

CIRC RegTracker tracks the creation of new economic regulatory institutions, their capabilities, performance, and the way they interact with other institutions in shaping economic governance in India. It is being published regularly by the CUTS Institute for Regulation & Competition, a body involved in enhancing knowledge and strengthening capacity in the area of interplay between law and economics.

RegTracker is a quarterly publication which has been tracking the current policy changes/policy proposals on economic regulations in the country, based on news report reports. It does not aim to provide an in-depth analysis of the developments, 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.025, Jul-Sep 2017). It offers sector wise developments and points-to-ponder for each development. Keeping with our focus on regulatory governance in infrastructure sectors, we cover the following: a) Coal; b) Telecom; c) Electricity; and d) Water.

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1. COAL

1.1 Government changes track, to offer coal blocks for commercial mining based on higher royalty rates to states.

The Indian government has changed track to introduce a new coal block auction system based on higher royalty and granting the rights to the miners to make their coal mining commercial. According to the government, the move shall accelerate the infrastructure sector simultaneously having a multiplier effect in the economy. The miners shall further be entitled to freedom of pricing but indexed to CIL pricing based on a formula derived.

The winning price bid shall be awarded to the company willing to pay a higher royalty to the state government based on its own assessments of the block. The blocks to be offered for competitive bidding would be intimated to prospective bidders beforehand to make their own assessment. Further, the system would allow the states to be entitled to some percentage of the gains in case of above normal profits by the miner. [[ET 25.09.17](#)]

Points to ponder

Commercialising the coal mining process from the earlier procedure of sticking it to captive consumption is a positive change for the coal industry, making it a win-win situation for both the private sector as well as the government by including the clause of royalty. Miners will be allowed to do their own due diligence of coal block before participating in the bid. This would end apprehensions of the private sector on the data accuracy and various mining parameters attached to the block. They would be able to make a fair valuation of coal block before entering into the competitive bid.

With the royalty based auction, it is expected that global mining giants as well as local users will participate in enthusiasm which would accelerate the growth of coal sector. The move aims towards making the coal sector competitive and effective and will help open up the market partially. It will also help in diminishing the decades long monopoly of Coal India Ltd. Furthermore, with

this policy change, government hopes to kick start the growth momentum which was subdued in the last couple of years owing to various reasons.

2. TELECOM

2.1 TRAI consultation paper on privacy and ownership of data

As it looks to protect data rights of individuals, sectoral regulator Telecom Regulatory Authority of India (TRAI) has come out with a consultation paper on privacy, security and ownership of data in the telecom sector. The paper plans to define personal data and who should have ownership and control when a customer uses telecom services.

In the paper titled, 'Privacy, Security and Ownership of the Data in the Telecom Sector,' TRAI described data protection as 'the ability of individuals to understand and control the manner in which information pertaining to them can be accessed and used by others.' TRAI says that it is of view that the users should be empowered in respect of ownership and control of his/her personal data and to ensure this, all the players in the ecosystem are bound to follow certain safeguards while collecting, storing and using the data pertaining to their subscribers.

TRAI has sought comments from stakeholders and public to identify the scope and definition of personal data, ownership and control of data of users of telecom services and to identify the rights of data controllers. The regulator noted that many mobile apps sought access to a user's call records, device microphone and picture library, which may not be needed to provide the service. The authority has suo-motu decided to come out with the consultation paper as it felt it was necessary to frame some guidelines regarding data protection and sharing of data with third party players. ([ET 09.08.2017](#)) ([BS 10.08.2017](#))

Points to ponder

With rapid evolution of technologies and exponential growth in data traffic, the challenges to regulate have also multiplied. As per a [report](#), 90 per cent of the data in the world today has been created in the last two years alone with new

data being added to this pool at the rate of approximately 2.5 quintillion bytes of data every day. While availability of data has enhanced the business potential of data analytics, it is equally important to assess whether the data rights of individuals are being adequately protected in this rapidly changing environment.

In 2016, the US Federal Communications Commission enacted broadband privacy rules that were aimed at securing greater choice, transparency and security protections for the personal information. In January 2017, the [European Commission also has proposed](#) a Regulation on Privacy and Electronic Communications to update current Directive on Privacy and Electronic Communications, known as the ePrivacy Directive which sets out rules on how

providers of electronic communication services, such as telecom companies and Internet Service Providers, should manage their subscribers' data.

It is pertinent to note that data protection and privacy is hot topic in the policy circles in India. In July 2017, the Ministry of Electronics and Information Technology (MeitY), Government of India constituted a [Committee of Experts](#) under the Chairmanship of Justice B N Srikrishna, Former Judge, Supreme Court of India to study and identify key data protection issues and recommend methods for addressing them. The committee will also suggest a draft Data Protection Bill.

The questions posed by the TRAI paper are very broad and challenge is that technological changes and innovation can rapidly make any regulation out-dated. Based on certain fundamental principles, such as accountability, safety and security, it would be prudent to create a broad legislative framework data protection and privacy. Such framework needs to be in line with the Supreme Court's recent ruling on privacy as a fundamental right under the Constitution.

In India, the Consumers are ignorant about the value of personal data and the impact of agreeing to share it. Recent cases of data breaches in India also warrant effective measures for data protection and privacy. Service providers

collecting data (Data Controllers) need to frame transparent policies, be careful about collecting and sharing data, need to inform and reassure customers about security measures for effective consumer protection. As India is taking giant steps towards digitalisation, as a first step, it is critical to bring awareness amongst consumers on these critical issues.

3. ELECTRICITY

3.1 Renegotiation of old rates for wind PPAs does not augur well for the industry

Karnataka's power regulator, Karnataka Electricity regulatory Commission (KERC) reiterated its decision to approve power purchase agreement (PPA) at a new rate, setting a fresh wind power tariff at Rs 3.73 per kWh, way below its previous tariff at Rs.4.50 per kWh. This comes after winning price at various other wind auction in India sees a tariff discovery of Rs 3.42 per unit. It aims at a 17% tariff reduction for the projects commissioned before March 31, 2017. Though, discoms are going to benefit from this move of KERC, it will severely dent the prospects of wind developers in the state.

The wind energy-independent power producers' association has filed a petition with the Appellate Tribunal for Electricity (APTEL) challenging the Karnataka regulator's order of tariff modification. [[BS. 28.08.2017](#)]

Points to ponder

The move shall jeopardise the 599 MW of wind capacity where PPAs have already been entered into with discoms at an rate of Rs 4.50 per kWh. Out of 599MW, 273 MW capacity are already commissioned and the rest 326 MW are under construction. The move of KERC severely dents the prospects of private investors in the state. It may lead to project delays and financial sustainability of the projects.

Apart from the Indian players such as Suzlon and Inox, the decision would adversely affect projects of foreign companies such as Siemens, Gamesa and Green Infra. This may even lead to the twin balance sheet problem in case the companies

default, detrimental to both the banks as well as the existing players.

The renegotiation of contracts may deter the confidence in India's infrastructure sector which might instigate the firms to quit. With few players left to bid, the future might see a whooping increase in the tariff prices. While it is good that wind prices are coming down through reverse bidding framework, the already signed PPAs at negotiated rates need to be strictly adhered to ensure contract sanctity and build investors' confidence.

4. WATER

4.1 SC reserves order on Cauvery river water-sharing dispute

The 2007 verdict by the Cauvery Water Tribunal to allot 419 TMC of Cauvery water to Tamil Nadu, 270 TMC to Karnataka, 30 TMC to Kerala and 7 TMC to Pondicherry has been reserved by the Supreme Court. The 2007 verdict of Karnataka releasing 192 TMC of water to Tamil Nadu annually had led to a serious conflict between the two states of Tamil Nadu and Karnataka with negotiations bearing no fruits, leading to repeated petitions filed with the apex body. The court also demanded written notes on various issues pertaining to the hearings spread over 8 months.

With neither state gratifying the tribunal's decision, setting up of Cauvery Water Management Board and the Cauvery Water Regulation Committee was recommended by the tribunal itself. [[HT 27.09.2017](http://www.thehindu.com/2017/09/27/)]

Points to ponder

The issue of water sharing has been the bone of contention amongst the states since 1892. Water is an indispensable part of everyday life. The dispute seems to have impregnated and disturbed crop cultivation within states and households, affecting the daily needs of people. With both the states unwilling to accept the tribunal's decision, the powers of these apex committees and tribunals seem feeble. It is important here to consider the role of the regulating bodies, as despite their presence and authority, they are being overlooked repeatedly.

News Sources

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