up immediately. If this happens, the Bill will need to go before Parliament within six months.

On May 07, 2013 Chidambaram said the proposed regulator would not have the power to set coal prices – the most contentious issue.

"Pricing must be left to the producer. The regulator will have powers to adjudicate on disputes related to price, quality, and supplies. All disputes will be adjudicated by the regulator. And then there will be an appellate authority," Chidambaram said.

Now, it is to be seen how the government separates the powers between the proposed regulator and the Office of the Coal Controller. At present, powers such as approval for coal mining rests with the latter. The Coal Ministry has not yet decided on dismantling the Coal Controller. The proposed regulator is expected to have the authority to approve methods of testing, sample collection and weighing, among others

www.thehindubusinessline.com/industry-and-economy/ministers-group-finally-okays-bill-to-set-up-coal-regulator/article4762875.ece

Points to Ponder

India's coal sector has been largely a State monopoly, leaning on the operations of Coal India Ltd (CIL). In recent years, CIL has been unable to meet demand due to government clearance issues, land acquisition problems and even inefficiencies, leading to higher imports and troubles for coal importing power generators.

The Coal Regulatory Bill envisages the setting up of a coal regulatory body which shall oversee coal supplies from CIL as well as state run and private companies mining under Government approved licenses. The regulator is set to preside over disputes, pricing, grading, testing and quality.

The setting up of a regulatory body could usher in the much needed efficiency and transparency in the coal acquiring set-up and could also be a step towards liberalisation of the energy sector. It could help create a level playing field for competition as and when the government opens the sector to private participation. The regulator can help manage the allocation process, oversee the opening of new exploration areas and planning and development of mines. An independent regulator for the sector is considered crucial for fixing guidelines for price revision, improving competitiveness in e-auctions, setting of trading margins and increasing transparency in the allocation of reserves.

However a counter argument is that the coal sector is in need of a facilitator and not a regulator. It is suggested that coal must be traded in a free market like any other commodity. Also the proposed regulator is not seen to be capable of rooting out the coal mafia and strong trade unions acting as impediments for the growth of the industry. Relevantly, the Coal Controller, incorporated in 1916, is already in place that looks after supplies and quality, making the foundation of another regulator redundant.

Thus mere setting up of a regulator cannot be hailed as the panacea for all the ills in the sector. What is imperative is an enabling regulatory process, which diagnoses the causes of inefficiency and sets in place the mitigating measures.

5. House Panel for single regulator to manage chit fund schemes

(The Indian Express, May 18, 2013)

The Parliamentary Standing Committee on Finance, which closely scrutinised the functioning of chit fund schemes, has supported the concept of a "single law and a single regulator" to tackle the menace of chit funds.

The panel asked the Finance Ministry to submit a written reply on the operation of such investment schemes in the country and the preventive actions taken by it. The panel has called RBI representatives to discuss the issue at length.

Senior officials from the RBI, CBDT, SEBI and the corporate affairs and finance ministries, who appeared before the committee, admitted poor coordination and lack of regulation to control the flourishing chit fund business in the country.

Committee Chairman and BJP leader Yashwant Sinha suggested that the 1982 Act regulating the chit fund business in the country be repealed through an ordinance, sources said. He was of the view that the chit fund business should be scrapped to protect innocent investors.

While most members, across party lines, supported his idea, others said repealing the Act would not ensure that chit fund companies stop functioning. The members were unanimous that there should be a "single law and a single regulator" to deal with such schemes, sources said.

www.indianexpress.com/news/house-panel-for-single-regulator-to-monitor-chit-fund-schemes/1117164/

Points to Ponder

The Saradha Group Financial Scandal duped thousands of people in Eastern India of hard earned savings over the course of five years. As a Ponzi scheme it was engaged in various investment businesses like debentures, preferential bonds, Collective Investment Schemes (CIS) and chit funds, as well as in political and entertainment activities to build its brand. It is reported that a huge agent pyramid was set into motion where these agents were paid hefty commissions to lure unsuspecting people into investment. The collapse of the group brought to light the inefficiency and helplessness of regulatory bodies working in an environment of dissected authority.

The SEBI, wary of the workings of the group, had launched an investigation in 2009, pulling up the Group for selling debentures and preferential bonds without auditing accounts or registering with SEBI. This began a cat and mouse chase as the Group changed its methods of raising capital to stay out of SEBI's loop. Saradha also started running a chit fund scheme because chit funds fall under the jurisdiction of the state government, as per the Chit Funds Act, 1982. When SEBI warned the West Bengal state government, the Group changed investment methods again.

The Saradha scheme is only one of multitudes of such schemes operating at grand levels in India. Thus the stand of the Parliamentary Standing Committee on Finance for a single regulator and the proposal of entrusting SEBI with more power is a welcome one. Changes in the SEBI Act by giving more teeth to the regulator shall check perpetration of illegal schemes and frauds by arresting jurisdictional delays. SEBI has sought direct powers to attach/sell movable and immovable properties without recourse to court of law, so that effective action can be taken if the concerned entity has either disappeared, or raised money in violation of securities laws, or has fraudulently diverted public money.

In addition to this, it is essential that gullible investors be protected from fraudulent activities of the flourishing small investment business in India by mass-ground-level advocacy initiatives. A weak financial system, its impermeability in reaching the grass root level and unavailability of cheap credit, fuels the small investment business which is more often than not deceptive. It has been suggested that the chit fund system be exterminated by repealing the Chit Fund Act but this may not ensure the dying away of informal chit funds, which is why there is a need for better and comprehensive regulator to deal with a myriad investment schemes.

6. Law Ministry to vet norms for uniform telecom licence

(The Financial Express, May 18, 2013)

The final norms for telecom UL regime will be sent to the law ministry within a week for vetting and approval, said a DoT official.

The new licence, which will form the crux of the New Telecom Policy 2011 (NTP 2011), has proposed to merge all licences – mobile, landline, Internet service and long distance – into one universal licence. However, the spectrum will be delinked from the licence and all companies will compulsorily need to migrate to the UL regime when it gets notified.

"The Telecom Commission has already approved the final version of the UL norms," said the senior DoT official, adding that the policy will be notified "shortly". The Telecom Commission is the highest decision-making body of the telecom department.

Telecom minister Kapil Sibal had recently said that DoT would soon take a final decision on the UL regime in consultation with the law ministry. Sibal had also said the new licencing regime would ensure fair competition.

A special committee, constituted to prepare the unified licence, has recommended two licences – UL (national) and UL (service area) – for telecom operators. The Committee had taken the decision after examining the recommendations of DoT and the TRAI.

According to broad features of UL, telecom companies holding the licence will be able to provide all services that existing licences permit as well as share spectrum and other active part of telecom infrastructure that were not permitted earlier. Telecom service providers who want to provide any additional service apart from current offerings, will have to go for unified licence. In case of mergers and acquisitions also, the companies need to go for unified licence.

www.financialexpress.com/news/law-min-to-vet-norms-for-unified-telecom-licence/1117339

Points to Ponder

The National Telecom Policy (NTP 2011) proposes to usher in the era of Uniform Licensing (UL). Under the UL regime, consumers will be able to avail all sorts of telecommunication services from one service provider. In October 2003, the government had unified the basic landline and cellular telecom licences. With UL, mobile, landline, Direct To Home, cable TV, broadband access, all will come under one fixed licence, making single billing feasible.

Interestingly, UL is also projected to transcend regional boundaries. Presently, licence holders have to get separate licences issued for operating in different states and pay different revenues. The new system shall require a single pan-India licence and a flat eight percent of the adjusted gross revenue (AGR) as licence fee. This increase in levy fee from six to eight percent is, however, seen to have potential to actually raise costs in non-metro areas since the levy is being increased

UL can enable the government to gradually leave the sector to market forces. Another advantage lies in the fact that UL will generate economies of scale, ensuring a fall in prices of telecom services in the future. Moreover due to melting away of regional distinctions, competition will lead to fall in roaming charges.

Further the one-time licence-acquiring fee set at Rs 15 crores can act as a barrier to entry for new players. In the context, internet telephony services deserve mention, which can operate without licenses, but would be forced to take licenses only because of policy restrictions – and not technology restrictions. The cost of a license will limit the entry of start-ups without significant backing, and potentially curtail innovation. In any event, given the intricate licensing system in existence, it could take years to implement the move. Even so as the UL has been approved by the Telecom Commission and is being vetted by the Law Ministry, it is entrenched in NTP 2012 and the telecom scenario of India is in for a big change.

7. Union Cabinet approves regulator for Real Estate

(Livemint, June 05, 2013)

The Cabinet cleared the Real Estate (Regulation and Development) Bill 2013, which seeks to set up real estate regulators in states to protect the interests of homebuyers, ensure fair practices and accountability, besides fast-track dispute resolution. The Bill proposes that developers register their projects with state regulatory authorities by declaring their building plans, timeline and other details of a project. This will then be posted on the regulator's website.

Developers have to declare this information in advertisements related to a project. A misleading advertisement by a developer, with representative pictures and not actual ones, is proposed to be a punishable offence. India's real estate and housing sector is largely unregulated and opaque, and home buyers do not have access to complete information. The builders lobby, however, said it was against the proposed law in its current form.

The Bill, initially planned for the entire real estate sector, including commercial real estate, was amended after the urban development ministry objected to the inclusion of commercial real estate, and now covers only residential real estate. The provision of depositing 70 percent of the money raised for a project in a separate account and using it for the development of that project has been diluted. This has been replaced by "70 percent or such lesser percentage, as notified by the appropriate government", under the Bill.

www.livemint.com/Politics/7qpt5rNwJStN0plxHahuFP/Cabinet-clears-Bill-for-creating-a-real-estate-regulator.html

Points to Ponder

The Indian real-estate sector, despite being a critical sector of the economy, is largely unregulated and opaque. The sector suffers with discrepancies both on the consumer and the developer fronts. Lack of clear titles, rules and regulations, absence of industry status, rising labour and raw material costs, approval and procedural difficulties, investment norms incompatible with the 100 percent FDI rule and general uncertainty prevailing across levels, all maim the growth of the developers while false pretences, fraudulent schemes, unscrupulous agents and lack of information, adversely affect the consumers.

In such a scenario, the Real Estate (Regulation and Development) Bill, 2013 is an imperative step, which can help the real estate sector realise its true potential. The Bill is set to oversee the incorporation of a real estate regulator which will act as a single clearance window for all projects. Developers lament that large housing projects in the metros require them to take approvals from a myriad authorities housed under the central and state governments, including the Environment Ministry, National Monuments Authority, Aviation Ministry, in addition to departments such as forest, water, pollution, etc. A single clearance window can fast track approvals and help reduce costs.

The Bill shall make it mandatory for developers to list all clearances, details and timelines on the regulator's website, to ensure transparency. Also, misleading advertising and prints shall be made a criminal offence. The establishment of Real Estate Appellate Tribunal for dispute redressal is another shining feature of the bill. Real estate agents, an unregulated lot, shall be required to register with the regulatory body, making the Bill pro-consumer. The Bill seeks to bring in accountability and transparency in the real estate sector and to set up a growth conducive, uniform regulatory environment.

The Bill has been a long time coming. The approval of the bill is pleasant news, especially after its deferral in August 2011. The Bill, though a step towards consumer welfare, has some negative characteristics. It proposes the set-up of yet another regulatory body and pushes real estate into the concurrent list, asking all states to build regulatory bodies. The selection procedure for the regulator has not been specified, alluding to a bureaucratic committee, which will end up creating more jobs for retired civil servants. Moreover, the path set for the regulator is not an easy one, as it will have to ensure transparency, compliance, strict checks on cartelisation and a level playing field to become the fair practice regulator it is envisioned to be.

8. TRAI begins to check monopoly in cable TV

(The Hindu Business Line, June 03,,0 2013)

The TRAI has started the consultation process to prevent monopoly or market dominance in the cable television sector.

The Ministry of Information and Broadcasting had sought recommendations from TRAI on restrictions that needed to be imposed on Multi-System Operators (MSOs) and local cable operators (LCOs) to prevent monopolies and ensure fair competition as well as improved quality of service and equity.

The regulator said that currently there were no restrictions on MSOs and LCOs on the area of operation and accumulation of interest in terms of market share.

TRAI said, "It has been observed in some States that the majority of the cable TV network is controlled by a single entity, virtually monopolising the distribution of cable TV services in these States. Such monopolies/ market dominance may not in the best interest of consumers and may have serious implications in terms of competition, pricing, quality of service and healthy growth of cable TV sector".

Points to Ponder

In India, distribution of TV channels mainly takes place through either Cable TV or through Direct to Home (DTH) systems. The key entities charged with distribution through the Cable TV medium are MSOs and LCOs. MSOs and LCOs are the aggregators present between broadcasters on one side and consumers on the other. Currently there are no restrictions as to market share in the area of operation, a possible consequence of which may have been the dominance that some MSOs have come to enjoy historically in a particular area.

It has been observed that over a period of time, a single entity has been able to buy several MSOs and LCOs to garner a position of dominance. This monopoly-like situation is contradictory with consumer choice, competition, fair pricing and provisioning of quality services. Cognisance of existence of such monopolies, prompted the Ministry of Information & Broadcasting (MI&B) to direct the TRAI to look into possible structuring and implementation of regulations in the sector and to suggest appropriate amendments in the Cable Television Network (Amendments) Act, 1995.

TRAI has observed that there are around 6000 MSOs in the country, of which only a handful are prominent players, catering to large consumer bases. One way in which certain MSOs have been able to expand is by entering into Joint Ventures, or by merging with or acquiring smaller MSOs and LCOs. While it has been argued that large enterprises may reap benefits from economies of scale, the adverse effects of anti-competitive practices indulged into by these enterprises, may and have outweighed any claims of economic efficiencies being achieved.

Powerful MSOs have been able to create entry-barriers, to impose unfair terms on stakeholders and to censor content as per their discretion. One instance of this abuse of market power was the conviction of Fastway Transmission Pvt Ltd by the Competition Commission of India (CCI). This enterprise, a group of several MSOs together dominating the cable TV market in Punjab and other states, had denied market access to Kansan News Pvt Ltd by distorting transmission of the news channel of the latter. This was found to be in violation of Section 4(2)(c) of the Competition Act, 2002 and the offending company was penalised.

Such anti-competitive practices call for the regulations to prevent monopolisation of cable TV. These regulations if realised could be in the form of monitoring and requirement of approval for mergers and acquisitions (M&A), to preventing combinations that could lead to creation of dominance among other things. Such restrictions already check the FM Radio sector in the country, wherein no company or group of companies can operate more than 40% of the total FM Radio channels in a city.

A pro-consumer regulatory set-up also exists in the US cable sector, which is governed by the Federal Communications Commission (FCC) in concordance with the Cable Television Consumer Protection and Competition Act of 1992. Acknowledging the need for regulation, TRAI has already begun the consultation process for containing market dominance in the sector.

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