

CIRC RegTracker is a bi-monthly publication which tracks 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. National Competition Policy on Anvil

The Ministry of Corporate Affairs came out with a draft National Competition Policy (NCP), an overarching framework that seeks to assess existing public policies and ensure that these do not restrict or harm competition. The draft policy suggested that all Departments and Ministries of Central and State Governments set up in-house cells to undertake competition impact assessment of various policies, statutes and rules enforced by them. This could impact over 1,100 central and state laws. In addition, all future laws will also be subject to the principles of 'fair competition'. It also favoured the establishment of a National Competition Policy Council (NCPC), which would facilitate and provide technical assistance to these in-house cells of different departments.

The final draft of the policy was submitted to the Ministry of Corporate Affairs (MCA) by the Committee on National Competition Policy. The policy has been prepared through a widespread consultative process wherein the opinions of all stakeholders have been taken into consideration. The Ministry will finalise the policy after discussing the same with all the Chief Ministers and then present it to the cabinet.

The NCP recommends integration of competition principles across all regulatory regimes with a sunset clause for the regime as competition becomes effective. It suggests that the overlap between the CCI and other sectoral regulators such as the TRAI be tackled either through more efficient coordination or the amendment of statutes where appropriate.

Source: http://articles.timesofindia.indiatimes.com/2011-10-24/delhi/30316821_1_national-competition-policy-competition-principles-sectoral-regulators; <http://www.thehindubusinessline.com/industry-and-economy/government-and-policy/article2580012.ece>;

Points to Ponder

The enforcement of the NCP is a welcome step keeping in view the aim of Indian economy to achieve double digit growth. The policy envisages the infusion of competition principles across all sectors of the economy. This will bring benefits to consumers, businesses and the economy. The proliferation of competition policy globally, in different variants, reflects the growing belief that effectively enforced competition laws and economic reform guided by competition principles are prerequisites for economic development.

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

“The process of undertaking Competition Impact Assessment of various policies, statutes and rules is a mammoth and long overdue exercise to make the regulatory framework market-friendly.”

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The proposed NCP aims to set up in-house cells in various Ministries/ Departments to undertake competition impact assessment of various policies, statutes and rules enforced by them with a view to check their potential anti-competitive effects. This implies a mammoth and long overdue exercise to overhaul laws to make them market friendly. In Australia, a similar review of roughly 1700 laws targeted at removing their anti-competitive impact, resulted in an addition of 5.5% to GDP over a 7-8 year period.

While the existing competition law is a regulatory instrument to check anti-competitive behaviour, the competition policy would be a pro-active effort to build a competition culture in the economy. The policy also aims to address the issue of overlap between the CCI and other sectoral regulators and will bring in role clarity and coordination between them. Whereas some sectors are in a process of imbibing a competition culture; several others still witness weak competition. The NCP will help to harmonise these efforts of promoting competition. It will usher in second generation of big bang reforms after 1991.

2. Mining Bill Gets Clearance from the Cabinet

On 30th September, 2011, the Cabinet approved the Mines and Mineral Development and Regulation (MMDR) Bill 2011; the Bill is now awaiting Parliamentary approval. The new MMDR Bill, 2011, aims to introduce better legislative environment for attracting investment and technology into the mining sector.

As per the provisions of the Bill, coal mining companies will have to share 26% of the profits from their mines with people impacted by the project. In the case of non-coal miners, the new law will provide for payment of an amount equivalent to royalty paid to the state government for project affected persons. The new MMDR Bill 2011 seeks to amend a more than half a century old law by the same name. The Bill also provides for punitive provisions to prevent illegal mining.

It also proposes to set up a National Mining Regulatory Authority and National Mining Tribunal for better regulation in the sector. Apart from these two agencies, the government after due consultations with stakeholders proposes to set up a new financing entity (on lines of the IIFCL) with a Special Purpose Vehicle (SPV) owned by Government of India. The SPV, would mobilise funds from the Market and Multilateral Agencies to address the concerns of investors in the capital intensive and high risks involved in the sector. It also stipulates the levy of cess for setting up a Mineral Fund at national and state levels for capacity creation. The states can introduce competitive bidding process for granting concessions and set their own minimum floor prices.

Source: [http://www.thehindubusinessline.com/industry-and-economy/government-and-policy/article2500869.ece;http://pib.nic.in/newsite/erelease.aspx?relid=76352;](http://www.thehindubusinessline.com/industry-and-economy/government-and-policy/article2500869.ece;http://pib.nic.in/newsite/erelease.aspx?relid=76352)

Points to Ponder

India's mining sector has opened up to private investors in recent years as state-run companies lack the funds and expertise to probe deeper than the top 50 meters in areas

where iron ore and coal reserves are found. In view of this, the proposed sharing of profit by mining companies with local communities is a climb-down in attracting badly needed investments to the sector.

“While the Bill visualizes the fund to be created with royalties/ profit sharing at the district levels, there is no certainty that the funds transfer to the lower grassroots level would not have leakages and undermine the same.”

It has been estimated that the royalty proposal will lead to an annual revenue loss of Rs.6000 crore to the Government. A recent study on the proposal by FICCI Mining Committee revealed that the incidence of taxation on Mining Industry will also increase significantly. If the burden is passed on to consumers, the prices of power, steel and other commodities may further fuel inflation.

The profit-sharing proposal, however, will make it easier for mining projects to win local approval and accelerate the pace of development.

The mining sector suffers from transmission leakages and a huge loss of minerals and ores causing losses to Government. Hence, while the Bill visualizes the fund to be created with royalties/ profit sharing at the district levels, there is no certainty that the funds transfer to the lower grassroots level would not have leakages and undermine the same. The envisaged sustainable and scientific mining through better regulation might in fact lead to long drawn legal battles until courts at State level dispose cases relating to illegal mining.

3. Single Unified Legislation for Land Acquisition, Rehabilitation and Resettlement

The Land Acquisition, Rehabilitation and Resettlement Bill, 2011, proposes a unified legislation for acquisition of land and adequate rehabilitation mechanisms for all affected persons. It replaces the Land Acquisition Act, 1894 and Rehabilitation and Resettlement Bill, 2008.

The provisions of the Bill shall be applicable when an appropriate government acquires land, (a) for its own use and control, (b) to transfer it for the use of private companies for public purpose, and (c) on the request of private companies for immediate use for public purpose.

A maximum of five per cent of irrigated multi-cropped land may be acquired in a district, with certain conditions. Every acquisition requires a Social Impact Assessment (SIA) by an independent body followed by a preliminary notification and a final award by the District Collector.

The Bill proposes that private developers shall provide for rehabilitation and resettlement of affected families. The compensation would be four times the market rate in rural areas and double in urban areas.

The Bill proposes the creation of a National Monitoring Committee for Rehabilitation and Resettlement to be appointed by Central Government. It also provides for the Establishment of Land Acquisition, Rehabilitation and Resettlement Authority to provide speedy disposal of disputes relating to land acquisition, compensation, rehabilitation and resettlement.

Experts have suggested that the Government should allow the compensation amount of farmers to be deposited in a special fund, where they are given a high rate of interest of 12 per cent per annum for next 30 years and the additional interest cost to be borne by acquiring agency.

Source:<http://timesofindia.indiatimes.com/city/delhi/Builders-call-land-acquisition-bill-anti-development/articleshow/9890137.cms>;<http://www.business-standard.com/india/news/cabinet-clears-land-acquisition-bill/448230/>;<http://rural.nic.in/sites/downloads/general/LS%20Version%20of%20LARR%20%20Bill.pdf>;

Points to Ponder

Bringing land issues under a single unified authority seems to be a step in the right direction since it has been a matter of concern for the Indian economy. A national code of conduct in land acquisition will help public and private sectors to resolve ambiguity in the method of land acquisition and aggregation.

The definition of the term 'public purpose' under the Act is sufficiently comprehensive and covers the provision of land for strategic purposes like military, naval, air force, railways, ports etc. It also includes the provision of land for project affected people and for planned development.

“The success/efficacy of provisions will depend on a just compensation and rehabilitation package, sensitive to the aspirations, culture, community, natural resource base and skill base of the affected people.”

The concepts of 'public purpose' and 'social impact assessment' are closely intertwined. Social impact assessment of the social cost of land to be acquired by government for a public purpose is conducted. The purpose of such an assessment is to ascertain the extent of public interest involved in an acquisition, affected families, socio economic impact on the families residing in the adjoining area of the land acquired etc.

The legislation is likely to discourage forced displacement and minimise adverse impacts on people, habitats, environment, bio-diversity and food security by discouraging acquisition of agricultural land.

The success/efficacy of provisions will depend on a just compensation and rehabilitation package, sensitive to the aspirations, culture, community, natural resource base and skill base of the affected people. While, there is a social objective being intended for the displaced families, the provisions may require certain projects to shift away from the projected marked areas and may finally lead to lop-sided development of the catchment areas. The conditions of not using the irrigated

land would be difficult as most of the land used for priority projects on power and infrastructure may fall in this domain and hence some of the projects would not be feasible.

The Bill would require a huge amount of follow up work at the state level since land is a subject in the states' jurisdiction as per the Indian constitution.

A humane, participatory and transparent process will be a prerequisite for its effective implementation.

4. A New PPP Policy to Pace-up the Development of Infrastructure

The Department of Economic Affairs (DEA) has prepared a new comprehensive draft policy on PPPs for incorporating in the PPP agreement provision of penalties for delay, incentives for early completion and performance guarantee from the private partner. The policy will be implemented by the Central and the State Governments. The new definition of a PPP will conform to performance-linked payments as a necessary condition.

The Policy also has provision for the Government to consider Turnkey Design Build (DB) approach with the payment linked to achievement of tangible intermediated construction milestones (instead of lump-sum payment on completion) and short period maintenance/repair responsibilities.

For bringing in transparency, it suggests a four point agenda for a) mandatory disclosures b) dedicated dispute resolution to address issues relating to bidding and award of PPP projects, c) developing new market based products such as independent pre-bid rating and d) exploring possibilities of setting up Web-based PPP marketplace.

For financing the projects, the draft favours rationalization of user charges and support through viability gap funding, India Infrastructure Project Development Fund and various Debt Funds.

To encourage PPPs in Social Infrastructure of Health and Education (Rural and Urban) the Government may consider setting up a separate window of assistance to encourage annuity based PPP projects to make larger up front payment of say 40 per cent of project cost.

Source:<http://www.thehindubusinessline.com/industry-and-economy/government-and-policy/article2490837.ece>;
<http://www.thehindu.com/todays-paper/tp-business/article2491874.ece>;

Points to Ponder

The draft National PPP Policy announced is a laudable move by the Government. In pursuance of government's commitment to improve the level and quality of economic and social infrastructure, the Policy proposes to expand the scope of the PPP scheme. Besides, it will also provide a framework for identifying, structuring, awarding and managing PPP projects.

“If implemented effectively, this would in fact propel PPP projects in social sectors like rural infrastructure, municipal infrastructure and primary health care in a viable manner.”

The definition given covers all necessary aspects of PPP. It seeks to address the issues concerning definition of various terms and processes so that a clear and consistent position can be adopted by stake holders, including centre, states and private investors.

The PPP agenda needs a serious re-look with a fresh impetus as India is yet to mature into a viable PPP market place addressing concerns such as: clarity and certainty in FDI and sectoral policies, resolving regulatory implementation hurdles like land acquisition, environment, sophistication in structuring roles, responsibilities and risks in PPP projects, moving away from one-shoe-fits-all approach, contract management with risk/reward linked with suitable VFM outcomes, mechanism for addressing unforeseen developments and effective dispute resolution mechanism.

The PPP policy is directionally correct in addressing issues required to attain PPP objectives for efficacious infrastructure development in the years ahead. If implemented effectively, this would in fact propel PPP projects in social sectors like rural infrastructure, municipal infrastructure and primary health care in a viable manner.

But the devil lies in detail. Its success largely depends on whether a framework is evolved and implemented that actualizes the objectives of efficiency, competition and transparency in provision of public goods and services and strikes a balance between the welfare objectives and economics while focusing on the provision of public goods/services.

5. Triad of Policies to Drive a National Agenda for ICTE

Drafts of National Telecom Policy-2011, National Policy on Information Technology, 2011 and National Policy on Electronics 2011 have been unveiled for public consultation. The Policies aim to facilitate the application of new technology-enabled approaches to overcome developmental challenges in education, health, skill development, employment generation, financial inclusion, governance etc. and to enhance efficiency, convenience and access. Application to technology in hitherto unexplored areas will boost competition.

The proposed NTP-2011 seeks to achieve the ideal of 'one nation one license' across the 22 telecom service areas in India meaning one nation - full mobile number portability and one nation - free roaming. It aims at providing affordable broadband on demand for all citizens of India by 2015. The policy envisages to enhance rural India's tele-density to 100% by 2020 from the current 30%.

The National Policy on IT focuses on application of technology-enabled approaches to overcome developmental challenges in education, health, skill development,

financial inclusion, employment generation, governance etc. to greatly enhance efficiency across the board in the economy.

The National Policy on Electronics, 2011 envisions creating a globally competitive electronics industry including nano-electronics to meet the country's needs and serve the international market. The policy aims to achieve a turnover of about USD 400 Billion by 2020 involving investment of about USD 100 Billion and employment to around 28 million by 2020.

Sources: <http://www.livemint.com/2011/10/10154527/Draft-telecom-policy-unveiled.html>; <http://www.financialexpress.com/news/Telecom-tower-industry-poised-for-rural-growth/838662/>; <http://www.feedback-dot.gov.in/WriteReadData/20111017115657777792final-10.10.2011.pdf>; <http://news.yahoo.com/india-plans-telecom-policy-allow-mergers-151450599.html>;

Points to Ponder

The Ministry of Communications and Information Technology has announced a combination of three interdependent and synergistic policies for IT, Telecom and Electronics. The integrated policy has twin goals viz. to facilitate the application of new, technology-enabled approaches to overcome developmental challenges and to harness the power and capability of India in ICT to meet global demand.

“Since telecom and other ICTs permeate all aspects of business, society and governance, it is desirable that the new telecom policy achieves the objectives of affordability and quality services for telecom services users.”

This triad of policies can have a tremendous synergistic effect and raise the growth momentum of the economy by enhancing the efficiency, competition and technological edge across sectors. It will also help in realising the coveted objective of inclusive growth. This is because differential access to economic opportunities as in the past has been significantly altered for the better by ICT.

Of the three sectors IT, Telecom and Electronics, Electronics poses special challenges. Lack of a strong base, an adverse international environment and failure to build an enabling ecosystem are the major bottlenecks. A holistic view rather than a piece-meal approach can help in overcoming the existing challenges in the Electronics sector.

India has witnessed a large number of questions relating to auction and usage of spectrum, which impact both the price and quality of services. Since telecom and other ICTs permeate all aspects of business, society and governance, it is desirable that the new telecom policy achieves the objectives of affordability and quality services for telecom services users.