

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 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.016, May-July 2016). 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.

HIGHLIGHTS

In this quarter, there are significant steps taken by the government to bring in much needed regulatory interventions to ensure infrastructure development and protect consumer interests in aviation and railways sector. It is a commendable job from Indian railways to move beyond a tariff regulator and to set up an independent regulator which will not only fix tariffs but also set performance standard benchmarks in the industry. Though there are some doubts whether the authority would be allowed a free hand in fixing tariff for passengers and freights but the steps are in the right direction. While freight transport can actually be subjected to market conditions by the regulator ensuring fair play with the private operators, it is remain to be seen how it will deal with the passenger tariff which has serious ramifications to political interest of the parties.

There are concerns on intermodal competition and multiplicity of operators in rail freight services. Should the regulator be in the business of determining freight tariffs? The answer lies in competition and for India it will take considerable time to develop competition in the railways sector. There are other issues related to access of tracks. While Indian railways run special trains in collaboration with IRCTC, there is bound to be resistance on access of tracks when private tour operators enter into the fray as is happening with open access issues in electricity sector.

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LATEST PUBLICATIONS

- Transforming Electricity Governance in India: Has India's Power Sector Regulation Enabled Consumers' Power?
- An Overview of Public Procurement Framework in Rajasthan
- [Un]Ease of Doing Business in India – A Review of Major Pain Points and Possible Lessons
- Competition and Regulatory Issues in Coal Sector in India
- Regulating Realty: Cabinet's Nod to Real Estate Bill

Similarly, in the aviation sector, the government has announced a new aviation policy which is perceived as a game changer in the airline industry. The policy mandates a competitive bidding to fly outside countries beyond 5000 km radius. Partial funds from this auction will be utilised for the ambitious Regional Connectivity Scheme (RCS) of the government. Also, incumbent operators would benefit from O/20 policy which says that airlines with at least 20 aircrafts or those which deploy 20 percent of their planes on domestic routes can start overseas operations. The policy also envisages capping of domestic airfares at Rs 2500 for one hour flights and any shortages to be funded by the government through viability gap funding. This will help increase the number of passengers and make the air tariff affordable to common people. Other initiatives, such as relation of royalty and additional charges will positively impact to the airline sector.

We hope that these regulatory developments will ease the private sector's participation in India's key infrastructure sectors. Following sections discuss the developments in greater detail, though not in depth.

Continued...

1. WATER

1.1 Government releases two draft water bills and invites comments

Government releases two draft water bills and invites comments

The Ministry for Water Resources, River Development and Ganga Rejuvenation has invited suggestions on the draft National Water Framework Bill and the draft Model Bill for Conservation, Protection, Regulation and Management of Ground Water by June 25, 2016.

The Water Framework Bill provides an overarching national legal framework based on principles for protection, conservation, regulation and management of water as a vital and stressed natural resource, under which legislation and executive action on water at all levels of governance can take place. The other legislation relating to groundwater is based on the principles of subsidiarity and equitable distribution in an integrated approach. [[Mint 26.05.2016](#); [BS 03.06.2016](#)]

Points to Ponder

Through these draft bills, the Central government has tried to build consensus amongst the people on issues relating to water. The draft National Water Framework Bill has defined 'water for life' with minimum water requirement to be decided by the appropriate governments from time to time.

The 'water for life' entails that every person is entitled to water as the basic necessity of life and cannot be denied access on the sheer basis of inability to pay. This brings into picture the debate regarding 'water privatisation' with proponents of this thought arguing in favour of this move so that the wastage of water can be reduced thereby promoting water conservation. At the same, whoever is willing to pay shall avail the benefits of it, thereby making it a 'commodity'. There are other arguments of water being a basic necessity should not be denied to anyone and must be provide to them the basis of affordability.

In yet another important move, the bill for Conservation has made the states liable for water conservation. The intent of this bill has been to bring a comprehensive governance structure to address issues of regulation, conservation, pricing and other related issues. The need of such legislation has long

been felt in the Indian context and given the prevailing water crisis; this is a much needed step from the side of Indian government.

The bill, therefore, requires states to prepare within six months of coming into force of this Act, the Drought Mitigation and Management Policy and Action Plan. This shall include a drought risk and vulnerability assessment for the State and identify programmes and measures for drought mitigation on the basis of the various indices of drought.

In the present scenario with respect to water crisis in India, these bills are milestones for the sector which is essential for life, but has not been in mainstream due to its ignorance by the respective governments and other stakeholders. The draft bills will be subjected to iteration after stakeholders' comments and suggestions. It will be interesting to see which version of bills will be passed in the Parliament eventually. The other aspect of the water bills is related to implementation by the states who are the custodian of water in their respective state. [[IE 03.06.2016](#)]

2. TRANSPORT

2.1 Rail Development Authority to be set up soon

The Rail Ministry, headed by Suresh Prabhu, has decided to set up the Rail Development Authority (RDA), recommended by the Bibek Debroy Committee [see [RT 0.19, sec 5.1](#)]. The Ministry is planning to bring up the proposal before the Cabinet by July 2016. The authority was proposed by the Ministry during the budget session of 2016-17. The government has come out with a concept paper on setting up the RDA. To free the authority from procedural hurdles, the Ministry has planned to set it up via an executive order and later widen the powers and functions, after the Parliamentary approval.

The five member authority will primarily have four functions:

- ensuring a level playing field to attract private investors;
- setting up of efficiency benchmarks and performance standards for the transporter;
- recommending tariffs; and
- disseminating information

[[TH 04.01.2016](#); [FE 27.05.2016](#)]

Points to ponder

The setting up of RDA by the Rail Ministry highlights the fact that the Ministry is convinced about the necessity of market-based pricing of the rail tariff. It also highlights the role of private investment to the railway sector. The dissemination of information by the RDA will help ensuring transparent procedures with respect to the functioning of railways.

Further, the Rail Ministry does not want to restrict the authority with only the regulatory functions and mechanisms. It also wants its contribution in the development of the transport sector, which has been suffering from ill financial health in terms of continuous losses. With the development angle attached to it, it will be named as 'Rail Development Authority'.

This should not end up as any other regulators whereas it is mandated to bring forth reforms but with no teeth to bite. It should be acting as an independent body without any external pressure. Setting up of a rail regulator is a long identified need and have been constantly on table as part of the reports put out by various committees set up on Railways in the past. Therefore, in such a condition, the efforts and move of the current government towards bringing RDA in picture is a welcome step.

The aspects that need to be constantly looked into are maintaining arms-length relationship with Railways Ministry in its total functioning. Maintaining apolitical relationship will necessary require transparency, accountability and participation to be put in place contributing to the effective and efficient functioning of the authority.

This will be the first ever time when a regulator will not report to the Ministry of its subject in India, thus ensuring an independent approach to its functioning. We expect this to be a harbinger in our reforms of the regulatory architecture.

For more, please see: [CUTS comments on rail development and regulatory authority of India](#).

2.2 National Civil Aviation Policy approved by the government

The much awaited Civil Aviation Policy [see [RT 0.21, sec 4.1](#)] has finally been approved by the Indian Cabinet on June 15, 2016. According to the Union Minister, the policy aims to 'make flying affordable, safe and convenient and to promote

balanced regional growth, tourism, infrastructure and ease of doing business'.

Some of the key policy provisions are:

- Any domestic airline can fly overseas provided they deploy 20 planes or 20 percent of their total capacity for domestic operations;
- India is set to get an open-sky policy for countries beyond the 5,000-km radius from Delhi, on a reciprocal basis;
- The government will provide support to fund airlines' losses on such unserved/lesser served routes by allowing the airlines to charge a small levy per departure on all domestic routes;
- The domestic airlines will be permitted self-ground-handling at all airports to ensure competition and efficiency, as well as lead to cost savings for the airlines;
- The development of Greenfield and Brownfield airports by state governments, private sector and/or in Public-Private-Partnership (PPP) mode will be encouraged; and
- There is a proposal for the development of four heli-hubs and for the provision of helicopter emergency medical services.

[\[BS 16.06.2016; ET 16.06.2016\]](#)

Points to Ponder

The unleashing of the Civil Aviation Policy has been a landmark move by the Modi government and clears ambiguities around various issues. It seems to pave the way for better regional connectivity, boosting cargo operations and making it easier and possibly cheaper for passengers to fly. There has, however, been a delay in its approval due to non-consensus between the Minister of State for Civil Aviation, Mihir Mishra, and the Union Civil Aviation Minister, Ashok Gajapathi Raju and senior officials over the key proposal of auction of rights for foreign airlines to fly into India [\[ET 26.05.2016\]](#).

An important intent of the policy is to fix up the regulatory imbalances and to create a level-playing field for all players, be it old or new, through scrapping up the 5/20 rule. One needs to dwell into the history of bringing up such rule into picture. The safety and the domestic connectivity arguments are the reasons behind the same. The Indian government did not want to risk its international image by allowing the new airlines to fly abroad by

causing accidents like plane crash. Further, the government wanted to increase flight connectivity to the remote and less accessible location, and therefore the new airlines were obliged to fly into the domestic markets. However, change in this rule presents a scenario of government walking the middle path. The airlines are not required to operate in the domestic markets for five years, but are still required to acquire 20 aircrafts. And as per the estimates, any Indian airline requires three years to fulfil this criteria, therefore the rule has become '3/20' instead of '5/20' [[Wire 16.06.2016](#)]

With respect to the regional connectivity objective, the government has put a cap on the airfares of Rs 2500 for one-hour flight on regional routes. This essentially is a game-changing move which will positively impact the airlines in terms of its revenues through increasing returns and profitability, and bring into its ambit the Indian middle class belonging to these regions by making the air travel affordable for them. However, as per some of the experts, the cap of Rs 2500 is not really on the lower side, going by the existing tariffs of carriers [[Quint 16.06.2016](#)].

The policy being considered a milestone in the reign of the present government has attracted criticisms as well. Taking into account opinions of experts and analysts, given some game changing moves, the policy still remains silent on some of the certain aspects, such as privatisation of loss-making Air India or the roadmap for setting up an independent and autonomous Civil Aviation Authority.

For more, please refer CUTS comments on the [CA Policy](#)

3. PETROLEUM AND NATURAL GAS

3.1 Oil Ministry codifies best practices for oil & gas exploration

Three years after the Rangarajan panel recommended setting up strict guidelines and standards for the functioning of the oil & gas sector, the Petroleum Ministry recently codified international best practices for petroleum exploration and production (E&P). The good international petroleum industry practices (GIPIP), prepared by a 10-member expert panel under the Directorate General of Hydrocarbon (DGH) and approved by the Oil Ministry, is said to increase predictability in decision-making and reduce

arbitrariness, which will check the rising cases of arbitration.

The committee, which framed GIPIP-2016, has clarified that these will be revised after two years and are only meant to act as guiding principles for E&P activities and cannot be taken to override the PSC provisions, Indian law, Oil Ministry's notifications or other statutory provisions including Indian Accounting Standards.

[[BS 10.05.2016](#)]

Points to Ponder

A lot of bad blood has been created between overseas explorers and the Indian government in the past few years in the absence of any clear guidelines on how to treat disputes occurring between signatories of a Petroleum Sharing Contract.

The GIPIP covers areas of Exploration, Discovery, Appraisal, Declaration of Commerciality, Field Development, Production, Testing and Analysis – Reservoir and Production, Health, Safety and Environment (HSE)/Abandonment, Procurement Procedures and other miscellaneous issues. GIPIP document provides for guidelines to be followed in crucial areas of E&P operations, including calculation of cost of unfinished work programme, contract extension and practices to be adopted in cases of reservoir contiguity such as the ongoing dispute between Oil and Natural Gas Corporation (ONGC) and Reliance Industries (RIL) on alleged gas migration from the state-run firm's KG-D5 block to RIL's KG-D6 block in the Krishna-Godavari basin off the Andhra coast.

There is a wide array of operators with varying experience working in India and fresh guidelines in the form of a compendium are expected to help stakeholders in conducting petroleum operations. The GIPIP is an attempt by the ministry to bring all stakeholders onto the same page.

3.2 Small, marginal oil and gas fields auction to begin July 15

The first round of auctions of discovered small and marginal fields will start on July 15, 2016 and conclude on October 31, 2016 the government said. As many as 67 fields clubbed into 46 contract areas, will be auctioned. The fields, with resources worth Rs.70,000 crore, were surrendered by the ONGC and Oil India after being deemed non-

remunerative. These fields will be offered under a revenue-sharing model, where the contractor will share a part of the revenue with the government as soon as the production begins.

In March 2016, the Cabinet approved the Hydrocarbon Exploration and Licencing Policy (HELP) which replaced the existing New Exploration Licencing Policy (NELP) and introduced significant reforms in the sector. The main changes made to the previous policy include a uniform policy for the exploration and production of all hydrocarbons, both conventional (oil and gas) and unconventional (shale oil, shale gas and coal bed methane).

[\[TH 26.05.2016\]](#)

Points to Ponder

The move to auction marginal fields will test government's ability to successfully market the auction policy to the international bidders. At a time when the crude price is hovering around US\$40 per barrel and investors existing the oil market, it would be difficult for the government to find buyers for the marginal fields. Though the government has set an ambitious target of Rs 70000 crores from the auction, the time is not ripe for the auction. It remains to be seen that how domestic and international investors react to the proposal at this point of time.

Big players will not be interested to explore this market as the volume is very less and will not add to their bottom-line. Small players could have been a targeted lot with the slew of incentives given by the government but the international price of crude oil at this moment are not encouraging enough for them to step into the market.

3.3 Kerosene subsidy: Govt may cut bill by 30%; will boost oil companies

With oil prices unlikely to rise sharply from the current level, the government may fix the subsidy for kerosene in FY17 at Rs 8-9/litre, about 30 percent lower than Rs 12/litre given in the last fiscal. For domestic LPG subsidy, which is borne entirely by the Centre, the subsidy mechanism has been tweaked to compensate oil marketing companies on an actual basis, compared with a fixed rate earlier. Both moves are likely to further free oil firms from any significant burden on account of oil subsidies, increasing the investors' appetite for stocks of these companies.

[\[FE 13.05.2016\]](#)

Points to Ponder

An exemption from sharing subsidy would be a positive for ONGC and Oil India as the companies are grappling with challenging times in the wake of global crude oil price slump. In October-December, too, the two upstream majors had been exempted from sharing subsidy despite the fact that under-recovery on kerosene was over 12 rupees per litre in that quarter. The better transparency and drastic reduction in subsidy burden could improve investors' appetite for the ONGC, in which the government plans to sell a portion of its 68.93 percent stake through an offer for sale.

4. POWER

4.1 Cabinet's new methodology allows states to give Coal to needy Utilities

The Cabinet approved a new policy for awarding domestic coal requirement of states. All requirements would be clubbed and sent to the state nominated agencies for approval. The state would then award coal linkages according to its need, cost of power and efficiency of the power plants. For the power plants owned by the Central government, coal linkages of Central Generating Stations (CGS) would be clubbed and granted to the company owning CGS for efficient coal utilisation.

Points to Ponder

The new Union Cabinet policy will allow coal swaps from inefficient to efficient plants and also to plants situated far from coal mines. This will minimise the cost of coal transportation and reduce the cost of power produced. Also, plants running on lower capacity can avail this arrangement to increase their plant load factor. In the absence of such an arrangement, they had to depend on the e-auction platform which sold coal at a premium of more than 60 to 70 percent making the end product costlier. Also, many units have to shut down due to unavailability of coal at the right time. Many small consumers of coal like captive power plants, brick kilns would benefit from such a move with coal available to them at the time of need. [\[BS. 05.05.16\]](#)

4.2 Franchise distribution companies model splutters back to life, after blackout

After a long lull, the benefit of franchise model in power distribution business is considered. The debt-ridden government of Rajasthan had decided to handover the distribution business in two cities to Calcutta Electric Supply Corporation (CESC), i.e. Bharatpur and Kota. CESC won the bids for franchisee distribution of these two cities. An investment of Rs. 1,525 crore and Rs. 477 crore are envisaged for 15 years for Kota and Bharatpur respectively. The main intention is to reduce State Electricity Board's (SEBs) commercial losses as mandated under *Ujwal Distribution Assurance Yojna* (UDAY). Currently, the aggregate technical & commercial losses (AT&C) are 25 percent in Kota and 27 percent in Bharatpur.

Points to Ponder

The Distribution Franchisee arrangement is based on principles of 'PPP'. Specific functions of discoms are outsourced to a franchisee by the utility. The franchisee system is an incentive-based arrangement between the utility and the operator to achieve overall reduction in T&D losses and increase operational efficiency. The current engagement of CESC in Rajasthan is expected to bring down the losses to a level of 10 to 15 percent in 15 years. The long term engagement will help the franchisee operator to invest in asset creation and upgradation to bring in much needed investment into the sector.

[\[FE. 27.06.16\]](#)

5. TELECOM

5.1 TRAI seeks to make set-top boxes interoperable

In a move that is likely to be welcomed by most television watchers across the country, the Telecom Regulatory Authority of India (TRAI) is looking at making set-top boxes (STBs) interoperable. Currently, STBs are tied to specific distribution platform operators (DPOs) and cannot be used interchangeably across different operators.

According to a statement issued by the regulator, there are six direct-to-home (DTH) operators, two Internet protocol television (IPTV) operators, two head-end in the sky (HITS) operators and a large number of multi-system operators (MSOs) providing pay TV services through addressable systems in the

country. As of now, cable operators and DTH service providers offer their services bundled with a STB. However, if a consumer is not satisfied with his service provider, he is forced to buy a new STB from other operator because of technical issues. Even the amount paid for the box is non-refundable.

Floating a pre-consultation paper, the authority has sought comments from various stakeholders by April 29, 2016 to identify issues related to interoperability of STBs, its challenges, concerns of the industry and possible solutions to achieve technical interoperability of STBs.

[\[Mint 05.04.2016; BL 02.05.2016\]](#)

Points to Ponder

According to TRAI, 30 million STBs are lying idle or unused mainly because of non-interoperability of STBs as 55 million out of 85 million STBs sold are active as on December 2015. STB interoperability will make STBs market more competitive and pave the way for cost reduction and benefit for consumers. It will also help addressing the challenge of e-waste resulting from discarded STBs.

Current business model used in pay TV systems in India follows a circle of dependency wherein DTH operators, multi-service operators (MSOs), conditional access system (CAS) vendors and STB manufacturers have to work in a restricted vertical market. Thus, an STB manufacturer needs to pay licence fee to CAS vendor in order to use CAS in his STB. There are technical reasons also for such business model. Technical reasons for non-interoperability of STBs include different methods of entitlement management message (EMM) and entitlement control message encryption, different compression and modulation standards. Pay TV service providers also raise the concern of piracy and express fear that fake STBs may be used to capture information from a valid smart card.

Allowing operability between cable operators and DTH service providers will help consumers immensely and promote competition while improving quality of services. Overcoming such technical challenges will be the first step to bring in the interoperability.

5.2 TRAI issues consultation paper on free data

The new consultation paper floated by TRAI sought to explore ways to provide mobile Internet to consumers for free without violating a ban on discriminatory pricing of data services. The paper addresses three issues: first, provide models to service providers to have a non-discriminatory platform to provide free data while adhering to net neutrality rules; second, seek comments on whether such platforms should be governed by TRAI or developers of these platforms; and third, whether free data or suitable reimbursements should be made available only to mobile data users or to subscribers of fixed-line broadband and leased lines.

TRAI suggested three models. The first model is a reward-based through which consumers will be offered rewards in the form of recharges or mobile data for performing a desired action. The other model suggested by TRAI is to have a toll-free application programme interface (API) or 'do not charge' API, which will help subscribers without any balance as they will not be charged. The last model proposed in the paper is reimbursing/recharging the subscriber with the amount incurred.

TRAI said its intention behind the latest paper was to enable smaller entrepreneurs to emerge without putting a gatekeeping function in the hands of telecom service providers (TSPs) and also to give consumers more choice when it comes to accessing the Internet.

[\[Mint 20.05.2016; ET 14.06.2016\]](#)

Points to Ponder

Earlier this year, TRAI had banned the practice of discriminatory pricing of data or allowing telecom service providers to offer differential pricing for access to specific applications or websites. Now, TRAI is exploring different models which can work within its regulatory framework. The paper is an attempt to explore the possibility of free or discounted data which is agnostic to the telecom service provider.

TRAI has proposed three different models under which websites or applications will be able to either waive or pay for data charges a consumer bears while accessing such sites or applications. This, TRAI argues, will enable smaller entrepreneurs to flourish without leaving the gate-keeping function in the hands of telecom operators. The models proposed by the regulator, however, seem to indirectly allowing differential pricing.

TRAI essentially is making an attempt to address the issue of allowing cheaper alternative Net connect apps to function, while checking any monopoly that could be established jointly by an app provider and mobile service firm. TRAI has issued a series of consultation papers on differential pricing, free data, Internet telephony, which are subsets of net neutrality. By adopting a piecemeal approach and not addressing the larger subject at one-go is only adding ambiguity and uncertainty to the regulatory framework.

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