



April 2009 • Volume 05 • Issue 02

A Quarterly Newsletter

circular

Covering developments in the area of research, training and education on public policy issues



Capacity Building of Electricity Regulators

Independent regulation is a relatively new development in developing countries like India. The basic premise of independent regulation is that specialised agencies that are independent of influence from stakeholders can make decisions for maximising social welfare. Such decisions result in competitive prices and efficient resource allocation. Aggregation of such decisions helps in maximising growth and investment and, at the same time, such aggregation should also take into account distributive justice especially in sectors such as electricity because it is a basic need of a consumer. In this process a consistent and balanced regulatory environment is created in order to facilitate healthy competition along with the enhancement of consumer welfare.

Independent regulation essentially follows a consultative approach of decision-making. Regulatory decisions try to strike a balance among conflicting interests of various stakeholder groups. Therefore, quality of representation from stakeholder groups, their capacity, and that of regulators and their staff becomes crucial determinants of regulatory effectiveness.

Apart from building the capacity of practitioners and consumers, it is also important to create a pool of resource persons on economic regulation and related subjects. With this perspective, CUTS Institute for Regulation & Competition (CIRC) with support from the Forum of Regulators (FOR) and Central Electricity Regulatory Commission (CERC) organised a four-day Training Programme entitled, 'Regulation, Competition and Consumer Issues in the Electricity Sector in India', in Himachal Pradesh during May 18-21, 2009. The programme was attended by 25 officers representing 15 State Electricity Regulatory Commissions (SERCs). 17 of them were middle level officers and the rest were senior level officials.

The programme was organised with the objective of imparting knowledge to SERC officials on theories of economic regulation and their application in the electricity sector and creating a better understanding of the officials on issues relating to regulation, competition and consumer protection in the Indian electricity sector.

There were 13 technical sessions led by 12 resource persons representing their respective professional areas. Inaugural address was delivered by S Jayaraman, Member, CERC, who covered the broad theme of electricity reforms in India. V K Khanna, Adviser, FOR, welcomed the participants and presented his views on the purpose of the programme. Navneet Sharma, Fellow, CIRC, provided an overview of the topics which were to be presented. Overall, the participants were satisfied with the training programme.

Cover Story

Capacity Building of Electricity Regulators

What's Inside

Expert Opinion (p 2)

A Wish List on Transport Infrastructure
– Mukesh Kacker

Highlight of the Quarter (p 3)

An Agenda for Infrastructure Finance and Regulatory Reforms

Events (p 4)

Capacity Building on Trade Remedial Measures



– Mukesh Kacker

A Wish List on Transport Infrastructure

Now that the celebrations after a well earned victory and the immediate task of Cabinet formation are over, the prime minister must be turning his attention to the agenda that has been prepared for the first 100 days of the new government. And though infrastructure figures in that agenda, I would be grateful for a little attention to the perspective of an outside observer. The Planning Commission had stated, at the beginning of the Eleventh Plan, that a growth rate of nine percent could be sustained only through much higher levels of spending on infrastructure. The path to economic recovery still passes through the revival of infrastructural growth. What has become even more pertinent is that such revival will become increasingly difficult without far-reaching reforms in different sectors of infrastructure.

Highways

In the highways sector, the slow progress of the National Highway Development Programme (NHDP) during the last five years, not just in construction but also in award of contracts, has been a major disappointment. More than 35,000 km length remains for award of contracts and more than 45,000 km length remains to be completed by December 2015.

The Ministry of Road Transport and Highways (MoRTH) and the National Highways Authority of India (NHAI), in its present shape, are in no position even to award the projects, leave alone complete them within the stipulated time. The proposal for the restructuring of NHAI is deficient in that it does not suggest concrete steps to make NHAI independent of the minister/ministry in its day-to-day working.

Also, it does not suggest a transparent method of selecting the best candidates for the post of chairman, member and chief general manager. Incidentally, the reported move to downgrade design parameters to bring down the cost of the project, in order to make a project affordable as well as to reduce the quantum of Viability gap Fund, is a retrograde step and must be scrapped.

There is a strong case for establishing a permanent ministry/department of infrastructure policy under the direct charge of the Prime Minister (PM). An equally strong

case for establishing an independent regulatory authority for roads, bridges, highways and expressways exists, in order to handle the post-construction issues relating to the management, control and operations-maintenance of the highways on a unified pattern across the country.

Civil Aviation

The civil aviation sector has been a mixed bag of achievements and failures. While the opening up of the skies has brought in a large number of private airline operators, the development and modernisation of airports to handle the explosion in air traffic leaves much to be desired. Though the privatisation of the Delhi and Mumbai airports through the PPP mode was a positive step, the way it was done was too brazen for comfort.

The way the Delhi airport is being developed shows not only the poverty of planning but total abdication by the government. As far as the development of non-metro airports is concerned, the Airport Authority of India (AAI) should be given a strict time-frame and held accountable for non-performance. Another area that needs serious attention is air traffic control, air space management and safety standards of aircraft.

The revamping of Director General Civil Aviation (DGCA), in my view, ranks higher in priority than operationalising the proposed Airports Economic Regulatory Authority (AERA), though the latter is also required.

Ports and Shipping

The ports and shipping sector is severely handicapped because of the absence of a unified policy on maritime and port issues. The first priority, therefore, is to develop a national maritime and port policy covering all issues of development connectivity, private participation, tariff, security, and environmental concerns etc.

The National Maritime Development Programme (NMDP) does deal with a number of issues, but in a disjointed and fragmented manner and not as part of a policy. The distinction between major and non-major ports is irrelevant and should be done away with. The Tariff Authority for Major Ports (TAMP) should be replaced by a National Ports Regulation and Development Authority as an overall regulator of the sector dealing with port regulations, tariff principles for all ports, dispute resolution, captive ports and terminals etc.

The PM carries the burden of the expectations of more than a billion people on his shoulders. Fate has placed him in a commanding political position that may not be repeated in near future. Such opportunity comes but rarely in the life of a politician. It will be a colossal tragedy if this opportunity is wasted. Whether India remains a lumbering elephant or becomes an Asian tiger will depend to a considerable degree on whether we reform the infrastructure sector or allow it to degenerate into a vortex of confused policies and bottlenecks.

– Chairman and Managing Director, Kacker & Daughter Infrastructure Consultancy Services. Abridged from an article that appeared in *The Economic Times*, on June 23, 2009

An Agenda for Infrastructure Finance and Regulatory Reforms



Prior to the presentation of the Union Budget for 2009-10 CIRC had submitted an Agenda for Infrastructure Finance and Regulatory Reforms to the Finance Minister of India.

One of the most important challenges before the government to propel the country forward on an accelerated growth path is improvement in infrastructure. Infrastructure needs massive injection of funds – estimated at more than US\$500bn. A substantial share of this investment has to come from abroad. In the economic climate that is likely to prevail in the immediate future, it will not be easy to attract private investment of this magnitude.

Three issues need to be addressed immediately to facilitate investment in infrastructure. These are:

- A predictable legal environment and an effective regulatory framework, which will ensure confidence among potential investors as well as promote consumer welfare;
- A financial stimulus for the public-private partnership (PPP) sector, which is the only way to finance such large investments – the financial stimulus should include among other things, support for shorter debt tenures, increased government viability gap funding and risk sharing on refinancing and broadening and strengthening of the credit markets for PPP; and
- Improve significantly the ease of doing business in India by reducing delays and attendant costs.

The government has taken a right step by creating an enlarged Infrastructure Division under the Department of Economic Affairs (DEA) to raise the ante. Hopefully, this Division will oversee the regulatory architecture in place for infrastructure sectors. It is now necessary to ensure independence and accountability of each regulator by amending respective statutes or by enacting a binding and umbrella statute to bring in uniformity across sectors. The latter has already been proposed by the Planning Commission in its paper on “Approach to Regulation of Infrastructure” and presenting a draft Regulatory Reform Bill.

Creation of multi-sector regulators for cognate sectors is imperative for efficiency, cost reduction and to keep them out of control of any single ministry. For instance, the move across the world is to provide for multi-modal transport to ensure seamless movement of goods, better logistics and reduced costs. Our exports are suffering very high transport costs and delays reducing their competitiveness. Regulation of all goods transport – air, rail, road and sea – by a single authority is a must.

At the same time, it is necessary to curb over regulation and to do away with unnecessary regulators by conducting an assessment of different sectors whether they need specialised regulators by checking the presence of market failures, anti-competitive practices, etc.

We already have several regulators in place. Sadly, there is no uniformity in their independence and their funding. While the Finance Ministry has been proactive in providing funding and the resultant independence to the regulators under them, this salutary principle has been largely ignored by many other ministries. Independence of regulators without control of administrative ministries is vital for their functioning. Simultaneously, all regulators must be accountable. There is nothing better than Parliamentary supervision for ensuring accountability. Therefore, replacing the administrative ministry’s control by Parliamentary supervision and providing independence to all regulators across the board, is necessary.

In short, the following are needed:

Ensure a regulator’s independence in terms of:

- funding;
- determining the terms and conditions of appointment and compensation package for staff; and
- separation of powers including ability of the administering ministry to provide binding guidelines/orders or reject a regulator’s recommendations/orders.

Ensure accountability of a regulator by:

- making provision of the appellate tribunals – wherever not existing – where the orders of a regulator concerned may be challenged; and
- setting up a Parliamentary Committee on regulatory bodies.

Capacity Building on Trade Remedial Measures

CIRC with support from the Department of Commerce (DoC), Government of India organised a three-day programme, 'Capacity Building on Trade Remedial Measures' in New Delhi, on April 19-21. About 12 participants from different industries and government departments attended the programme.

It was focussed on anti-dumping, anti-subsidy and safeguard measures. It was to strengthen professional skills on how to address issues relevant to trade remedial measures which will help maintaining position in domestic and foreign markets, especially at this time when trade protectionism is growing.

The rationale of this programme was to provide practical inputs on issues such as calculation of dumping margin and injury and

protection of one's exports from the imposition of trade remedial measures in export markets.

Speaking at the Opening, Commerce Secretary G K Pillai said that since the Indian industry was not aware of all that is required to make an application, they did not come prepared and therefore, this programme was all the more important. He also asked the industry to keep in touch with the government and inform it in case they faced problems while exporting.

He added that we generally impose more anti-dumping measures than safeguard measures despite the fact that the imposition of the latter takes less time. Such use of non-tariff barriers (NTBs) by developing countries to protect their markets is not appreciated by the developed countries.

A V Ganesan, Former Member of the WTO's Appellate Body for Dispute Settlement stated that tariffs were no longer an issue but that NTBs were proliferating in developed countries. But, he said, the DoC could not help industry in the improvement of the quality of its products.

However, sometimes, the industry instead of upgrading its products for the external market sells them in the domestic market, for example spurious drugs are sold in India. He also mentioned that we should make developed countries fulfil conditions peculiar to the Indian market to sell their products in India rather than just imposing additional duties.

A majority of the participants said that they would like to participate in similar programmes to gain more advanced knowledge on this subject and understand its applicability.

Interaction between Competition Law and Intellectual Property Rights

CIRC in association with the Federation of Indian Chambers of Commerce and Industry (FICCI) organised a Public Lecture on 'Interaction between Competition Law and Intellectual Property Rights (IPRs)' by Allan Asher, Former Member of the UK's Office of Fair Trading in New Delhi, on May 29, 2009.

Anand Pathak, Chairperson, FICCI Task Force on Competition Law introduced the subject and briefly discussed the tension between IPR and competition law, and the conditions of usage between a patent and a license holder. Allan Asher, at the outset, spoke about the two views on the relationship between competition law and IPRs.

Making his observations, Augustine Peter, Economic Adviser, Competition Commission of India (CCI) discussed four provisions relating to IPRs in the Indian Competition Act 2002 (as amended in 2007).

Participation

- **Pallavi Kishore** attended national conference on the 'State of Competition in the Indian Economy' organised by CCI in New Delhi, on June 11-12, 2009. It covered a wide range of issues such as implementation, competition assessment framework, market studies of specific sectors, such as civil aviation, ports, railways, pharmaceutical, energy, steel, petroleum refining. There were a large number of participants including academicians and practitioners from all parts of the world and from different disciplines, such as law and economics.
- **Arpan De Sarkar** participated in 6th Water Summit organised by the Confederation of Indian Industry (CII) in New Delhi, on June 11-12, 2009. It was observed that Public-Private-Community Partnerships have great potential to contribute towards water resource management and achieving reciprocal benefits. With this objective, CII joined hands with the World Economic Forum to form India Business Alliance on Water (IBAW). The aim of the IBAW is to catalyse private sector participation and stimulate multi-stakeholder partnerships in water and watershed management.



CUTS Institute for Regulation & Competition

R-75, Greater Kailash I, New Delhi 110 048, India
Phone: +91-11-2646 3021, TeleFax: +91-11-4053 5921
Web: www.circ.in • Em: circ@circ.in

