

CIRC RegTracker tracks the creation of new economic regulatory institutions, their capabilities, performance, and the way they interact with other institutions in shaping economic governance in India. It is being published regularly by the CUTS Institute for Regulation & Competition, a body involved in enhancing knowledge and strengthening capacity in the area of interplay between law and economics.

RegTracker is a quarterly publication which has been tracking the current policy changes/policy proposals on economic regulations in the country, based on news report reports. It does not aim to provide an in-depth analysis of the developments, 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.024, Apr-Jun 2017). It offers sector wise developments and points-to-ponder for each development. Keeping with our focus on regulatory governance in infrastructure sectors, we cover the following: a) Coal; b) Petroleum and Natural Gas; c) Electricity; d) Telecom; e) Transport; and f) Water.

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1. COAL

1.1 Niti Aayog moots new regulator for coal, gas and oil

Niti Aayog, the government think tank came up with a draft National Energy Policy in June 2017, that pitches for setting up of one independent regulator for all the coal, oil and gas sectors. The idea for establishing a regulatory body for coal sector was first proposed way back in budget 2007-08, following which Shri Pranab Mukherjee, the then Finance Minister had reiterated the recommendation in budget 2009-10. Although the idea has been floating for some time, the draft policy presses that the need for an independent, statutory regulator has become unavoidable now, due to increased participation from private sector. The proposed regulator shall pay close attention to development of supply in order to enhance fuel availability, reduce entry costs, and address complexities in coal sources. [[The Hindu 28.06.17](#)]

Points to ponder

The think tank in its [draft National Energy Policy](#), states putting in place "effective independent oversight" for India's maturing energy market, marked by competition in order to complete the regulatory space. This would safeguard the interests of both investors and consumers along with meeting other objectives such as integrating the sector with country's macroeconomic and global policies, addressing issues of States, whilst engaging with various stakeholders, and training of manpower on a continuous basis to meet the technological advances of energy sector.

This is a welcome move.

[CIRC Working Paper of 2015](#) highlights the need for establishing a sectoral regulator in order to streamline piecemeal legislative interventions, coordinate the activities of statutory players across various activities involved in mining, import and distribution of coal to yield desired results. It would also curb widespread anti-competitive factors, especially in the fuel supply

agreements of government-owned entities. An independent regulator shall also facilitate streamlining of processes, procedure and help in removing discriminatory provisions in existing legal framework against private players, which in effect would incentivise and expedite coal production in the country.

Ministry of Coal introduced the Coal Regulatory Authority of India Bill, 2013 in the Lok Sabha in December, 2013 but lapsed due to the dissolution of the lower house in 2014. Although the Cabinet Committee on Economic Affairs (CCEA) gave a green signal for the creation of coal regulatory authority in 2013, no consolidated decision has been reached on it so far. The proposal for re-introducing the bill has been in consideration, and the presence of a legislative mandate would also give teeth to the regulator. It would also help in resolving the centre-state conflict on jurisdiction of natural resources.

2. PETROLEUM AND NATURAL GAS

2.1 Oil ministry working towards new policy to ramp up gas usage for power generation in India

The oil ministry is working for formulation of a policy that will encourage use of natural gas for power generation. 24,000 megawatt of gas-based power stations is currently lying idle and not producing any power due to shortage of gas. Imported gas use for domestic power generation is not favorable at this juncture. Though the government's focus is to make India a gas based economy for cleaner and safer environment, paucity of gas makes it difficult to use it for various applications.

While the entire focus of the power sector is shifting towards renewable energy, it would be difficult to have gas based power generation if economics do not sustain a long term variability. So, a customized approach is required to find out areas where gas can be effectively and efficiently used for power generation such as urban agglomeration. ([TOI 12.05.2017](#))

Points to ponder

India's energy future depends on four pillars namely accessibility, efficiency, and sustainability and supply security. The government is making all efforts to have energy access at an affordable price to all. There is a need to explore more avenues to enhance use of gas as fuel and for energy requirements of the country. The government wants development of gas supply sources, infrastructure and markets. Indian gas production has declined in recent years. There is no fresh gas discovery and low gas prices have made KG basin offshore production unviable. On the import side too, there is no international gas pipeline to augment import of the gas from outside.

In the power sector, approximately 23% of the total available gas (32 mmscmd out of 139.37 mmscmd), both domestic and imported, was consumed by the power sector in 2016-17. Gas in the energy portfolio mix is only 6% as against the global average of 25%. The only extenuating factor is that India is ramping up its re-gassification (CHECK) facility to reach 45 million metric tones by 2021 and a large expansion of domestic gas pipelines.

While the infrastructure is building up, India looks forward to source cheap gas from every alternative sources available and relook its domestic production strategy.

3. TELECOM

3.1 TRAI to unveil rules on tariff assessment

Telecom regulator TRAI sought views on the rules of tariff assessment with regard to issues like promotional offers and predatory pricing. These issues are being debated as part of TRAI's ongoing consultation on 'Regulatory Principles of Tariff Assessment' - have been a flashpoint between newcomer Reliance Jio (RJio) and incumbent operators such as Bharti Airtel, Vodafone and Idea Cellular. Consultation paper was released in February 2017 seeking the comments of the stakeholders, followed by an open house discussion on the issues.

“The idea is to look at the current dispensation with regard to (aspects like) transparency, non-discrimination and predatory pricing...the definition of a promotional offer...and to see whether or not there is a need to change it,” the TRAI chairman said. The regulator has sought views on which tariff offers should qualify as ‘promotional offers’ and the need to limit the number of promotional offers that can be launched by an operator in a year — one after another or concurrently.

The issues being debated include new measures that need to be prescribed to ensure transparency in the tariff offers of telecom operators, and strengthening the definition relating to ‘non-discrimination’. It also seeks suggestions on definition and criteria for ‘dominance’ in relevant telecom markets. ([ET 30.05.2017](#)) ([BL 30.05.2017](#))

Points to ponder

Keeping in view the developments post entrance of RJio in the market, multiple agencies—TRAI, Telecom Disputes Settlement and Appellate Tribunal (TDSAT), the Competition Commission of India (CCI)—and even the Delhi high court are simultaneously dealing with these matters. While this new telecom entry has disrupted the market, the debate is on as to how regulation needs to keep track of such disruptions so that healthy competition for the benefit of the consumers is sustained in the market.

Over the years TRAI has moved from ‘Fixation of tariff rates’ regime to ‘Forbearance regime with post-facto reporting obligation’ with regulatory oversight. Focussing on transparency of tariffs would be better than focusing on prices. Keeping in view the consumer perspective, TRAI has already issued guidelines on transparency. TRAI now should focus on better implementation of transparency measures which will also check issues like non-discrimination.

Regarding predatory pricing, [in a prima facie order](#), CCI found that there is no contravention of the provisions of the Competition Act by RJio and

that there is no case of predatory pricing or leveraging of dominant position. CCI noted that in a competitive market scenario, where there are already big players operating in the market, it would not be anticompetitive for an entrant to incentivise customers towards its own services.

One moot question is if TRAI is a competent authority to rule on predatory pricing and other such issues which directly fall into the domain of competition authority. Out of seven specific issues for consultation mentioned in the paper, four belong to domain of competition law. These include technical issues like identifying relevant market and determining dominant position. On such issues, TRAI should consult CCI while framing its new guidelines and while responding to charges of anti-competitive behaviour. TRAI must realise such co-operation amongst regulators will be necessary for building a proactive and resilient regulatory framework.

4. TRANSPORT

4.1 Union Cabinet approves setting up of Rail Development Authority

Ministry of Railways had brought out a concept paper for public consultation on setting up of Rail Development Authority (RDA) of India. The proposal for setting up of RDA has been approved by Government recently in April 2017. Main aims and objectives of RDA would be: pricing of services commensurate with costs; enhancement of Non Fare Revenue; protection of consumer interests by ensuring quality of service and cost optimization; competition, efficiency and economy; market development; creation of positive environment of investment; benchmarking of service standards against international norms; providing framework for non-discriminatory open access to Dedicated Freight Corridor (DFC); absorption of new technologies for achieving efficiency and performance standards; and human resource development to achieve any of its stated objectives. RDA is proposed to comprise a Chairman and three Members and shall have powers to make recommendations to Government for

appropriate consideration/decision on all above matters. [[Mint 06.04.17](#)]

Points to ponder

The Railways had been in dire need for regulatory reforms. For the last two decades, many committees and boards have been suggesting constitution of a regulatory authority in this sector, basically the biggest departmental undertaking of the government. The main intention through those recommendations had always been for a body that sets the rail fares and freight tariffs from time to time, retiring political influence from this function. The approved body, Rail Development Authority (RDA), which shall be an independent body, will function under the parameters of the Railway Act, 1989.

Since the nomenclature is 'Development Authority', instead of clearly giving out its regulatory functions greater importance, the mandate for this new body has been kept limited to an advisory role in some of the most important things. The regulatory functions as given to RDA under the Railway Ministry's [concept paper](#) are (a) recommend Central government on pricing of services proportionate with costs; (b) protection of consumer interests; (c) ensuring competition and a positive regulatory environment promoting investment and (d) providing a framework for fair and open access to the dedicated freight corridor. While its developmental functions are to (a) promote efficiency and adoption of new technology to ensure service quality and cost optimization; (b) market development; (c) benchmarking services against international norms and (c) and development of human resources.

While in the effort of maintaining a positive regulatory environment, the authority shall have the powers to penalize cartels, dominance and other unfair market mechanisms. On matters of tariff determination, it can only give its recommendations to the government and on matters of amendments to standard documents that can regulate the sector efficiently and get desired outcomes; RDA can only make such

suggestions to the Ministry. Therefore, at the end of the day, it would remain in hands of the Railway Ministry to accept or reject the advices/suggestions made by RDA. It would not be wrong to say that with changing governments and seat bearers, willingness to accept suggestions from RDA would only decline, thence rendering it totally ineffective.

However, the functions assigned of collection, analyzing and disseminating information and statistics and forecasts concerning the rail sector in India and, in particular, on matters affecting consumer interest are the ones that look promising for now. How the body is constituted, maintained and performs is yet to be seen.

5. ELECTRICITY

5.1 Compensating RE developer for grid curtailment is a right step forward; need a comprehensive work plan to balance the interest of all stakeholders

The proportion of Renewable energy capacity in the generation portfolio has been expanding over the last 5 years and states have been increasingly focusing on power purchases from solar and wind projects. But given the transmission congestion, intermittent nature of renewable energy and lower demand from distribution companies, there is risk of renewable energy curtailment from some of the states. This adversely impacts cash flow to project developers and lenders. In such a scenario, it is important to safeguard their interests through regulatory provisions, institutional, and operational measures. The government has come out with the idea of compensating renewable energy (RE) developer for grid curtailment through a 'compensation mechanism for existing renewable energy projects' which is a welcome step and needs proper planning to implement strategy. [[Bloomberg, 23/05/2017](#)]

Points to ponder

Grid curtailment is not a new concept in India. Depending on grid's capacity to absorb and transmit additional power, transmission system operators such as NLDC (National Load Dispatch

Center) or SLDC (State Load Dispatch Center) takes a call whether to instruct a plant for back down the operation completely or partially. This is how the system operator maintains grid stability throughout the transmission network. This also helps in better congestion management for the overall network.

With renewable energy volume going up in the overall portfolio of power transmission, it is a challenge for the system operator to maintain the grid stability because of the intermittent nature of the renewable energy. In absence of proper load scheduling mechanism for renewable power generation, it becomes very difficult to book transmission corridor for the RE power generation. Thus, integration of intermittent power to grid remains a major challenge for the power sector as a whole. This leads to increased uncertainty among the RE developers and lenders.

In the absence of clear regulatory provisions, distribution companies may sometimes not very keen to off take RE power; resulting indirectly forcing RE generators to back down. Though this decision is purely economic in nature for the distribution companies; it has a negative impact for the developers as it affects their cash flow directly. With renewable energy as percentage of load constantly increasing in the overall portfolio of the distribution companies, there is a genuine fear that grid curtailment cases would invariably rise in the system due to discoms following merit order dispatch in power procurement.

So, the decision to compensate renewable energy developer in case of grid curtailment is a welcome step from the government as it will give the necessary support to the developer to compensate for the growing risk of grid integration. Also, government can think of other alternatives to tide over this issue. It should be looking for other fundamental changes in the system such as providing for guidelines in regulatory provisions, strict monitoring of the grid operator, forcing for proper plan and advance scheduling from the RE developer, ramping up transmission infrastructure etc.

On the other hand, RE generators may also try to game the system by taking refuge under the characteristics of intermittent power and saying that it would be difficult to schedule RE in absence of certainty in wind velocity and sun light provisions throughout the day. So, it is necessary to take a balanced approach where in RE generators should be told to strictly provide advance scheduling for their power generation schedule and in the same time make a long term load assessment for network by the operator to accommodate the RE power in the system and constantly looking for technological up gradation.

6. WATER

6.1 Centre, states not on same page when it comes to water rule book

“Simply improve governance or push for a national law on water?” This is the pressing question today. More so, when the Indian PM visits Israel, keeping water a key point on discussions this has rekindled the ongoing debate as to how water should be well managed in the country and whether there should be a regulator to do the same. Israel, one of the world's most water-starved nations, has a national water law, like South Africa and Australia that has helped it manage its scant resources. “The country's water resources are public property, controlled by the state and designated for residents' needs and the country's development,” says Tami Shor, senior deputy director (regulation) of the Israeli Water Authority. This is in contrast to India which is a water abundant country, ironically infested with droughts every year. Dried and polluted rivers, depleting and contaminated groundwater, shrinking lakes, zero access to potable water, unseasonal flood and inter-state river disputes are some of the water related woes being faced in a continuum.

As water resource management remains to be state's prerogative, Central government argues that the absence of a central regulatory regime has led to over-exploitation and misuse of resources at all levels -domestic, industry and agriculture in the surplus regions and that most

states' laws are not comprehensive and only few regulate for efficient use of treated water. [[ToI 16.06.2017](#)]

Points to ponder

On one hand, it is argued that there are ample central laws (The Water Pollution Act 1974, Interstate Water Disputes Act 1960, River board Act 1956, Environment Protection Act 2006 etc.) but the fault occurs in their implementation. Hence decentralization of laws is the key to better management of the resources. But on the other hand, it has been observed that, the absence of a central authority to oversee the usage, has led to over-exploitation and misuse. Absence of a central regulatory body has exacerbated the water related problems and will continue to do so.

Water being a state subject under the Constitution, has witnessed separate laws in different states. This along with differing water needs of the states has given rise to inter-state water disputes; often leading to a security problem in the country. Whether water should be a state subject or a central subject is debatable, easy way out is definitely putting it under the concurrent list. But there is undeniable need for a central regulatory authority to monitor water resources and regulate their usage through-out the country.

Although still at a nascent stage, the recent decision to give Rivers Ganga and Yamuna a living entity status will put the entire stretch of the rivers under the purview of a single regulatory authority. Whether this will be beneficial to the rivers or will give rise to more inter-state disputes is debatable.

7. REAL ESTATE

7.1 Real Estate Regulation Act (RERA)

To regulate the real estate sector, the government has come up with the idea of Real Estate Regulatory Authority (RERA) Bill which is expected to help buyers. RERA is supposed to protect the interest of the homebuyer and ensure timely delivery of projects. Real Estate Regulatory Authority (RERA) Bill was

introduced in 2013 and finally the bill got approved in March 2016. The Union Ministry of Housing and Urban Poverty Alleviation had given time till May 1, 2017, to formulate and notify rules for the functioning of the regulator. A further time till 30th July, 2017 has been given to states to notify rules related to RERA. RERA seeks to bring clarity and fair practices that would protect the interests of buyers and also impose penalties on errant builders. [[IE 01.05.17](#)]

Points to ponder

Although RERA is a central law, its implementation is dependent on state governments, as real estate is a state subject. Each state and union territory will have its own regulator and set of rules to govern the functioning of the regulator. Till date, Maharashtra and Madhya Pradesh have established a Regulatory Authority as required under the Real Estate Act, while none of the other states have established an Appellate Authority.

There are 6 important provisions in RERA which ensures that the builders stick to given deadlines and do not delay the projects. They are:

- 1. Written affidavit: Along with all the required documents, the promoter has to give a declaration, supported by an affidavit stating the time period within which the project or the specific phase will get completed.*
- 2. Possession date will be inviolable: The 'agreement of sale' will have to specifically carry the date of possession and the rate of interest in the case of any default.*
- 3. Clear title of the land: A written affidavit has to be provided by the promoter that the legal title of the land on which development is proposed has legally valid documents with authentication of such title if land is owned by another person.*
- 4. Free from encumbrances: A written affidavit has to be provided by the promoter that the land is free from encumbrances.*
- 5. Maintaining separate account: As per RERA, 70 percent of the amount realized for the*

real estate project from the buyers, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose.

- 6. Making it an offence: In case of not adhering to the rules, the builder stands not only to lose the registration of the project too but may also be punishable by imprisonment for a term which may extend up to three years or with fine which may extend up to a further ten per cent of the estimated cost of the real estate project, or both.*

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