CIRC RegTracker

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Enhancing Knowledge, Strengthening Capacity

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Since the advent of liberalisation and globalisation, regulatory governance has been transforming across various sectors, across the globe. The emergent system is characterised by an increasingly rule-based, technocratic and juridical approach to economic governance. Much of the regulatory responsibilities held by the state have now been delegated to newly established independent sector regulators. Being a major emerging economy, India has either adopted or contemplating adoption of the independent regulation approach in major economic sectors. In this context, there is a need to track the creation of these new institutions, their capabilities, performances and the way they interact with other institutions in shaping patterns of governance.

CIRC RegTracker is a modest attempt in that direction. 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.

Beginning with this issue, we have made a slight change in the format. The new format will offer sector wise developments and points-to-ponder for each development. Keeping with our focus on regulatory governance in infrastructure sectors, we will cover following six sectors: a) Petroleum and Natural Gas; b) Coal; c) Electricity; d) Transport; e) Telecom; and f) Water.

HIGHLIGHTS:

Developments over last quarter testify rise of 'regulatory state' in India, seeking to create institutions that are expected to operate at arms-length from government. It is evident from the growing recognition of need to establish regulators for key economic sectors, while the existing regulators seem to be enforcing their mandate. While a sector regulator for coal is being planned and the government is considering to set up a regulator to look into health, safety and environment practices in oil and gas sector, absence of an integrated regulatory regime in the ports sector is also recognised. On the other hand, existing telecom and electricity regulators are being proactive to enforce their mandates through stricter regulations.

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I. PETROLEUM AND NATURAL GAS

1.1 Exempting small gas fields from the pricing policy

Despite very limited indigenous gas reserves, the Indian Ministry of Petroleum and Natural Gas (MoPNG) has termed natural gas as the *'Fuel of the 21st century'*. This sentiment has also been echoed by the other emerging economies in Asia. Foregoing months saw GoI's newly initiated thrust on Petroleum and Natural Gas Sector which led to various policy changes and strategic promotions to various stakeholders.

The *first* initiation being that, the MoPNG has exempted small, isolated fields from its gas utilisation and pricing policy. It will give them full marketing freedom and impose no obligation to seek customers from the fertiliser and power sectors. The new guidelines allow producers from such fields to sell gas at market rates by inviting competitive bids from prospective consumers. There shall be no sectoral priority and the existing as well as new customers shall be treated equally. Other than the gas produced from small, isolated gas fields, all other output will be sold at regulated rates and as per the existing gas utilisation policy that makes fertiliser companies the top priority consumer followed by power producers. Although MoPNG has circulated a note to the empowered group of ministers (EGoM) to treat power sector at par with fertiliser plants.

E.T. (15.07.2013)

Points to ponder:

It is interesting to note that a similar policy was framed last year by MoPNG for the sale of gas produced in small quantities from remote areas, but it did not give pricing freedom to producers. These guidelines were changed after receiving industry feedback which highlighted that when gas was produced in small quantities with low pressure, putting it in the grid was very difficult and installing compressors to put gas in the system was not cost-effective. This exemption shall prove to be fruitful as small discoveries where production is small and fields are isolated can be allocated to customers expeditiously without referring each case to MoPNG, thereby making it cost effective.

1.2 PNGRB has no power to fix prices: Government

Apart from legislative and administrative thrusts, the Judiciary has been playing an important role in defining and developing these legislative attempts. In an on-going case between Indraprastha Gas Ltd., (IGL) and Petroleum and Natural Gas Board (PNGRB) at Supreme Court of India (SC), the Central Government through its affidavit, supporting the marketing companies, has told SC that PNGRB has no power to fix prices of notified petroleum and natural gas, but can only monitor their marketing and sales and prevent restrictive trade practices by taking corrective measures. The government's response has come on a petition filed by the Board which has last year challenged the Delhi High Court's June 1st judgement that held that the regulator had no jurisdiction to fix rates or regulated gas tariffs. The apex court had in August last year sought response from IGL and the Centre.

F.E. (19.07.2013)

Points to ponder:

During the arguments before the apex court PNGRB submitted that under the PNGRB Act, 2006, one of the primary functions of the Board is to frame regulations to protect the interest of consumers by fostering fair trade and competition amongst the entities. And therefore its order dated April 9, 2012, to the extent of fixing the maximum retail price or requiring the petitioner (IGL) to disclose the network tariff and the compression charges to its consumers, should be upheld. However, it was countered that, PNGRB can only act as an enabler of competition in the city gas distribution system and can dictate only those tariffs which do not act as building blocks for the final tariffs to be charged to customers, and thus it is not empowered to fix petroleum and gas prices.

Keeping in mind the stance of Centre and representatives of IGL and referring to the preamble and provisions of PNGRB Act, 2006, the tariffs charged by any city gas distribution (CGD) company is a factor of three main constituents – network tariff, compression charge (wherever applicable) and marketing margins. While PNGRB cannot interfere in the marketing margin, the other two factors are under the control of the Board to facilitate implementation of the PNGRB Act and to make sure companies follow the bidding guidelines. In the event SC upholds the Delhi HC judgement, PNGRB would be left without any powers to fix or regulate any tariff and therefore, unable to discharge the functions entrusted to it.

In the case of natural monopolies, regulators do have the power to regulate the prices to mimic competition, as the market cannot be competitive.

1.3 Regulator for health, safety and environment in oil & gas sectors

Meanwhile the government also announced its plan to set up a regulator to look into health, safety and environment (HSE) practices in the oil and gas sector. Currently, the Directorate General of Mines Safety is the regulatory body looking into safety in mines and oil fields. This new body will focus only on the oil and gas sector.

B.S. (27.09.2013)

Points to ponder:

This is an attempt to establish an independent regulator for the sector, so as to restrict procedural delays in getting clearances under the next round for the New Exploration Licensing Policy bidding (NELP X). Earlier clearances were to be taken from DG Mines Safety, which is looking onto safety of mines and oil fields, and thus there were delays. However, environmental clearances from other government departments are still to be taken, and therefore, though the attempt to set up an independent HSE regulator is novel but not the only hurdle for the stakeholders.

1.4 Exploration firms cannot hold back revenue share

Another announcement was pertaining to exclusion of 'cost recovery' practice from the next round of NELP. The government has decided to craft a perfect exploration licensing regime which will unify and simplify the policies for oil and gas, coal bed methane and shale, and end the current practice of 'cost recovery' which is at the heart of oil ministry's raging dispute with Reliance Industries. Companies that are awarded exploration blocks will have to share revenue from the first day of production, instead of the current system of recovering expenditure before sharing profits with the government.

E.T. (27.09.2013)

Points to ponder:

The proposed new system, outlined in a draft policy eliminates the need for CAG audit and limits the roles of the bureaucrats in managing fields and spares them from the long-winding procedure of the DHG having to agree that the discovery in which a company is ready to invest risk capital, is indeed commercially viable.

By and large, this unified policy has been seen as a positive step and will eliminate several unnecessary and controversial elements. In the proposed policy, the State's revenue share, which will be biddable, will be net of royalty, thus, the contractor will get the incentive for keeping costs down. Pegging the costs down will enhance the contractor's profitability of operating the project.

II. COAL

2.1 Coal regulator on the cards

The recent upheaval in the coal sector has necessitated the debate for a Coal Regulator. The need for surplus coal and the growing imports has been a major concern in the past few years. The country needs to maximise its coal production capacities to meet future energy requirements.

The Coal Ministry has proposed a revenue sharing model under production-linked payment as the methodology for conducting the auctioning of coal blocks for allocation to private companies. The ministry has preferred this method to an upfront lump-sum payment by the companies. The bids would be based on a production linked multiple. The company quoting the highest multiple would become the preferred bidder. Further to ensure the bidders' commitment in the production linked system, the companies would be subjected to Minimum Work Programme (MWP). B.S. (19.07.2013)

Points to ponder:

By preferring the company quoting the highest production-linked multiple, this method minimises the risk for the developer as against the upfront payment method. To ensure bidders' commitment to develop the block, only a basic upfront payment method has been prescribed. Further the MWP ensures that ensures a detailed exploration and preparation of a geological report. This give the bidder the right to relinquish the block after detailed exploration without any penalty subject to MWP being carried out. The proposed revenue sharing model, based on 'Rs per tonne' criterion, may boost state revenue from the sector as well as production.

2.2 CIL to become coal bank

The Government of India has been recently mulling over a new policy to turn Coal India Ltd (CIL) into a coal banker to reduce import dependence. Soon steel, power and cement companies with captive coal blocks may be given the option to park their surplus coal with CIL. In

return, the firms would get a guarantee fee from CIL. As per the current policy, surplus coal produced by captive developers is transferred to nearest CIL subsidiary and price payable by CIL is lower than the cost of production and the notified price of coal. This policy does not incentivise surplus production. F.E. (25.07.2013)

Points to ponder:

Though there have been few attempts to draft a policy on surplus coal in last few years, none has progressed much. The present move shall enable CIL to use its vast network to disburse the fuel to consumers. This will definitely help in reducing the country's dependence on expensive imports and bridge the demand supply mismatch that is expected to be about 160 million tonne this fiscal. This will give an incentive to the captive coal block holders to produce more. The coal banking policy shall also help overcome the shortage of fuel in the domestic market.

The recent Planning Commission statement on coal banking and surplus coal policy [E.T. (21.09.2013)] *is a welcome step by the government in this sector. It has been seen, domestic power producers in our country faced fuel shortage in several times. To eradicate the problem of coal shortage, the power ministry's suggestion to the coal ministry on incentivising the surplus coal production from the captive mines cannot be ignored. It can be said that the positive decision of the plan body on coal banking and surplus coal may bring a change in the whole coal sector and especially to the private companies.*

Another point to ponder is to privatise CIL and its subsidiaries, and thus get rid of developing 'innovative' solutions, which will not resolve the fundamental problems.

III. ELECTRICITY

3.1 Power regulator heralds an era of costlier power

The Central Electricity Regulatory Commission (CERC) seems to have favourably considered the government's advice to allow pass-through of imported coal cost in electricity rates for consumers. In a much-awaited order, after the Union Cabinet's decision in this regard, it has upheld the rise in rates for Odisha consumers due to blending of high cost imported coal in NTPC's projects. The landmark ruling signifies the onset of an era of rising power rates, set to burden consumers across the country with an estimated Rs 10,560 crore on account of imported coal use in power plants. B.S. (25.07.2013)

Points to Ponder:

This order is third in the series of CERC orders allowing a pass-through. Earlier CERC has allowed Adani Power and Tata Power to charge a compensatory rate in lieu of the higher cost of imported coal. Though the utility (Gridco Odisha) has demanded CERC for instructions to the generator to take prior permission from the buyer before importing high cost coal and to issue guidelines for blending, CERC has turned down the demand.

This CERC order has three significant implications: first, it will boost the trust of private investors in generation segment by ensuring a secure return on their investment; second, this will ensure electricity generation efficiency even in the face of declining fuel availability; finally, however, the cost will be passed on to the end consumers. Though this would lead to rise in power tariff, as happened in Odisha, there is some hope that there won't be more breakdowns in lieu of idle thermal plants. However, the situation offers an opportunity to optimise India's energy conservation initiatives. Rising cost of power will be an incentive, in part of the end consumers, to use the scarce resource sensibly. India must tap the opportunity.

Quite apparently, the need to import coal is due to the inefficiencies and distortions of the coal sector. India has enough coal deposits of its own to satisfy all our needs. Hence, the need, as stated above in Para: 2.2, we seriously need to think of privatising the coal sector in India, otherwise we will continue to muddle along and face such paradoxes.

3.2 MoP unveils model Bill on distribution responsibility

Amid rising losses, the union power ministry has formulated a model state electricity distribution management responsibility Bill, 2013, on the lines of the Fiscal Responsibility and Budget Management (FRBM) Act. The Bill aims to provide for responsibilities of the state government to ensure a financial and operational turn around and long term sustainability of the state-owned distribution licensee. This is to enable adequate electricity supply to consumers through financial restructuring.

The model Bill envisages the state government to submit the electricity distribution management

statement on the measures taken in relation to distribution, in each financial year during the budget session to the legislature.

A slew of measures would be in the areas of long term planning, consumer protection, regulatory compliance, corporate governance and financial restructuring. Further, the state government would lay down key performance indicators with regard to payment of dues by government departments and institutions, distribution loss cut trajectory, provisioning of subsidy, energy accounting and auditing, improvement in collection efficiency, recovery of past receivables.

B.S. (16.09.2013)

Points to Ponder:

Déjà vu! Power sector in India is in a mess again and needs another bailout. After a decade since the Electricity Act 2003 was implemented, followed by substantial private investment in generation and significant capacity addition, the situation is no different from early 2000s- in fact, it has worsened. And, as always, the problem lies in the distribution segment.

The model Bill on distribution responsibility is a welcome step. With a garden-variety of provisions, it seeks to make the state governments accountable for performance of discoms. But are the state governments willing to take it and can the Union government be able to persuade them? Considering the past experiences, the state governments do not seem to be serious about distribution reform. Though the model bill lays out laudable provisions and precise targets, which can significantly improve electricity supply and financial viability of discoms, the real outcome will depend on how far these provisions are implemented. We also need to see how soon this-much-needed-Bill becomes an Act and how much of the forte is retained in the final form.

If one looks at the implementation of the FRBMA, it is also wanting. The government brought about the law to self-regulate, but could not implement the law in its spirit, thus our fiscal deficit continues to be in the red zone.

3.3 MERC cracks the whip on RPOs

In a breakthrough decision for wind and solar power industry, the power regulator in Maharashtra has directed all distribution firms to meet their obligation for buying renewable energy in the past four years, and said they will have to pay a stiff penalty if the backlog of their "renewable purchase obligation (RPO)" is not cleared by March 2014. As per the National Tariff Policy, 2006, all states are mandated to procure a part of their power demand from renewable sources. The order would impact about 90 entities, including not only distribution companies, but also captive users and open-access consumers. E.T. (21.08.2013)

Points to Ponder:

RPOs are meant to ensure a market for renewable energy and proportionately distribute the burdens of high cost across the consumer categories, based on their consumption. After three years since RPOs were issued none of the states, except Gujarat and Rajasthan, have complied with their RPO targets. Consequently, the market for 'renewable energy certificates' has collapsed--giving a blow to renewable energy producers. (B.L. 27.09.2013).

Compliance with RPOs is needed to achieve India's renewable aspirations. In that context, recent MERC decision is commendable and needs to be followed by other state regulators. However, financial implications of the compliance must be considered and reflected in the tariff orders to ensure financial viability of insolvent discoms. Though it will raise the tariff for end consumers, as suggested earlier, it must be taken as an opportunity to optimise energy conservation.

IV. TRANSPORT

4.1 New Port Tariff Norms Announced

The 12th Five Year Plan (12th FYP) acknowledged that there is a near absence of an integrated regulatory regime in the ports sector for overseeing tariff setting, cost of operations, anti-competitive practices and accountability to consumers. However, it also provided that such challenges can only be met through *transport sector reforms*.

Validating the spirit of 12th FYP, the Government of India (GoI) announced new *Port Tariff Norms.* These are a new set of guidelines for determining reference tariffs (RT) at major ports, under which ports are allowed to charge a maximum of 15% above the ceiling rate, which would be decided by the Tariff Authority for Major Ports (TAMP). However, the tariff revisions are applicable only for prospective projects and not for the existing ones also the operator will be allowed to have upward revision of tariff once every financial year. Under the new guidelines, TAMP will also notify

performance standards of facilities and services offered at the port project. Both RT and performance standards will be mentioned in the bid document and bids will be evaluated on the basis of RT. F.E. (01.08.2013)

Points to ponder:

The new tariff guidelines for major port projects fall short of total deregulation of the port sector. Neither these guidelines cover the projects awarded before August 1, 2013 which will continue to be regulated by the earlier tariff regimes, viz. 2005 and 2008 Tariff Guidelines respectively. These guidelines also have not addressed the issue of unifying existing guidelines into single tariff guidelines for all the major ports and PPP projects therein. Out of the 12 major ports, one port - Ennore Port - falls under the Companies Act, while the others are under the purview of the Major Ports Act 1963. While Ennore is free to fix its own tariff, the other Ports under Major Ports Act, 1963 are subjected to tariff regulation. Besides, non-major ports which are private ports under the jurisdiction of respective maritime states enjoy total freedom in setting port tariffs. As a consequence, non-major ports have increased their share in total cargo handled at India's ports to almost 40 %. Till TAMP is regulating tariff of the major ports, they would continue to face uneven level playing field vis-à-vis non major ports which does not augur well for their long term financial viability.

4.2 Civil Aviation Authority in making

This was followed by introduction of Civil Aviation Authority Bill on August 20th by Ministry of Civil Aviation (MoCA). The bill proposes setting up of a Civil Aviation Authority which will regulate the civil aviation sector. The proposed Authority will have administrative and financial flexibility to regulate the civil aviation sector, but will be under the overall oversight of the Ministry of Civil Aviation. The main functions and powers of the proposed CAA, which would replace the Directorate General of Civil Aviation (DGCA), will be to regulate civil aviation safety and provide for the better management of civil aviation through safety oversight of air transport operators, airport operators, air navigation service operators and providers of civil aviation services. It will also issue licenses, certificates, permits, approvals etc. required to be issued under the Aircraft Act, 1934 and Aircraft Rules. B.L. (21.08.2013)

Points to ponder:

Unlike the DGCA, which functions under the aegis of the ministry of civil aviation the proposed authority would have administrative and financial freedom to meet the functional requirements for an effective aviation safety and oversight system. Besides, it would also have teeth to exercise economic and environmental regulations and protect interests of consumers. The CAA, like the DGCA, would also deal with matters relating to financial stress on safety of air operations, as witnessed in connection with the closure of Kingfisher Airlines last year. With this move the Indian aviation industry will be at par with UN's International Civil Aviation Organisation's norms (ICAO) and in line with aviation regulators in other countries like the Federal Aviation Administration of the US and the UK's CAA.

This move has been long pending and will facilitate meeting the demands of a dynamic and fast-changing aviation scenario in India. However, decisions by CAA should be transparent. Adequate checks need to be put in to ensure that CAA undertakes decisions in a transparent and time-bound manner.

Another point which needs to be pondered is why create another regulatory body in the civil aviation sector but to amend the law governing the Airports Economic Regulatory Authority and turn that into one sector regulator. This will eliminate the need to have too many bodies dealing with cognate issues, and also reduce the financial burden on the taxpayers. One of the incentives of the bureaucracy to create more regulatory bodies is to create parking slots for retired babus and that must be stopped.

4.3 New airports under PPP model

Furthermore, MoCA has created new avenues of private investment. The ministry of civil aviation is open to giving 100 per cent equity to a private concessionaire in the development of new airports (green-field). The government has also signed public private partnership (PPP) contracts for airports' operation and maintenance. In the case of brownfield (existing) airports, operations, maintenance and development agreement (OMDA) under PPP model will be considered. B.S. (30.08.2013)

Points to ponder:

The development of green-field airports has always been a concern, as the government lacks

funds for infrastructure development, and the need is imminent. Therefore this announcement was clearly appreciated by all. With reference to brownfield airports, industry bodies, such as airlines and International Air Transport Association (IATA), have voiced their opposition to the same.

According to them, any unnecessary private shareholding might increase the focus on profit-maximisation and as a result, increase users' costs. The privatisation of AAI airports would only serve to fuel a further round of increases in the airport cost environment, adding to costs for passenger and the airlines. As we have seen in two examples of privatisation, i.e. GMR and GVK, at Delhi and Mumbai respectively, increase in tariff cost cannot be put out of question. However, if these hikes leads to better services and are proved to be genuine, it must continue. We should not forget that the reason behind adopting PPP or introducing 100% privatisation in airport development is that the AAI is facing financial deficit and one reason could be tariff being not suitably determined.

4.4 Civil aviation ministry to rope in CCI to monitor air fares

These months also saw another interesting development. MoCA roped in Competition Commission of India (CCI) to keep in check indiscriminate airfare increases in domestic aviation. The ministry, which will soon make operational an economic cell to monitor domestic airlines' pricing mechanism, is looking at forwarding reports to CCI to take corrective actions in the event of discrepancies in airfares. The ministry cleared that it would not attempt to regulate fares and would continue to allow airlines to determine fares based on market dynamics. Data acquired by economic cell would be made public to inform consumers of how airlines arrived at the final pricing of an air ticket.

B.S. (24.07.2013)

Points to ponder:

Attempt to rope in CCI to keep a check of indiscriminate airfares increase (both passenger and cargo) in domestic aviation as neither DGCA nor any other authority under MoCA has the power to regulate the price mechanism of the airlines.

Recently, upon receiving complaint of predatory pricing by airlines, the DGCA asked the airlines only to disclose the components in airfare structure, as it didn't had the power to take corrective action. It should be noted that the MoCA has announced Civil Aviation Authority Bill, 2013, for setting up of Civil Aviation Authority which will be replacing the DGCA. Thus, instead of roping in CCI, an external body, CAA should be empowered to monitor the price mechanism and the parameters in ticket pricing.

A stark reality has been brought about by Pradeep S. Mehta in his article, "Flying in the face of the free market" (B.S. 30.07.2013), wherein he states that the step of DGCA to set up a cell to keep tabs on airfares, would defy logic as one of the airlines, Air India is a government entity and thereby will make MoCA an interested party. Thus either a statutory autonomous body for price regulations should be created or the power of CCI to check airlines malpractices should be given greater importance, only then a consolidated CAA Bill can have its reverence.

4.5 Railways seeking FDI

Meanwhile Indian Railways is now seeking foreign direct investment (FDI) for its ambitious infrastructure projects such as a 534-km stretch of the dedicated freight corridor; 63-km Mumbai elevated corridor and the Mumbai-Ahmedabad high speed railway corridor. As per the proposal of the Department of Industrial Policy and Promotion (DIPP), foreign companies would be allowed to pick up 100 per cent stake in the special purpose vehicle (SPV) that will construct and maintain rail lines connecting ports, mines and industrial hubs with the existing rail network.

B.L. (19.09.2013)

Points to ponder:

At present, there is a complete ban on any kind of foreign direct investment (FDI) in the railways sector. To allow FDI in the sector, the government needs to remove it from the list of prohibited sectors under the current policy. The move is anticipated to give a boost to this sector where infrastructure expansion will provide direct and tangible benefits to the economy.

Currently, the PPP model in the railway sector is at a take-off stage, with large domestic investments coming in a few areas or projects, including private freight terminals and port connectivity projects. Under the new policy for participative models in rail connectivity and capacity augmentation projects notified by the railway

ministry, 100% FDI has been permitted under the prior approval (FIPB) route. Despite acute shortage of funds, the railways have refrained from allowing FDI in their core areas and allow it, through the automatic route, only in the manufacture of components by private companies. Between 2000 and 2012, total FDI into the railways was Rs 1354.65 crores, according to the DIPP.

V. TELECOM

5.1 Telcos to shift to unified licence yet to be sorted out

The Telecom Sector is fluttering with activity, with newly introduced regulations and regimes, creating quite a lot of turbulence among its stakeholders. The below mentioned developments testify this fact.

On 30th July, 2013, Department of Telecommunications (DoT) issued norms to Telcos to shift to Unified License (UL) Regime, before license validity expires, though it remained silent on the details of migration. Migration to be immediate for those including additional service/new service areas. Rules will also apply where a Company adds circles or license through mergers and acquisitions but the modalities of the additional charges are yet to be decided. This system fosters overall growth by allowing mobile companies to enter into roaming pacts in another service area irrespective of the spectrum and offers wide ranged services under one license.

E.T. (21.08.2013)

Point to ponder:

The UL Regime provides a level playing field and simplifies the hassles existing between wireline and wireless systems. By delinking spectrum from licenses, free and fair competition can be ensured. It will also leverage the use of technological innovations by all service providers and allow them to run an array of services. This scheme is in line with National Telecom Policy, 1999 and will encourage economies of scale, where services will be made available to the consumers at cheaper rates.

On the other hand, internet rates might rise due to the one time licensing regime. Thus, as rightly pointed out by Telecom Secretary, Mr. Farooqui, the government will have to adopt a calibrated approach and provide a 'healing touch', so that it can once again become a success story.

5.2 TRAI recommends FDI guidelines

On 30th July, 2013, Telecom Regulatory Authority of India suggested 100% Foreign Direct Investment in carriage services and 49% in News TV and private FM Radio, routed through Foreign Investment Promotion Board. It justified the step taken by pointing out benefits of technology, infrastructure, productivity and competitiveness, for the broadcasting sector and said that FDI limit for news and current affairs channels will enable access to more resources at competitive rates for upgrading news and quality of presentation.

MINT (31.07.2013)

Points to ponder:

100% FDI in the Telecom Sector is a blessing for those foreign investors who earlier had to partner with Indian investors to comply with regulatory norms. A significant financial debt burden will also be eased, as the industry will attract fresh funds which are estimated to be US$10bn, in the long run. This will pacify the differences between the need of funds and the current technological growth for which only domestic finds will not suffice. It is a welcome move for major telecom players.

5.3 Dealing with pesky calls

On 22nd August, 2013, in a move to curb the menace of unwanted calls and SMSes, TRAI issued stricter regulations called the 'The Telecom Commercial Communications Customer Preference (amendment) Regulations 2013', which if flouted will result in telephone lines of Banks, Insurance firms and realty players to be disconnected. In an attempt to control the Unsolicited Commercial Communication (UCC), companies have been given 15 days to rectify their actions, after which serious actions will be initiated. It will pacify the problem of unregistered persons engaging in telemarketing activities.

B.L. (22.08.2013)

Points to ponder:

The Regulation issued by TRAI is yet another leap forward to control the activities of the unregistered operators and imposing heavy penalties in case of a complaint. When we look at the 'Telecom Commercial Communications Customer Preference Regulations 2010', for curbing UCC, we do not see much of a deviation here. The Regulation of 2010 provided for a systematic set up as a solution to the growing

menace and the equally rising consumer complaints. The only silver lining is the inclusion of a provision for disconnection of telephone lines of those flouting the regulations. Again, only time will tell.

Our own experience is that pesky calls and smses continue without let.

5.4 TRAI moves court on TV channels

On 27th August, 2013, TRAI moved the Court of Chief Metropolitan Magistrate seeking action against broadcasters violating the 12 minute per clock hour cap on advertisements. This serves the primary objective of striking a balance between giving the consumers a good TV viewing experience and protecting the commercial interests of broadcasters. E.T. (27.08.2013)

Points to ponder:

The whole debate about whether TRAI has the authority to issue the present Regulations and that there is a violation of Article 19(1)(g) of the Constitution, seems totally unworthy. The cap on advertisements has already been a part of Rule 7(1) of the Cable Network Regulation Rules 1994. Thus the regulation does not bring out any substantial change in the status quo. While Article 19 has been contested by the broadcasters, what has been ignored is the blatant violation of the 10+2 cap and the rights of the viewers curbed by such indiscriminate advertising.

What remains unaddressed by TRAI and CCI is that channels are coordinating the timing of advertisements, so that one cannot move to another channel when wanting to avoid watching ads. This is an anticompetitive practice.

5.5 Addressing data privacy

Individual data privacy is again in the limelight with the Data Security Council starting work on building a comprehensive privacy framework. The Data Security Council along with the NSA, has started work on a privacy framework programme which will ensure that all companies, especially in the banking, insurance and telecom sector, furnish proof that they are adhering to privacy principles such as proper use of data, no breach of an individual's details and erasing of old customer data. Assessing of privacy protection standards will also be done, after which a particular company will be given a privacy seal (or certification) which will be valid for 3 years and checks at the end of each year. B.L. (23.08.2013)

Points to Ponder:

Dissemination of personal information raises concerns of privacy breaches as the individual has no control over who has access to the personal information. The above move is a clear step ahead emerging out of national/global concerns over privacy principles affecting people in multiple countries. What has to be seen are the compliance mechanisms and whether they can be properly put in place. But, agreeably, there is no substitute to awareness among consumers.

5.6 Penalties for violation of cell tower radiation norms

The DoT has recommended the doubling of the penalty for violation of Cell Tower Radiation Norms, from Rs five lakhs to 10 lakhs per site per telecom provider, which is in line with Kapil Sibal's recent directive to the DoT. The permissible radiation limit is 0.45 watts per square metre, which is one tenth of the tower radiation limit set by International Commission on Non-Ionizing Radiation Protection (ICNIRP). The norms have been tightened in view of public health.

E.T. (19.09.2013)

Points to Ponder:

India has made the laws far more stringent than the international standards in view of concern for harms associated with tower radiations. But, the DoT has faced several allegations of irregularities and ambiguities with respect to the imposition of these penalties, which in most cases is due to procedural laxities and only one per cent of the total penalties imposed, for violation of permissible radiation limits. This has to be looked into, while the move to strengthen the norm will only do us good.

5.7 TV rating agencies to register

TRAI has made it mandatory for all TV rating agencies to register with the government to improve the accreditation mechanisms. It is recommended to increase the minimum sample size for audience measurement and TRAI has also supported self-regulation through an industry body such as Broadcast Audience Research Council (BARC). To ensure compliance, heavy penalties up to Rs one crore, extending to cancelling of registration, can be imposed.

MINT (12.09.2013)

Points to Ponder:

TRAI's unhappiness over the little or no progress made over implementations suggested five years back, is a step too late, though, beneficial. With the haywire system and set-up of the rating agencies and the rating system, as compared with other countries, stringent steps like the above can ensure better compliance. Better late than never.

VI. WATER

6.1 Uttarakhand Yet to Implement Water Management Act

Recently, the Uttarakhand Water Management and Regulatory Act, 2013, came into being after Governor Aziz Qureshi gave his consent on April 4, much before the disaster struck the state on June 16-17. The experts criticised the government and claim urgent action by government to implement the water regulatory act. The act provides for establishment of a Water Management Regulatory Authority which will ensure judicious and equitable management of water resources in the state as well as its proper allocation and optimal utilisation. The five-member authority will have the powers of a civil court and the mandate to carry out developments in the state in an eco-friendly and sustainable manner. The proposed authority will also fix rates for water use for industrial, drinking, power, agriculture and other purposes and levy a cess on land benefited by flood protection and drainage works.

E.T. (28.07.2013)

Points to ponder:

Under the Indian Constitution water is primarily a State subject and the states have the right to choose their own water law and policy which suit to them. Effective water governance and appropriate laws and institutions are essential for water management. It has been seen that, the National Water Policy of the country is struggling for a long time for better regulation and implementation of water laws; now it is the states' responsibility to take necessary steps in this area.

There are lessons to be learnt from the recent Uttarakhand tragedy. The Uttarakhand Water Management and Regulatory Act, 2013, which was passed on April 4, is yet to be implemented. Experts in this field raise their concerns and claims for immediate action by the government. Analysing the June disaster, the administration stated that it was a natural calamity whereas environmentalist's analysis of man-made disaster due to geology of the area was always neglected with poor law and policies of the government. Now it's the time to implement better law and policy to protect and regulate natural resources.

The Act defines the role of the Water Management Regulatory Authority, which would look after the equitable management of water resources, proper allocation and optimal utilization of water in the state whereas. Further, this act empowers the Water Management Regulatory Authority, to fix the rates for water use for industrial, drinking, power, agriculture use and also flood protection and drainage works without proper guideline. According to this act, the regulator would also coordinate with the state water policy for an integrated state water plan and basin plans to ensure sustainable management of water resources. It can be concluded that one authority with multiple task, with so much power, may complicate the water regulation in the state.

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