CIRC RegTracker

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Enhancing Knowledge, Strengthening Capacity

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CIRC RegTracker is an attempt to track the creation of regulatory institutions, their capabilities, performances and the way they interact with other institutions in shaping patterns of economic governance. It is being published regularly by the CUTS Institute for Regulation & Competition, a body devoted to enhance knowledge and strengthen capacity on the interstice between law and economics.

RegTracker is a quarterly publication which has been tracking the current policy changes/policy 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.

We are pleased to share latest issue of RegTracker (RT.017, October-December 2014). It offers sector wise developments and points-to-ponder for each development. Keeping with our focus on regulatory governance in infrastructure sectors, we cover following sectors: a) Coal; b) Petroleum and Natural Gas; c) Electricity; d) Telecom; and e) Transport.

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HIGHLIGHTS

In this quarter, there are significant advances in the regulatory sphere which is in line with the current government's endeavours. While some are continuation and intensification of the past developments, there are few innovative proposals. The developments in this quarter include:

- Government has issued Coal Mines (Special Provision) Ordinance, 2014 and introduced Coal Mines (Special Provisions) Bill, 2014.
- Final Report of the Committee on Petroleum Reforms favors production-sharing
- Simples exit route proposed for the telecom companies
- An Ombudsman proposed for the civil aviation sector

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1. COAL

1.1 Coal Ordinance: Just a Short- Term Fix?

The deallocation of 214 out of 218 captive coal blocks by the Supreme Court allocated to PSUs and private players between 1993 and 2011 created a nightmarish scenario for the allottees. As per estimates, captive coal blocks allocated were to produce 100 million tonnes of coal by 2017. [RT.016 sec 1.1]

To deal with this crisis kind of situation, the government issued an ordinance to reallocate coal blocks expeditiously. The Coal Mines (Special Provisions) Ordinance, 2014 was greeted rapturously as it promises to eliminate the coal shortages.

Finance Minister Jaitley opinionated that Coal Mines Nationalization Act will protect Coal India's interest, letting the Coal Mines Nationalization Act unharmed. Adding that coal mines will be allocated to Public Sector Undertakings (PSUs) on a priority basis.

The government will begin the clean-up by first placing all the mines in a central pool and then start their allocation. Post today's decision, going forward the centre will decide on commercial users of mines. [ET 24.12.14] [BS 21.10.14]

Points to Ponder

This significant but cautious step towards ending state monopoly on coal with an ordinance enables commercial mining by private companies in future. The key decisions as per the ordinance that could spell a blockbuster for corporate India are:

- *All cancelled mines will be auctioned or given to PSUs*
- *New law will have enabling provisions to allow commercial mining by private firms*
- *Companies that have end-use projects will be offered mines in 1st round*
- *Blocks will be identified separately for power, cement and steel sectors*
- *Authority to be set up to decide price of land and machinery in existing mines*
- *Companies that lost mines can bid again, unless convicted for malpractices*

This implies on the brighter side that power cement and steel sectors will get more fuel supply, boosting their production, but also causing an increase in prices as the auction prices will be passed on to the consumers. Not diverting much from the previous coal block allocation policy, the ordinance envisages the government to retain the captive dispensation that will again concentrate coal ownership among a few groups.

Fallout of the previous allocation policy was its lack to address the problem of coal supply but this time may be different as companies that bag blocks will surrender their CIL linkages and with the 74 mines being auctioned, the coal scarcity might get over.

Also, it won't lead to any improvements in mining technology, as captive mining does not provides economies of scale and after all they don't specialise in mining. With the government expressing its intention to auction all 204 cancelled coal blocks, the threat of avoidable environmental damage remains. Also, the ordinance says that companies will be allowed to supply coal from their mines to multiple end-use plants, leading to intensification of mining in these areas.

Thus, what is required is to scrap the state monopoly, instead, entry of professional miners, so that the world's fifth largest reserves can be tapped to feed the growing energy requirements.

When government has so much political capital at its disposal, why should it undertake reform in stealth, and bold steps being pushed to an indeterminate future?

1.2 Lok Sabha Passes Coal Mines Bill

To follow up the ordinance, the Coal Minister introduced the Coal Mines (Special Provisions) Bill 2014 while insisting that the bill did not seek de-nationalisation of the coal mines. Commercial coal mining got a relief in India as the Lok Sabha cleared changes in law to allow private companies to produce coal. Amidst opposition of the bill by other parties on the grounds that it will allow total exploitation of the mines, government opinionated that the bill will avert a crisis in power generation by facilitating the auctioning of the cancelled coal blocks. [HINDU 13.12.14]

Points to Ponder

The Coal Mines Bill 2014 could face rough weather in the upper house because of apprehensions it drew from other parties while being perceived as 'non-transparent'. The Left and Trinamool Congress had opposed the bill even at the introduction stage in the Lok Sabha. Although the bill doesn't appears to be a blatant attempt to denationalise coal mining, the opposition has no compulsion to see it cleared, unlike the insurance bill which has been congress' 'own baby'. However due to its commitment to the Supreme Court, the

government has to bring in reforms to the sector by 31st march 2016.

1.3 Owners of Cancelled Coal Blocks to be compensated

With the proclamation of the Coal Mines Ordinance, the government plans to compensate owners of cancelled coal blocks. At first, allottees of 204 coal blocks have been asked to furnish details of investments for land acquisition and development of mine infrastructure. The compensation for land would be the cost of land at the time of acquisition plus an interest of 12% a year, payable for the period from the date of acquisition till the date of allotment, according to the Ordinance. The mines will be up for fresh bidding through the e-auction route.

Government is yet to work on the bidding amount, which will be separated into two parts - fixed and variable. The fixed cost part will constitute value of land and other assets associated with a particular mine, whereas the Variable cost will be constituted by the reserve price of coal for which the government is deciding a methodology. This revenue would be based on geological reserve of the mine and would go to the respective state.

[BS 25.11.14]

Points to Ponder

The Ministry of Coal held the opinion that there won't be any change in the bidding methodology for all the end-users in the cement, steel and power industries, except for projects which generate power under a pass-through mechanism, for which the government would formulate a cap on tariffs to keep electricity prices in check.

A committee was formed in this regard headed by former CVC Pratyush Sinha, to assess the compensation to be paid for taking over running or ready to produce mines. The committee valued the assets and liabilities of the blocks and the compensation hierarchy declared by government is as follows:

- *Dues of employees*
- *Payment to secured creditors*
- *All revenues, taxes, cess and rates due to the central/ state governments and/ or local authorities by the prior allottee*
- *Any other claim that arises before a specified date to be issued by nominated authority soon*
- *Prior owner of the mine*

The government went eloquent about its e-auction of cancelled coal mines and released draft rules for the same in an approach paper -open for public consultation in December, seeking comments from the stakeholders.

Assuming that the new government is set to promulgate its reform policy in a transparent manner, this move of earmarking of coal mines for different end-use sectors and allocating through a competitive bidding process of e-auction would be highly appreciated.

2. PETROLEUM AND NATURAL GAS

2.1 Kelkar committee favors production-sharing pacts

The Committee on Petroleum Reforms headed by the former finance and petroleum secretary Vijay C. Kelkar has submitted its final report, following its first report in January 2014 and a consultation paper subsequently in August. The report essentially aims at reducing hydrocarbon import dependency by 2030. One of the significant recommendations by the panel on introducing market-linked gas pricing has been adopted by the Government. On another important issue regarding Oil Contracts, the committee opposes the revenue-sharing contract (RSC) proposed by the Rangarajan Committee and instead favours continuing with the existing production-sharing contracts (PSC). The Kelkar Committee considers the biddable revenue sharing model as having misaligned risk return structure that could lead to either lower recovery ratios or high windfall gains to the operator. Earlier, the production-sharing approach has been criticized by the Comptroller and Auditor General of India for encouraging irrational increase in capital expenditure. The Kelkar committee has now recommended two variants of the production-sharing contract, each linked to an investment multiple – a) with modified contract administration and self-certification of costs by the contractor or b) with biddable supernormal profits tax. The committee has also recommended other significant institutional and fiscal reforms for the petroleum and natural gas sector. **[BS 18.11.2014]**

The government wants to resolve the oil contract impasse. While the production-sharing contracts (PSC) that allow the operator to recover costs before sharing revenue with the govt. became controversial due to strict observations from the CAG, the revenue share model has been opposed by the recent Kelkar Committee report. The Oil Ministry which was considering completely doing away with PSC regime, has now decided to

calibrate the system in view of detailed discussions with domestic and global investors. The Govt. will favor the less controversial - revenue sharing model where cost recovery by operator is not allowed, only for basins where oil and gas is established. The incumbent government is apparently disappointed with the dismal performance of state-run explorers and wants them to swiftly undertake exploration in existing blocks rather than saddle them with additional blocks. [ET 10.12.2014]

Points to Ponder

The Govt. wants to significantly reduce the import dependence of hydrocarbons for India by 2030. Among other reforms, it is considering strategizing the future of oil contracts through a change in the system. However, its impact on exploration and production (E&P) will only be seen in years to come. While the revenue sharing model is definitely less controversial simpler and more attractive to investors due to less government interference, the results may be difficult to predict in case of India. Indian geology is far riskier and uncertain in comparison to place like Saudi Arabia, where revenue sharing model has been successful. It needs to be noted that the Kelkar Committee undertook an empirical analysis of 1,132 oil and gas fields in Indian basins for different price scenarios before arriving at the conclusion of continuing with the production-sharing contracts.

While India has covered the operator risk to a large extent by deciding to offer only explored basins under revenue share, this could in-turn adversely impact exploratory efforts. The last two discoveries - KG-D6 by Reliance India Ltd and on land oilfield in Rajasthan by Cairn were made in 2002-04, after almost four decades of ONGC's discovery of the Mumbai High.

Suitable reforms to encourage and monitor performance of state-run explorers such as ONGC and Oil India will be critical in addressing India's high dependence on Imports.

3. TELECOM

3.1 DoT to frame separate exit policy for telecom sector

Telecom companies could soon have a simpler exit route, with the required permission to sell or transfer their entire business to a different entity becoming a thing of the past. As reported, operators such as Tata Teleservices and Aircel have been looking to find a suitable buyer for over a year now without much success, primarily because of the existing rules. Although they continue to operate in the market with fresh funds pumped in by promoter companies, they find themselves locked in.

A committee headed by the DoT Secretary has been formed to find solutions for various outstanding issues, which could throttle the telecom sector if left unresolved for too long. The committee noted that there was no reason to ask for clearances that take a few to many months and may disrupt services if there is a transfer of business. However, trading and sharing won't be an answer for easy exit. With transfer of business, permission to exit may be transferred within the licence period, it added. At present, companies can exit the sector by way of surrendering licence and spectrum.

On the other hand, the committee has also suggested that internal restructuring of telecom companies would be re-looked, as in case of merger and acquisitions there could be a chance of misusing the concept of sole beneficiary as defined in the licence terms in the auctions held in November 2012. However, the committee did not suggest any solution. In 2012, the department had wanted to formulate an exit policy but telecom regulator TRAI had shot down the move.

(Mint 03.11.2014; BS 04.11.2014; BL 03.11.2014)

Points to Ponder

The move to re-frame the exit policy comes in the wake of a deal between Bharti Airtel Ltd, which aimed at acquiring Mumbai-based Loop Mobile's assets in that city for around Rs.700 crore, using a so-called slump sale market mechanism. DoT has held back approval for the deal for the last six months over the fact that a slump sale is not part of the telecom policy and the only way to exit the business is by surrendering the telecom licence and spectrum.

As of now the only way for an operator to exit the market is by either surrendering licences or by going through the merger and acquisition route. While the former does not allow the exiting player to recover investments sunk in the business, the rules around M&A make it very tough for anyone to sell out.

Under the existing policy, when an operator acquires the operations of another player, it has to seek fresh permission and authorisations. This can disrupt services, as the clearances take time to come through. This situation is not only bad for such telecom companies but also for the overall industry, as spectrum resources currently with

these players could have been better utilised had they been able to exit.

Recent example is the fate of Loop's agreement to transfer its mobile users in Mumbai to Airtel. As reported, Airtel had to call off its Rs 700 crore deal to acquire the Mumbai-based Loop Mobile because the department of telecommunications did not convey its approval, which was sought in March, 2014. This deal would have enabled Airtel to acquire Loop's assets but the agreement was time-bound and expired on October 30, 2014.

There is a need for consolidation in the sector and a transparent and time bound exit policy is critical. Consolidation in the telecom sector after a phase of competition seems to be crucial in delivering quality services to the consumers in India.

3.2 Department of Telecommunications, Defence Ministry iron out issues over spectrum

The Department of Telecommunications (DoT) and the defence ministry have finally resolved the contentious issue of swapping spectrum for commercial use. The issue has been hanging fire from 2009, when a basic plan of vacation of spectrum was decided between the two. After going back and forth for over three years, the Department of Telecom and the Ministry of Defence seem to have thrashed out their differences over spectrum. As reported, Communications and Information Technology Minister Ravi Shankar Prasad met newly appointed defence minister Manohar Parrikar, adding the two had reached an agreement on the matter.

At a recently held meeting between high ranking officials of the two departments, considerable ground was made on a number of outstanding issues, including vacation of additional 3G spectrum by the Defence. Both the DoT and the Finance Ministry had asked the Ministry of Defence to swap 15 MHz of 3G spectrum with same amount of airwaves in another band. The spectrum vacation will require Cabinet's approval.

The defence ministry has also agreed to the proposal on the 'defence interest zone', which will facilitate the swap. An announcement to this effect is expected once the Cabinet approves the measure formally. In that scenario, another 15 MHz of spectrum in the 2100 MHz band would be in DoT's kitty, which would brighten the chances of a big bang auction for all spectrum together — in the 900, 1800 and 2100 MHz, as desired by the TRAI. (BL 17.10.2014; BS 19.11.2014; BS 12.12.2014; FE 12.12.2014)

Points to Ponder

Spectrum being a limited resource; its demand has increased especially for 3G spectrum in frequency band 2100 MHz, due to more use of data services by the consumers. TRAI has earlier recommended that spectrum in 2100 MHz band, a part of which is with the Defence Ministry, should be put up for auction along with 900MHz and 1800MHz spectrum bands in February 2015.

Defence services have spectrum sitting idle can easily be vacated for commercial use, after taking in to account the security concerns. There is no doubt that with spectrum sitting idle, the government also loses money in form of licence fee, spectrum usage charges and other applicable taxes. As reported, a lot of spectrum lies with defence, railways and Prasar Bharti which remains unused. The objective of 'Digital India' cannot be achieved without the government making more spectrum available for commercial use.

There is no doubt that the Defence-DoT tussle needed a political resolution and the spectrum swapping will lead to efficient use of this limited resource. Effective mapping and allocation of spectrum through a transparent regulatory framework will facilitate competition, which is seen as essential to driving down prices and stimulating improvements in quality and innovation.

4. TRANSPORT

4.1 Civil Aviation Ombudsman: For Consumer Complaints

In order to redress grievances of passengers and give bindings orders; MoCA has started the process for setting up of an Ombudsman to look into complaints of passengers against the ministry wings: DGCA, AAI, Air India etc.

The Ombudsman will work on the same lines that are being followed by Ombudsman's of Electricity, Telecom and other sectors.

[**BS 11.11.2014**; **ET 12.11.2014**; **MINT 12.11.2014**]

Points to Ponder:

Currently, the Directorate General of Civil Aviation (DGCA) looks into grievances but the resolution of issues through this window has not met with much success as the regulator is short-staffed and is occupied with dealing with safety related issues.

In an increasingly globalised economy, air transport is a vital element of the country's transport infrastructure. Airline passenger complaints in terms of missing baggage, pilferage and replacement of articles have been increasing

over period of time. The discontentment has been on the rise because of the experience that had to be memorable for the passenger went wrong for all the wrong reasons: mechanical problems, poor service, bad food, lost luggage, or any of a number of other problems that result in a significant inconvenience or financial loss. Airline passenger complaints should be dealt with immediately. In the case of Service industry such as Civil Aviation, its quality is ascertained by customer satisfaction ex-post the service experience which is intangible in nature. The growing grievance amongst passengers concerning staff misbehaviour and indifferent attitude is an area of serious concern. In this light, this move of aviation ministry to set up an ombudsman "in the interest of redressal of public grievances and for ensuring speedy delivery of services" is a step in the right direction. But to achieve the desired results, the Ombudsman must be proficient to provide a fair process to redress grievances; and given the backdrop of a multiple stakeholder scenario, the Ombudsman team must be assisted by eminent professionals from Aviation and Consumer Affairs background.

Given the current situation, whether the setting up of Ombudsman in aviation sector will be a game changer or not can be determined only after its implementation. For the time being, "the Institution of Ombudsman is a major step forward in timely redressal of grievances and for bringing about better standards by public institutions and organisations".

4.2 Port Tariff Regulator to Wind Up Soon

Another important news is from Port sector, where it has been finally decided to wind up the Tariff Authority for Major Ports (TAMP), the rate regulator for the 12 ports owned by the central government. The move comes 17 years after the agency was set up to fix and revise rates when Indian ushered in private investments into its dozen ports as part of economic liberalization.

The ministry will soon seek cabinet approval for facilitating an amendment to the Major Port Trust Act and to introduce a new tariff regime that is linked to market forces. [**ET 18.11.2015**; **BS 05.12.2014**]

Points to Ponder:

In 1997, Tariff Authority for Major Ports (TAMP) was set up to fix and revise port tariffs, but it has no jurisdiction over minor ports or private ports. Within the span of 17 years, the TAMP regime witnessed many run-ins with private cargo-handlers, many of whom took the regulator to court over its order to cut rates when they asked for a raise. Some of these cases, stretching as far back as a decade ago, are yet to be decided.

Due to allotment of limited powers, the regulator cannot be singled out as the only reason for the mess in the ports sector, because the fault lies in the guidelines prepared by the ministry for the regulator to follow. Thus, giving up with TAMP which was meant to protect against developments of private monopolies has attracted countervailing arguments. On the one side, major ports that are running losses are against the abolition of TAMP; on the other hand those that are doing well are in favour of waving off the TAMP.

Given the background that, TAMP has not been given powers to function as a quasi-judicial body and ensure compliance of its orders. In addition, it has also not been granted necessary, financial autonomy. Besides, the orders of TAMP are not final as government has retained powers to order remissions from the rates approved by TAMP. The plans to wave off TAMP might not be the best bet, but it may help in determination of market rates freely. The post-TAMP scenario, however, may not be easy for the government-owned port trusts and the exporters and importers. Now the Government of India should play a more proactive role in implementing its policy so as to realise the benefits of private sector participation in port development.

News Sources

Asian Age (AA)	Economic Times (ET)	Hindustan Times (HT)	Reuters (Reuters)
Business Standard (BS)	Finacial Express (FE)	Mint (Mint)	

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