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.019, April-June 2015). 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

- In this quarter, there are significant advances in the regulatory sphere which is in line with the current government's emphasis on improving governance and ease doing business. While some are continuation and intensification of the past developments, there are few innovative proposals. The developments in this quarter include:
- Commercial coal mining allowed to state entities;
- Coal India will operate mines on public private partnership model;
- Government allows gas pooling to improve operational efficiency;
- E-tendering mandated for large orders by oil PSUs;
- NITI Aayog preparing an integrated energy policy for the country;
- TRAI recommends separate license for virtual network operators;
- Debroy Committee recommends separation of policy, regulation and operations in railways;
- Cabinet has approved a new law that would declare 101 stretches of rivers as national waterways;
- Government mulling over a threefold hike in water cess.

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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

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***

1. COAL

1.1 Coal Blocks to be given for Commercial Mining to State Entities

As a next step to The Coal Mines (Special Provisions) Bill, 2015, [see our earlier analysis of the bill in **RT.018, sec.1.1**] recently passed in Parliament, which has enabling provisions for commercial mining and sale of coal by even private players, Modi-government is now set to allow commercial mining by other public sector utilities (PSUs). Apart from state governments, central PSUs such as NMDC might also be given commercial coal mining rights.

In the first go, states that are already mining coal such as Odisha, Chhattisgarh and West Bengal are likely to be given blocks for commercial mining and sale. According to officials, this could happen by June 30. [**FE 06.04.15**]

Points to Ponder

Government set the ball rolling for commercial coal mining- a right currently enjoyed by only Coal India (CIL). Giving commercial mining rights to all state entities like National Mineral Development Corporation (NMDC), the largest iron ore producer and exporter (producing about 30 million tonnes a year), makes pragmatic sense. Government seems to be taking systematic and incremental steps for reforming the coal sector by first auctioning the captive coal mines followed by commercial mining rights to state units now. In this fashion, coal mining rights may be extended to the private players in near future.

As the money from the auction would go to states and the centre would not be generating any money out of this auction, it may be defined as an example for 'Cooperative Federalism'. Coal secretary Anil Swarup posed his view that this kind of an arrangement would bring the centre and states closer in terms of understanding how businesses should be conducted.

This move will certainly satiate the fuel demand of small local units, which are unable to bid for their smaller requirement at coal block auction, but they also need coal. In such a scenario, localised state entities would be a great help; they can offer better linkages to smaller units compared to CIL.

However, this model is not something pristine. In 1999, following an amendment to the Coal Mines (Nationalisation) Act, 1973, Maharashtra State Mining Corporation tried an unsuccessful hand at commercial mining.

Although private participation would bring with it a feasible business plan, affordable financing options and much-needed high-end technology, there is need to formulate a realistic policy for the success of commercial coal mining in the country. In order to supply fuel at affordable prices and thus maintain the power tariffs, CIL should continue to play a prominent role.

However, India' coal sector needs major regulatory and competition reforms to achieve sustainable growth and maximise consumer welfare. Lack of competition and effective regulation has contributed to lock in inefficiencies in the sector. While the current government initiatives appear to be in the right direction, there is a need for much more coherent reforms approach and interventions.

1.2 CIL to go the PPP way

In accordance with the Centre's public-private partnership (PPP) model, CIL is finally preparing to float an Expression of Interest (EoI) in a couple of months to award long-term mining contracts to private companies, to boost production.

After the expression of interest, there will be a tendering process, where there would be bidding. It will be worked out on a cost-effective basis, where the particular mine should call for a higher level of technology. CIL looks open to foreign miners as well to come forward. [**BS 13.04.15**]

Points to Ponder

Engaging private contractors for mining is already operational in CIL under a Mine Developers and Operators (MDOs) model (which began almost two years back) but the state-owned miner is now looking at an expansion of this. It is different from an MDO model which was on a piecemeal basis, as now the miners would be handed over the mines, covering from production to transport till loading point.

The CIL being under pressure to raise production and missing its targets for several years procreated this decision. South Eastern Coalfields (SECL) and Eastern Coalfields (ECL) would be the first to award mines under the PPP model, during the current financial year, as they have identified some underground mines where high-technology mining would be required.

Going the PPP way is not going to be a cakewalk. In order to sustain the macroeconomic development and to go a long way, realistic planning and the selection of right PPP model would be indispensable.

2. PETROLEUM AND NATURAL GAS

2.1 Government Clears Gas-pooling

Not expecting any additional gas output from fields auctioned under the New Exploration Licensing Policy (NELP) until March 2017, the Oil Ministry had earlier proposed that all domestically produced gas should be included in the price pooling scheme for the power plants. While this might hurt state owned NTPC stations, the Union Cabinet has approved the proposal in a bid to increase operational efficiency of Urea manufacturing units thereby helping farmers and reducing subsidy burden by Rs.1,550 crore.

[MINT 01.04.15]

Points to Ponder

Such proposal will result in pooled average price of gas being higher than the domestic price for State owned NTPC stations and certain others as these are currently supplied gas under the Administered Price Mechanism (APM). Consequently, the cost of power production and tariff is likely to go up (though administratively capped at Rs.5.5 per kilowatt).

On the other hand, this would give Eastern India a much needed development boost. For the defunct fertilizer plants, the gas pooled price will improve their global competitiveness.

2.2 E-tendering mandatory for large orders by Oil PSUs

The Ministry of Petroleum and Natural gas has made it mandatory for the oil marketing and production firms to go for e-tendering for purchases beyond a specified threshold. These minimum limits for oil marketing (IOC, BPCL etc.) and production (ONGC, OIL) companies have currently been set as Rs.5 lakh and Rs.10 Lakh respectively.

The Ministry also suggests that companies adopt centralised procurement for similar items, so as to enable price advantages. The companies would also share price list of bulk item every quarter among themselves to derive maximum price advantage. [FE 04.04.15]

Points to Ponder

There is indeed growing need for efficient and corruption free procurement process, and the Ministry seems to have pressed the right button at just the right time. This initiative is expected to bring in transparency in procurement of the PSUs and prevent anomalies in awarding contracts. As a result, frequent delays faced by oil companies due to conflicting claims, counter claims, delay in material supply, additional cost claims etc. could be controlled to a large extent.

However, success of e-tendering depends substantively on how well laid out and user friendly is the whole process, for the vendors to understand and interpret it correctly. Apart from a clear and precise tender document, robust feedback and grievance redress mechanisms need to be in place.

3. ELECTRICITY

3.1 NITI Aayog Making a Blueprint to Tackle India's Energy Woes

India has started work on a plan to ensure energy security that's being shaped by a group at the newly established NITI Aayog think tank, energy minister Piyush Goyal said on Tuesday.

[Mint 08.04.15]

The government's National Energy Policy will bear a strong imprint of its think tank NITI Aayog, which has already started preliminary discussions with stakeholder ministries to draft a blueprint for India's energy road map to help meet the country's growing demand for solar, wind, gas and coal energy.

[ET 14.04.15]

Points to Ponder

The current government realises the importance of energy access for sustainable inclusive growth and human development. The energy minister has expressed the intent to ensure energy access to all at affordable rates and double power generation to two trillion units by 2019. Given the past record of India's energy development, this may appear to be an ambitious goal.

The government seems to recognise that taking the country towards energy security needs to re-envision its energy policy and significance of integrated energy planning and policy. Subsequently, the government's thinktank NITI Aayog has been assigned the responsibility to prepare an integrated energy policy for the country. While the regulatory environment in the sector is shaping up, as we have been discussing in previous issues of RegTracker, the current approach to integrated planning and coherent policy making would help the country to address a major growth barrier.

To facilitate implementation of the forthcoming integrated energy policy, the government is also planning a time-of-day tariff. NITI Aayog is going to set up an energy data management cell to gauge

energy consumption and spot a trend. This will help to decide the time-of-day tariff for the residential consumers, which is already being charged to the industrial and commercial consumers ***[ET 13.04.15]****. These emergent developments, along with the proposed amendment in the Electricity Act 2003 that will introduce multiple supply licensees, will certainly bring competitiveness in the sector and expected to improve consumer experience with electricity service. While the government makes broad policies, the sector regulators have the critical role of ensuring their implementation and monitoring process.*

4. TELECOM

4.1 TRAI recommends separate license for virtual network operators

India's telecom regulator recommended bringing virtual network operators (VNOs) - companies that provide telecom services without owning spectrum or network infrastructure within a licensing framework and allow them to offer voice, data and video services. VNOs are expected operate as retailer of different telecom operators under one roof and provide one bill to customers for a host of services. The regulator feels that there should be no cap on number of VNOs that can operate in a service area. It suggested that access to services for further sale should be left to the mutual agreement between a network service operator (NSO) and a VNO.

TRAI recommended that a separate category of unified licence be created for VNOs. It suggested levying an entry fee of Rs 7.5 crore on those who want to offer all services. For those who don't want to offer all the services, the fee should range from Rs 15 lakh for national-level Internet services to Rs 1.25 crore for a long-distance telecom licence, it said. TRAI made the recommendations to the Department of Telecommunications, which makes the final decision.

[**IE 02.05.15**; **ET 02.05.15**]

Points to Ponder

As per TRAI, VNOs will be companies providing telecom services without owning spectrum or network infrastructure. Such a policy will open the doors of the sector to new players and offer more choices to consumers. As per TRAI recommendations, there will be no cap on the number of VNOs in a circle; there is also no restriction on the number of telecom operators from whom any VNO can raise capacity. This will help in fostering competition. This policy, if implemented, would not only open doors for new players and offer more choices to consumers.

*Rural penetration and tele-density improvement are likely to happen due to introduction of VNOs. Fixed line penetration in India is a negligible 2.2% as compared to 20% in China and a phenomenal 43% in the United States (****FE 06.05.2015****). Multiple service providers can play an important role in reducing the price of services and aid in penetration of services across service areas, particularly those areas which hitherto remained underserved or unconnected. It is pertinent to note that VNOs are prevalent in a number of mature telecom markets in developed countries and have played important role in increasing tele-density and consumer choice.*

The issue of the proper infrastructure will remain and there seems to be no effective complementary policy to deal with the issue of increase in investment in the basic infrastructure. Further, Indian telecom sector has between 7 and 13 mobile operators in each service area. Will there be enough subscriber base in the areas already being served for the VNOs to become viable? It will be interesting to see how this idea takes off in the wake of expected consolidation in the sector.

The precondition for effective introduction of VNOs will be the basic telecom infrastructure. Once the basic infrastructure is put in place through National Optical Fibre Network (NOFN) project, introduction of VNO may help in quick and efficient delivery of services for the benefit of the sector and the consumers. Further, effective norms on infrastructure sharing and licensing will also need to be in place for VNOs working. Despite recommendations on (Mobile Virtual Network Operators) MVNO twice by the TRAI in 2008 and 2011, and acceptance of TRAI's advice by Department of Telecom (DoT) in 2009, to date no final policy and guidelines have not been announced. TRAI's new recommendation on VNOs is capable of taking the telecom sector to the next

level of growth if a clear policy framework and infrastructure for the same is in place.

4.2 Telecom Commission finalises views on spectrum sharing, trading norms

Call drops may become fewer and consolidation moves among telecom companies get a fillip as the telecom department has given its final clearance to long-awaited rules on sharing and trading of airwaves. To become operative, the rules still need Cabinet's approval. While technically the matter does not require the Cabinet's nod since the Telecom Commission itself is an inter-ministerial body, the latter still has decided to seek its approval.

DoT had in April, 2015 sought clarifications from TRAI regarding spectrum-sharing and trading guidelines. The TRAI has reiterated its recommendations on spectrum sharing and trading guidelines. According to the TRAI, spectrum sharing would provide an opportunity to telcos to pool their spectrum holdings and improve spectral efficiency. The regulator had also suggested that operators be allowed to sell the spectrum through trading only after two years from the date of its acquisition. Administratively assigned spectrum can be converted to tradable spectrum after paying a prescribed market value.

For consumers, this could mean better quality of voice services and faster data speeds, as sharing could reduce traffic congestion on the network. Telcos have often cited lack of airwaves amid increasing voice traffic as the main reason for rising call drops. And, as sharing of spectrum could allow operators to cut down on capital expenditure, they could pass on the benefit to subscribers through lower tariffs. [**FE 12.06.15; ET 12.06.15**]

Points to Ponder

As of now, only government is allowed to allocate spectrum to telecom firms through auctions. Once trading is allowed, it is expected to increase efficient use of radio waves by enabling telecom operators, who have a lower subscriber base or un-utilised spectrum, to trade in it. Through sharing, operators can pool in their spectrum resources to create a larger bank and each partner can use the airwaves from the pool as per its needs. The regulator also recommended allowing the trading of spectrum. Trading allows operators to sell airwaves that they aren't utilising, offering an exit route for struggling operators.

Spectrum management policies world over are evolving towards more flexible and market oriented models to increase opportunities for efficient spectrum use. The basic objective of spectrum sharing and trading is to provide an opportunity to telecom service providers to pool their spectrum holdings and gain better spectral efficiency.

Spectrum trading will provide operators increased flexibility to accommodate shifting demand driven by market changes. Further trading might help in easing entry barriers for new operators which results into healthy competition. Spectrum Trading is allowed in various countries and similar approaches may be adopted for allowing spectrum trading in India. Finalisation of these guidelines will be a positive step towards efficient utilisation of spectrum starved India.

5. TRANSPORT

5.1 Separation of Policy, Regulation and Operations suggested for Railways

The interim report of the expert panel chaired by Bibek Debroy on reforming Indian Railways has suggested separation of roles of policymaking, regulation and operations, with Ministry only responsible for formulating policies. It suggests clear division of responsibility between the government of India and railway organisation. It recommends separation of Railways into two independent organisations – one for track and infrastructure and another for train operation. It favours privatisation of the rolling stock – wagons and coaches while the public sector retains track and infrastructure. The panel believes that necessary re-organisation shall facilitate large-scale investments, and introduction of competition will ensure efficient pricing and improved services.

In particular, the expert panel argues for the need of establishing an independent regulator for determining tariffs, with an independent budget. The committee also strongly recommends corporatisation of the Railway Board with necessary decentralisation of decision-making

powers at Zonal levels. The report has also considered the exhausting social service obligation cost on the transporter and recommended mitigating measures such as hiving off sub-urban railways to state governments through joint ventures, financial assistance from States for uneconomical branch lines, rational sharing of the subsidy burden and costs. **[MINT 01.04.15]**

The report by the parliamentary standing committee (2015-16) for the Railways makes two important recommendations to improve the financial health of the railways.

- One, it observes that paying gross budgetary support to railways from one hand and drawing back annual dividends from the other is contradictory and counterproductive. It suggests halting duality in payments till such time that financial health recovers

- Second, it recommends need to identify ways to reimburse the social service obligation expenditure that railways incurs in delivering low fare sub-urban services and uneconomical branch lines. **[BS 29.04.15]**

Points to ponder

The Debroy report does a good job of analysing and condensing recommendations from a multitude of past reports on railways that have also noted most problems. The report is in sync with the Draft National Competition Policy, 2011 which also underscored the Institutional separation between policy making, operations and regulation, as one of the principles of competition policy. *The proposal of establishing an independent regulator is again rational. An Independent regulator will ensure level-playing field to the private sector which has so far eluded the sector.* Making the regulator accountable to the parliament is indeed path breaking and rightly in line with the draft Regulatory Reform Bill being anchored by the NITI Aayog.

The idea of retaining rail-track and infrastructure as publicly owned monopoly, while opening up the rolling stock operations to the private sector is drawn from the supposedly successful UK experience. However, certain class doesn't consider British rail privatisation a success; the State is today burdened with financial risks and cost of the rail infrastructure. With the proposed split, there is a growing perception that while the public sector will struggle to maintain the required Indian railway infrastructure, much of the profit from operations will go to the private sector.

Also, Railway safety should ideally not be the responsibility of the economic regulator. Instead, the existing arm's length body Commission on Railway Safety, under the Ministry of Civil Aviation, should be beefed up with professionals from disciplines other than railway engineering and be encouraged to do ex ante work which it is mandated with but is not effectively done.

5.2 101 National Waterways – pushing for a network on water

The Cabinet has approved a central law that would declare 101 stretches of rivers as national waterways. There has been growing recognition of the advantages of water transportation – as cheap, fuel efficient, environment friendly and particularly suitable for bulky and odd-sized cargo, besides easing the pressure on over-burdened road and rail networks. As per estimates, the water transportation cost is only 50 paise per km in comparison to Rs.1 by rail and Rs.1.5 by road. The carbon foot print of water transport is also much low.

The move by the govt. appears to be part of a larger plan to create a much-needed interconnected rail-road-waterways logistics system for more efficient haulage of goods and passengers. Approval has also been granted for constituting a special purpose vehicle (SPV) to provide efficient railway evacuation systems at major ports. The proposed central law is expected to stave off disputes with states, given that water is a state subject, while the development and regulation of shipping and navigation is under the jurisdiction of the Union government.

In a related move, the govt. is also undertaking an Integrated National Waterways Transportation Grid, which involves connecting the existing five national waterways (NW-1, NW-2, NW-3, NW-4, NW-5 and the proposed NW-6) with National/State Highways, Railways (wherever feasible) and Sea Ports (wherever feasible) so that all these waterways become an integral part of the total transportation grid. **[BS 03.04.15]**

Points to Ponder

Despite the inherent advantages, only five national waterways are currently operational and even this network is sadly under-utilised: inland water transport's share in the country's total transport sector is less than 0.4 per cent. Inability to shift cargo between modes of transport without disruption is one of the main reasons. Implementation of such a large plan will be challenging and its success dependent largely on

efficient connectivity with other transport modes, as well as ability to incentivise potential cargo shift.

Also, extensive dredging besides construction of barrages will be needed to hold part of the surplus monsoon water for release during the lean season to maintain the minimum water depth and flow needed for navigation. Concomitantly, the inland ship building and repair industry will need adequate regulatory support by the government.

Also, bulk goods traffic like coal, minerals, food grain and fertiliser is usually unidirectional, requiring the vessels to return empty or under-loaded, negatively affecting their profitability. The government will have to be sensitive and prepared to address these issues as it pushes ahead with developing this much needed infrastructure.

6. WATER

6.1 Government Mulling Threefold hike in Water Cess

The environment ministry is mulling over a threefold hike in water cess in a bid to check excess use of water by industrial units and also to encourage use of treated waste water in industries. The hike is also expected to increase the resources of the Pollution Control Boards (PCBs) but the ministry does not expect it to affect the domestic consumers.

The cess is charged under the Water (Prevention and Control of Pollution) Cess Act, 1977, levied on the quantity of water consumed by industries and is collected by the State Pollution Control Boards. The amount raised is used for environment protection and pollution control activities. The cess presently ranges from five paise per kilolitre to 30 paise per kilolitre for different categories of industries. In consumption of water, industry comes second to agriculture, and the usage is projected to increase about two-fold by 2050.

The environment ministry also aims to incentivise the use of treated waste water in industrial sector and the industry has welcomed the move but stressed that cess collected should be used for incentivizing them. **[Mint 19.06.15]**

Points to Ponder

The step taken by the environment ministry is quite significant keeping in mind the reports indicating declining fresh water table and India being on a verge of becoming a 'water scarce' nation by 2025. But a water cess cannot tackle the fresh water shortage completely or either control water pollution single handedly. Enviro-activists have stressed on better governance and implementation of environmental laws by the pollution control boards. As long as there is a lag from the side of pollution control authorities such pecuniary measures will not help.

On the other hand, there growth is expected in the industrial sector keeping in view the Make in India initiative of the Government, wherein governance and penalising functions of the PCBs are more in focus. The textile companies (one of the majority stakeholder in industrial water consumption) have however indicated that the burden of cess hike would be passed on to the customers.

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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