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.020, Sept-Dec 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.

CONTENTS

HIGHLIGHTS

- Proceeds from coal blocks take a hit
- Reposing rules to speed coal mining
- Govt. considering deregulation of natural gas prices
- Natural gas losing its shine as Asia holds faith in coal power
- Oil pool account makes a comeback
- Government notifies spectrum trading rules
- TRAI seeks views on differential pricing for data services
- DGCA audit underscores concern over ageing fleet of Air India
- New model for Road Project attracts no bids

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1. COAL

1.1 Proceeds from coal blocks take a hit

The auction and allocation of 67 mines early this year, has seen a sluggish growth as only seven of them started operations. The centre has by far collected Rs. 1,363 Cr. as against the projected estimate of Rs. 11,100 Cr. annually, based on the average mine life of 30 years, if all the 67 mines were in operation. It was seen in the previous quarter that many coal mines auctioned earlier this year remain shut and many workers jobless as reported by Indian National Mine- workers' Federation [**RT.019, sec 1**]. Thus, a weak investor appetite was seen in the beaten down coal stocks as well. [**BS 19.10.2015**; **FE 22.10.2015**]

Points to Ponder

The auction decision taken early this year was to ease the bottlenecks towards increased coal production in the country. Out of the speedy auctioning of 67 mines, which was quite laudable in itself, only seven have begun production so far. This has become a cause for serious concern. The amount the government earned post auction so far has been deplorable compared with the expectations of high revenues. So what has caused such poor revenue realisation is the right question to ask at the moment. The mining activities have been expectedly delayed because of change in ownership of mines. Out of the total amount received by centre from the miners, only around half the money has been transferred to the states, which ideally should have been entirely transferred. The delays in the mines beginning operations are due to bottlenecks operating at the state level, while the ministry says it has given all requisite clearances. Other causes are the application of stamp duty for execution of mining lease, valuation of land for mutation and pending dues of bidders. All this points out the criticality to fix the coal sector through an integrated approach. Even after having coal, its demand from power generation companies may not see significant rise. If the programme for reform of distribution companies actually leads towards improving financial health of the discoms, coal demand can be expected to improve.

1.2 Reposing rules to speed coal mining- a fait accompli?

The coal mining cannot be operational at present without receiving clearances from forest and non-forest areas. Now the Union ministry of environment, forest and climate change (MoEFCC) is proposing that the mining can go ahead even if the final clearance for the forest area has not been accorded. With India planning to mine 1.5 billion tonnes of coal by 2020, the minister, Prakash Javadekar is of the view that relaxation in clearances is an effort to boost coal production by reducing red tape. [**MINT 18.11.2015**]

Points to Ponder

The environmental ministry diluting its rules on mining projects is inviting criticisms. There would be likely resistance from green activists who have been already arguing MoEFCC's prior decisions to dilute green clearances. Forest clearance takes place in two stages. The stage 1 relates with agreeing or rejecting a project and putting conditions of compensations against the forest use, but no land is given. Forest land is given only in stage 2. The process between the two stages takes time. However, this move of ministry should not be suspected as the ministry aims at shortening this very process so that projects (and in turn production) are able to kick-start sooner. The move of environmental ministry hasn't found any favour with the environmentalists, who are of the view that this doesn't make sense as the project developers will think that he transfer of forest land is inevitable. There is always a trade-off. Now whether this relaxation would really speed up the stalled projects or it will completely defeat the purpose of regulations under the Forest Conservation Act is yet to be observed.

2. PETROLEUM AND NATURAL GAS

2.1 Govt. considering deregulation of natural gas prices

Government of India is considering deregulating the prices of natural gas extracted from local fields, following petitions from producers. In respect of the bi-annual revision policy, the govt. on 30th September'15 the government cut the price of natural gas by 18% which came into effect from 1st October. The decision has prevented the energy explorers and producers from undertaking new capital expenditure. India's gas output from local fields has fallen 36%, lowest in past five years. Now, Prime Minister Narendra Modi has made energy security his priority and is stressing on lifting restrictions to attract foreign investments. Indian Government (also previously NDA govt.) has been under pressure since past five years from the industry for de-regulation of gas prices in line with oil. **[MINT 14.10.2015]**

Reviving NELP

Keeping with its promise Modi government has unveiled a draft policy that aims at making oil and gas exploration in India fair, transparent and attractive for investors. It is said to allow pricing and marketing freedom for natural gas produced in areas awarded under the new regime. The new policy also proposes a revenue-sharing arrangement in place of the earlier cost recovery model under New Exploration Licensing Policy (NELP). The government aims at cutting down the imports by at least 10% by 2022. The auction of marginal oil and gas fields (worth Rs. 77000 crore) under the new regime in Feb 2016 is being seen as a pilot case for the policy to be put in place for mainstream blocks.**[BS 17.11.2015; FE 09.12.2015]**

Points to Ponder

Raising local gas output is the key to reviving industries such as fertilizer and power that have had to cut capacities for lack of fuel. In 2007, Reliance was allowed to set the price of gas it produces from the fields in the Bay of Bengal; in 2013, the government decided to set a formula-based pricing for natural gas, subtly ending the freedom given to the producers. The government has been trying to keep the reigns in its hands because if gas prices were to rise, it would push up power and fertiliser subsidies; and the new draft policy put forward is a step ahead towards a much awaited free-market regime. The revenue sharing model proposed under the draft policy brings a lot of doubts in as upfront costs and output in fossil fuel sector cannot be clearly ascertained in advance; and if in case the developers incur higher than expected E&P costs and thereafter need to share revenue with the government, it would lead to a longer payback /break-even period, thus depressing project returns. This would in turn lead to a cautious investor interest in the upcoming auctions.

2.2 Natural gas losing its shine as Asia holds faith in coal power

The fossil fuel of choice for Asia still remains to be the cheap domestic coal resources and the prospects for natural gas have been slimming. In Asia alone, in 2015 power-generation firms are said to be building more than 500 coal-fired plants, with atleast a thousand more on planning boards. . Coal is not only cheaper than natural gas, it is often available locally and has no heavy import costs. The International Energy Agency (IEA) has reported data signalling both increase in electricity consumption and coal consumption for generation of energy in turn. It also poses India as the highest and fastest consumer of coal, where it meets 45% of the total energy demands and surely the demand will remain ascending. Also the natural gas market faces competition from the renewable sources solar and wind, which are now being preferred by governments in wake of carbon emission concerns. These renewable sources are cheaper and help reduce import bills for expensive fossil fuels. A Silver lining to the clouds over the natural gas sector is the demand growth in transportation and small-scale power unit industry.

[RUETERS 03.11.2015]

Points to Ponder

The concerns are not only faced by Indian Natural gas sector but by all emerging Asian economies. Coal is still a cheaper fuel option and most of the Asian countries rely on it for electricity generation. And growth in coal is not only seen in developing countries of Asia but also developed ones, for example Japan which is actually the top importer of LNG, still has 30% of its energy generation based on coal (which has risen since 2010 when it was 22%)while natural gas holds at 18%. Renewables are in a better perspective and that actually is a sigh of relief, but better and effective initiatives should be targeted towards reducing dependence on coal. As for Natural gas, it can be an alternative to coal only at very small level because of various factors including price. It's very hard for natural gas to replace as an energy generation fuel in Asian countries, considering high exploration and production costs that make it not an economical choice.

2.3 Oil pool account makes a comeback

Taking advantage of the global crude oil price slump, Modi government has entered into an arrangement with Oil Marketing Companies (OMCs) under which they will get full LPG subsidy but a fraction of it will be set aside for compensation for subsidised sales or under-recoveries. The rest will go into a pool account similar to the much debated Oil pool account that was trashed in 2002 under the Vajpayee led NDA government. Oil pool accounts were used to revive the OMCs that suffered irreparable losses at the hand of Oil price regulation by the government. And if the global prices fall below the controlled domestic price, the surplus was deposited into the pool. This had cushioned the government finances during the price rise period of 1991. With the similar strategy, the present government is planning to tap the funds in LPG pool (Rs. 2846 Crore) to rescue OMCs later when the crude oil prices rise. **[BS 06.11.2015]**

Points to ponder

The Union government is providing more than the required subsidy on cooking gas to oil marketing companies, which will cushion them when the prices soar. Now the strategy was trashed by the BJP government previously to encourage more market determined rates, which was later made into a joke by the UPA government. Again the revival of the pool by Modi government in background of their new draft of Oil and Gas policy will bring all eyes on the results and outcomes when ultimately oil makes a comeback.

3. TELECOM

3.1 Government notifies spectrum trading rules

The department of telecommunications (DoT) on Tuesday notified guidelines relating to spectrum trading, which will help mobile operators buy and sell spectrum from one another. "All access spectrum bands earmarked for access services by the licensor (DoT) will be treated as tradable spectrum bands," the guidelines said. Unlike spectrum sharing, the guidelines have restricted trading to presently allocated frequencies in 800 Mhz (being used for CDMA mobile services), 900 Mhz (2G and 3G), 1800 Mhz (2G and 4G), 2100 Mhz (3G), 2300 Mhz (4G) and 2500 Mhz (4G). However, only spectrum purchased through auction except 800 Mhz purchase in 2013 auction, or for which market rate has been paid to the government can be used for trading.

Interestingly, companies have started spectrum trading under the new rules. In November 2015, Idea Cellular and Videocon Industries made a spectrum trading pact **[BS 26.11.2015]**. Reliance Jio Infocomm Ltd (RJIL) has announced that it will buy spectrum from Reliance Communications Ltd (RCom). Despite industry opposition, the government has decided to impose transfer fee of 1% on the entire transaction amount on the buyer. While telecom operators will be free to decide the price at which they want to trade spectrum, the government can levy tax and other charges based on market price which should not be less than the latest auction-determined price.

[ET 13.10.2015; FE 14.10.2015]

Points to Ponder

The approval of spectrum trading rules has set the ball rolling for the consolidation in the telecom sector in India. Earlier, it was not possible for companies to acquire spectrum without taking over the whole business. Under the approved spectrum trading rules, the companies can buy another operator's spectrum in part or whole. Trading helps established TSPs with congested network, to buy spectrum and improve quality of service without waiting for Government to auction the spectrum.

According to existing rules, a telecom operator cannot hold more than 25 per cent of spectrum assigned to all companies in a particular circle, or more than 50 per cent of spectrum assigned to all firms in a particular frequency band. Such caps still prohibit any sharing or trading amongst major operators with large spectrum holdings. As per experts there is still scope for relaxation of these caps for the realisation of benefits of spectrum trading.

Trading in telecom spectrum also provides an exit option to existing TSPs in India which had bought spectrum but have not been able to scale up their operations. National Telecom Policy 2012 also envisages liberalisation of spectrum to enable optimal utilisation of spectrum through appropriate regulatory framework. Sharing and trading norms will lead to optimal utilisation of services and will help in improving quality of services for the consumers.

3.2 TRAI seeks views on differential pricing for data services

The Telecom Regulatory Authority of India (TRAI) has issued a consultation paper on differential pricing for data services. It has asked if telecom operators should be allowed to have different pricing for accessing different websites, applications and platforms. In the consultation paper, the regulator has asked if differential pricing for data usage was permitted, what measures should be taken to ensure non-discrimination and affordable internet access among others were addressed.

The consultation paper by TRAI said that some service providers were offering differential data tariff with free or discounted tariffs to certain contents of certain websites, applications or platforms. TRAI has also asked stakeholders to specify about alternative methods or technologies or business models, other than differentiated tariff plans available to achieve the objective of providing free internet access to consumers. "On request of the stakeholders, the last date for receipt of written comments/views has been extended up to 07.01.2016 and counter comments, if any, up to 14.01.2016," TRAI said.

[BS 10.12.2015; ET 13.10.2015]

Points to Ponder

This consultation paper on differential pricing by TRAI comes amid a debate on net neutrality and zero-rating plans. Zero-rating and the differential pricing plans as suggested in the TRAI's paper will lead to selected traffic from the Internet service provider itself or affiliated providers being favoured above other traffic which is against the norms of net neutrality. The differential pricing enables the TSPs to become gate-keepers for our 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 enable unfair prioritisation and thus can be counterproductive to competition and innovation. Such models will be lowering the consumer choice also. Since such platforms can act as gatekeepers, they will be having control over data there is associated high risk on consumer's privacy.

The internet should remain an open, neutral platform for all types of communication. Providing access is a challenging task and we should look for other ways for finding solutions to the access problem. The internet is now playing the role of enabler and contributes to economic growth; cultural diversity, social life and realising democracy. The regulators need to ensure that the internet remains an open platform.

4. TRANSPORT

4.1 DGCA audit underscores concern over ageing fleet of Air India

Directorate General of Civil Aviation (DGCA) had audited after the incident at Delhi airport Khajuraho-Delhi Air India flight had made an emergency landing early last month and marked serious concern over the dearth of proper monitoring, shortage in manpower, carrier's ageing fleet and lack of safety oversight of Air India. In September, special engineering audit of Air India was conducted DGCA found that Air Bus A320 plane (VT-ESI) have been operating at peak with Zero exhaust gas temperature (EGT) margin for five months until May (from January) at a high level of risk, Air India staff had not conducted a video recording of the inspection of the engine in may, as further degradation of engine could have resulted fire.DGCA pointed back on Air India's ageing Airbus A320 fleet, out of total 20 A320s that the Air India operates, 6 have been in service for 26 years and 7 for 21 years, Even the Air Andia Airline seek GCA permission to operate 3 of its 320 for longer than their operational life of 48,000 flight cycles and 60,000 flight hours.As per the data sourced from Ministry of civil aviation, Air India has the worst record in terms of emergency landing caused by technical glitches, 141 emergency landing has been recorded from last 3 years from Jan 2012 to July 2015, of these 14 % are caused due to technical issues.

[TOI 11.10.2015; BS 26.10.2015]

Points to ponder

With the increasing competition in the airline industry, 6 new Airlines started operations in year 2015, but still the major area where industry lacks is qualified pilots and technical manpower, shortage of maintenance facilities and safety management, from a survey report Air India and jet airways fall at the bottom of the world safest airlines of the world i.e. 57th and 36th out of 60 airlines. Ministry of civil Aviation, through the use of technology and effective monitoring ensures safe, secure and sustainable aviation industry. The government puts uppermost priority on Aviation security by introducing a safety plan and focuses on four major thrust areas to improve safety level of the industry, (i) Formation of Civil Aviation Authority for dealing with Aviation related accidents. (ii) Creating SSP (State Safety Program) in correspondence to ensure and develop a safety culture across the Aviation industry. There are much of debate around to privatize air India because of its inefficiency, but still there is a lot of scope for the Airline to improve if there will be restructuring of the strategic leadership, lots of learning could be drawn from international experience by appointing international senior management who know how to manage commercial operations and fleet development by adopting safety measures to turnaround the condition of the Airline.

4.2 New model for Road Project attracts no bids

Solan-Kaithalighat highway project in Himachal Pradesh, government effort to resuscitate private investment in the Highway Sector through Hybrid Annuity Model (HAM), achieved no success in attracting private companies. The project of 23 km was built at a cost of Rs 522 crores was first among five projects for which bids are invited.

The HAM model is a blend of BOT (Build- operate – transfer) and EPC (Engineering, Procurement and Construction) formats which work on PPP (Public private Partnership) model, sharing project cost 40:60, the government before the start of the project would look after the land acquisition and environmental clearance issues and then hand over the project to private contractors. Also, the profit margin and fixed amount of toll on the project would be collected by government and will be given to a private partner. DPRs have been prepared for the new 1300 km of highway projects under the same scheme in this financial year. Whereas in the year 2015-16, the National Highway Authority of India had identified 19 projects, costing Rs. 14,300 crores spanning a number of road projects in Delhi, Uttar Pradesh, Himachal Pradesh, Jharkhand and Maharastra.

[BS 03.11.2015]

Points to ponder

The structural problem has burdened the Highway infrastructure sector, many models have been introduced to revive the road sector, including BOT (Build- operate –transfer) model under which private developers invest in constructing roads and recuperate investments through toll collection or fixed revenue annually by the government, the private players hesitate in participating in the BOT model because of the slowdown of the Indian economy and higher interest cost. The current government came up with the model of EPC (Engineering, Procurement and Construction) in which the construction of the road would be executed by private developers but funding would be done by government. But considering the current economic scenario of government facing fiscal deficit and lots of pending projects are underway, the best solution to the problem could be the combination of BOT and EPC i.e. HAM (Hybrid Annuity Model), this would ease the cash flow pressure on NHAI, HAM will also benefit the developers as they will be required to achieve only 60 of the total project cost. For the proper implementation of the model coordinated efforts from the stakeholders is necessary this would take few time for the revival of the sector but a reasonable outcome could be expected from the step.

News Sources

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