

CIRC RegTracker is an attempt to track the creation of economic regulatory institutions, their capabilities, performance, and the way they interact with other institutions in shaping the economic governance regime in India. 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.023, Jan-March 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 following sectors: a) Coal; b) Petroleum and Natural Gas; c) Electricity; d) Telecom; e) Transport; and f) Water.

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1. COAL

1.1 Commercial Coal mining to take off in India

In a bid to revive the coal sector, the government of India comes out with a proposal to open up the sector for commercial coal mining where end users will not be defined and the miner will be free to sell the coal anywhere. This will be a partial opening as the ministry of coal would first identify the coal blocks and put them into the auction for commercial coal mining. As of now, 4 coal blocks are identified to be put into the auction for commercial mining.

The government will float a discussion paper on the same and ask for comments from the stakeholders as to what would be the procedure, how many coal blocks to be auctioned and what will be the eligibility criteria etc. The government has earlier opened up coal mining for commercial purpose but restricted it only to state-owned companies. This time it has envisaged to open up the sector to private players also. [\[ET 08.03.17\]](#)

Points to ponder

Commercial coal mining is not a new concept in India as several coal blocks were allotted to state-owned entities for commercial mining earlier. Private players were allowed for mine development but they were not allowed to sell the coal. The current proposal is to allow the private player to mine and sell the coal and provide them the complete ownership. There will be certain rules and regulations on the matter of revenue sharing, flexibility in terms of coal being mined, peak rated capacity etc.

Though commercial coal mining is the much-needed reform awaited from the GoI, the timing of such an action puts a question mark to government's intention. While the industry is moving towards solar and plant load factor of coal-based power units are coming down, will there be any takers from the power sector to this idea? Currently, coal mining in India has witnessed lower than expected demand. CIL was facing difficulty in despatching the coal produced resulting in inventory build up.

Also, for commercial coal mining to be successful, the coal mines need to be lucrative in terms of various parameters such as reserve, geological conditions, proximity to the market etc. Looking at the last round of recently concluded competitive coal bidding where the response was lukewarm, one is not so sure as to how people will perceive commercial coal mining at this stage. It is anybody's guess work.

2. PETROLEUM AND NATURAL GAS

2.1 India to experiment with open acreage licensing policy (OLAP) to cut dependence on oil imports

After the successful bidding of HELP (Hydrocarbon Exploration and Licensing Policy) where 31 small discovered fields were awarded mainly to state-owned and local firms for exploration and drilling, GoI wants to open up the sector with a new policy named as OLAP. This policy will be different from the earlier policy in terms of selection of blocks and exploration rules and regulations. The investors will be free to pick up the areas for exploration and drilling from the DGH (Directorate-general Hydrocarbons) National Data Repository (NDR) on the basis of seismic and well data. NDR offers a total of 160 terabyte data of India's 26 sedimentary basins.

The agreement will be on the basis of revenue sharing with the government. In this type of arrangement, the government will have the minimal role and it will not interfere with micro-managing of the operations. [\[DNA India 07.03.17\]](#)

Points to ponder

India is an energy-hungry nation. Its domestic crude oil production was 36.95 million tonnes in 2015-16 and only accounts for 20% of its demand. Similarly, natural gas output was 32.249 billion cubic meters in 2015-16 which only catered to less than half of its requirement. These dismal data proves that India has to take a giant leap forward if it needs to satiate its energy requirement. Import dependency cannot be a sustainable long-term option for India. The government has set a deadline to cut imports by 10% by 2022 which is a good move.

In this context, the decision to open the sector for private players without any interference and giving them the flexibility to choose their block accordingly would certainly attract investors. Though oil and gas sector is currently undergoing a critical phase of change and slowed down a bit, this move would send a positive message to the investors particularly to the foreign developers. Though investors had a bitter experience with the government in the past, one can hope that this policy would succeed to wean them back into the India growth story.

3. TELECOM

3.1 TRAI calls for mandatory in-building infra sharing

In its suggestions to the telecom department (DoT), the Telecom Regulatory Authority of India (TRAI) has recommended that it should be mandatory for telcos and tower firms to share in-building infrastructure in residential and commercial complexes and large public places like malls, hotels and airports to boost overall quality of indoor coverage.

The regulator said a minimum of three telcos or tower operators must have a presence in large public places and commercial and residential complexes. Such sharing of in-building solutions (IBS), optic fibre cables and ducts among others in large public places and residential/commercial premises, it said, should be "fair, transparent and non-discriminatory". TRAI has also advocated that any attempts by a telco to forge exclusive contracts, denying others similar access, be treated as a violation of licence conditions. TRAI is also of the view that suitable provisions for the creation of Common Telecom Infrastructure (CTI) inside the newly constructed large public places should form part of the Model Building Bye-Laws.

Consultation paper on "In-Building Access by Telecom Service Providers" was released in June 2016 (Mint 06.06.2016) seeking the comments of the stakeholders. An Open House Discussion on the issue was also convened on 30th September 2016 at New Delhi. Based on the comments

received from the stakeholders and its own analysis, TRAI has finalised its Recommendations on "In-Building Access by Telecom Service Providers". ([ET 21.01.2017](#))

Points to ponder

With rapid evolution of technologies and exponential growth in data traffic, large organisations, big buildings & complexes, malls etc. require continuous high speed data connections in order to function effectively. It is not viable to install individual in-building infrastructure by all Telecom Service Providers (TSPs) as this will result in multiplication of network, thereby entailing huge avoidable cost. Further, there have been cases where building owners allow TSPs to access their premises at exorbitant rates. For instance, airport or mall owners may charge high price from TSPs for accessing their premises. Premise owners can enter into exclusive agreement with one of the TSPs for providing telecom services to the consumers living or doing business from that particular building and deny access to other TSPs, thus creating an artificial entry barrier.

These recommendations are designed to make telecom services an integral part of planning new urban infrastructure projects, and will help accelerate the roll out of high speed internet services across the country. In a way this will also help in achieving the goal of smart cities and will be helpful in resource utilisation. Since 2000, in Singapore, the Code of Practice for Infocomm Facilities in buildings (COPIF) provides for mandatory provisions for info-communication facilities inside the building. In EU Broadband Cost Reduction Directive of 2014, there are a number of measures to reduce cost of providing broadband. The Directive also requires that new buildings and major renovations must include a minimum standard of in-building physical infrastructure and providers of high-speed networks must have certain rights to access this infrastructure.

Interestingly Delhi Metro has registered itself with DoT as Infrastructure provider and created infrastructure in underground tunnels which the

Telecom operators share to provide services to commuters. Such good practices need to be emulated. It is the need of the hour to facilitate infrastructure handling high speed data and thereby enabling better quality of services, enhanced coverage, less cell interference, fewer Call Drops and improved quality of service.

4. TRANSPORT

4.1 New amendment bill to MV Act, 1988 aims at regulating IT based transportation aggregators

The Motor Vehicles (Amendment) Bill, 2016 which is currently pending approval from Rajya Sabha aims to regulate the app-based cab aggregators with national guidelines superseding the state rules/guidelines for the sector. Some states like Karnataka, Maharashtra, Delhi-NCR, West-Bengal and more recently Tamil Nadu have promulgated their own regulations, although not all have been able to implement them to their full strength. Clause 34, Section 2, subsection 2 of the concerned Bill makes it mandatory for the state while issuing a licence to the aggregator, to take into account the guidelines released by the Ministry of Road Transport and Highways. The clause says, "...while issuing the licence to an aggregator the State Government shall follow such guidelines as may be issued by the Central Government". The central guidelines are being considered more progressive and aggregator friendly while they differ from state regulations on many important aspects. Meanwhile states wait for clarity, experts have started questioning about the impact of this bill on the sector which is only in its nascent stage in India. [\[ET 23.03.17\]](#)

Points to ponder

A brief background into the matter goes as, the tussle for market share between app-based cab aggregators like UBER and OLA on one hand and the traditional black & yellow taxi and radio-cab operators on the other, led to states making their respective guidelines and rules for these aggregators. When the matter knocked the Delhi High Court's door, the transport ministry was

called up to draft national guidelines for the new (and highly emerging) industry. In pursuance, the Ministry of Road Transport and Highways (MORTH) constituted a committee for working on the matter and coming up with some guidelines and the resultant report seems to be in form of a blueprint for the states to follow as it is a part of the new MV (Amendment) Bill 2016 pending at the parliament.

While the report is more like a push to the app-based cab aggregators only and rest of the players seem to be left in a lurch, there is a serious question as to how this report will satisfy the concerns of all stakeholders. Shared transportation, surge-prices, digitisation and upgradation of metering technologies (GPD enabled calculation of distance) grab more attention and how important these cab aggregators are for managing transport and congestion issues is all this report sings of. It is felt that the responsibility of government to strengthen public transportation system in solving these issues has been set aside for now (this would have helped in controlling pollution levels too). How much the appointed committee weighed consumer satisfaction, is also questionable as no matter how many times the judiciary has ruled on curbing surge-pricing, the proposed guidelines are clearly favouring it (allowing upto 4 times of surge). While motor vehicle laws are state's prerogative, since the matter falls in concurrent list of the Schedule VII of the Constitution, the central guidelines, if passed through parliament shall prevail and will have to be complied by the states.

5. ELECTRICITY

5.1 Lower tariff for heavy users to boost manufacturing in India

To increase electricity demand, a committee constituted by the government has recommended to lower tariff for heavy users and incentivise them to use more from the grid. To boost electricity demand, rebates and incentives in electricity bills may be extended to consumers. It calls for a revision of the tariff,

especially for commercial and industrial consumers. The idea is to boost manufacturing in India and attract investors by providing lower tariff to them.

The committee is of the view that the present tariff structure has been designed for power shortage scenario in states and has not been changed since Independence. Since India has excess electricity generation capacity now, the existing framework needs to be changed to address the capacity generation glut. The committee is working on finding innovative ways to increase demand for power. [IT 14.01.17]

Points to ponder

The move would certainly help heavy industries such as manufacturing units, other industrial establishments with fewer power shocks and they would move out from captive power units to the grid. The assurance to provide cheap power would spur industrial growth in India as many more investors would start establishing their units. As power cost is a major cost for any industrial setup, this move would certainly soothe nerves. In India, industrial and heavy users pay the highest rate of tariff as they have to take the burden of agricultural and domestic consumers as part of cross subsidy. The higher cost of power forces them to look for alternatives such as captive power units.

For this to happen, the overall planning of discoms need to be changed. The debt-ridden discoms tend to suppress their actual demand so as not to procure any additional power from the market or go in for long-term PPA (Power Purchase Agreement) with the generators. Also, they do not factor in the latent demand for agriculture, residential and other upcoming establishments. This is one of the major reasons of slowing down the demand growth in India.

While providing cheap power to heavy users would incentivise them to consume more, at the same time, the government needs to come up with a robust structure to find the actual demand of the power from the states and not necessary rely on the data provided by the discoms.

6. WATER

6.1 Maharashtra decentralises water clearances for industry, drinking water

To support the ease of doing business, the state government has decentralised the water clearances for industry and drinking water. Water allocations for industry and drinking water in the state's dams, which were earlier cleared by the state cabinet, will now be done by irrigation corporations. If demand for drinking water or small industries stretches beyond reservations, clearances for diverting water will be given by the water resources minister. For large industries, clearances for diverting water will be given by a cabinet sub-committee. These diversions were earlier cleared at the cabinet level. [ToI 20.01.17]

Points to ponder

It is being claimed that this move will enable speeding up water clearances, 70-80 permissions were pending. In Maharashtra for over 3600 dams the water reservation is 75% for agricultural purposes, 10% for industries and 15% for drinking purposes. But there has been no clarity as to how the divisions for the allocation of water was made. It is said that the reservation of water for the industries would have been lower had other sources like surface water, ground water and sewage been taken into account.

But analysing the past experiences in the state, Maharashtra had enacted the MWRRRA Act in 2005 and water allocation stayed with a high-powered cabinet committee. There were charges of mass diversion of water from agriculture to industry. The state government then amended the Act in 2011 to take away its powers of water allocation but chose to back the decisions taken by the high-powered committee. This highlighted the gross violation of human rights to access water for agricultural purposes and the corruption underlying in the state government agencies related to water resources.

There is a need to regulate the issue of water distribution by an independent regulator, and not by ministers or local officials. The water sector has the Maharashtra Water Resources Regulatory

Authority (MWRRA). They should judiciously decide sectoral allocations and water entitlement in the state of Maharashtra without any internal and external pressures.

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