CIRC RegTracker

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RegTracker is a bi-monthly publication which will be tracking 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. DGCA set to regulate Air Fares in a new Avatar

The Civil Aviation Ministry will soon present a blue print seeking to empower the Directorate General of Civil Aviation (DGCA) with powers to regulate air fares which sky rocketed during the last festival season. Airfares escalated significantly by about 200%, after Diwali last year, compelling the DGCA to instruct airlines to submit a copy of established route-wise tariff across their networks in different fare categories.

The blue print which will be drawn up in a month seeks to transform the DGCA into a powerful regulatory body called Civil Aviation Authority (CAA) and its responsibilities would include regulation of air fares.

Some aviation experts are of the opinion that a strong regulatory authority is needed, as rather than facilitating competition, market forces are often misused to increase or decrease fares in an ad hoc manner as had happened during the Leh crisis and Mangalore crash. The advocates of a stronger Civil Aviation Authority are of the view that the revamped Civil Aviation Authority should have inherent powers to regulate air fares in extraordinary situations and in normal times it should allow the market forces to operate freely.

On the other hand, there are others of the opinion that such a model may not be suitable for the Indian market. In a competitive market like India, there is no place for such regulations as the market forces are best instruments for ensuring fair play.

Source(s): http://articles.economictimes.indiatimes.com/2010-02-14/news/28422440_1_dgca-new-avatar-caa

Points to Ponder

The role of a sectoral regulator is to address structural issues so as to facilitate competition in the sector concerned by allowing market forces to operate freely. On select occasions, a sectoral regulator is also entrusted with the responsibility of preventing monopolistic and restrictive trade practices.

Air tariff as of now is covered under the Aircraft Act 1934, an archaic law whose provisions are most likely inconsistent with today's economic conditions, and which could benefit from suitable amendments. The DGCA is supposed to function as a safety regulator for airlines; regulation of airfares is kept out of the purview of the DGCA.

The present proposal of empowering the DGCA with additional powers to regulate air fares is a retrograde step to the command-control days of yore.

The Indian aviation market is open to competition and market forces remain the best facilitators of competition. Regulation of tariffs even in extraordinary situations would result in an administered regime, and would also defeat the purpose of having a regulator. What is however needed is an evaluation of whether the price hikes are a result of misconduct or have structural causes.

In situations where a prima facie case of collusion or abuse of dominance is established, jurisdiction of the Competition Commission of India (CCI) can be invoked for correcting the market aberrations. And, as has been argued, if the structural conditions so mandate, rather than creating a new regulatory body the existing airport regulator, AERA,

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Your views and comments are welcome at: circ@circ.in

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can be empowered to also regulate aviation pricing issues by suitable amendments to the AERA Act. Multiplicity of regulators in a single sector will only add to confusion and jurisdictional overlap.

But doubts remain as to whether the proposed regulatory move is yet another attempt by the government to extend subsidies/protection to the state-owned Air India, which is running in heavy losses.

2. Realtors' body wants to change Perceptions through Self-regulation

Real estate developers are trying to change perceptions. A new team of office bearers of the Confederation of Real Estate Developers' Associations of India (Credai) which took charge recently will focus on measures that will enable builders deliver projects on time, redress consumer grievances and improve governance to change the image of the industry.

Credai, with membership strength of 6000 developers will work in close cooperation with the government and create a complete checklist for all clearances required plus facilitate a single –window clearance for projects. Developers are of the opinion that presently it takes 9-10 months to obtain about 40 clearances from the different government departments. Credai will be setting up consumer redressal cells in every state, such cells have already been set up in Karnataka, Tamil Nadu, Maharashtra, Andhra Pradesh and Kerala. These consumer redressal cells would facilitate amicable resolution of disputes within 60 days without resorting to the courts. Credai member associations have adopted a code of conduct to be signed by every developer.

The developers' body also plans to create a research cell for affordable housing strategy, technology and funding and work with the government. An initiative has been taken to bring all cities with more than 500,000 population into Credai's fold.

Source(s): http://www.business-standard.com/india/news/realtors%5C-body-wants-to-change-perceptions/428001/

Points to Ponder

Absence of a proper regulatory framework in the real estate sector has left property buyers in a lurch and they are often compelled to look for remedies in varied jurisdictions like civil courts and consumer fora. The need for a regulatory framework for real estate in India has thus been felt for long.

There exist regulatory irregularities as well as multiplicity of laws in the real estate sector across Indian states. There is therefore an urgent requirement to harmonise the State and Central laws with respect to real estate in India. The proposed Real Estate (Regulation of Development) Bill is designed to provide a regulatory framework for the real estate sector in India. It may however also be cautioned that a mature market should not require active nannying by the State, beyond an overarching supervisory and monitoring role.

The Real Estate developers' body on its part is trying to provide services of a SRO (Self Regulatory Organisation) for Real Estate developers in the country. This may appear to be a new development but owing to the poor performance of functioning of SROs (as exemplified by the experiences in the advertising and broadcasting sectors in India), it may not solve the problems faced by consumers in this sector.

Consumer problems get further complicated by the inevitable black money transactions in the real estate sector, largely due to irrational stamp duties which belies evidence of payment by consumers, thus also fracturing the dispute settlement process. This latter problem can only be solved through reform of land usage laws and property taxation regulations in the country.

3. New Regulatory Authority to replace major ports' tariff body

A new proposed regulatory structure for the port sector envisions one regulator for all the major ports, and State regulators for the ports under the jurisdiction of states. The proposed Major Ports Regulatory Authority (MPRA) will replace the Tariff Authority for Major Ports (TAMPS). All maritime states will create separate port regulatory authorities. If a state fails to establish the regulatory authority, ports under that state will come under the Major Ports Regulator. The new authority shall also exercise jurisdiction over the ports under the control of the state governments, until the states set up their separate regulatory authorities.

Both at the central and state levels, it is proposed that the regulatory authorities will consist of three members including the chairman. The new regulator will frame the fee and tariff guidelines for facilities being rendered by port terminals, which is presently under the purview of TAMP. The new regulator will frame norms for transhipment of containers, or goods between vessels and use of property belonging to the ports. Though the state regulators will be free to prescribe the rates, they will follow the common guidelines issued by the new Authority which will establish the common principles, approach and methodology to be adopted by the state authorities.

The proposed authority will also formulate performance norms and standards of quality, continuity and reliability of service. It will be empowered to take action against port operators for violation of regulations. The bill provides for of an appellate tribunal to adjudicate disputes between service providers and users or between port operators. With the establishment of the Major Ports Regulatory Authority, TAMP will cease to exist. All employees of TAMP will come under the new regulatory authority.

Source(s): http://www.thehindubusinessline.com/industry-and-economy/logistics/article1565316.ece?homepage=true

Points to Ponder

The Union government's plan to give more teeth to a proposed regulatory body, the Major Ports Regulatory Authority, that will replace the existing tariff regulator, Tariff Authority for Major Ports (TAMP), appears to be a step in the right direction. But, care should be taken to ensure that regulatory coherence and uniform implementation standards are maintained between the MPRA and the state regulatory authorities.

The new regulatory authority, intended to be comprehensive and powerful, will oversee and adjudicate disputes pertaining to all the Union government-owned ports, whether governed by the Major Port Trusts Act or the Companies Act, unlike TAMP. It will also help when the 11 ports now functioning under the Major Port Trusts Act are converted into companies. TAMP has been criticized as being a toothless regulator with no powers to enforce its own tariff rulings or penalize those found violating the terms and conditions governing tariffs. It has a limited role—to set tariffs—without any regard for the facilities given to the end-use customers of port services. The proposed regulatory body would remove these shortcomings.

Furthermore, unlike TAMP, the new port authority would be a full-fledged regulator. It would have the powers to set rates for the facilities and services provided at the 12 ports, to prescribe and monitor performance norms and standards for services and facilities provided by port authorities and private operators and also to decide on disputes between port authorities, private operators and users of the facilities and services.

The new regime will also go a long way in making ports more efficient since it will have the powers to set performance standards for port authorities and private operators, and to impose penalties in case of non-adherence. The challenge however is that without a major overhaul of the personnel in the new regulatory body and their performance standards, the implementation of the above laudable move will gravely disappoint. But the question remains, whether the proposed 3-member board will be able to discharge efficiently and timely all the responsibilities of the regulatory authorities.

4. NHAI to bring in new qualifying norms for Developers

The National Highways Authority of India (NHAI) will soon execute a process to have annual pre-qualification of developers. This will prevent highway developers like Larsen and Toubro, GVK, Reliance Infrastructure, Nagarjuna Constructions etc. to face disqualification on "frivolous grounds". As per the new norm, each interested company will be technically evaluated and be given points annually. Such a step was being demanded by the developers who had been losing out opportunities to bid financially.

Presently, for each project the NHAI carries out due diligence at request for qualification (RFQ) level. For each project, bidders submit documents for technical qualifications, based on which NHAI performs calculations and verifications for selection.

This process takes three to four months and has also caused disputes between the NHAI and bidders on account of arbitrary decisions. The new norms aim to eliminate this step, making it easier for both the NHAI and developers.

Under the new system, once the qualifying thresholds are annually evaluated, NHAI can work towards adopting e-tendering at the financial bid level. The new norms are based on the recommendations of the BK Chaturvedi Committee on highway projects. According to its recommendations, applicants can seek pre-qualification assessment any time during the year and such pre-qualification assessment will be valid for 12 months or the next September 30, whichever is earlier.

Source(s): http://www.thehindubusinessline.in/2010/02/16/stories/2010021652450100.htm

Points to Ponder

National Highways Authority of India functions both as an operator and has the responsibility for evaluating/selecting bidders for each project based on their technical and financial bids. The technical bid is essentially a qualifying requirement which is not only necessary but is also time consuming.

The road sector does not have an independent regulator to address the competition and regulatory oversight concerns of project bids for road development and the operation of the highways, toll charges etc under the PPP mode. It may be worth mentioning here that present PPP model which leaves greater role for developers not only in determination of toll charges but also in its revision from time to time, which has often caused hardships to consumers.

The proposed reforms of NHAI of annual pre-qualifications of developers had been a long standing demand of the developers. This process would bring transparency and objectivity in the system and as such appears to be a positive interim move until an independent regulator is put in place for governing and monitoring the sector.

5. Review APMC Act to check cartelisation: Basu Panel

An inter-ministerial panel chaired by the government's Chief Economic Advisor, Kaushik Basu, has proposed using the competition law and reviewing the Agriculture Produce Marketing Committee (APMC) Act to prevent cartelisation of wholesale agricultural markets and ensure smooth movement of produce by small traders. This proposal was made to address the unparalleled rise in food inflation in February and deliberated on means of reducing volatility in the prices of primary (unprocessed items).

The inter-ministerial panel also deliberated on measures to narrow the gap between farm and retail prices, in particular.

Source(s): http://www.business-standard.com/india/news/review-apmc-act-to-check-cartelisation-basu-panel/429336/

Points to Ponder

The Basu panel was entrusted with reviewing the overall inflation situation with particular reference to primary food articles. It is of the view that the provisions of the Competition Act, 2002 should be used and the APMC Act should be reviewed to prevent cartelisation of wholesale agricultural markets and to ensure smooth movement of produce by small traders.

The Competition Act, 2002 prohibits any agreement which causes, or is likely to cause, appreciable adverse effect on competition in markets in India.

Furthermore, the APMC Act provides for regulation of agricultural produce markets to ensure efficient system of buying and selling of agricultural commodities.

The proper implementation of the provisions of these two laws to address the anti-competitive practices in the food sector has rightly been emphasised. If still there is evidence of anti-competitive practices by traders to form cartels or even collective abuse of dominance to manipulate the supply of commodities causing a) depression in purchase prices and b) rise in selling prices, the CCI which is mandated by law to check anticompetitive practices, should, if required, suo moto intervene or its intervention should be sought by stakeholders to deal with anticompetitive practices in agricultural markets.

The problem with the APMC Act, is that it is up to the States to adopt the new model law and the Centre cannot really intervene due to the Constitutional division of powers in sectors. On the other hand, the Competition Act is a central statute but it has only one office in Delhi which cannot really take on issues around the country effectively. In the first draft of the law regional offices of CCI were proposed but the same was dropped after the law was amended in 2007. This proposal should be revived. Another proposal meriting consideration is establishing state level competition agencies under state laws as existing in the USA and Australia, both federal countries.

6. Telecom Sector: Spectrum Allocation Issues

The Department of Telecommunications (DoT) has proposed doing away with the system of auctioning spectrum in favour of licensing. The proposal makes a case for a system under which a group of stakeholders or an independent body will hold all the available spectrum and the companies will pay according to usage. DoT has suggested that the system can be used for spectrum in the 700 MHz band to be used for 4G services and also the 900 MHz band, a major part of which is already with 2G operators.

According to the DoT, the use and pay system would ensure more efficient use of spectrum. It will decrease the huge capital costs telecom companies have to incur for buying spectrum in auctions, especially since it is a scarce resource. These costs deter companies from decreasing tariffs. The proposal highlights some problem areas in spectrum allocation, the most important being that there is fragmented allocation due to the presence of too many operators. Incidentally, the government has also decided to set up a committee under the Chairmanship of Ashok Chawla to look into these issues, including setting up of a spectrum regulator.

In another important development in the sector, all leading GSM operators will have to give up unused airwaves they have when their mobile permits come up for renewal beginning 2014. This implies that telecom companies like Bharti Airtel, Vodafone Essar and Idea Cellular etc. which presently have up to 10 MHz or units of 2G airwaves in many regions, will be given only 6.2 units of radio frequencies when they renew their permits. Besides, telecom companies will also have to pay market rates for this 6.2 MHz of airwaves in every region when they renew their licences.

Source(s): http://www.business-standard.com/india/news/dot-partly-accepts-trai%5Cs-reportspectrum-issues/427716/

http://www.business-standard.com/india/news/dot-proposes-open-skies-for-spectrum/427114/

http://articles.economictimes.indiatimes.com/2011-03-07/news/28665918_1_mobile-operators-gsm-operators-mhz-limit/2.

Points to Ponder

Prima-facie, DoT's proposal of doing away with the system of auctioning spectrum and for development of a system wherein the companies pay according to their usage/consumption of spectrum/bandwidth is in accordance with the systems prevalent in other countries. It is contemplated that such a system will result in more efficient use of spectrum and may even minimize the capital costs telecom companies have to bear for buying spectrum in auctions by the Government.

However, practical modalities of this proposal will have to be worked out. The proposed move emphasizes on some issues in spectrum allocation. Most important among these is fragmented allocation due to presence of a large number of operators. The Government is also looking at allowing spectrum sharing in view of the scarcity of this valuable resource.

DoT has rejected the TRAI recommendations on license fee while accepting TRAI' s suggestions pertaining to delinking of licenses with spectrum, on M&As and reframing the 800/900 MHz spectrum. TRAI had recommended Rs.10,972.45 crore for a pan India license with 6.2MHz spectrum and a one-time fee for additional spectrum beyond 6.2 MHz at the rate of Rs.4,571.87 crore for one MHz for pan India.

However, DOT will follow its own proposal of having a uniform license fee of 8.5 percent of Adjusted Gross Revenue (AGR) and has declined TRAI's recommendations of uniform license fee of 6 percent to avoid revenue loss to the Government.

Without going into the validity or otherwise of the contrary view taken by DOT, apparently, decision of DOT to stick to uniform license fee of 8.5 percent of Adjusted Gross Revenue (AGR) against the recommendations of TRAI appears to be monopolistic and anti-competitive in nature, since there is no system proposed for determination of the license fee. Even TRAI's proposal seems to be faulty which suggested a lumpsum price without contemplating any market mechanism for determining the price of spectrum.

It would have been appropriate for DOT to refer the matter back to TRAI with its own views to facilitate a considered decision. This is because TRAI is the sectoral regulator, and the government acting through DoT must value opinion of regulator and avoid overriding the same, thereby sending inappropriate signals in the market.