

# CIRC RegTracker

## Points to Ponder

Many telecom players have been under financial stress, so there was a demand to smoothen out the M&A procedure. Accordingly, acceptance of relaxed rules for M&A by Telecom Commission permitting merger of two companies with their combined subscriber or market share up to 60 percent is a welcome step in the direction of long awaited Spectrum consolidation in the 15 Players Market as part of a new telecoms policy, likely to be approved by June 2012. While under current rules, two companies can merge only if their combined market share does not exceed 40 percent, Telecom Commission has accepted TRAs recommendations to allow merger of companies if their combined subscriber or revenue market share does not exceed 60 percent, although its consent would be required for any merger that would create a company with a market share of between 35 and 60 percent.

Besides, revising license fee for operators at uniform rate of 8 percent of their revenue as against variable of 6 to 10 percent currently and levying one time fee beyond contractual 6.2 Mhz are welcome steps towards rationalization. While an auction-based pricing for future spectrum allocations is certainly a better option, Ministry should guard against cartelization among the limited players.

Lastly, the mandate of Competition Act, 2002, gives CCI immense power to check anti-competitive behaviors involved and their adverse effects on competition and consumers. Any merger notification has to go through CCI for clearance despite the sectoral regulators' market assessment.

## 5. Proposal to set up Independent Regulator for Coal Sector

[The Economic Times on 22nd Sept, 2011]

The government said it plans to set up a coal regulator by the end of 2011-12 fiscal, a move aimed at monitoring pricing of the dry fuel as well as the sector.

"We hope the coal regulator will be set up in this fiscal itself," Jaiswal told reporters on the sidelines of an energy summit here organised by the South Asia Forum for Infrastructure Regulation and Proactive Universal Group. Though there is opposition from certain states, he said he is hopeful of having the regulator in place this fiscal itself. As per the Coal Ministry, the regulator will have the responsibility of allocating coal mines, price fixation and revision; and performance standards-setting and enforcement, among other things.

Currently, coal prices are determined by the ministry in consultation with the country's largest producer, Coal India, and other coal sector companies. The regulator will also look after the pricing of coal washing, washed coal and by-products generated during the process. The government has proposed that regulator should be a five-member body, comprising a chairman and four members -- technical, legal, administration and finance

On the concerns raised about the 'no-go' policy of the Environment Ministry, Jaiswal said, "There are environmental concerns about coal mining. But there is no such thing like 'go' or 'no-go'. The Environment Ministry will resolve the issue on a case-to-case basis." On whether the country will be able to achieve the coal production target for this fiscal, given the delays in securing green clearances for projects, he said, "We have not been able to achieve the coal production target (so far) this year, mainly because of the various setbacks we are facing, including that of environmental clearances."

Coal production grew by 7 per cent last year, but it has been flat so far this year. "But for the next year, we are targeting a 7 per cent increase in production," he said. On Coal India acquiring overseas assets, Jaiswal said, "The primary work of CIL is to raise production and develop the sector, yet CIL is importing coal and there have also been delays in long-term import contracts. But we are not very keen on imports. CIL will have to focus on raising its production."

CIL has already acquired coal blocks in Mozambique, he said, adding that it has issued an Expression of Interest for acquiring overseas assets and the ministry will support it. CIL, which owns the world's largest coal reserves, has also received supply offers from 11 overseas coal companies, including Rio Tinto, Xstrata, Peabody, Massey Energy and Sinar Mas.

Sources: [http://articles.economictimes.indiatimes.com/2011-09-22/news/30189461\\_1\\_coal-regulator-coal-production-coal-prices](http://articles.economictimes.indiatimes.com/2011-09-22/news/30189461_1_coal-regulator-coal-production-coal-prices)

## Points to Ponder

Coal India has the largest coal reserves in the world yet coal import bill is rising, this scenario raises regulatory concerns. Data from Central Electricity Regulatory Authority shows that the country's current fuel stock at its 89 thermal power stations, has fallen by 35 per cent from a year ago.

There have been unexplainable delays in the commissioning of new mines coupled with simultaneous production decline from operating mines. Slashing of production targets in the current fiscal from 453 million tonne to 440 million tonnes opens up issues which are signalling alarm bells with respect to infrastructure development in the country. A large number of coal-fired power plants are facing shortage of coal stocks, which is further complicated by heavy rainfall, industrial strikes, and delays in the release of government grants, clearance from Ministry of forest and environment to coal projects. This suggests that executive format of regulation of coal sector needs urgent revision to avoid systemic sickness in the coal sector.

Independent regulation of the sector is important for determination of price formulae which would ensure long-term fuel supply, competitiveness in e-auction of coal, and fixation of trading margins in coal. Setting up of a coal regulator, kick-starting the process of competitive bidding of coal blocks and removal of hurdles in environmental clearances for coal mines seem to be the need of the hour under the present circumstances.

CIRC RegTracker is a bi-monthly publication which tracks the current policy changes and 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.

## 1. Companies Bill introduced in Lok Sabha

[www.moneycontrol.com on 14th Dec, 2011]

The Companies Bill, which enhances accountability, introduces the concept of corporate social responsibility and encourages e-governance, was introduced in the Lok Sabha on 14th December 2011.

The 2011 Bill was introduced by Corporate Affairs Minister M Veerappa Moily after he withdrew a similar legislation of 2009 on the ground that the revised measure incorporating several recommendations and suggestions made by the Parliamentary Standing Committee on Finance and various stakeholders. For the first time, the Bill makes it mandatory for firms to maintain their documents in electronic format, introduces the concept of e-governance, makes provision for encouraging ethical corporate behaviour and rewards employees for their integrity.

Among the measures proposed in the fresh bill to enhance accountability are those which provide for additional disclosure norms, facilitate raising of capital, mergers and acquisition and protection of investors and minority shareholders, the Statement on Objects and Reasons of the Bill said. The original Companies Act was enacted way back in 1956 and has been in operation ever since.

In view of changes in the national and international economic environment and growth in the economy, the need was felt to enact a new law, it said. The Companies Bill 2009 was then introduced in Parliament and sent to the Standing Committee, which presented its report in August 2010. A large number of recommendations were made by it and suggestions came in from several stakeholders. Many of these were accepted by the government, which then decided to withdraw the 2009 measure and introduce a fresh legislation incorporating the recommendations.

Source: [http://www.moneycontrol.com/news/business/companies-bill-introducedls\\_633605.html](http://www.moneycontrol.com/news/business/companies-bill-introducedls_633605.html)

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## Points to Ponder

*The much awaited Companies Bill, 2011 which proposes sweeping changes to the existing law has been tabled in the Lok Sabha. It seeks to repair and fine tune the 1956 Act. The Bill aims at ensuring better disclosures, penalize non-compliance with stiff penalties, stimulate entrepreneurship by permitting a one person company and, empower small shareholders by allowing class action suits.*

*The class action suit, a handy weapon for small investors seeking relief from errant corporations, will soon be available in India through the provisions of the Companies Bill, 2011. Investors and depositors can claim damages or demand any other suitable action for improper conduct, misleading statements and illegal acts by the company or its directors, auditors and any expert associated with the company. The National Company Law Tribunal (NCLT), which the Bill proposes to set up, will pass directions in this regard. This new provision seems to be a result of the discourse that emanated from the Satyam episode so as to pin responsibility not only on insiders of the company but also on various gatekeepers who are responsible for ensuring compliance with the law.*

*The Companies Bill, 2011 seeks to impose an obligation on all companies to contribute two per cent of their average profit of the preceding three years towards Corporate Social Responsibility, (CSR). This provision may be unworkable and can once again be abused by the vast majority of companies that do not obey the law. It may be far better to promote CSR through tax incentives than to make it compulsory under the Companies Act.*

*In the ever-evolving M&A space, the corporate world keenly looks forward to easy regulation. To start with, the new provisions allow Indian companies to merge into companies in foreign jurisdictions (to be notified) and vice versa. This is a positive step that clearly exceeds expectations that opens door to corporate strategies on a global scale. While the new Bill seeks to leap forward by permitting such mergers, the need to have a nod from RBI for banking sector M&As as well as the issue about tax neutrality would, in fact, negate the step taken in the new Bill to a large extent.*

## 2. Public Procurement Bill to be introduced in Parliament

[Business Line on 14th Dec, 2011]

The Government has decided to introduce a bill in Parliament to bring uniformity and transparency in procurement process. "The Central Government has decided to introduce a Public Procurement Bill in Parliament. A draft of the proposed Bill has been placed on the website of Department of Expenditure for eliciting comments from the public," the Minister of State for Personnel and Public Grievances, Mr V. Narayanasamy, told the lower house in a written reply.

Besides, he said, a high-level empowered committee was constituted under the chairmanship of Mr Vinod Dhall, former Secretary, Ministry of Corporate Affairs, on public procurement.

The terms of reference of the committee includes suggesting measures necessary to ensure full transparency in public procurement and systematic measures to strengthen it.

Mr Narayanasamy said nine references from Members of Parliament were received by the Department of Expenditure

And Department of Personnel and Training regarding the stated purchase of stationery and other general items by inviting tenders and quotations at higher rates and even higher than maximum retail price (MRP) causing avoidable loss to the Government.

Source: <http://www.thehindubusinessline.com/industry-and-economy/economy/article2714222.ece>

## Points to Ponder

*Finance ministry has issued a draft Public Procurement Bill to regulate purchase of goods and services by government and its companies. Government agencies procure upto Rs. 15 lakh crore worth of commodities annually, making a strong case for its regulation. The new legislation proposes to bring all government purchases under regulation except procurement in cases of a natural disaster or in the interest of national security.*

*In view of the significance of public procurement and the need for evolving and enforcing the policy and regulatory framework for public procurement, setting up of an institutional framework in the form of a dedicated department for Public Procurement is considered necessary, which is lacking in the present draft. This Department should not only have an operational responsibility for direct procurement; it should also act as a repository of the law, rules and policy on public procurement and monitor compliance thereof.*

*Further, to build up a strong legal and institutional framework in the Public Procurement domain, it is considered necessary to position a strong regulator in place for looking into legal matters and provide provisions for compliance assessment, procurement audits, investigation of complaints and associated matters that do not find place in the present draft.*

*Another point which merits attention is that following the recommendations of the Committee on Public Procurement set up under the chairmanship of former CCI member, Mr. Vinod Dhall, the Planning Commission came out with its version of the Public Procurement Bill. This version of the Bill was rejected by the Ministry of Finance on the plea that it was its prerogative to draft the Bill. A draft of the Public Procurement Bill, 2011 prepared by the Ministry of Finance is now in the public domain and the consultation process with stakeholders is on. The presence of two bills on the same subject brought out by two different government agencies, presents a case of lack of regulatory coherence, which will only add to the confusion and delay.*

## 3. Plan panel bats for autonomous urban service regulator

[Times of India on 26th Dec, 2011]

The government wants to set up an independent urban service regulator to ensure quality, time-bound and affordable delivery of civic services. "The regulator would monitor provision of services as well as tariff regime and ensure transparency and efficiency," said a Planning Commission's committee. It argued that an independent regulator is the need of the hour as the existing paradigm of service provider is outdated.

The regulator would be set up at state or city level or for a cluster of cities to advise, regulate, monitor and adjudicate on wide range of issues like service delivery, quality, pricing, equitable access and roles and responsibilities of all utility providers. "The overall responsibility of the regulator would be to balance the

interest of public, urban civic agencies and service providers," the Plan panel's working group said. The mechanism has the potential to provide comfort to the investment by PPP players along with inculcating efficiency and equity in urban services.

It seems that the group was impressed by anti-graft crusader Anna Hazare as it has recommended bringing employees, councillors and other office-bearers of municipalities under the purview of an ombudsman or Lokayukta to make them more accountable. The mandate of ombudsman should be brought out by a well-structured legislation. Every urban local body would have to notify the Citizens' Charter, declaring the services provided and the prescribed timeframe for accessing them.

The panel suggested more interactive and participative framework for urban bodies to ensure greater accountability. For instance, citizen report cards, like the one prepared by Public Affairs Centre in Bengaluru, have to be replicated across cities. Monthly town hall meetings, involving local officials and civil society, should review service delivery, monitor progress of projects under implementation and prioritize future development of the city.

All the states have to amend municipal laws to ensure that public disclosure is mandatory regarding certain prescribed items. This will make mandatory disclosure of information relating to local bodies like quarterly financial statement, service provided, development plan etc. There is a dire need to statutorily prescribe timeframe for disposal of various types of cases - not only at the level of various municipal officials, but also for various committees of urban local bodies.

Source: [http://articles.timesofindia.indiatimes.com/2011-12-26/ndia/30558802\\_1\\_urban-local-bodies-regulator-providers](http://articles.timesofindia.indiatimes.com/2011-12-26/ndia/30558802_1_urban-local-bodies-regulator-providers)

## Points to Ponder

*The civic bodies in India are faced with a perpetual financial crunch. Due to this, several crucial works like water supply, sanitation, sewage treatment, solid waste management, proper roads and streetlights, environment conservation etc. suffer and remain in arrears. The administrative expenses of civic bodies consistently increase leaving meagre funds for development. There are many corruption cases and scams in civic bodies. Also, the services provided by the urban local bodies lack quality and are not delivered on time. As such the whole municipal set up appears in dire need of a revamp.*

*In this backdrop, Government's intentions to position an autonomous regulator for Urban Local Bodies are welcome and timely. Further, the proposal to bring employees of Urban Local bodies, councillors and other office-bearers under the purview of an ombudsman or Lokayukta also seem to be in tune with the present efforts to bring officials at all levels under the ombudsman's scanner. Interactive and participative framework including monitoring mechanism for development works and service delivery are all very positive features envisaged which would certainly go a long way in making the lives of citizens hassle free.*

*Question is when will such a legislation see the light of the day. Even if such a proposal becomes a reality, it remains to be seen whether the proposed regulator is able to deliver the goods and does not become an ornamental institution which lacks teeth. The well-intentioned proposal should not end up being another burden on the exchequer without fulfilling the intended purpose.*

## 4. Telecom Commission OKs M&A Rules

[Times of India on 27th Dec, 2011]

The Telecom Commission has not ruled out levying a one-time fee on operators holding spectrum beyond 6.2 mega hertz and favours an auction-based pricing for future spectrum allocations, the telecoms secretary said.

R. Chandrashekar, the top bureaucrat in the telecoms ministry, also said the commission had accepted the sector regulator Telecom Regulatory Authority of India's proposals on mergers and acquisitions rules by and large. India's once-booming telecom sector has struggled in recent years from competition and a scandal over alleged below-market price sale of spectrum, prompting authorities to overhaul decades-old regulations.

"We will be furnishing our recommendations to the government now and after that those items, which need cabinet approval, will go to cabinet," Chandrashekar told reporters after a meeting of the commission, the highest decision making body within the telecoms ministry. He did not give details on the spectrum proposals except to say that "For the future allotments, we are looking more closely at auction-related pricing."

The TRAI had earlier proposed steep increases in spectrum prices and a one-time fee on spectrum beyond 6.2 mega hertz, which would see bigger carriers like Bharti Airtel and Vodafone's India unit pay hundreds of millions of dollars each.

## M&A RULES

Analysts say current mergers and acquisitions rules are restrictive. India's telecoms ministry has said it will relax rules to facilitate a sector consolidation as part of a new telecoms policy, likely to be approved by June. Last month, the sector regulator proposed a relaxation of rules for M&A in the telecoms sector in a move to facilitate a long-awaited consolidation in the 15-player market.

On mergers and acquisitions, "we have by and large accepted the TRAI's recommendations," Chandrashekar said. The TRAI had proposed that companies should be allowed to merge if their combined subscriber or revenue market share does not exceed 60 percent, although its consent would be required for any merger that would create a company with a market share of between 35 and 60 percent. Chandrashekar said those mergers where the combined entity's market share does not exceed 35 percent and the spectrum holding is up to a quarter of the total spectrum available in a telecoms zone will be "cleared".

"And above that, we will be requesting the TRAI to suggest some guidelines considering specific cases where the market share may be above 35 percent," Chandrashekar said. Under current rules, two companies can merge only if their combined market share does not exceed 40 percent. The commission has also decided to fix license fee for operators at a uniform 8 percent of their revenue, from a variable fee of 6 to 10 percent currently, Chandrashekar said, adding the new fee would be implemented in two phases. The commission has also "by and large" accepted the regulators proposal to allow firms to share radio spectrum, Chandrashekar said.

Source: <http://www.indianexpress.com/news/telecom-panel-oks-m-a-rules/892576/2>