CIRC RegTracker

RT.007, June 2012

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. Ministries object to proposals in New Telecom Policy

[Business Line - May 25th, 2012]

The Telecom Ministry's plans for a new telecom policy have hit a roadblock with a number of other Ministries raising objections to various proposals. While the Commerce Ministry has raised concerns over the move to give preferential access to locally manufactured telecom products, the Department of Financial Services does not want the telecom sector to be included in infrastructure financing schemes.

In addition, the Department of Space wants spectrum earmarked for satellite broadband services in the proposed policy. The policy was supposed to have been presented to the Cabinet for approval on Thursday but the Telecom Ministry withdrew it at the last minute owing to the differences, according to top Government sources.

The Ministry of Commerce has told the Department of Telecom that the manufacturing policy should conform to international obligations. "The WTO agreements on subsidies and countervailing measures prohibit WTO members from granting incentives conditioned on the use of domestic over imported goods," the Commerce Ministry said in its response to the draft telecom policy.

"Any requirement of indigenisation through value addition in the NTP-2012 would violate the prohibition of quantitative regulations on procurement from domestic sources under GATT," it said. The Ministry said that the only way for the Government is to establish national security concerns if it wants to make it mandatory for private telecom companies to buy locally made goods. "There must be clear and cogent justification why domestic procurement is imperative for protecting national interest," the Commerce Ministry said.

The Ministry has also cautioned the DoT that the proposed migration to unified licence regime should be done after taking comments from the Department of Commerce.

Under the proposed telecom policy, all telecom companies would have to buy a certain percentage of their equipment requirements from manufacturers in the country. The policy also envisages giving telecom an infrastructure status and thus making the sector eligible for financing from organisations like India Infrastructure Finance Company Ltd. The Department of Financial Services said that this can be done only after the approval of an empowered committee and the Finance Minister.

Available at: http://www.thehindubusinessline.com/industry-and-economy/info tech/article3456432.Ece?homepage=true&ref=wl_home

Also Read: *A bitter pill to better telecom: Expensive spectrum could trigger consolidation*
Economic Times - May 31, 2012
http://articles.economictimes.indiatimes.com/2012-05-31/news/31921923_1_price-increases-spectrum-pricing-capex

---

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***

Table of Contents

Points to Ponder

The Telecom Ministry's plans for a new telecom policy have reached a stalemate with a slew of objections being raised by a number of ministries to some of the proposals contained therein. This despite the well-intentioned and ambitious targets it seeks to achieve. The National Telecom Policy (NTP) 2012 aims at making the country's telecommunications sector more transparent, relax merger and acquisition norms to encourage consolidation and also give more teeth to sector regulator and de-link spectrum from licences.It also provides for abolition of roaming charges and allows users to retain the same number across the country. Such inter-departmental differences are stumbling blocks for developmental reforms to take place as they are more in the nature of rent-seeking towards domestic firms and hence violate the WTO quantitative regulations.

It is worthy of note that benefits from competition can only be realised when the sector is fully open to all level playing firms, whether domestic or foreign. Considering telecom as infrastructure is a good move not only to make it eligible for India Infrastructure Finance Company Ltd. (IIFC) financing but also in view of the fact that telecom acts as a platform on which several other sectors and businesses survive.

2. The Curious Case of Real Estate in India: Prices of homes stay high even as demand slumps

[Economic Times- June 25th, 2012]

Gautam Belwal, who works with a multinational IT company in Delhi NCR, is not much of a movie buff. But these days, he spends almost every Sunday at his rented home catching up with some action flicks. His weekly forays in search of a two-bedroom house in Noida have come to an end due to soaring realty prices. As if to add insult to injury, the youngster suffered a double-whammy.The company he works for doled out a below-par increment, dashing his hopes of buying a permanent home. Sumit Joshi, director of Noida-based Real Credit Consultancy, a small firm that helps home buyers get loans from big banks, reminisces about the days his phones would not stop ringing the whole day with calls from customers and bankers.

These days, he is the one doing the chasing as buyers stay away and a banker client refuses payment due to unmet targets. Joshi and Belwal have little in common apart from being members of Indias harried middle-class striving to either buy a home or make a living in the fractious realty market. But as prices rise, thanks to inflation and attempts at cartelisation by real estate barons in some parts of the country, and banks turning overcautious, people like Joshi and Belwal are finding their plans being blown away by this perfect storm. Our payments from banks are linked to disbursement targets which we are struggling to meet because of slow home sales, says Joshi.

Available at: http://lite.epaper.timesofindia.com/getpage.aspx?Articles=yes&pageid=1&max=true&articleid= Ar00102&sectid=0edid=&edlabel=ETBG&mydateHid=25-06-2012&pubname=Economic+Times+-+Bangalore+-+Front+Page&title=The+Curious+Case+of+Real+Estate+in+ India&edname=&publabel=ET

Also read: Land Bill needs a new 'public purpose': The Parliamentary Committee's recommendation to exclude PPP and private projects will sound the death knell for infra projects

Business Standard, June 07, 2012
Http://www.business-standard.com/india/news/rajiv-kumarchetan-bijesure-land-bill-needsnew-public-purpose/476496/

Points to Ponder

Every slowdown is accompanied by a price-crash, be it a sector, business, product or the economy. That is a normal-rational economic behaviour. Realty sector seems to have shielded itself from such tendencies. Thanks to the cartels in the sector, despite low demand, prices refuse to come down. This is a clear case of 'market failure'. Actual value of the product is never reflected in the prices, market determined equilibrium prices are multiple times higher than what they could have fetched in the absence of cartels. The Indian Realty sector seriously requires a Regulator to remedy such market failures. This is the right time for the government to take a call on the matter.

3. Road transport reform stuck due to implementation

[Times of India, June 20th, 2012]

Road transport reform has stalled with the new amendment waiting for Parliamentary nod and existing rules being blatantly ignored by the industry. The Motor Vehicle (Amendment) Bill 2007 - passed in Rajya Sabha in the last budget session of Parliament - is waiting for a green-signal from the Lok Sabha. The lower House is supposed to pass the Bill in the forthcoming Monsoon Session. However, says the Indian Foundation of Transport Research and Training (IFTRT), an independent body in the field of research and monitoring transport and automotive sector, transport reform continues to be stuck in first gear as common carriers avoid compliance of Carriage by Road Rules 2011.

Road transport reforms needed a decade of sustained lobbying by various stakeholders before the Rajya Sabha passed the Motor Vehicle (Amendment) Bill introduced in the Parliament in May 2007. Now, the Bill awaits its final passage in Lok Sabha during the forth coming Monsoon Session of Parliament, so that it will become law incorporating enhanced penalties for traffic violations, bring in common carriers under the ambit of the provisions causing overloading of goods carriages and ceiling on third party motor insurance liability etc. While the Act will no doubt be a step in the right direction, there are already some laws in place which, if implemented, can improve the situation on the ground. The Carriage by Road Act 2007 and Carriage by Road Rules 2011 are not effective because their compliance continues to be a huge problem area.

In the last 16 months, ever since the Carriage by Road Rules 2011 have been notified on 28.2.2011 to implement the Carriage by Road Act, 2007 to regulate transport intermediaries / common carriers / goods transport agents / logistic firms, precious little has been done by Central and State Governments for its compliance. The Carriage by Road Act primarily provides for regulation of common carriers and determination of liability for loss of, or damage to, such goods which have been handed over by consignor for transportation to be delivered to consignee. The Carriage by Road Act 2007 has been promulgated to replace the Carriers Act, 1865. Unless implementation of these acts is ensured by the central and state governments, the actual benefits of structuring the road transport industry will not come by nor will the reforms that the sector needs so badly happen, says IFTRT.

Available at: http://articles.timesofindia.indiatimes.com/2012-06-20/india/32335295_1_carriage-road-transport-monsoon-session

Also read: New amendment in Motor Vehicles Amendment Bill 2012 makes it possible to get road taxes back when moving out

RTN Asia, May 15, 2012
http://rtn.asia/1254_new-amendment-makes-it-possible-get-road-taxes-back-when-moving-out

Points to Ponder

The Carriage by Road Act 2007 was notified on 29thSept 2007 repealing the earlier Carriers Act of 1865. The Statute of 2007 was an Act to provide for the regulation of common carriers, limiting their liability and declaration of value of goods delivered to them to determine their liability for loss of, or damage to, such goods occasioned by the negligence or criminal acts of themselves, their servants or agents and for matters connected therewith or incidental thereto.

The Carriage by Road Act 2007 though came in to being in 2007 could not be procedurally implemented for lack of rules. After nearly 3 years of the Act, the draft of Carriage by Road Rules 2010 were published vide GSR 505 (E) dt 15th June 2010 inviting objections, suggestions from all persons likely to be affected. This legally had to be done within 45 days from the date on which copies of publication of the Gazette notification was made available to the public. The copies were available on 17th June 2010 but the notification of the Rules were postponed due to objection of some powerful lobbies who wielded clout. After passage of some more months, the Ministry of Road Transport and Highways have notified the rules on 28th Feb 2011. These rules are called "The Carriage by Road Rules 2011" and come into force from the date of publication in the Official Gazette.

The Carriage by Road Act 2007 as read with the Carriage by Road Rules 2011 is in many ways prejudicial to the interests of Insurers and primarily those who utilize the services of transporters. As one would appreciate, the contract of carriage is an agreement between the Transport / Carrier and the owner of the goods / consignor / consignee and Insurers are not a direct party to the contract. When goods are insured, they only enter as subrogees having a paid claim. It is this subrogation, more specifically, the extent of recovery which is threatened now. It is also true that the value of the goods might pose no direct proportion to the value of freight that is paid for transportation. And, the value of goods would remain constant throughout the transportation and might not be affected by the distance involved but, the cost of freight would be proportionate to the volume / weight of the consignment as also to the distance.

4. Govt Switches on, Lifts Coal Mining Hurdles

[Economic Times - May 31st, 2012]

The government has removed roadblocks to coal mining by leading business houses and taken the first step to relax scrutiny of corporate expenditure on oil and gas fields, in a burst of action that has cheered investors and industrialists in the languishing energy sector. A group of ministers recommended to the cabinet on Wednesday that Reliance Power's Chhatrasal block, which is attached to the 4,000 mw Sasan Ultra Mega Power Project, and Mahan block for captive use by Hindalco and Essar should be given forest clearance, subject to some conditions. The projects have been mired in controversy after the Comptroller and Auditor General of India said in a leaked draft report that the government had given undue benefits to private companies by handing out coal blocks, a charge vehemently denied by the coal ministry and Prime Minister Manmohan Singh.

Separately, the oil ministry announced it had set up a panel under C Rangarajan, chairman of the Prime Minister's Economic Advisory Council, to review the production sharing contracts (PSC) with oil companies and suggest ways to minimise the government's monitoring of expenditure by oil companies. ET first reported this on Monday. The ministry also wants the panel to recommend guidelines on gas pricing and suggest a new mechanism for contract implementation instead of the current system in which nominees of the government and the regulator are nominated to the management committee of each block. The current system effectively involves the bureaucracy in micromanagement of commercial operations, and has triggered disputes with companies such as Reliance Industries Ltd (RIL), which discovered a large gas field in the Bay of Bengal. The long-pending decisions in the energy sector, coming barely a week after state oil firms announced the biggest-ever increase in petrol prices despite concerns of inflation, has cheered investors fretting over policy inaction by the government.

The GoM's decision to recommend clearance of coal blocks will help Reliance Power generate electricity from the Sasan UMPP as well as the Chitrangi project, which would use surplus coal from mines attached to Sasan. It will also help Essar generate 1,200 mw of power and Hindalco to use coal for a smelter. Officials said the GoM had recommended clearance of coal blocks subject to stiff conditions. "The GoM has recommended clearance to both Mahan and Chhatrasal blocks, but with strict riders on afforestation, corporate social responsibility (CSR) and compensation as recommended by the expert group," Coal Secretary Alok Perti told reporters after the interministerial meeting.

The GoM, in its last meeting in March, had asked the ministry of environment and forests to form an expert panel to evaluate the impact of mining in the two blocks on the environment. The expert committee suggested clearances to both Mahan and Chhatrasal coal blocks with conditions on the companies to spend 5% of project outlay on CSR activities in surrounding areas.A top government source said the Environment Ministry had expressed some reservations about the coal blocks, but these were overruled by other ministers. Association of Power Producers Director-General Ashok Khurana welcomed the GoM's decision. "It is positive step. This will help stalled projects to come to operation quickly," he said.

Available at: http://epaper.timesofindia.com/Default/Scripting/ArticleWin.asp?From=Archive&Source=Page&Skin=ETNEW&BaseHref=ETD/2012/05/31&PageLabel=1&EntityId=Ar00101&ViewMode=HTML

Points to Ponder

The government's decision to give the go-ahead to coal mining by leading business houses displays an element of resolve on the government's part, in removing hurdles to the Indian growth story and thereby ensuring the growth of the beleaguered coal mining sector. The empowered group of ministers has given the green signal for the development of coal blocks of Chhatrasal and Mahan, but a long list of riders that came with the approval will make it difficult for the companies to make a meal out of it. The nod by the government was subject to certain conditions, including mandatory spending of 5 per cent of the total project cost in corporate social responsibility activities. Among other conditions are rehabilitation of displaced people affected by the projects and contingency plan to mitigate disturbance caused to ground water. Such long-pending decisions in the energy sector, almost coinciding with the announcement of the biggest-ever increase in petrol prices by the state oil firms despite concerns of inflation, has cheered investors complaining about policy inaction by the government.

The GoM's decision to recommend clearance of coal blocks will help Reliance Power generate electricity from the Sasan UMPP as well as the Chitrangi project, which would use surplus coal from mines attached to Sasan. It will also help Essar generate 1,200 mw of power and Hindalco to use coal for a smelter. In another significant move, the 12-member GoM decided to do away with the controversial 'go no go' classification of coal blocks by the Ministry of Environment and Forests. The classification is estimated to have impacted as much as 660 million tonnes of annual coal production. In 2009, the MoEF had categorised 203 coal blocks based on the 'go no go' classification based on environmental issues arising out of coal mining activities. In 'No go' areas, coal mining was disallowed.

Such steps would guarantee availability of cheap energy sources which would enable the country to optimise its domestic production.

5. PowerMin for amendments to Electricity Act, 2003

[Business Line - May 25th, 2012]

The Power Ministry has proposed a slew of amendments to the Electricity Act, 2003, in a bid to remove anomalies in its implementation. The ministry has proposed amendments to Section 11 to curb its alleged misuse by state governments and prohibit the sale of surplus power from generating units to entities outside a state. It has proposed an appropriate government may specify that a generating company shall, in extraordinary circumstances, operate and maintain any generating station in accordance with the direction of that government.

The ministry said, "For Section 11, 'extraordinary circumstances' mean those arising out of threat to the security of a state, a public order or a natural calamity, or other circumstances arising in public interest, except for the implementation of open access, as envisaged in the Act."The ministry's proposal has secured support from the Forum of Regulators, an apex body of power regulators. The forum said, "The Act may be amended to provide greater clarity on the meaning of the 'extraordinary circumstances' mentioned in Section 11."

A power ministry official told Business Standard, "The proposed amendments would be looked into by a committee appointed recently."PramodDeo, chairman of the Forum of Regulators and the Central Electricity Regulatory Commission, said the forum had discussed these amendments.

The ministry's move is crucial, given several states were resorting to invoking Section 11, citing rising power shortages. These were asking all power generating stations to operate at their full capacity and supply power within the state. Recently, states like Andhra Pradesh, Karnataka and Tamil Nadu had exercised their powers, invoking Section 11.

While the ministry has also proposed an amendment to Section 61(1), the Forum of Regulators said amendments in Sections 62 and 63 would introduce more clarity. However, it said

Available at: http://www.business-standard.com/india/news/powermin-for-amendments-to-electricity-act-2003/473359/

Also Read: CERC moots tariff change to boost hydro power plants: Draft regulations hope to spurt investments in peaking capacity

Business Standard, June 20, 2012
Http://www.business-standard.com/india/news/cerc-moots-tariff-change-to-boost-hydro-power-plants/477952/

Points to Ponder

India's power sector, expected to attract an investment of Rs 11 lakh crore during the 12th Plan period, is in crisis. Procedural and regulatory uncertainties, rising fuel constraints and deteriorating health of distribution companies have raised questions over the health of a sector that saw huge investment even during the 2008 downturn. The sector has always been a laggard in infrastructure.

India added 55,000 Mw generation capacity against the original target of 78,000 Mw and created an inter-regional transmission grid of 28,000 Mw against the planned target of 37,000 Mw during the 11th Plan period that ended March 31. However, the rising mismatch between demand and availability of coal and gas has put a question mark on the survival of existing capacities. The PMO intervened to better the coal supply situation by directing Coal India Ltd to sign fuel supply agreements with power companies. That has brought some hope but with domestic production not expected to match demand, CIL may have to resort to imports or take a hit on its revenue through cutting of e-auction quantities.

Companies that opted for imported coal to meet the deficit are also in trouble, as a result of high international coal prices. Regulatory issues in Indonesia and Australia have made imports expensive. Those who kept their plants running on imported coal had to incur losses, as there were no buyers. Even state electricity boards prefer to shed load instead of procuring costly power fuelled by imported coal.

Therefore we need to work on a comprehensive package to gas-based power projects pooling with fiscal incentives. The practice of cross subsidising domestic and agricultural consumers by higher rates for commercial and industrial customers and the railways has to be re-addressed. In addition, rate hikes need to be made market determined in order to avoid mounting Aggregate Technical and Commercial losses which have led to underutilisation of generation capacity.

Additional Reading: The enemy within:It is ridiculous to make the task of clearing sovereign obstacles the private sector's core competence.

Business Standard - Jun 08, 2012
Http://www.business-standard.com/india/news/vinayak-chatterjeeenemy-within/476607/