CIRC RegTracker

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Enhancing Knowledge, Strengthening Capacity

RT.021, Jan-March 2016

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.021, Jan-March 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; e) Transport; and f) Water.

HIGHLIGHTS

- Coal mining has slow progress a year after e-auctions
- Government cures all gas problems with sweet pills of reforms
- Call drop compensation by telecom operators
- TRAI prohibits discriminating pricing for data services
- New aviation policy to be approved soon
- Government planning to set up an Urban Mass Transit Authority

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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
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- Competition and Regulatory Issues in Coal Sector in India
- Regulating Realty: Cabinet's Nod to Real Estate Bill

1. COAL

1.1 Coal mining follows a slow lane a year after e-auctions

Of the 34 operational mines that were auctioned to private firms and allotted to state government utilities, only 22 have got mining leases and only 10 are producing by now. The states where mining has begun are Odisha, Madhya Pradesh, Rajasthan and Chhattisgarh, whereas, despite of having 15 mines, not a single has started production in Jharkhand. Coal ministry officials say the total coal production has touched 20 million tonnes from 10 producing mines. The total proceeds from the mining transferred to the mine-bearing states stand at Rs 1,350 crore. Even in the previous year, the auction saw a sluggish growth as only seven of the 67 mines allotted started operations [**RT.020, sec 1**]. [**BS 30.03.2016**]

Points to Ponder

The central government's task was over after the handing over of the mines. Thereafter, everything now falls in the purview of the state government - from land clearance to mining lease. Both auctioned and allotted mines are facing hurdles as the forest and land clearance of Jharkhand government is under a cloud. On the contrary, the Jharkhand state ministry claims that mining land of most mines falls under forest land. This was not the case when Centre surveyed the area before auction.

Where mines in Jharkhand face land and forest clearance issues, land disputes and erroneous data, West Bengal, Punjab and Karnataka face legal hurdles from Eastern Mineral & Trading Company (EMTA, one of the key accused in the coal scam for allegedly ignoring the clauses for forming joint ventures and getting pecuniary gains through the arrangement).

The legal and regulatory scuffle is what is keeping the fate of coal mines in trouble even a year after the historic e-auction of mines. While on the one hand, production is being held up due to procedural delays, agreement signed with the government stipulates that delays in operationalisation of mines would lead to penalties. The question remains whether such procedural delays point towards a sheer lack of communication and coordination between the government entities or a more ostensible crack in the federal structure.

1.2 Non- Power coal mines to be auctioned

The cabinet has cleared a proposal to auction coal to non-power sectors like steel, iron and cement, ending the past practice of selective allocation and potentially raising costs for users. The Cabinet Committee on Economic Affairs (CCEA) approved the auction route for awarding future coal linkages to non-regulated sectors as opposed to the practice of allocation by a linkage committee based on recommendation from ministries.

With this, all allocations of linkages for non-regulated sector like cement, steel/sponge iron, aluminium and captive power plants will be auction-based. The tenure of fuel supply agreement (FSA) will be as decided by ministry of coal from time to time.

However, the CCEA approval will not lead to termination of existing linkages as of now. There will be no renewal of existing FSAs of non-regulated sectors. [**BL 03.02.2016**; **PIB 17.03.2016**]

Points to Ponder

*Following the Supreme Court's declaration of allocation of 204 coal blocks as illegal due to arbitrary procedure, this move aims for transparency and creating a level-playing field, providing equal opportunity for all consumers. It comes with an aim to remove discretion, following the launch of round of auctions of mines so that private firms can extract coal for their own use [**RT.019 sec 1.2**]. The Coal Ministry had been drawing up a plan for auctioning linkages to the non-power sector over 2015, for which, an Inter-Ministerial Committee was constituted in January 2015 to screen various structures and models for competitive bidding.*

Meanwhile, as a step towards consumer friendly approach and increasing transparency in business operations of Coal India Limited (CIL), the Press

Information Bureau reported the launch of a Web Portal for distribution of coal by State Nominated Agencies (SNA). The portal would provide small and medium consumers access to information about SNAs, availability, booking/supply distribution of coal in public domain. The portal offers facility of online registration to consumers.

2. PETROLEUM AND NATURAL GAS

2.1 Government cures all gas problems with sweet pill of reforms

The government announced sweeping market-friendly reforms that usher in a new oil exploration regime unshackling the sector from intricate controls, allowing a higher price of gas for new deep-sea fields and tweak the mining law to speed up takeover of companies with captive mines. The decisions, taken by the Cabinet Committee on Economic Affairs on Thursday, will make idle reserves worth Rs. 1.8 lakh crore in challenging terrain, such as the deep sea, commercially viable and boost India's gas output by nearly 40% as companies like Reliance Industries and ONGC will be able to make heavy-duty investments once they are allowed to charge a higher price for gas.

[**ToI 11.03.2016**]

Points to ponder

As the government has high hopes from these reforms and the sweet nothings that it had offered to the industry, higher pricing or market pricing as it is being called is not going to make much of a difference in investment perspectives. A price cap will be imposed keeping in view the lowest of fuel oil and the same will be revised every six months. This would mean that all serious bids will mostly be at the cap price in a situation of excess demand, and since price would no longer serve as the differentiator the only way left to transparently allocate gas among bidders would be to give a higher preference to those who offer to buy more. Reliance has appreciated the move, and so it will as per the rumours. It will be seen how far these reforms transform the exploration market and whether they give the current government any credits.

3. TELECOM

3.1 Call drop compensation by telecom operators

In October last year, TRAI issued amendment in Telecom Consumers Protection Regulations, mandating this compensation. The regulation was to come into effect from January 1, 2016, but telecom operators had approached the Delhi High Court against the TRAI's order. Major telecom operators have opposed the compensation to mobile users for call drops as proposed by the Telecom Regulatory Authority of India (TRAI). The Delhi High Court upheld the decision of TRAI, making it mandatory for cellular operators to pay consumers one rupee per call drop experienced on their networks, subject to a cap of Rs 3 a day.

"The investment made in the infrastructure (other than radio spectrum) in wireless access service segment rose by only 4.6% from Rs 2,02,399 crore in the financial year 2012-2013 to Rs 2,11,691 crore in financial year 2013-2014. During this period, the minutes of usage (MOU) grew by 6.8% and the data usage grew by more than 100%. Clearly, the investment has not kept pace with the usage. It appears that the lack of investment in network infrastructure by telecom companies is one of the main reasons for the problem of call drops," TRAI has said. Telecom operators association Cellular Operators Association of India (COAI) and Association of Unified Telecom Service Providers of India (AUSPI) moved Supreme Court, challenging the Delhi High Court order which upheld TRAI's decision to offer compensation to mobile users for call drops.

[**BS 04.03.2016; ET 03.03.2016**]

Points to Ponder

The pervasive problem of call drops and poor telecom service across the country has been the bone of contention between TRAI and the service providers. Main reason for call drops can be inadequate coverage, overloaded cell towers, switching between towers, cityscape challenges and other technical failures. From TRAI's perspective, lack of investment by telecom

firms in network infrastructure like mobile towers, appears to be the main reason behind poor service quality and call drops.

In December 2015, TRAI conducted drive tests and found that network quality of most of telecom operators, including state-run MTNL, was below standards. The telecom companies make counter arguments to the main reasoning given by the government that the companies are not investing in the infrastructure. Such reasons for call drop include the operators' inability to deploy sites in key and critical areas amid concerns over radiation and shortage of spectrum. The call drops issue has worsened in the past few months and there seems to be no clear answers in sight in view of arguments and counter arguments in the court rooms. Some of these issues can be overcome by use of technology to optimise the networks and improve planning approaches, as for instance, the adoption of Self-Organizing Networks (SON) can mean real-time capacity adjustments in an automated manner.

The consumers have to bear the double whammy of poor service quality and also paying extra when a call drops. While the telecom revolution in India has seen lower rate of call charges, the time has come for a paradigm shift towards more technology intensive investments by telecom companies to ensure high service quality standards for consumers.

3.2 TRAI prohibits discriminatory pricing for data services

Telecom Regulatory Authority of India (TRAI) issued the 'Prohibition of Discriminatory Tariffs for Data Services Regulations, 2016. This would disallow service providers to offer or charge discriminatory tariffs for data services on the basis of content being accessed by a consumer. TRAI had earlier issued a Consultation Paper on 'Differential Pricing for Data Services' in December, 2015. This Consultation primarily sought the views of the stakeholders on whether the service providers should be allowed to charge differential tariffs based on the websites/applications/platforms being accessed on the internet. The Authority has decided that ex ante regulation, rather than a case by case tariff intervention regime would be more appropriate as it would give the much needed certainty to industry participants.

The Authority has therefore mandated (a) No service provider shall offer or charge discriminatory tariffs for data services on the basis of content; (b) No service provider shall enter into any arrangement, agreement or contract, by whatever name called, with any person, natural or legal, that has the effect of discriminatory tariffs for data services being offered or charged by the service provider for the purpose of evading the prohibition in this regulation; (c) Reduced tariff for accessing or providing emergency services at times of public emergency has been permitted; (d) Financial disincentives for contravention of the regulation have also been specified. According to media reports, the regulator also specified that violators would be fined an amount of Rs 50,000 per day, subject to a maximum of Rs 50 lakh.

[**BS 08.02.2016; ET 09.02.2016**]

Points to Ponder

The Telecom Regulatory Authority of India (TRAI) has laid down rules that strictly prohibit the differential pricing of data on the basis of content in India thereby effectively banning zero-rating initiatives being proposed by few companies. It is pertinent to note the change in terminology from 'differential' in consultation paper to 'discriminatory' in the regulations. This change in terminology is welcome as differential pricing generally a part of business strategy of firms and was confusing as used in the title of the TRAI's paper. The reason for this ex-ante regulation by TRAI is that a case by case approach would have warranted high costs of regulation in terms of time and resources that will be required for investigating each case of tariff discrimination. Though this brings clarity but it becomes challenging for the companies to redesign market business strategies in compliance of TRAIs regulation.

The differential pricing enables the TSPs to become gate-keepers as internet services and they will then

be able to differentiate between the data packets. In such a scenario internet service provider can decide as to how consumers can use the internet. The principle of net neutrality clearly prohibits any blocking, differentiation or prioritisation of data packets based on their type. Further, such discriminatory models can enable unfair prioritisation. Such unfair prioritisation can be counterproductive to competition and innovation and will also be lowering the consumer choice. Although the implications of the ruling on discriminatory pricing regulation will be visible in the coming months, it is clear that TRAI has broken new ground on the issue of Net Neutrality in India.

4. TRANSPORT

4.1 New Aviation Policy to be approved soon

The wait for the new aviation policy is likely to end as the civil aviation ministry expects an approval from the cabinet by the end of March, 2016. The much-delayed policy awaits its implementation in the upcoming financial year. The policy will showcase the decision of aviation ministry on various important issues.

- The aviation ministry is expected to take decision on the controversial 5/20 rule in the policy i.e. an airline needs to fly five years in the domestic market and have a fleet of 20 aircrafts to fly abroad.
- The draft policy also provides a provision for viability gap funding for airlines in order to promote regional connectivity.
- The policy proposes a cap on airfares at ₹ 2,500 for flights with one – hour duration under the regional connectivity scheme.
- Other issues addressed in the policy are various tax sops, setting up of no – frills airports and auctioning of international flying rights.

[**FE 03.03.2016; Mint 03.03.2016**]

Points to Ponder

The aforementioned 5/20 rule has landed up the aviation policy into a pool of controversies in terms of either retention or scrapping up of the rule in the policy. The policy has witnessed strong reactions and lobbying from both the older airlines as well as the new entrants. There seem to be lobbying from the side of older airlines such as IndiGo, Jet Airways with respect to the upholding of the 5/20 rule; whereas the new carriers want a relaxation for the same. With the continuation of this rule, the new players are expected to face difficulty in flying abroad [**RT 0.18, sec 5.3**]*. This raises an important question regarding the guidelines or rules that govern the flying routes for airlines in India as well as overseas. The controversy also brings into picture the huge sales tax regime prevalent in the country, which in turn, becomes the reason for the demand of new carriers to fly abroad as the international fuel costs are much lower than the domestic rates.*

The Route Dispersal Guidelines (RDG), granting the license to airlines to fly abroad in return of flying certain proportion of their planes to smaller towns, highlight a point which is valid from their viewpoint if 5/20 rule is scrapped off without the RDG. It will compel them to fly more loss-making routes as compared to the new airlines which have less number of planes and therefore, have to fly less to smaller cities/towns. The union civil aviation secretary claimed that "there would be a level playing field for all airlines and the government will see to it that no wrong is done to anyone" [**Mint 03.03.2016**].

All this brings into forefront the question of viability of many routes which remain unviable largely due to the huge sales tax. As a result, the government needs to pay attention if it wants to continue with current regimes of dictating the airlines or will forego the same and rely on the markets.

4.2 Regulatory Challenges facing the Transport projects

The projects in the transport sector have been under constant oversight of regulatory challenges. There have been issues of delay of various projects which in turn are resulting in cost and time overrun. The metro rail systems in different cities

such as Jaipur, Bangalore, and Delhi have also been bearing this pain.

- A controversy over the impact on archaeological sites has delayed the next phase of Jaipur Metro project; as a result, the commercial run could only be started in March 2015. Even though the project was completed in a record time of 2011 – 14.
- In Bangalore, the Metro project was delayed due to pending civil works; although the safety clearance was obtained much earlier.

One of the other significant reasons for the delay in transport projects is the lack of coordination amongst various agencies involved in the projects. In order to address this issue, the urban development ministry is planning to set up an Urban Mass Transit Authority (UMTA), which will act as the single nodal agency for planning and co – ordination of project related works.

[BS 18.01.2016]

Points to Ponder

The prevalent scenario of delay in the transport projects brings into forefront the planning and management of these projects by the various agencies. The question that arises is who should be blamed for this delay? For issues like clearances, is it the authority or the public at large, engaging in various protests, strikes etc.?

*The blame-game plays out itself in the public domain as well. The Minister for Roads Transport, Highways and Shipping at a seminar on Make in India stated that bureaucracy cannot be entirely blamed for the delay in approvals of various projects, the political support play an equally crucial role in the efficient management of the system [**BS 17.02.2016**].*

*Yet another issue that needs attention is that of public funds involved in these projects. The overrun leads to wastage of huge public resources; for example, delays in completing railway projects resulted in cost overruns of Rs.1.07 lakh crore ($16.4 billion) – equivalent to the yearly salary bill of its three million employees– according to an IndiaSpend analysis of a December 2015 audit report [**BS 18.04.2016**].*

Right from the conceptualisation of a project till its effective completion and implementation, there needs to be cautious and constant efforts from the side of various agencies. In this regard, the setting up of UMTA is a welcoming step. However, one needs to look forward to the functioning of the authority in an environment full of given regulatory hurdles.

News Sources

Asian Age (AA)	Economic Times (ET)	Hindustan Times (HT)	Reuters (Reuters)
Business Standard (BS)	Financial Express (FE)	Mint (Mint)	Times of India (ToI)

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