PolicyWatch

Covering developments on policy responses, policy implementation and policy distortions on a quarterly basis. Comments are welcome.

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INSIDE THIS ISSUE

HIGHLIGHTS

"The reformer has enemies in all those who profit by the old order and only lukewarm defenders in all those who would profit by the new." **Machiavelli** in *The Prince*

Competition Policy and Governance

The possible link between competition policy and good governance is often a matter of debate in different forums. However, in the Indian context, the debate seems to be irrelevant, not because the link is non-existent or irrelevant, but because the implementation of a competition policy is an essential component of governance in India. According to the Indian Constitution, the freedom to trade or practice any occupation is a fundamental right. As per Articles 301-305 of the Constitution, only the Parliament or the State has the power to impose restrictions on this right. Hence, when barriers to entry are created by private parties, or a business entity is thrown out of business by predatory practices, or a business entity is forced to close down due to a buyers' cartel, a fundamental right is violated.

The Financial Express

Constitution also provides for curbing concentration of economic power, so that the common good is not adversely affected. Since the core function of the government is to protect the constitutional rights, an appropriate mechanism to check such anti-competitive practices becomes an essential component of governance. Not only that the present Indian Constitution also recognises this right but also this was recognised even in the *Arthashastra*, the first known treatise on government written by Chanakya in the 3rd century BC. It emphasised fair trade as one of the cornerstones of good governance.

If there are a few powerful companies, rather than many non-powerful companies, the ability of the business to influence government policies and decisions will be greater. The government, in such a situation, is more likely to develop a close nexus with the business, leading to corruption.

Much of the corruption in government happens in the area of procurement. Though, in India, there is a system of promoting transparency and accountability in the procurement process through a vigilance establishment, government audit without the involvement of the relevant government officials, may not come under the existing system of scrutiny

By bringing in an effective mechanism to tackle bid rigging with adequate investigative capability, corruption can also be reduced.

At another level, businesses too collude, through cartelisation, and overcharge consumers or do not allow easy availability or divide markets. That too is a part of the competition-governance nexus. In many cases, this cannot be done without the acquiescence of the enforcement machinery. If it is not explicit, it can be implicit. In conclusion, the above points do buttress the argument that competition can promote better governance.

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COMMUNICATION

Failure to Utilise Fund

The Planning Commission has reduced the allocation to the Universal Service Obligation Fund (USOF) by Rs 900 crore for the fiscal 2008-09. The reason is that the Department of Telecommunication (DoT) has failed to completely utilise the funds allotted towards the USOF in 2007.

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For the current fiscal, the DoT will now get only Rs 2,000 crore, as against its requirement of Rs 2,900 crore. All telcos contribute five percent of their annual revenues to the USOF used for telecom infrastructure in rural India. While about Rs 20,000 crore has been collected so far towards this levy, only Rs 5,000 crore has been disbursed by the Finance Ministry.

In fact, the Parliamentary Standing Committee also slammed the DoT over this issue, saying the shortfall had happened for the first time and might have prompted the Planning Commission's move to reduce the disbursement. *(ET, 19.04.08)*

Mobile Number Portability

Favouring the nation-wide implementation of mobile number portability by June 2009, the Telecom Regulatory Authority of India (TRAI), recommended that the Mobile Number Portability Clearing House Administrator (MCHA) should be licensed through a competitive bidding process.

The TRAI said that, in the case of pre-paid mobile subscribers transferring the mobile number with some balance amount, no credit transfer would be allowed to the new account. Subscriber has to either consume the balance amount or forget it.

There will be 'break before make' arrangement for completion of porting process – that is connection from donor network to be disconnected first and then connection with recipient network will be made.

(BL, 11.04.08)

Inquiry Against Mobile Cos.

The Monopolies and Restrictive Trade Practices Commission (MRTPC) has issued a notice of enquiry against Bharti Airtel, Vodafone Essar and Idea Cellular for allegedly forming a cartel to distort competition, by increasing tariffs simultaneously.

The case was taken up by the MRTPC after the three companies announced similar tariff hike on a specific plan in August 2007. While local call charges were increased from Re 1 to Rs 1.20 per minute, STD rates were increased by 10 percent on a few pre-paid plans.

The notice from the MRTPC comes after its investigative wing, the Director General of Investigation and Registration (DGIR), report said that the three GSM operators, by colluding, have simultaneously increased the price. *(BL, 03.04.08)*

Review of Termination Rates

In a move that will bring down mobile tariffs further, the DoT has asked the telecom regulator to undertake a review of the existing termination charges.

Termination rates are paid by the telecom operator on whose network the call originates to the operator on whose network the call ends.

At present, the originating operator pays up to 30 paise a minute as termination charge. The DoT has proposed to bring this down to 10 paise a minute, which will bring down tariffs by 20 paise. *(BL, 23.06.08)*

Draft Radio Policy

The draft radio policy, which permits a satellite radio service provider to hold the permission of satellite radio channels also, received a boost, as the Ministry for Information and Broadcasting has accepted the final recommendations by TRAI on it, with some modifications.

Among its various recommendations submitted to the Ministry, the TRAI has found acceptable the Government's proposal in the draft policy on restrictions on news and advertisements in satellite radio service.

Satellite radio service refers to the distribution of single or multi-channel radio programmes, by using a satellite system, which provides encrypted digital radio signals direct to the subscribers' receiver sets.

(BS, 04.06.08)

M&As Tough for Telcos

The Government made mergers and acquisitions (M&As) in the telecom sector difficult, by making it mandatory for companies to obtain pre-amalgamation approvals and at least four service providers to be present in a circle.

The DoT also said no operator would be allowed to transfer fresh spectrum or radio frequency allocated to it for three years from the date of issue. Announcing the revised norms for intra-circle merger, the DoT said, "Any permission for merger shall be accorded only after completion of three years from the effective date of the licences".

This lock-in period will effectively seal the chances of new and small operators merging with big players in a circle immediately and, most importantly, the transfer of spectrum.

(ET, 23.04.08)

TRAI Cautions DoT

The TRAI has cautioned the DoT against taking any decision on policy matters, without consulting it. In a note written to the DoT, TRAI Chairman said that the recommendations of the regulator is required according to the existing laws and the DoT should keep this in mind, to avoid any legal complications.

The TRAI said that it had come to know that the DoT was planning to amend the licence terms for unified access service and basic telecom providers. *(BL, 27.05.08)*

POWER

Violation of Act

The Central Electricity Regulatory Commission (CERC), in a path breaking order, ruled that it will be a violation of the Electricity Act to grant inter-state power trading licence, when the transmission company and the trading company are owned by one entity and controlled by the board of directors headed by a single person.

Based on the existing provisions of the Electricity Act and the law laid down by the Supreme Court, CERC has rejected Maharashtra State Electric Power Trading Company's (applicant) plea for grant of category "D" inter-state power trading licence.

CERC ruled that the applicant and the Maharashtra State Transmission Company, which is the State Transmission Unit (STU) and also operating the State Load Despatch Centre (SLDC), are the integrated organs of the one concern, MSEB Holding Company.

The applicant had submitted that it proposes to carry on the business of purchase and sale of all forms of electrical power, both conventional and non-conventional, and also to supply, import and export or deal in all forms of electrical energy.

(FE, 20.06.08)

Amendments to Tariff Policy

The Power Ministry has issued amended tariff policy to promote private sector investment in hydro-power generation. As per the revised tariff policy, long-term power purchase agreement (PPA) would be at least for 60 percent of the total saleable design energy.

However, this 60 percent would get enhanced by five percent for delay of every six months in commissioning of the last unit of the project, against the scheduled date approved by the Appropriate Commission, before commencement of the construction.

(FE, 11.04.08)

Power Import Policy Soon

With the Indo-US civilian nuclear deal hanging in the balance, the Government is framing a policy for importing power from neighbouring countries, including Pakistan, to overcome the peaking shortage, according to sources.

Work on the policy is being expedited. For, although India considers Nepal, Bhutan and Myanmar a natural market for hydroelectricity, competition could be round the corner.

The overriding objective of the policy should be "securing energy resources in these countries for our future in a framework based on sound commercial principles and which is beneficial to both parties in the long run", the sources said. *(TH, 19.05.08)*

Stake in Profitable Cos.

To meet the United Progressive Alliance (UPA) government's ambitious target of adding fresh capacity of 1,11,000 MW during the 11th Five-Year Plan, the group of ministers (GoM), examining the finances of the power sector, has proposed that the Government divest up to 49 percent of its stake in profitable central power sector companies.

They include National Thermal Power Corporation (NTPC), Power Finance Corporation (PFC), Rural Electrification Corporation (REC), Power Grid Corporation of India limited (PGCIL) and National Hydroelectric Power Corporation (NHPC).

To ensure that funds from any such disinvestment are ploughed back for investment, the ministerial panel has recommended they be routed through the new National Electricity Fund announced in the Budget 2008-09. *(FE, 11.04.08)*

Suitable Regulations

After the CERC's warning to overdrawing states threatening curtailment of power supply, it is the turn of the Power Secretary, who has asked guilty states, especially Uttar Pradesh and Jammu & Kashmir that they must resort to "suitable prompt regulations" or face strict action.

According to sources, the Power Secretary was critical about states that have overdrawn power at times when frequency has been below 49.0 hertz. The Power Secretary suggested that the states scout for untapped captive power units and have them connected to the grid, with a view to mitigating the crisis. *(FE, 05.05.08)*

Green Power for Distributors

It is now mandatory for power distribution companies to buy a minimum quantum of green power for their consumers. The Government is working on a set of regulations by which distribution companies must have a mix of conventional and non-conventional power in their kitty.

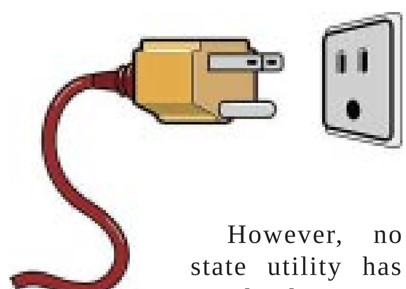
Distribution companies normally have to buy power from generating companies within and outside the state to meet the electricity requirements of the state.

The idea behind the move is to see that every state includes some green power (electricity generated from non-conventional sources like wind, solar or bio-gas) in their total consumption.

Companies may be even penalised for not buying a minimum quantity of non-conventional power. *(ET, 27.06.08)*

First to Privatise Power

Gujarat will be the first state to privatise all the activities, viz. power generation, distribution and transmission. So far, only central transmission utility – the Power Grid Corporation of India Ltd – had joined hands with private players, by forming joint ventures with Torrent Power, Jaypee Power and Tata Power.



However, no state utility has involved private players into transmission, as yet. The Gujarat Energy Transmission Corporation Ltd (GETCO) would now invite participation from private players for providing services to establish transmission systems for two projects.

It would be the first state utility in the country to invite participation from private investors to avail transmission services. *(ET, 24.05.08)*

TRANSPORT

Perform or Perish

Urging that the state-run carrier, Air India should match up the competition from the private operators, the Civil Aviation Minister, Praful Patel, said that it was after more than 15 years that the Government has given a signal that the national carrier must be allowed to grow and flourish and must remain in Government hands.

Justifying his earlier statements that the merged carrier must "perform or perish", he said, India and Indian Airlines cannot compete with their hands tied. This is an era of competition, not only in aviation but also in every sector virtually.

We have seen public companies competing with private enterprises and have seen many successful public sector undertakings (PSUs) emerging, in spite of the competition, the Minister commented.

(FE, 20.06.08)

Regulator for Aviation

The aviation sector in the country will now be regulated. An independent regulator will be in place for the aviation sector by October 2008. The matter was presented to the Parliament and was later referred to a standing committee.

After clearance from the Parliament, it would take about three months to set up the regulator. The regulator would look into aspects like aeronautical charges, user development fee, passenger fee and others.

A policy on green field airports being considered by the Cabinet would be announced shortly that would seek to minimise the delay faced by developers of new airports in getting approvals. *(BL, 10.04.08)*

Denied Boarding Ticket?

The next time an airline says it has no seats, though you are holding a confirmed ticket and reported to the airport well in time, you could be going back home richer by between Rs 5,000 and Rs 12,000.

The Directorate-General of Civil Aviation (DGCA) has issued draft guidelines that stipulate a passenger denied boarding is entitled to Rs 5,000 for flights of 1,500 km or less or Rs 8,000 for longer domestic flights.

Similarly, a passenger flying over 3500 km outside India will be entitled to a compensation of Rs 12,000. A passenger is considered as having being denied boarding when there are too many passengers and an airline does not have enough seats to offer.

(BL, 02.06.08)

500 Airports in 10 Years

The airline industry is all set to spread its wings across the country. In an ambitious plan, the Civil Aviation Ministry has set a target of having 500 operational airports in the next 10 to 12 years, according to a report by the Centre for Asia Pacific Aviation (CAPA). This will include the ongoing *redevelopment* of currently unused airports or little used airports and development of green field and cargo airports.

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According to a senior ministry official, "The civil aviation sector is showing a phenomenal uptrend with double-digit growth rates. However, airport infrastructure has not developed simultaneously, resulting in traffic congestions and delays at most airports".

To revamp the airport infrastructure, the Government has envisaged a modernisation plan with an investment of Rs 40,000 crore to Rs 50,000 crore by 2009. *(ET, 10.05.08)*

More Compensation

The Lok Sabha passed the Carriage by Air Bill that enhances the compensation amount to victims of air accidents or for damage caused to baggage or cargo, bringing it on a par with the international rates.

The Bill was adopted by voice vote after Civil Aviation Minister said it was necessary for India to ratify it as part of an international protocol – the Montreal Convention 1999.

The legislation would enable payment of higher compensation to air travellers, in the event of death or injury, and prevent Indian passengers from discrimination. *(TH, 02.05.08)*

Slammed for Limiting Profits

A Parliamentary panel has pulled up the Indian Railways for "arbitrarily" limiting the gross profit of its tourism and catering subsidiary, Indian Railways Catering and Tourism Corporation (IRCTC) at Rs 30 crore.

The Committee has asked Railways to reconsider its decision on the issue. The Railways had decided to impose haulage cost in 2006-07 on IRCTC for hauling the pantry cars in rakes by issuing a directive.

Expressing its displeasure on the move, the Parliamentary Committee on Public Undertakings has stated it is surprised to note how the Railway Ministry can put a cap on the gross profit of IRCTC by imposing an abrupt and arbitrary decision on it.

(BL, 30.04.08)

Flaws in Rural Road Scheme

In a scathing indictment of the *Pradhan Mantri Gram Sadak Yojana*, the 77th report of the Public Accounts Committee (PAC) has pointed out diversion of funds, non-compliance of the tendering process and unreliable monitoring in the implementation of the programme.

The report said that even after five years of launching of the PM's rural roads programme and incurring an expenditure of Rs 20.67 crore, the Online Management and Monitoring System was not "fit for decision-making and monitoring".

There were weaknesses in the design and internal control mechanism of the system and the internal control mechanism of the system and the database generated was incomplete and unreliable.

The Rural Development Ministry admitted that it "did not have a formal IT strategy and IT group and depended on NIC and C-Dac for co-ordinating the functioning of the application". *(HT, 03.05.08)*

MIXED BAG

HC Stays RBI Order

Subroto Roy's para-banking company, Sahara India Financial Corporation Limited (SIFCL), obtained a stay against the RBI's directive prohibiting the non-banking financial company from accepting public deposits from investors.

A vacation bench of the Allahabad High Court in Lucknow granted the stay on a petition filed by Sahara India Financial Corp's Executive Director, O P Srivastava.

On June 04, 2008, the RBI had prohibited SIFCL from accepting deposits from investors in whatsoever manner, including installments under any running daily deposit or other deposits. *(FE, 06.06.08)*

Order on New Chief

The Insurance Regulatory & Development Authority (IRDA) has remained headless, as the Centre is yet to notify the name of the new chairman. C S Rao has retired from the post of the chairman of the IRDA on May 14, 2008.

The Centre has selected Jandhyala Harinarayan, former Chief Secretary, Andhra Pradesh as the new chairman of the IRDA on the basis of the recommendation of a search committee, headed by the Finance Secretary, D Subba Rao. However, the official notification is yet to be issued by the Government.

Once again, the IRDA chairmanship has been filled by a retired officer of the Indian Administrative Service (IAS). Earlier, the selection committee had short listed two names for the post. Along with Harinarayan, the name of C R Murlidhran was also short listed for final selection. *(FE, 17.05.08)*

Now An Infrastructure Index

India may now have an infrastructure index to measure the country's core sector growth on a regular basis. The index, which will be on the line of wholesale price index (WPI) or consumer price index (CPI), will reflect the growth or downturn of the country's infrastructure story on a regular basis.

The index, which could be quarterly or bi-annual, is being developed by a private organisation. Significantly, the index is likely to be managed by a reputed private organisation, before it is adopted by the Government. When contacted, the adviser to the Finance Minister, Shubhashis Gangopadhyay, confirmed the development, but added that the idea was still in its preliminary stage.

"Some people are working on the concept of creating an infrastructure index for the country. We do need such an index. Of course, an infrastructure index cannot be rolled out on a weekly or monthly basis. It has to be either three-monthly or bi-annual", he said. *(ET, 04.05.08)*

No to Bank's Privatisation

The All India Bank Employees' Association (AIBEA) and the All India Bank Officers' Association (AIBOA) are gearing for a nationwide campaign against the privatisation move in banks, two months ahead of the Bank Nationalisation Day.

They have decided to observe July 19 – the Bank Nationalisation Day – as 'save public sector banks day'. Alleging the Government of 'misdirected policies and misplaced priorities' in banks, the AIBEA and AIBOA representatives said that associations have demanded rejection of the Tarapore Committee, Anwarul Hoda and Raghuram Committee recommendations for reduction of government equity to 33 percent.

The associations have demanded the need to ban high cost bulk deposits from corporates, increase in interest rate on savings account, a halt to sub-PLR credit to corporates, greater thrust to priority sector credit and extension of farm credit at four percent. *(BL, 18.05.08)*

Penalty on Top Insurers

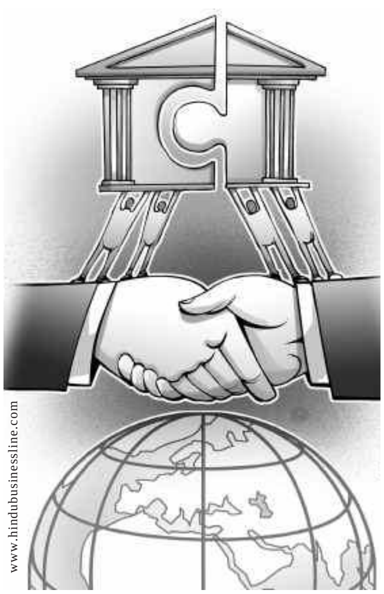
The IRDA has cracked the whip on some state-owned general insurers and a few private insurance companies for flouting norms.

But, unlike the banking regulator, the RBI, the insurance regulator does not publicise such moves immediately after making them. Also, unlike RBI, IRDA has penalised some insurers up to Rs 5 lakh for not being able to meet the mandatory social sector obligations. Both New India Assurance and Shriram Life Insurance have faced regulatory action because of this.

Other prominent insurers that have been fined Rs 5 lakh include Bajaj Allianz Life Insurance, Bajaj Allianz General Insurance, Reliance General Insurance, IFFCO Tokio General Insurance and United India Insurance. *(FE, 13.04.08)*

RBI to Consolidate Banks

"The Reserve Bank of India (RBI), as the regulator and supervisor of the banking system, would continue to play a supportive role in the task of banking consolidation, based on commercial considerations", said V Leeladhar, Deputy Governor, RBI while addressing the International Banking & Finance Conference 2008, organised by Indian Merchants Chamber in Mumbai.



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This would further strengthen the Indian financial sector and support growth, while securing the stability of the system. Though consolidation in the public sector banking segment, which accounts for about 75 percent of assets of the banking system, is still a work in progress, there are enabling legal provisions for the purpose in the respective statutes of the public sector banks. *(ET, 18.04.08)*

OIL & GAS

Running Out of Cash

"The public sector oil marketing companies are fast running out of cash (working capital) needed to keep their operations going", according to sources in these companies.

The cash crunch is adding a new dimension to the problem of under-recoveries in the domestic sale of petroleum products that these oil PSUs – IndianOil (IOC), Bharat Petroleum Corporation (BPCL) and Hindustan Petroleum Corporation (HPCL) – suffer in the backdrop of the relentless rise in the crude prices.

Indeed, these sources go so far as calling "2008-09 to be the most difficult year to survive".

(BL, 30.04.08)

Food Prices May Drop If...

Global food prices could ease by up to 20 percent by 2010, if bio-fuel production is stopped completely across the world, a US-based think tank has said in its latest report.

"If bio-fuel demand from food crops was abolished after 2007, prices of key food crops would drop more significantly. By 2010, maize prices are expected to fall by 20 percent, wheat by 8 and sugar by 12 percent", International Food Policy Research Institute (IFPRI) report said.

However, it maintained that the contribution of bio-fuel production in wheat and rice price rise is only 22 percent, while factors like bad weather in key producing nations, like Australia, higher oil prices and poor government policies had much bigger impact.

It also said, "If bio-fuel production was frozen at 2007 levels for all countries and for all crops used as feedstock, maize prices are projected to decline by six percent by 2010 and 14 percent by 2015".

(ET, 18.05.08)

Policy Amendments Delayed

The implementation of the new National Mineral Policy (NMP) is likely to be delayed again. The working group set up by the Mining Ministry, comprising officials of mineral-rich states, is yet to reach a consensus over the proposed amendments to the Mines and Mineral (Development and Regulation) Act, 1957.

The Amendments to the Act are an integral part of the recently-cleared NMP, without which the policy merely remains a toothless piece of initiative on paper. Amendments would have to be separately cleared by the Cabinet, before its introduction in the Parliament.

The states still have a few doubts over some of the provisions of the policy and want to incorporate changes in the Act that suit their interest. This could delay the introduction of the amendments in the Parliament, thereby delaying operationalisation of policy.

(ET, 14.04.08)

Fuel Price Hike Unavoidable

The Indian industry termed the fuel price hike as "unavoidable" and said that the move would provide some cushion to the under-recoveries of about Rs 550-600 crore a day that oil marketing companies were facing, given the surging global crude prices.

The industry further said that the sharing of the burden of rising oil prices by various stakeholders would ensure that the direct impact on retail consumers is contained. The reduction of customs duty and specific excise rate is a welcome measure and shows the Government's commitment to share the burden of increased global prices, said the Confederation of Indian Industry (CII).

Further, the Federation of Indian Chambers of Commerce and Industry of India (FICCI) also lauded Government's multi-pronged approach to deal with the situation through a combination of reduction in excise duty on petrol and diesel and the abolition of customs duty on crude, in addition to an upward revision in prices.

According to the PHD Chamber of Commerce and Industry (PHDCCI), the measures announced by the Government would help oil companies to cut losses on sale of petrol, diesel and liquefied petroleum gas (LPG).

(BL, 05.06.08)

Need for 'Re-authorisation'

The Petroleum and Natural Gas Regulatory Board (PNGRB) has written to all existing city gas distribution companies, asking them to get themselves "re-authorised" within a week.

The PNGRB has also asked the gas retailers to stop the expansion of existing pipeline networks till they are re-authorised by the board. Existing city gas companies started operations before the regulator formally came into being on October 01, 2007.

Their city of operation was chosen by the Petroleum Ministry, after directions came from the Supreme Court. The PNGRB wants these companies to now get licences from it, as it wants all city gas operations to be routed through the regulatory board.

(BS, 04.04.08)

Co_2 Emissions to Rise

If governments around the world continue with policies in place to date, by 2050, CO_2 emissions will rise by 130 percent and oil demand will rise by 70 percent, a bleak outlook made by International Energy Agency (IEA) due to pressures from coal-based economies like India and China.

The agency's leading biennial publication responds to the G-8 call for guidance on how to achieve a clean, clever and competitive energy future and said the current path is not sustainable.

"We are very far from sustainable development, despite the widespread recognition of the long-term problem. In fact, CO2 emissions growth has accelerated considerably in recent years", said IEA in a statement.

(FE, 07.06.08)

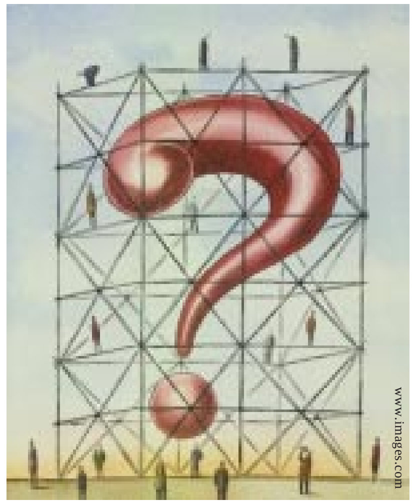
Setback for Infrastructure Privatisation

– Somasekhar Sundaresan

A recent decision of the Bombay High Court has far-reaching implications for the private sector players' operating businesses that were once the preserve of the state. A division Bench of the court has ruled that the company implementing the Mumbai airport privatisation project is nothing but an "instrumentality of the state".

Consequently, various business decisions and actions of similarly placed private Indian companies would now be subject to the writ jurisdiction of Indian High Courts.

The Court was hearing a writ petition challenging the award by the Mumbai International Airports Pvt. Ltd of a contract for running duty-free shopping outlets in the Mumbai airport (Disclosure: In the proceedings, another partner of this author's firm represented the party to whom the contract had been awarded.)



The view of the Bombay High Court has opened up a range of possibilities that would dampen the process of privatisation and private implementation of what was once a public preserve.

The private operator of the Mumbai airport chose not to shortlist one of the parties that expressed interest in managing duty-free shopping outlets. The ignored party filed a writ petition, arguing that the private operator too was an instrumentality of the state and, therefore, was bound by the rules of public law and procedure in selection of the licencee to run the duty-free shopping area in the airport.

The grievances, among others, were that the private operator ought not to have taken a short-listing approach, ought to have invited bids from all interested parties and ought to have given written reasons for not taking cognisance of its interest in the contract.

The Court upheld the challenge to the awarded contract and exercised its writ jurisdiction to rule on the merits of the case. The Court ruled that the private limited company was not truly private and ought to have conducted itself in the same manner in the award of the contract as the government would have.

The view of the Court has opened up a range of possibilities that would dampen the process of privatisation and private implementation of what was once a public preserve. Such business enterprises now abound in India – in the power, telecom, roads and port sectors, to name a few. In the conduct of their day-to-day business, they award several contracts, appoint numerous service providers and employ an enormous work force.

If all their actions have to follow the same standard and rules that the government would have to follow, the very cause for privatising such operations would be nullified.

The Court arrived at the conclusion on the basis that the state still had pervasive control over the airport operator – the airport operator has a concession of 30 years to run the airport, extendable by another 30 years, but the government has a 26 percent equity ownership in the project company. One specific criterion that weighed with the Court was the power granted to the private operator to evict encroachers from the airport property, which are "public premises" under relevant laws.

By such rationale, private sector players in all infrastructure projects can now be regarded as instrumentalities of the state and, therefore, amenable to the writ jurisdiction of courts. All their business decisions would no longer be "business decisions" but "state decisions" and, therefore, subject to the rules of procedures that would govern the conduct of government and public sector enterprises.

Arguably, even companies in heavily regulated or licensed industries can be regarded as arms of the state by logical extension of such rationale.

Once a business is handed over to a private operator, if the state (including the judiciary) can also decide on how the business ought to be run, there would be no difference between a private airport operator, and say, the Bombay Municipal Corporation.

For instance, every job for which the private company may place a recruitment ad would have to follow the norms followed by the government. Any candidate could access the writ court and seek judicial intervention on how the selection of the important officials of the company ought to be effected.

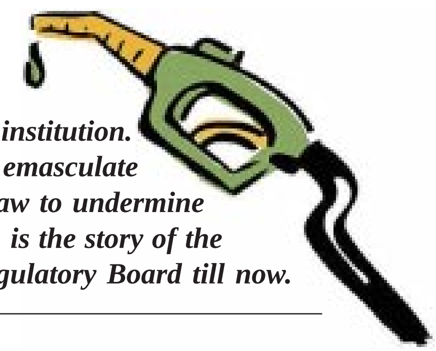
Housekeeping contracts, janitorial contracts, staff canteen contracts, contracts for servicing of lifts and elevators, contracts for purchase of repair materials, spares or any plant and machinery and even the sale of scrap would then have to follow the public tender process.

In short, one would have to run such project companies in the same manner in which the government would run them, tie things down in bureaucracy and, as a result, place the system in the same position as it was in before privatisation. This is a wake-up call.

– Partner of JSA, Advocates & Solicitors. The article appeared in the Business Standard, June 23, 2008.

Oil's Not Well

– Paranjoy Guha Thakurta



Set up an important regulatory institution. Do not empower it. Worse still, emasculate it. How? By manipulating the law to undermine its authority. This, in a nutshell, is the story of the Petroleum and Natural Gas Regulatory Board till now.

On All Fool's Day, 2002, the BJP-led NDA Government took a policy decision to do away with the administered pricing mechanism (APM) for petroleum products, or a mechanism that enables the government of the day, through the Union Ministry of Petroleum and Natural Gas, to regulate the prices of petrol, diesel, cooking gas, kerosene and so on.

Given the fact that the prices of petroleum products are politically highly sensitive, the NDA Government continued to administer the prices of key products, despite its policy decision to the contrary. The UPA Government did not formally reverse the decision to scrap the APM, but continued to administer prices at the highest political level, usually the Cabinet Committee on Economic Affairs.

In March 2006, Parliament enacted the Petroleum and Natural Gas Regulatory Board (PNGRB) Act. On April 03, 2006, the Act is published in the Gazette of India. The next step for the Government is to notify the Act and, supposedly, leave the Board to go about its task. But that does not happen.

On December 20, 2006 the Government puts out a policy for 'development of natural gas pipelines and city/local natural gas distribution networks'. A number of important areas in the hydrocarbons industry have been taken out of the purview of the Board.

What then was the Board supposed to do? The Act says the Board is supposed to regulate the distribution of natural gas through city/local networks, authorise entities to lay, build, operate and expand a common carrier or contract carrier, trunk pipelines as well as city/local networks and regulate transportation tariffs.

On June 25, 2007, the Government notifies the formation of the Board. Retired IAS officer, Labanyendu Mansingh, former Secretary, Consumer Affairs, is appointed chairman of the Board. L.K. Singhvi, former Chief Commissioner of Income Tax, Delhi, is appointed member, commercial, and Bhagwat Singh Negi, former Director (business development), GAIL (formerly Gas Authority of India Limited), is appointed member, infrastructure.

In June, the Government notified only the constitution of the Board and not the Act itself. Yet, Section 3 of the Act clearly states that the Board can be set up only under the provisions of the Act. It was a classic 'Catch-22' situation, straight out of Joseph Heller's novel. The Board was operational, but it could not do anything because the Act itself had not been notified. Was the omission an oversight?

Between June 25 and October 1, 2007, the Ministry of Petroleum and Natural Gas went ahead and authorised the construction of five major natural gas pipelines by GAIL and four by Reliance Industries Limited, involving an investment of – hold it – not less than Rs 50,000 crore. In effect, what the Government did was to leave nothing for the Board to do, since all the major trunk pipelines required for the country in the near-term had already been authorised.

That's not all. Significantly, all the nine gas pipelines were authorised without going through a process of competitive bidding. Section 4.1 of the natural gas distribution policy, on the other hand, provides detailed guidelines for selecting the entity that would build a pipeline, through a transparent process of bidding.

The story does not end there. Section 11F of the Act specifies that the Board would supervise the marketing and retail service obligations of those who sell natural gas and petroleum products that are 'notified' by the Ministry, which, in its infinite wisdom, has chosen not to notify even a single one of the 140-odd petroleum products that are sold.

The Board had asked Shastri Bhavan to sanction 130 posts. So far, only 31 posts have been sanctioned, most of them at a junior level. The Ministry released a paltry sum of Rs 2 crore to the Board, for the first time, in April this year. Till then, it had no financial autonomy.

Whereas the salaries of the chairman and members were being paid for by the Ministry, the rest of the staff of the Board are on lien from public sector undertakings, like the Indian Oil Corporation and Hindustan Petroleum Corporation Limited, companies which the Board is supposed to regulate.

Moreover, the Board itself has been functioning out of premises provided by these same PSUs. It was first operating out of the office of the IOC in central Delhi. Since this office is currently being renovated, the Board has temporarily moved to premises being used by HPCL in east Delhi. Even the computers and the phones being used by the staffers of the Board are owned by these companies.

The Government of the day had taken its own sweet time empowering the Securities and Exchange Board of India, the regulator of the capital markets. Although the Monopolies and Restrictive Trade Practices Act was diluted and the MRTP Commission became a toothless tiger a long time ago, the Government dragged its feet on strengthening the Competition Commission of India.

The moot point is why the Government went through the charade of creating a body called the PNGRB, when the Minister, Murli Deora, and the Secretary, M.S. Srinivasan, do not appear to be interested in wanting it to work, leave alone function effectively.

– Editor, Realpolitik. Abridged from an article appeared in the Hindustan Times, April 10, 2008.

Don't Leave Policy-making to Experts, Private Sector

– By Mukesh Kacker

Public policy affects the entire citizenry and strives to achieve a wide range of objectives in a non-partisan manner, unlike private policy, which has a single objective of profit maximisation for a particular group. However, since the citizenry of a state is an agglomeration of individuals, companies and myriad interest groups, based on the coalescing glues of language, religion, caste, geography, ideology, politics and economic interest, each trying to influence the policy to suit its specific interest, the making of public policy is a rather messy affair.

Though the bureaucracy and the political executive of the day appear to be the main actors, the actual process is complicated and includes a long list of dramatis personae, including the Parliament and its committees, sector regulators, bodies of experts and subject-matter specialists, tribunals, courts, industry associations, public advocacy forums, NGOs and the media. Since public policy can neither possibly satisfy all the competing interests nor achieve conflicting objectives, it perhaps cannot avoid being a punching bag and being slammed by all and sundry. And, as the main actors, the bureaucracy and the political executive are always at the receiving end. This is not to say that bad public policy should not be criticised.

The Economic Times

In a democracy, public criticism, scrutiny and debate are perhaps the most essential processes in the making of public policy. What is to be seen is whether any other group deserves to be the main actor.

One popular proposition that gets aired in many forums is that policy-making should be best left to those with domain expertise, that is, to subject-matter specialists, as opposed to generalists. However, though policy should never be made without inputs from specialists, it is highly debatable whether they should be given the pivotal role of steering it. Firstly, except in highly technical subjects, like rocket science or nuclear technology, expertise is nothing but codified common sense. Secondly, public policy needs perspective and holistic vision, whereas subject specialists, more often than not, suffer from tunnel vision.

Another idea that has become fashionable supports greater role for the private sector in policy-making. The reasoning given is that, since the private sector is more efficient, it deserves much greater say in the formulation of public policy. However, the argument is facile and cannot withstand close scrutiny. Though it is incontrovertible that the private sector is far more efficient, this efficiency relates to the area of execution, driven primarily by concerns of the bottom-line. Secondly, though at the macro-level the prosperity of the private sector does add to the GDP of the country, at the micro-level, private interests are seldom co-terminus with broad national interests. This is not to say that industrialists or businessmen should not be made ministers, but if stringent conduct rules apply to civil servants, similar rules should govern persons from industry and business in public life.

The best possible compromise would be to use private sector stalwarts as advisers or as part of specialist bodies and to use private sector efficiencies in execution, through public-private partnership (PPP) projects. A word of caution, though, needs to be inserted here. PPP is a great concept – it is an open admission by the government of its inferior execution skills – but, great care needs to be taken that the concession to the concessionaire does not extend to policy-making areas and that the leadership role is retained by the government. The abysmal state of the Delhi Airport, even two years after the signing of the PPP concession, is precisely because of the fact that the PPP document did not take care of these two points.

The foregoing analysis, unfortunately, leads to a conclusion that appears to be indefensible — that public policy must be led by civil servants and ministers. Firstly, the public perception of the government's role in policy formulation is so poor that it is almost embarrassing to say that there is nothing wrong with this institutional arrangement. Here, it is necessary to keep a few things in mind. Public policy is but a handmaid of the political philosophy of the government and for the first 40 years of our republic, the direction of the political philosophy of the state ensured the doom of public policy in most areas.

Secondly, lackadaisical and unmotivated implementation at the grass roots has often been the main reason for the failure of well thought-out policies.

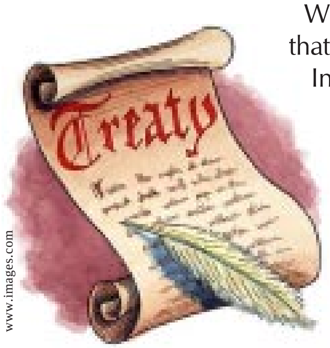
Thirdly, although the civil services are full of exceptionally bright people, the personnel management of the government is so pathetic that it continues to place unimaginative dolts in important positions, leading to poor policies and widespread negative public perception of the bureaucracy.

There is no simple solution to the problem. Beyond that, good selection procedures for senior positions in the government are, perhaps, the most important requirement. Public advocacy institutions dealing with public policy issues must play a greater role in sensitising and educating civil servants and governments on issues that may have escaped their attention.

– Former Civil Servant and the CMD of Kacker & Daughter Infrastructure Consultancy Services. Abridged from an article appeared in the Economic Times, June 02, 2008.

India-Brunei Signs BIPA

India has signed a bilateral investment promotion and protection agreement (BIPA) with Brunei Darussalam.



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While signing the agreement, Chidambaram said that Brunei becomes the 70th country with whom India has, so far, signed the BIPA. Observing that Brunei is the third-largest producer of oil in South-East Asia and the fourth-largest producer of liquefied natural gas (LNG), he hoped that the agreement would serve as a catalyst in boosting investment flows between the two countries.

The BIPA seeks to protect and promote investments from either country in the territory of the other country, with the objective of increasing bilateral investment flow. *(BL, 22.05.08)*

Steel as Essential Commodity

A year after it declassified steel and its products from the list of essential commodities, the Government is preparing to bring it back under the ambit of the Essential Commodities Act, 1955.

The Act gives the power to the Government to control production, supply and distribution of essential commodities at a fair price. The proposal is likely to be taken up by the Cabinet Committee of Economic Affairs.

Some other inflation control measures that are on the anvil may also be implemented soon. These include getting the Power Ministry to make available uninterrupted electricity supplies to small and medium steel producers, in order to improve their capacity utilisation and productivity. *(BS, 24.04.08)*

Escaping Regulator Radar

Many Indian businessmen have discovered that the neatest way to bring back money that's stashed away abroad is to show it as foreign direct investment (FDI) in a small unlisted firm that few would notice. This involves a string of transactions that not only escape the regulatory radar but also have a touch of legitimacy.

The regulator has asked all commercial banks to carry out a check on entities that are investing into the country. This in all likelihood emanates from concerns that the majority of FDI deals are automatic in nature. These deals are not in the public domain and are hardly tracked by any of the central authorities.

Under the circumstances, if concerned banks which handle such transactions have to carry out a 'know your customer' check on organisations that invest, it could make such laundering a little riskier. *(ET, 02.06.08)*

Towards Consolidation

After a flurry of M&As – CRH acquiring My Home Industries for US$462mn, Lafarge buying L&T Concrete's RMC business for US$349mn and Heidelberg consolidating its business with Mysore Cement and Indorama – the cement industry is moving towards consolidation, according to experts.

The period 2005-08 had seen a slew of M&A activity in the industry, with recent ones being of very high valuations.

According to experts, cash flows are at an all-time high and this year looks to be a very active one. But, whether this will continue with more M&A activity is a big question. *(FE, 20.05.08)*

Agency for Bilateral Aid

With the country shifting gears, from being an aid recipient to a donor nation, India may soon have its official agency for developmental aid. This is also in line with the country's emergence as an economic power.

The Government is working on a plan to create an agency on the lines of Japan International Co-operation Agency (JICA) and South Korean International Co-operation Agency (KOICA) for handling development aid, official sources said.

The Ministry of External Affairs is giving final shape to the agency. The agency will be the single window to provide India's technical assistance and other forms of aid to other countries. *(ET, 04.05.08)*

No Big Bucks Required

Patents do not require big bucks and nor do massive R&D spends necessarily translate into an increase in patent filing. This can be seen from the data provided in the latest annual report (2007-08) of the Department of Scientific and Industrial Research, Ministry of Science and Technology.

In the automobile sector, for instance, TVS, the third-largest motorcycle company, has an R&D spend that is one of the lowest among players, but the number of patents in its kitty is way above the rest.

Auto parts makers, like Ucal Fuel System and Sundaram Clayton, have also been able to build a reasonable patent portfolio, with a relatively low R&D spend. While patents may not have a direct correlation with R&D spends, companies that have a substantial number of patents in their belt feel that they have several advantages. *(BL, 05.06.08)*

Milk Companies to Merge

Consolidation is gripping the Rs 2,27,340 crore milk industry in India. Smaller companies are increasingly looking at merging their subsidiaries, to retain their position amidst newer players, such as Reliance and Bharti.

Sources opine that the move is part of a family shareholding consolidation. The companies are working out an internal restructuring exercise, which is aimed at boosting efficiency.

The merger will help in consolidating procurement under one legal entity, which will enable better synergies and maximise competency in processing and marketing. Post-merger, all dairy products under the Paras brand will be sold by the flagship company, Ved Ram & Sons. The legal formality is yet to be completed. *(ET, 15.04.08)*

Biased Report

The Confederation of All India Traders (CAIT) has condemned government-sponsored Indian Council for Research on International Economic Relations (ICRIER) report on organised retail, terming it as biased and overlooking the ground realities of Indian retail trade.

While demanding that the Government should formulate a National Trade Policy for Retail Trade and Small Manufacturing Industries, CAIT said, "the report is short-sighted and does not take into account the long-term impact on farmers, manufacturers and consumers. It has been designed in a manner to draw a rosy picture facilitating further entry of multinational company (MNC) retailers".

(BL, 30.05.08)

A New Department

The Prime Minister, Manmohan Singh has approved a new 'Department of Export Production' to boost exports within the Commerce Ministry. The Department will focus on two areas where the Government thinks the country can grab a significant portion of international trade – cash crops and Special Economic Zones (SEZs).

The move comes after the Government's discussions on the proposal for a separate international trade policy department. With this, the Commerce Ministry will have three departments, each headed by a secretary, instead of the one for commerce and department of industrial policy and promotion at present. *(FE, 13.04.08)*

Investment via Big Ticket

Indian corporate houses making overseas investments through big-ticket acquisitions are now quite established. But, they seem to be doing so through countries that have either low tax rates or allow tax-free remittance of income. Much of the outward FDI by India Inc done between April and December 2007 was directed to Singapore, the Netherlands and British Virgin Islands (BVI), according to the latest Reserve Bank of India data. These are intermediate stops before investments land in the final destination country.

Singapore, which is a business and financial hub for Asia-Pacific, had 37 percent share in FDI approvals followed by the Netherlands, with 26 percent and eight percent for BVI. The RBI said the actual outward FDI in April-December 2007 grew 13 percent, at US$10.11bn, as against US$8.97bn, in April-December 2006.

During April-December 2007, FDI inflows were estimated at US$19.74bn, resulting in net inflows of US$9.63bn, compared with US$8.48bn during the corresponding period in 2006.

(BS, 15.04.08)

No Ban on Trading

Futures trading is a price discovery mechanism and there is no indication of it causing inflation in the country, said Venugopal N Dhoot, the President of Associated Chambers of Commerce and Industry of India (ASSOCHAM) in a function organised to release an ASSOCHAM study 'Current inflation in India'.

Dhoot said there was no justification in banning futures trading. The idea was misconceived, and a ban on futures will only make the economy bereft of a potential risk management and price discovery mechanism. The Government could consider putting a cap on the exports instead. *(BL, 20.05.08)*

JV to Boost Investment

The Government has decided to set up a joint venture company with the industry body, Federation of Indian Chambers of Commerce and Industry (FICCI), to encourage investment in the country.

The company would be set up in the next two months, Commerce and Industry Minister Kamal Nath said. He said the foreign trade policy review seeks to enlarge India's trade basket, with the inclusion of high value-added manufactured products and items such as fruits and vegetables.

"The Government's objective was to continue to build on the economic momentum that the country has gained and make a serious bid to attain the export target of US$200bn in 2008-09", he said. *(PTI, 12.04.08)*

Last FTP Series

The annual supplement of the foreign trade policy (FTP) 2004-09, to be announced by Commerce and Industry Minister Kamal Nath on April 11, 2008 would be the last edition of the FTP series by the UPA Government.

The Council was envisaged as an institutionalised dialogue mechanism between the Centre and the States to make sure that all the export-friendly measures taken by the Centre are implemented smoothly across the country.

The Council could have solved several obstacles faced by exporters through proper implementation of the single-window clearance mechanism of the SEZ Act as well as labour reforms. Also, treating export units as essential services to thwart flash strikes by workers could be another measure. *(FE, 09.04.08)*

Jump in FDI Inflows


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India received a record FDI worth US$24.57bn in 2007-08, a 56.5 percent increase over the previous year, which makes it the largest recipient of FDI in Asia, after China and Hong Kong.

Enthused by the huge inflows, the Government has now set an FDI target of US$35bn for 2008-09. In 2006, India was fourth in the FDI inflow stakes among Asian nations, after China, Hong Kong and Singapore. Reacting to the inflows, the Commerce and Industry Ministry said: "This shows the global investors' confidence in the Indian economy. India has become a safe and stable investment option. The Ministry expects this trend to continue and that India will be a good parking lot for everybody's money."

Significantly, 80 percent of the total FDI inflows in 2007-08 were greenfield investments, and not through acquisitions, the Ministry highlighted, adding that in the last four years, inflows increased eight times. The Ministry is quite confident that the momentum will continue. *(ET, 03.05.08)*

Slow Growth

In spite of its potential, the growth of India's tourism and shipping industry has been slow. The high level group on the service sector, headed by the Planning Commission member in charge of industry, Anwar-ul Hoda, found that the two sectors have become uncompetitive.

The group has suggested a slew of measures, like rationalisation of taxes, to give a boost to the tourism sector and the abolition of certain taxes to give the necessary fillip to the shipping industry.

India's tourism is one of the most diverse and yet, the tourist inflow has been just about 4-5 million.

(FE, 02.04.08)

Indians Greenest Consumers

As per a study of 14 countries, conducted by the National Geographic Society and the International Polling Firm GlobeScan, India and Brazil have come at the top, jointly.

The survey was conducted online among 14,000 consumers in Australia, Brazil, Canada, China, France, Germany, Great Britain, Hungary, India, Japan, Mexico, Russia, Spain and the US.

Indian and Brazilian consumers topped the 14-country index and have the highest Greendex score for environmentally sustainable consumption, at 60 points each, because of their relatively lower environmental impact from housing and above-average performance on transportation and food.

(TH, 09.05.08)

Ahead of China

Indian millionaires will hold more than double the wealth of their Chinese counterparts, according to a study.

As a result of evolved financial markets and private enterprises unlocking value, 411,000 Indian high net worth households will be worth US$1.7tn in 2017. In contrast, 409,000 Chinese millionaires will be worth US$795.4bn.

The study, done by Barclays Wealth and Economists Intelligence Unit, predicts that the number of Indian dollar-millionaire households will increase from less than 100,000 to 4.11 lakh in a decade.

Riding on the back of a large entrepreneurial class, contributions of top corporate professionals, inherited wealth and an increasing number of celebrities, India will only be preceded by the US, China, Japan, UK, Germany, France and Italy in the overall wealth rankings in 2017.

(BS, 08.05.08)

Retail on Mom-n-Pop Stores

The growth of organised retail, headed by large corporations, does not significantly impact small mom-n-pop retailers, a long-awaited study by the ICRIER concluded.

The study showed that the latter's turnover and profit dropped eight to nine percent, initially, but the adverse impact weakened over five years.

Significantly, the report states that a total of 151 small shops have closed down over a period of 21 months, which is about 4.2 percent of annual closure of retailers.

However, only 62 of these shops attributed their closure directly to competition from organised retail.

(BS, 27.05.08)

Less People High Income

According to a report, prepared by the Commission on Growth and Development, an independent body, 30 years ago, less than a fifth of humanity lived in high income or high growth countries.

A substantial number of people live in countries that are stagnating. Their number is expected to grow substantially by the middle of this century. The challenge, therefore, is to shift less developed countries into the category of high growth ones.

After making a detailed analysis of 13 countries, which have consistently maintained a growth rate of seven percent and over for 25 years, the report lists out some common socio-economic policies that each one of them has followed that are worth emulating by the less developed countries. *(TH, 16.06.08)*

Delayed Projects Cost Dearly

About 318 government projects running behind schedule has cost an additional Rs 24,670 crore to the exchequer. This money could have fed half of India's below poverty line population for close to four months.

A Ministry of Statistics and Programme Implementation report on the status of Central Government's 897 infrastructure projects worth Rs 3,59,451 crores, surveyed between July-September 2007, shows that the maximum number of projects delayed was in road transport followed by railways and power.

The Railway Ministry witnessed the maximum increase of 53 percent in project costs because of delays.

(TH, 03.05.08)

Fastest in Millionaire Growth

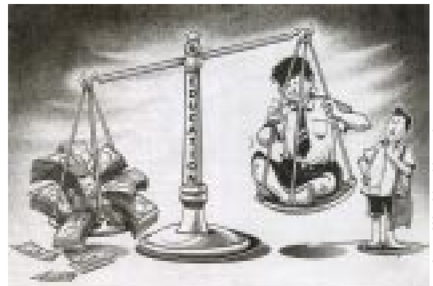
India has witnessed the fastest growth in millionaire population in the world in 2007, on the back of robust economic growth and a sharp stock market surge, a new report has said.

According to the annual World Wealth Report, India saw its millionaire population surging in 2007 by 22.6 percent – which is higher than any other country in the world. In the previous year's report, India had the second-fastest growth rate of 20.5 percent, after Singapore's 21.2 percent.

India is followed by China, in terms of growth in the millionaire population, at 20.3 percent, as its numbers grew from 345,000 to 415,000. "Driven by market capitalisation growth in emerging economies, the wealth of the world's high-net-worth individuals increased 9.4 percent to 40.7 trillion dollar", the Report said.

(BS, 25.06.08)

Fund Students, Not Schools



The Hindu Business Line

Demanding that the Government fund students and not schools, a non-profit organisation, Centre for Civil Society has launched a "School Choice Campaign" to secure "quality education" for the poor.

According to the campaign, parents should be able to choose the school they think is right for their child, regardless of their economic status or background.

Education vouchers, cash stipends and tuition fee reimbursement schemes are some of the instruments that the Government could use to increase school choice for parents. Education vouchers are coupons of a specific amount that can be redeemed at any school chosen by the parent.

(TH, 01.04.08)

Panacea for Policy-making

"India's reserves are going up, inbound capital flows are larger than trade deficit. China has US$1.6tn in reserves, largely from private capital inflows, and its currency is a one-way street. But, the astonishing trade surplus it is running since a couple of years is unacceptable in a developing country. It is pushing capital outside, when it should be used at home and impoverishing people by holding real wages down." This is what Nobel laureate and former dean of the Stanford Graduate School of Business, Michael Spence has said.

"India's priorities today are infrastructure, education, labour markets and ensuring the government does not fiddle much with market prices. It needs to urgently fix social security, tertiary education, income inequalities and environmental issues", said Spence. *(FE, 28.05.08)*

Eradication of Poverty

Management guru, C K Prahalad, believes that abject poverty will not be the prevailing concern in the country's next phase of development, that is India@75.

Instead, due to the fast economic development and basic structural changes in the economy, a different issue of income inequality will evolve over the years. On soaring food and fuel prices, Prahalad said that the shortage will not last long, but the poor will have to suffer more.

We have to deal with all these problems in the short run, but not lose sight of the big picture. We must have a vision and then work backwards to it. *(FE, 09.05.08)*

Scales down Projection

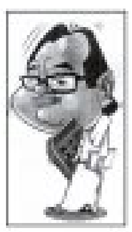
The Prime Minister's Economic Advisory Council has scaled down its projection for the economic growth this fiscal from 8.5 percent to eight percent, owing to domestic and international factors like rise in crude oil and commodity prices.

The Council had projected a growth rate of 8.5 percent in January, since then, oil and commodity prices have risen substantially in the global market. "Given the domestic and international factors, it may be reasonable to expect the growth rate to remain around eight percent in 2008-09", Council's Chairman, Dr C Rangarajan, said.

He expected inflation to cool from around eight percent to six percent in the next 3-4 months, pinning hopes on good procurement of wheat and projection of good monsoon.

(FE, 07.06.08)

FM Warns on Cartels



Warning the steel and cement makers against forming a cartel, the Finance Minister, P Chidambaram, has made it clear that the Government was ready to take tough measures.

While emphasising that the Centre will not hesitate to take more fiscal and administrative measures to tackle the rising inflation, he asked the State Governments to join the war against inflation and take stern measures against hoarders and black marketers.

"Cement and steel manufacturers are behaving like a cartel. There is cartelisation in cement and there are similar signs for steel. The Government will not hesitate to take tough measures", he said. The central bank would assess the situation and take appropriate monetary steps to beat inflationary pressures. *(ET, 17.04.08)*

Weakening US Dollar

A very low rate of savings among Americans is a key reason for the weakening of US dollar, which, in turn, is hitting the bottom lines of Indian IT firms, feels.

The savings rate is virtually zero percent among Americans, while the same is at 35 percent and 45 percent for India and China, respectively, Azim Premji, the billionaire chief of country's third-largest software exporter, Wipro said.

He further said, "The weak dollar is not good for our business, since we get paid in dollars". However, on a positive note, the Wipro chief said the dollar seems to have stabilised. He added, "I do not see it getting much weaker, because the US is a source of creativity and innovation".

(BL, 28.05.08)

High GDP in India

India's Gross Domestic Product (GDP) of an average annual growth rate in the last 4-5 years has been an 'incredibly high' 15-percent-plus, in dollar terms, according to Arvind Panagariya, Professor of Indian Political Economy and Economics at the Columbia University.

Panagariya reckons that India's economy would equal the size of the US economy in two decades, by growing from the present US$1.2tn-US$18tn. Therefore, if the growth is calculated in real dollar terms, then the growth of the Indian economy would be 15 percent which is an incredibly high number.

"India's economic growth will be sustained and would even jump to 10-11 percent, if reforms are continued in earnest", he said. *(ET, 10.05.08)*

No Rush in Liberalising Education

The Government is in no hurry to liberalise higher education and appoint an an Independent Regulatory Authority for Higher Education (IRAHE) as recommended by the National Knowledge Commission (NKC).

The NKC, pointing out the barriers of entry erected by multiple regulators, had called for redefining the role of the University Grants Commission (UGC), the All India Council for Technical Education (AICTE), the Medical Council for India (MCI) and the Bar Council of India, in its 2006 report.

The Commission said that the UGC's role should be limited to disbursement of public funds to universities and other bodies should merely function as representative organisations of respective sectors. All the stakeholders, namely, the UGC, the AICTE, the MCI and the Bar Council, have trashed the NKC's recommendation on the independent regulatory body, terming it non-feasible. *(HT, 02.05.08)*

Fine for 'Unfair' Margin

The Government plans to penalise drug makers who pay wholesalers and chemists over and above the 'fair' margin notified by it. The Ministry of Chemicals and Fertilisers is thinking of amending the Drug Price Control Order (DPCO), to make drug companies, importers and distributors disclose the margins they give to chemists on all brands that are outside direct price control and which account for 75 percent of the retail market.

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If the chemist margin on a particular drug is more than the notified margin, it will have to pay the difference to the Government as penalty. The Government's endeavour is to keep the final retail price in check by 'dis-incentivising' drug companies from paying exorbitant margins to the trade, which in turns pushes up prices. *(ET, 29.04.08)*

Bill to Fix Age

The Central Government has finalised a bill that proposes to fix the minimum age for admission to pre-school at three years and 10 months. The draft Right to Education Bill would also protect parents and children from screening by schools and prescribes huge fines in case of violation.

The Bill says the minimum admission age for Class I should be five years and 10 months before the beginning of the academic year. This implies the admission age for pre-school would be three years and 10 months. The Bill shields parents from arbitrary admission rules of private schools. *(HT, 24.04.08)*

Cut Wasteful Expenditure

In a bid to dispel any misgivings in the common man's mind about the Government maintaining high expenditure levels, while the '*aam aadmi*' faces increasing pressure on his cash flows due to the fuel price hike, the Prime Minister, Manmohan Singh, has asked his Council of Ministers and officers to voluntarily cut down on any 'wasteful expenditure'.

While the PM has asked the Cabinet Secretary to rigorously scrutinise all foreign as well as local travel proposals to trim down on Government expenses on quarterly basis, the Finance Ministry has come out with elaborate guidelines to 'ensure fiscal discipline' amongst ministries and departments. *(ET, 06.06.08)*

Regulating Hoardings

Regulating display of hoardings on private buildings and places causing traffic obstruction under the licensing provisions is not illegal, the Supreme Court has ruled.

The bench said: "Hoardings erected on private places also require to be licensed and regulated, as they generally are visible on public roads and public places. Hoarding erected on a private building may obstruct public roads, when put up on private buildings; they may be dangerous to the building and to the public; they may be hazardous and dangerous to the smooth flow of traffic, by distracting traffic; and their content may be obscene or objectionable". *(ET, 18.04.08)*

A Separate Department

Considering the robust growth witnessed by the pharmaceutical sector in the country, the Government has decided to create a separate department dedicated to the sector.

A senior government official said that, while the modalities are being worked out to give a final shape to the new department, National Pharmaceutical Pricing Authority (NPPA) would become a part of the proposed department. The official added that, keeping in mind India's growing exports, the pharmaceutical sectors too needed a separate specialised department just as the IT industry. *(FE, 28.05.08)*

Online Sale of Produce

In a bid to bring down the number of intermediaries and help farmers get better realisation for their produce, many State Governments have decided to encourage alternative platforms for farmers to reach the end consumer directly.

Recently, the State Governments of Gujarat and Maharashtra issued licences to the National Spot Exchange (NSEL) for facilitating transactions online. The new platforms proposed by the State Governments include sale of products online.

Under the new system, farmers can sell their products online. Similar to stock market quotations, prices of the farmers' produce will be flashed on computers. Farmers are assured of better prices for their products, as they will be directly selling to the customer, without any intermediary. *(BS, 19.04.08)*

Bill to Correct Parliament

A Bill seeking to discourage disruptions in Parliament by going in for a ‘no work, no pay’ principle and even proposing termination of membership of the MPs was introduced by a Congress Member in Lok Sabha.

The Bill lays down that if any member or a group of members is identified disrupting the proceedings on three occasions in the same session, the membership of such a member or group shall be terminated on a motion.

Further, in order to provide disincentive for disruptions no member shall be entitled to receive daily allowance for a day, if proceedings are disrupted, leading to adjournment of the House for a substantial part of the day. *(TH, 30.04.08)*

Drug Firms under Scanner

The Central Government is exploring options to bring marketing and promotional expenses of drug firms under the regulatory scanner. Companies are likely to be asked to limit their promotional expenses and pass on the benefit to consumers.

The Pharmaceutical Advisory Forum (PAF) announced the formation of an expert group to prepare a report on the measures to be undertaken to keep promotional expenditure under check. The PAF pointed out that over 5,000 new medicine packs were introduced each year in the domestic market.

While the NPPA tracks the price increase in the medicine market, it does not assess if the prices of medicines that are newly introduced in the market are reasonable or not. *(BS, 23.04.08)*

First Housing Regulator

In a bid to control the sector, Maharashtra became the first state in the country to approve a regulator for the housing sector which would have sweeping powers, including the authority to fix prices of houses.

The Maharashtra Housing Sector Regulatory Commission Act 2008, when passed by the State Assembly, will give the regulator powers of a civil court to settle disputes, regulate builders and have a separate budget to function independently, besides allowing it to set prices of flats built for the poor and middle classes by Government agencies and private builders.

The decision follows a recommendation by the Law Commission to enact a law and form a Commission to deal with contentious issues in the housing sector.

(IE, 04.04.08)

Imported Foods to Vanish

Imported food products, such as Kraft cheese spread, Hershey’s syrup and Pringles potato chips, may soon vanish from Indian supermarkets, *kirana* stores and high-end malls.

The Government has decided to crack down on imported food products that flout Prevention of Food Adulteration Act PFA guidelines, such as declaring vegetarian and non-vegetarian symbols on labels, putting expiry and ‘best before’ dates in Indian languages, carrying batch numbers for identification, including importers’ names, and not labelling maximum retail prices (MRPs) through paste-on stickers.

As per the Act, any violation can lead to ‘heavy penal provisions, including a jail sentence’ and the entire chain of operators, starting from the importer to the trader and even the shopkeeper, is vulnerable to severe penal charges. *(ET, 17.04.08)*

Rs 25,000-crore Package

The Government is considering a package of Rs 25,000 crore to provide fillip to the growth of the agriculture sector. According to a senior official in the Department of Agriculture, the agri-fund would be allocated through utilisation of resources, such as water, the *Rashtriya Krishi Vikas Yojana*.

If all goes well, this would be an impetus for the sector, particularly Punjab and Haryana, where the cost of cultivation has increased manifold in the last five years, due to increase in the cost of inputs and dwindling natural resources. The move is good as farmers need capital to use technology which enables optimum.

(BS, 12.04.08)

Regulators under More Scrutiny

In a far-reaching suggestion that will elicit support from the political class, an expert committee has called for the Parliament, through the Finance Ministry, to set a specific remit for financial sector regulators every five years.

Every year, the regulatory body should report to a Standing Committee of Parliamentarians, preferably the one attached to the Finance Ministry, explaining the progress it has made on the remit.

In addition, to ensure that there are more direct checks on the regulator in a system that is less rule-bound, the Committee has also recommended that regulatory actions should be subject to appeal at a Financial Sector Appellate Tribunal, which will be set up along the lines of the existing Securities Appellate Tribunal.

In another suggestion, which found an echo in the recent Sixth Pay Commission report, the Committee has said regulatory staff should be given higher remuneration and should be drawn from the private sector.

(BS, 07.04.08)

Amending Postal Act

The Government will soon amend the Indian Postal Act to bring courier companies under the ambit of this Act, a move that may hit the private players hard, but could prove to be a shot in the arm for the Indian Postal Department.

If approved, this would bar the private courier service providers from carrying packets weighing below 500 grams and could give a major blow to the courier companies, which earn a major share of their revenues from letters and packets weighing below half-a-kilogram. *(Live Mint, 18.06.08)*

PSUs Fail on Social Front

Public sector enterprises may be partly negating the very objective of their existence as the Comptroller and Auditor General (CAG) of India has pointed out that central PSUs are yet to adopt a systematic approach towards socially responsible reporting.

According to guidelines of the Department of Public Enterprises formulated in 1994, PSUs are expected to report their contributions to society and the environment. "There is a need to promote a drive in PSUs towards greater corporate accountability on social, environmental and ethical issues", the CAG has observed.

It has also recommended creating a standard reporting format and setting up of an independent agency for this. It has also recommended that every PSU should have a separate section in its Annual Report to state its initiatives toward socially responsible business practices.

(FE, 28.04.08)

Violation of Forest Act

The CAG's Audit Report 2006-2007 for Madhya Pradesh exposes serious violation of the Forest (Conservation) Act, 1980 by pointing out that mandatory compensatory afforestation was not carried out in 70 percent of the projects where forest land was diverted for non-forest purposes during last 10-year period (1997-2007) in the State.

Performance Audit of the implementation of the Forest (Conservation) Act in Madhya Pradesh revealed significant cases of violation of the Act and absence of execution of compensatory conservation measures in most of the cases where forest land had been diverted for non-forest purposes.

(TH, 03.04.08)

Plan for Strengthening RTI

The Centre, in a bid to strengthen the Right to Information (RTI) division within the personnel department and for granting financial autonomy to state information commissions (SICs), is set to launch a Rs 300-crore scheme under the 11th Five Year Plan to fund capacity building, training programmes, awareness and educational campaigns relating to RTI.

The scheme will involve disbursal of Rs 300 crore as grants to RTI and the 27 SICs for effective implementation of RTI Act.

The largest chunk of the Rs 300-crore scheme – Rs 215 crore – would be spent on capacity building, involving construction of offices and other physical infrastructure for SICs and computerisation of records.

(ET, 28.04.08)

PF Subscriber is a Consumer

The Supreme Court has held that the services rendered by the office of the Regional Provident Fund (RPF) Commissioner come within the ambit of "service" under the Consumer Protection Act, 1986, and a subscriber of the Provident Fund scheme is a "consumer" under this Act.

A Bench rejected the contention of the RPF Commissioner (appellant) that the service rendered to the subscribers was not a service under the Consumer Protection Act and such subscribers could not seek remedy under the Act. The appellant submitted that the service amounted to "personal service", which was of a free nature and would not attract the Act.

(TH, 25.04.08)

Facing Flak for Panel

Already in the dock for admitting that he used his position to request for favours for his son's company, T R Baalu now faces flak from Parliament panel who have asked his ministry to desist from interfering in port trusts' functioning.

The Parliament reiterated that "the ministry should desist from intervening in commercial and operational matters concerning the port trusts, decisions on which should be best left to professional experts serving the port".

The port trust and the ministry continually changed their stance on the construction and supply of a dredger, which led to an avoidable additional expenditure. *(FE, 29.04.08)*

'Exclusive' Club

The Maharashtra Finance Minister, Jayant Patil, has floated a consultation paper on the concept of creating an exclusive club of progressive states to act as a pressure group for their developmental needs.

Patil said he had received "overwhelming response" from progressive States like Gujarat, Maharashtra, Andhra Pradesh, Karnataka, Tamil Nadu and Kerala.

Admission to this group will be on the basis of the performance of the State in areas like the Human Development Index, investment, law and order handling, infrastructure and so on.

(BS, 16.05.08)

Babus to be Judged on PAR

The benchmark score, which determines the promotion of All India Service (AIS) officers, including IAS, IPS and IFS need further clarity. The new AIS performance appraisal report (PAR) rules have come into effect from April 2007, in which it has been made mandatory to record the PAR of the officers by December 31.

The new PAR rules provides for numerical assessment of officers on a scale of 1-10. However, no grading system accompanies the scale. For instance, one may get a score of 5, but the new rules do not specify whether that is average, above average or below average.

There shall be a single reporting, reviewing and accepting authority at each level of assessment, which shall be specified in the channel for writing performance appraisal reports by the concerned ministries and state governments. And, in no circumstances can more than one person write the PAR in the capacity of reporting, reviewing or accepting authority.

(HT, 08.06.08)

CAG Reports are Taxing, Let the Efforts Not go Down the Drain

– T N Pandey

The Economic Times

The objective of CAG and the Central Board of Direct Taxes CBDT has to be the same – to usher in mistake-free implementation of laws and to avoid loss of revenue. Hence, both have to work in cooperation – not as adversaries. The aim of the audit should not be merely fault-finding.

Each year, the CAG conducts the audit of revenues from direct taxes of the union government. Sadly, the annual exercise has been going on, for the last few years, without any evaluation as to what has been achieved by such audits, involving substantial deployment of manpower by CAG and also the CBDT.

In fact, reports show that while the exercise is religiously being done by CAG's audit parties, CBDT seems to be indifferent towards the numerous audit objections raised, and their pendency is mounting. The efforts of CAG seem to be getting wasted because of lack of enthusiastic response from CBDT. As on March 31, 2007, as many as 79,390 observations, involving revenue effect of Rs 28,654.54 crore, were pending, excluding those communicated between April 1, 2006 and March 31, 2007. (The latest report of the CAG placed in Parliament on March 11 relates to 2006-07.) Obviously, not taking any action for such long time negates the very purpose of audit as many actions become time-barred by passage of time.

Each year, CAG mentions about the number of cases where action gets time-barred, but there is no mention in the reports as to what action has been taken against those who failed to act in time. During 2002 to 2007, action in 20,124 objections, involving revenue impact of Rs 4,780 crore had became time-barred.

The issue is whether continuing the exercise is worthwhile, when the efforts made are wasted in this manner. The revenue impact of the audit has been inconsequential. In 2007-08, total revenue from direct taxes is expected to exceed Rs 3 lakh crore. In this background, checking some 15,000-20,000 cases (out of 3 crore-plus assessments made) in a random way and realisation of lost tax of Rs 1,000 crore or so (in the report for the year 2005-06, total recovery, consequent to audit observations for that year and earlier years, was only Rs 305.63 crore) is not commensurate with the time, effort and financial inputs required for such an exercise.

To improve the situation, re-orientation in regard to audit work is imperative. Here are some suggestions – The time of the audit parties should not be spent on merely pointing out mistakes of omission and commission in individual cases. The scrutiny should be confined to 2,000-3,000 cases as sample cases only. The time saved should be used for more system studies and suggestions as to how the mistakes noticed year-after-year could be avoided. Five-yearly consolidated reports should be prepared to show as to what remedial action has been taken for improving the system on the basis of the past suggestions. The reports should also highlight the good work done by the I-T officers as case lessons.

Some areas, which can be picked for future examination could be whether the system of salary assessments is well-planned? What changes can be made to improve the existing system to make it assessee-friendly? System followed in regard to assessments of financial institutions and non-banking financial bodies can be examined to see the strengths and weaknesses of the existing system. Working of Double Tax Avoidance Agreements should be reviewed periodically and revenue loss, consequent to agreements with countries like Mauritius should be highlighted. Special study can be made to see how such agreements helped in checking tax evasion/avoidance.

The tax department's view as to why some objections are not acceptable should also be mentioned; there has to be perfect coordination in the functioning of the CBDT & CAG. The increase in number of pending paras shows that such coordination is lacking; accountability, where actions have become time-barred, should be fixed and mentioned in the action taken report of the CBDT; and, finally, the reports should not be loaded with too many numerical numbers. Why a figure of say Rs 260.98 crore cannot be rounded off to Rs 261 crore is difficult to appreciate.

The approach in audit exercises should be result oriented, which is lacking because of age-old practices followed in doing audit and indifference of CBDT towards such reports. The situation is continuing without either CBDT or CAG trying to bring improvements. This is doubtless indefensible. Either the situation should improve or the audit work should be discontinued. There is no point in going about without any worthwhile results.

– Former Chairman, CBDT. Abridged from an article appeared in The Economic Times , May 20, 2008.

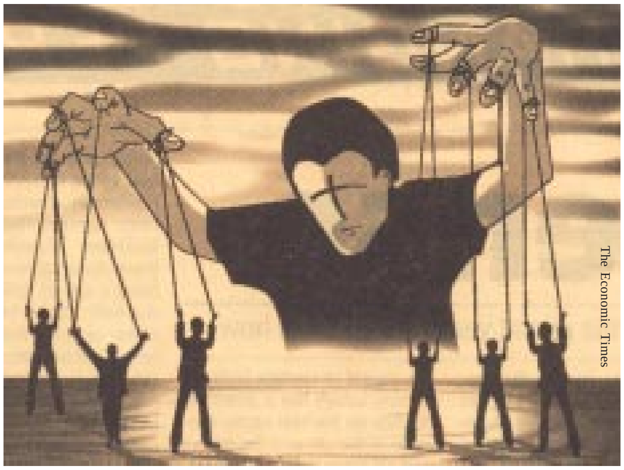
Competition Regulation Needs Fixing

– Somasekhar Sundaresan

It is election time. The India Shining campaign has a formidable successor – the *Bharat Nirman* campaign. Even staid government organisations such as Employees' State Insurance Corporation are presenting sunshine ads.

However, runaway inflation is threatening to spoil the party for the Government, which only recently seemed to smell of roses, after a wonderful election-year Budget.

With all political effort on bringing down the Wholesale Price Index, it is but natural that the Government would train its vision on the constituents of that index.



The Competition Act, 2002 (Competition Act) got passed, but has been stymied with myriad legal issues. Quite draconian in its ambit and scope, the law was bound to face the stiffest opposition.

The conduct of senior government executives is further feeding the panic. First, the Government indulged in what is called "moral suasion" (a la central bankers, who talk banks into lending more or contracting credit) to talk down prices, particularly in the cement and steel sectors. Then, it went on to being plaintive. Finally, the threat of investigations by the Monopolies and Restrictive Trade Practices Commission (MRPTC) was held out.

Economics is about how human behaviour reacts to circumstances and signals of reasonable expectations and the perception of the Government is that it is not in control of the situation. This column will not pretend to spout economic theories.

However, it hopes to make a point about serious regulatory failure that has resulted in the Government lacking the regulatory framework to deal with the situation, if the Government's belief of price-fixing being rampant is indeed correct.

If there has been one singular regulatory failure in the system over the years, it has been in the space of competition regulation. When the MRTP Act was amended in 1991, to delete the provisions prescribing government approval for "concentration of economic power", the lawmakers did not repeal the provisions governing restrictive and unfair trade practices.

However, in practical reality, there has been hardly any noteworthy contribution by the MRTPC. The mid-1990s, indeed, saw the MRTP Act being the weapon for waging corporate war, particularly in consumer goods categories – so, very often, soap wars and toothpaste wars reigned supreme in the mid-1990s, but that too stopped making headlines after a point.

The debate over the regulations that are being proposed under the Competition Act mainly centre around the horrendous problems they threaten to pose to the mergers and acquisitions activity.

There is a lot to be said about the draft regulations governing combinations and mergers. They also pose very difficult implications in their interplay with the Securities and Exchange Board of India (SEBI) takeover regulations. However, there is hardly any commensurate debate over the provisions that seek to deal with price-fixing and cartelisation.

It is the regulatory failure to notice, detect and curb cartel conduct over the years that is stark. Hardly any homework has been done in the system. Institutional memory is faint.

Over time, government officials who had experience have quit the system. Again, the complete absence of private action, thanks to the terrible track record of the judicial system in the pace of litigation resolution, has meant that regulation of anti-competitive practices has remained stunted.

Therefore, if ministers now rattle sabres and threaten probes by the MRTPC, merely because inflation is rising high, there may not even be any regulatory bandwidth to really check if there is a case for legal action and to warn the government to go easy on rhetoric. Often, when governments change and the stock market indices fall, the SEBI has been pushed to launch probes, take action and report to Parliament.

Action taken to demonstrate teeth, without there being substance to chew on, has often led to loss of face to regulators, when courts uphold challenges. This is also a dangerous time – to prove how regulators have teeth, overzealous investigators could unleash havoc on the market system. Again, securities market regulation provides numerous precedents.

The legal system governing competition has all the ingredients to follow suit – bad legal action can only harm competition regulation and its credibility and prove counter-productive. If anti-competitive practices are indeed rampant, there is an institutional vacuum to bring it to book. For now, the Government resembles a child who has not studied until the night before his exams.

– Partner of JSA, Advocates & Solicitors. Abridged from an article appeared in the Business Standard, April 28, 2008.

A Drop in Ranking

India has suffered a drop in ranking in the latest 2008 IMD World Competitiveness Yearbook. The country has been placed 29th in a list of 55 economies assessed for competitiveness by the IMD – a leading business school based in Lausanne.

IMD's rankings are derived from 331 competitiveness criteria, revolving around four basic parameters of economic performance, government efficiency, business efficiency and infrastructure.

Predictably, India scores worst in infrastructure, particularly in respect of energy, broadband infrastructure, and access to water, primary education, health and environment. On the other hand, it fares relatively well in 'business efficiency', 'government efficiency' and 'economic performance'. *(BL, 14.05.08)*

Limited Powers of MRTPC

The Supreme Court has ruled that the MRTPC, is not empowered to direct authorities to allot plots to claimants and can only award compensation for such lapses. A bench said that under the MRTP Act, there are provisions for conducting inquiries.

The various sections lay down powers of the MRTPC in dealing with instances of unfair trade practices (UTPs). However, none of the provisions seem to indicate that the Commission has the power to direct an authority to deliver possession to a claimant, the Court has said.

In this case, the Commission had directed the Ghaziabad Development Authority to deliver possession of a plot to a complainant in its Govindpuram Scheme, or any adjacent scheme, at a price prevalent in the year 1988.

The Court said that the Commission has the power to impose damages or give compensation to the complainant as a mode of redressal for harm caused by UTPs, but it certainly cannot assume the powers of a civil court. *(ET, 16.05.08)*

A Healthy Competitive Regime

The pharmaceuticals and airline industries have attracted the attention of the competition regulator for indulging in allegedly anti-competitive activities. The CCI has called the pharmaceutical industry for a dialogue on the anti-competitive practices in the sector, seen as a prelude to action against offenders when the government notifies the regulator's enforcement powers.

The Commission is expected to tell companies and industry associations how certain practices in pricing, trade and retail do not reflect the spirit of competition. It is also expected to tell companies how much pricing liberty they could take from the monopoly rights they get by way of intellectual property protection to inventions.

(ET, 08.04.08)

SEBI to Tighten Listing

The CCI has asked the Securities and Exchange Board of India (SEBI) to make compliance with competition law mandatory for listing on stock exchanges. The Commission has proposed amendments to Clause 49 of the listing agreement dealing with corporate governance.

With the Government also blaming cartelisation for the spiralling inflation, which is now ruling close to a 13-year high of 11.05 percent, the CCI's proposal, if accepted, may allow the Government to target listed companies acting in a cartel.

Once approved, the amendment would empower the SEBI to de-list companies forming cartels. Also, amending the listing agreement does not need Parliament's approval.

(ET, 24.06.08)

CCI to Bust Cartels

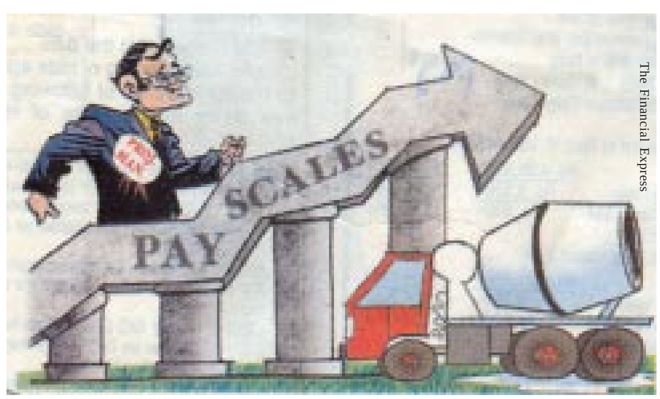
The CCI, which is likely to get the necessary powers and other resources for taking administrative action to bust cartels and pre-empt/curb other anti-competitive practices in the Indian market for goods and services by the year-end, wants to make its approach non-confrontationist and so it is coming out with a set of tips for the industry to be voluntarily compliant with the country's competition policy.

The CCI had commissioned studies to independent agencies on the existing level of competition in many industries and also the compatibility of some government policies with the competition policy.

Many of the studies have exposed the prevalence of practices like cartelisation, abuse of dominant position, etc., in some industries and also the loopholes in certain laws and policies, when seen in the light of competition law provisions.

(ET, 23.06.08)

Competitive Pay for CCI



The Financial Express

The top brass at the Competition Commission of India (CCI) would get the highest pay scale existing for civil servants. The Government has decided to offer the chairman and members of the CCI a pay scale similar to a secretary to the Government of India.

The Ministry of Corporate Affairs wanted to offer a handsome package that would help in attracting the best talent available in the country, but the Finance Ministry had some reservations.

The Sixth Pay Commission had also recommended compensation to the CCI top brass that reflects the market reality. Sources said the scales now offered are expected to be revised, once the Pay Commission recommendations are approved. *(ET, 19.05.08)*

The Politics of Regulation

– Suresh P Prabhu

In India, the democratic set up in place requires politicians to face elections every five years. In contrast, the regulators face a long time horizon to ensure economic growth through efficient markets.

The relationship between politics and regulation has been the subject of both public and political discourse for quite sometime now. Broadly speaking, so-called independent regulators are subject to government supervision and a system of scrutiny. But, over the last few years there have been an increasing number of instances in which government supervision has morphed into "political intervention".

For instance, when established in 1997, the TRAI used the rulebook without appreciating the political economy. Further, TRAI reported to the Union ministry of communications, which itself was in the business of telecom as the biggest player. As a result the law was amended in 2000, which turned the regulatory authority mainly into an advisory body, and created an appellate and disputes settlement tribunal to deal with contentious issues arising out of regulatory and market practices.

This is not an isolated incident. On several occasions, the concerned ministries have tried to 'clip the wings' of the so-called 'independent regulator'. For a regulatory agency to be effective, the regulator ought to be independent from political influences, particularly when it comes to the regulator exercising its legitimate mandate independent of the ministry concerned.

In this context, the political origins of regulation in India also have a significant bearing. In India the independent regulator took over the functions which were earlier exercised within the governance system at the ministerial level. This transfer of regulatory functions from a ministry to an independent regulator has probably not been an easy development to accept and adapt to.

In India, regulatory reforms have largely been concentrated in the public utilities and infrastructure sectors. In order that these sectors do not starve development it is essential for regulatory agencies to be insulated from overriding political considerations. Such issues make the study of political economy of regulation crucial and relevant.

Interestingly, a study by a leading economic policy research and advocacy group, CUTS International, titled 'Competition and Regulation in India, 2007' also concluded that political intervention is a bane on the existence of a regulator. When politicians attempt to influence regulatory policies, potential investors suffer, which in turn affect the development of the sector. The study takes an in-depth look into the competition and regulatory scenario in the country through a general index, which assesses the perceptions of people about these issues.

The independence of the regulator is of paramount importance, as it determines the quality of regulation. A good regulatory framework is one which adheres to the six principles of representation, participation, transparency, due process, accountability and availability of a redressal mechanism. But generally, this has not been the case so far in India.

The decade long experience of independent regulation suggests that in practice, regulators have to deal with a territory over which the state has considerable control. Their functions are shaped by administrative and political practices. As a result what we have is an agency that is full of opportunities for political intervention.

Amidst all gloom, there is still some hope that the regulatory climate in India can improve. However, certain conditions have to complied with for that to happen. For any regulator to be effective he has to keep an arm's length distance not just *vis-à-vis* the government but also *vis-à-vis* the market players.

Second, the regulators must report directly to Parliament, and not to line ministries. This will enable the government to take the rap should there be some wrong or unpopular decisions taken in a sector. Third, regulators must be truly empowered to both discharge their duties without fear or favour, and to attract good talent.

Our regulators are not even independent enough to implement their decisions. The extent to which the procedures of appointment, removal, remuneration and budgets are controlled by ministries reduces the whole idea of independent regulation to a myth. In practice, the hand that really controls the regulator still remains the government.

On the government front, there is a dire need to strengthen the decision-making ability of the policy-making community.

To sum up, it could be said that the regulatory landscape in India is neither too vibrant, nor too bad. Regulation is needed not only for proper functioning of markets, but also for their very survival. In the words of Prime Minister, Dr Manmohan Singh, "it is good regulation that will ensure that while engines of growth are allowed to move at full speed, there is no space for manipulators in the system".

States often act as manipulators by creating weak regulatory institutions, over which they continue to exert control and further their interests. It is high time to put an end to this practice of consciously politicising regulation.

– Member of Parliament, Lok Sabha. Abridged from an article appeared in The Economic Times, May 01, 2008.

India's Policy Regime Marred by 'Bad Ideas'

– Tina Edwin

The Government's decision to subsidise consumers of petroleum products by resisting revision of prices despite a sharp rise of crude is a "bad idea" measured by the yardstick of The Growth Report released recently by the Commission for Growth and Development, a special-purpose grouping of leading minds in finance, economics and policymaking, majorly from the developing world.

For that matter, many of the policy initiatives of the central and State Governments in India – whether to tackle poverty, unemployment or inflation – makes a study of "bad ideas" in action. Subsidising power is a bad idea.

Many Government policies – whether to tackle poverty, unemployment or inflation – makes a study of 'bad ideas' in action. While country-specific compromises may be inevitable, providing open-ended protection from competition does not find favour with the expert panel.

So are measures, such as reducing fiscal deficits by cutting expenditure on infrastructure, banning exports for long periods to keep domestic prices low for consumers at the expense of producers and imposing price controls to stem inflation.

The report, put together by 21 contributors including Nobel laureates Michael Spence and Robert Solow who are members of the commission, notes the objectives of the measures are often admirable. However, the cost involved in implementing these measures would be large, and the objectives can be usually better served through other means.

India's Planning Commission Deputy Chairman Montek Singh Ahluwalia is also a contributor to the report.

The authors of the Growth Report makes no claims of it being a "cook book" that tells governments and policymakers what to do nor provide all the answers for questions on achieving sustained growth over a long period.

The report does, however, identify some of the key insights and policy levers to help countries achieve high, sustainable, and inclusive growth.

And indeed, this includes an illustrative list of bad ideas, ideas which should be resisted and prevented from being implemented even though situations and circumstances may justify their limited or temporary resort.

Topping the list of the bad ideas is the subsidy on energy. The report suggests that that such subsidy should be limited and targeted at the highly vulnerable sections of the population.

Dealing with joblessness by relying on civil service as an "employee of last resort" too falls in that list, but public works programmes such as rural employment schemes, which provide valuable social safety net, is acceptable.

The report does not approve of reducing fiscal deficit by cutting public spending on infrastructure or other projects that yield large social returns in the long run on account of short term macro-economic compulsion. Providing open-ended protection from competition in specific sectors, industries, firms and job too does not find favour. "Where support if necessary, it should be for a limited period, with a clear strategy for moving to a self-supporting structure," it recommends.

Recent measures taken by the Government – informal price controls in steel and cement, taxes on export of steel and iron ore, ban on export of rice variants, etc – too are seen as bad ideas to stem inflation. The report suggests that inflation can be better handled through other macroeconomic policies.

The report has also identified underpaying of civil servants and teachers relative to their market price and combining this with seniority-based promotion rather than performance-based rewards among ideas that are best resisted.

Poor regulation of the banking system combined with excessive direct control and interference, also qualifies as a bad idea. Rapid appreciation of the exchange rate when an economy is ready for the transition towards higher-productivity industry too does not find favour. Excessive regulation of banks prevents development of an efficient system of financial intermediation, which, in turn, results in higher costs in terms of productivity, the report notes.

Resisting urbanisation and as a consequence under-investing in urban infrastructure and ignoring environmental issues in early stages of growth on the grounds that they are "unaffordable luxury" are, too, listed as bad ideas.

The authors qualify their recommendation with "one-size-fits-all approach" may be avoided and that policy measures should be tailored to tackle country-specific circumstances.

The commission, established in April 2006, is supported by the governments of Australia, the Netherlands, Sweden, and the UK, and the William and Flora Hewlett Foundation and the World Bank.

– Assistant Editor, The Economic Times. The article appeared in The Economic Times, May 30, 2008.

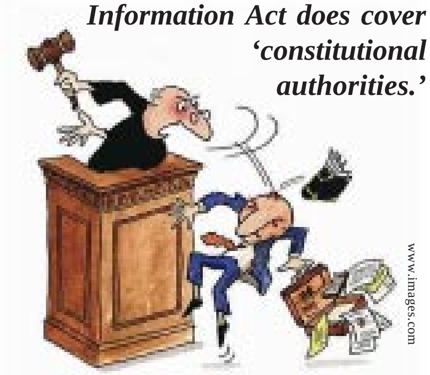
Judges are Public Servants, not Bosses

– V R Krishna Iyer

Absolute power and egregious error will be totally incompatible, even when the matter involves the judiciary. Justices of the court are no higher than great Homer who, as Lord Byron put it, sometimes nods off. The 'robed brethren' on the High Bench do sometimes blink.

Perhaps it is a rare occurrence, but this is what happened when the Chief Justice of India, the country's highest judicial functionary, claimed that the Chief Justice is not a 'public servant' but a 'constitutional authority.' It may be true. But every judge is oath-bound to dispense public justice "without fear or favour, affection or ill-will." Public justice is public service, and obviously judges are public servants. The Right to Information Act, therefore, does cover 'constitutional authorities', contrary to what the Chief Justice said. His absolutist obiter, coming as it does from a legal luminary for whom I have high regard, is bizarre and it is a faux pas. Unfortunately, he has, in my legal perception, slipped into an accidental innocence of jurisprudence.

Contrary to what the Chief Justice of the Supreme Court recently said, the Right to Information Act does cover 'constitutional authorities.'



This may, however, be justly overlooked, having regard to the heavy burden he bears. He has to manage the court, handle a load of judicial work, frequently make ceremonial journeys, give erudite speeches and interviews, and bear the tremendous strain involved in selecting higher judicial personnel. Under public pressure or out of vanity, judges often undertake a tremendous amount of non-judicial work, sacrificing valuable time so necessary to study dockets, hear prolix and logomachic arguments, and write (although some of them do not do that) judgments laying down the law of the land. Considering this onerous background, we must forsake criticism of occasional forensic failings.

Grave goof-up

How else can one explain a grave goof-up, made unwittingly, in his saying that judges are not public servants but 'constitutional authorities'? The latter are, in simple semantics, a higher category of public functionaries. They are a finer, nobler group of public servants, democratically more accountable and qualitatively more liable than others to furnish information to the people about themselves and their functions, if it is relevant to the public interest.

All important constitutional authorities, such as Judges, Ministers, the Comptroller and Auditor General, the Accountant General, the Election Commissioner, and the Speaker of the Legislature, are a fortiori public servants with superior and more profound obligations. These are not two antithetical categories but are, in public law, of the same class. My candid constitutional camera perceives both as owing public duties and being liable to pay penalties for any failures — subject to the limitations laid down by law.

The great judge Jerome Frank, in his book *Courts on Trial*, said he had little patience with, or respect for, the view that it is dangerous to tell the public unpalatable truths about the judiciary. He wrote: "I am unable to conceive… that in a democracy, it can ever be unwise to acquaint the public with the truth about the workings of any branch of government. It is wholly undemocratic to treat the public as children who are unable to accept the inescapable shortcomings of man-made institutions… The best way to bring about the elimination of those shortcomings of our judicial system which are capable of being eliminated is to have all our citizens informed as to how that system now functions. It is a mistake, therefore, to try to establish and maintain, through ignorance, public esteem for our courts."

Democratic Instrumentality

I stand solidly for a judiciary that is a democratic instrumentality, not an occult class of divinity. David Pannick, QC, observed: "We need judges who are trained for the job, whose conduct can be freely criticised and is subject to investigation by a Judicial Performance Commission; judges who abandon wigs, gowns and unnecessary linguistic legalisms; judges who welcome rather than shun publicity for their activities."

Information about judges' wealth, other activities and even private doings, if they affect judicial duties, cannot be kept secret. To cite David Pannick again: "The judiciary is not the 'least dangerous branch' of government… They send people to prison and decide the scope and application of all manner of rights and duties with important consequences for individuals and for society. Because the judiciary has such a central role in the government of society, we should (in the words of Justice Oliver Wendell Holmes), wash…. with cynical acid this aspect of public life. Unless and until we treat judges as fallible human beings whose official conduct is subject to the same critical analysis as that of other organs of government, judges will remain members of a priesthood who have great powers over the rest of the community, but who are otherwise isolated from them and misunderstood by them, to their mutual disadvantage."

– Fellow, National Institute of Public Finance and Policy (NIPFP). The article appeared in The Economic Times, January 23, 2008.

Letter 'n' Spirit: Learning Lessons from the Sub-prime Crisis

Quality, not quantity, will determine the effectiveness of Regulatory Action; giving regulators some freedom might help

What implications does the turmoil in global financial markets have for Indian financial sector reforms? Consider the broadly accepted causes of the crisis. The financial sector in the US offered excessive credit to the housing sector, financed with excessive short-term leverage. The combination was explosive – as house price growth showed, credit losses mounted, financial institutions balance sheets looked increasingly shaky and opaque, and it became harder for them to roll over their borrowing. Excessive credit and excessive leverage led to funding difficulties, problems that are now spilling over to the rest of the economy as credit is tightened.

What broad lessons can India draw from this crisis? Perhaps the most important lesson is that a narrow focus on rules can lead regulators to miss the bigger picture, and can encourage regulatory arbitrage, to the detriment of the system. Large banks in the US had seemingly adequate levels of risk weighted regulatory capital. Yet banks changed their balance sheets dramatically over the last three years, investing in highly rated structured products financed with volatile short term commercial paper.

Excessive regulatory micro-management in the modern economy leads to a counter-productive interaction between the regulator and the regulated; the regulated respond to the needs and opportunities in the market place while attempting to comply only with the letter of the law. The regulator then attempts to stamp out the violations of the spirit through new rules and the regulated find new ways to get around them. Indeed, banks will find something else that has modest risk-adjusted capital requirements to plunge into next time.

In India, change will have to start with the legislation governing the regulators, where the micromanagement starts. For instance, the requirement that banks obtain regulatory approval for a range of routine business matters, including opening branches, remuneration to board members and even payment of fees to investment bankers managing equity capital offerings, is enshrined in the Banking Regulation Act. This legislation need to be rewritten to focus on broad aims and objectives, leaving more room for regulators to determine their course of action.

Perhaps the most important lesson is that a narrow focus on rules can lead regulators to miss the bigger picture, and can encourage regulatory arbitrage, to the detriment of the system. Regulators were overly fixated on seeing that rules on capital norms were being met, without seeing the larger picture – that many banks were going to the riskiest structures consistent with the rules. To achieve all this, the Committee on Financial Sector Reforms (CFSR) proposes a statutory body, the Financial Sector Oversight Agency (FSOA) composed of key regulators, which will replace the current informal High-Level Coordination Committee (HLCC). The FSOA will conduct a principles-based supervisory dialogue with top management of key financial conglomerates, look out for an overall build up of risks in the system, and undertake coordinated action to mitigate those risks. The senior most regulator – typically the RBI governor – would be the head of the FSOA.

Three other changes are needed to make the system less rule-bound in India. First, regulators may fear that ignoring a violation, may result in a possible enquiry. Regular interaction with parliament, where they explain how they are adhering to their mandate, should give them safe harbor against such enquiries.

Second, some regulators resort to box-checking when they simply do not understand what they are dealing with. We need to constantly upgrade regulatory skills. Investments in better regulatory pay and conditions, as well as in training, can offer tremendous national return.

Third, there are fewer limits on regulatory action when regulators can go beyond the letter of regulations. To balance this power, the CFSR recommends regulatory actions should be subject to appeal to a Financial Sector Appellate Tribunal. More freedom for regulators will therefore be combined with checks to ensure the freedom is not misused.

In sum, we need a smarter regulation, not necessarily more than regulation. The reasons have been outlined that why CFSR has suggested a steady shift towards regulation that emphasises spirit rather than letter. This will help the country control a fast-moving financial system, without killing innovation or growth with excessive, and ultimately futile, regulations.

– Chairman of the Committee on Financial Sector Reforms set up by the Planning Commission. The article appeared in the Economic Times, June 03, 2008.

ReguLetter

The January-March issue of the CUTS C-CIER newsletter ReguLetter encapsulates the "Busting Cartels for Development" in its cover story. It presents promoting effective competition in developing countries means getting tougher on cartels in the Organisation for Economic Cooperation and Development (OECD) area, and compensating customers internationally. Through a new competition fund, the OECD could play a lead role in making sure poorer countries get a fairer deal.

The lead story is followed by regular sections focusing on news, views and policies related to corporate restructuring, regulations of utilities and finances, corporate governance etc. of different countries in particular, the developing nations. Besides, annual roundup of competition laws, mergers & acquisitions, corporate issues etc. is another highlight of the edition.

A special article by Dani Rodrik highlights the importance of good governance as it provides households with greater clarity and investors with greater assurance that they can secure a return on their efforts. Placing emphasis on governance also has the apparent virtue of helping to shift the focus of reform towards inherently desirable objectives.

About a Competition Law dwells on the competition scenario in Burkina Faso, the institutions of competition law in the country and the scope of improvement in the law.

This newsletter can be accessed at:
http://www.cuts-international.org/pdf/reguletter1-08.pdf

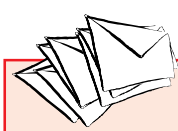
CIRCular

CIRCular a quarterly newsletter of CUTS Institute for Regulation and Competition (CIRC), carries a brief analysis on the celebration of 25 glorious of CUTS. In 25 years, CUTS' expansion – from a garage in Jaipur to a full fledged centre in Geneva – has been a journey full of hard work, dedication and support from various national and international organisations and individuals. The sense of celebration gives it the strength to carry forward its programmes and activities on a much wider scale, so that more and more people could be benefited.

Special article by B Ramalinga Raju entitled, 'Capacity Building: It is an industry' analyses the need for all stakeholders: local, state and central governments, industry, educational institutions, faculty and students to come together on a common platform to ensure that India continues to position itself as the knowledge capital of the world.

The section 'News & Views' carries glimpses of the events and activities of CIRC during the period.

This newsletter can be accessed at:
http://www.circ.in/pdf/circular11_apr-jun08.pdf



Forum

Researching Anti-competitive Practices

This refers to the research conducted by CUTS on the need for a Competition Policy for India. There is no gainsaying that there are many policies and practices prevalent in the mammoth organisational machinery like the State Government, which favours anticompetitive regimes at different levels of working.

Research studies conducted by professional institutes and voluntary organisations like CUTS bring such anomalies to the fore and help in suitable rectification, beneficial both to the state in general and the consumer in particular.

I hope that CUTS would take up more such issues resulting in the betterment of governance and establishment of a civil society.

Sunil Arora
Principal Secretary to Chief Minister
Government of Rajasthan

SOURCES

ET: The Economic Times, **BS:** Business Standard, **TH:** The Hindu, **BL:** Business Line, **FE:** The Financial Express, **HT:** Hindustan Times, **IE:** Indian Express, **PTI:** Press Trust of India

The news/stories in this Newsletter are compressed from several newspapers. The sources given are to be used as a reference for further information and do not indicate the literal transcript of a particular news/story.