PolicyWatch

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

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HIGHLIGHTS

Editor's Choice



*"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 and Policies: Costly Neglect of Synergies

The recent spat between the Planning Commission and the Ministry of Road, Transport & Highways has highlighted one vital aspect, that of possible cartelisation of road builders due to the stiff norms of qualification of bidders, which promotes collusion among a limited number of firms.

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Cartelisation or other types of anti-competitive practices can be actioned against under the Competition Act, 2002. But, in such cases if the same has emerged due to a government policy or praxis, action can hardly be taken or if taken, chances of success are remote. The case of Jindal Steel complaining under the competition law against Railways for not allowing it to offer rails is a case in point.

To stimulate discussion and awareness on competition impacts of various policies, a natural precondition for the effective implementation of a competition policy, CUTS has been coming out with a *Competition Distortions Dossier* (CDD) since March 2009 (*http://cuts-ccier.org/Competition_Distortions_India.htm)*.

A policy measure with vast implications for competition is the imposition of an anti dumping duty (ADD). The recent government recommendation for imposition of ADD on radial truck and bus tyre imports from China and Thailand and the resulting debates, captured in detail through the CDD, highlight all the dilemmas mentioned above. Note that ADD helps to enhance competition in the long run and is justified only if there is predatory or below cost pricing by the supplier. The scrutiny process, which constitutes the core of competition policy, thus necessarily has to compare import prices with costs corresponding to efficient production.

Similar comparisons are needed when safeguard duties are demanded by well organised producers with consumers and end users standing to lose as in the case of aluminium products and antibiotics in India; when government contemplates continuation of its efforts to artificially render public sector enterprises viable through subsidies, at the expense of competitiveness of the private sector, with the overt objective of maximising employment; or while evaluating a draft anti monopoly policy, as in the case of the Indian port sector, which tries to clip the wings of powerful but efficient players in a declared attempt to boost competition.

The well elaborated case of ADD on tyre imports and other cases touched on above, all captured through various issues of the CDD, illustrate the advantages of policy choice based on scrutiny of diverse welfare impacts including competition rather than the pressures imposed by poorly matched stakeholder groups. It is hoped that such efforts will help prepare the Indian stakeholder community and government for introduction and effective implementation of a formal competition policy.

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## COMMUNICATION

### Inexpensive 3G Services

Though the value of 3G spectrum has gone much higher than expected, services will not be expensive. Since the benchmarks for 3G services have already been set in the market, it will be difficult for the new entrants to charge a premium.

Operators also expect a strong uptake of 3G services. Operators will find innovative strategy to keep costs down. Since none of the operators have won pan-India spectrum, a number of roaming agreements between operators will happen. Players who have both CDMA and 3G spectrum, like Tata Teleservices, could use a mix of the two technologies to get a pan-India footprint. *(BL, 19.05.10)*

### Telecom Investment to Double

Investment in the Indian telecom sector will peak at US$40bn during the current fiscal as the country presses on to build a network of one billion mobile phones over the next two years, the Telecom Equipment & Services Export Promotion Council said. This investment, up from US$20bn in 2009, would be for continuing the development of 3G, Broadband Wireless Access and expansion of existing networks.

Additionally, India is also importing an average of US$10bn worth of hardware to support its massive expansion of telecom sector, which has set a target of adding 18-20 million subscribers a month.

*(PTI, 18.06.10)*

### MNP Gets Stuck Again

The Department of Telecom (DoT) has warned cellular operators that it would be forced to take action against them if they do not do enough to quickly implement Mobile Number Portability (MNP). The facility, which was initially supposed to be introduced in January 2010, is already delayed by more than six months.

Despite repeated extension of deadlines over the past one year, so far only 14 percent of the mobile networks across the country are ready for the introduction of MNP.

Number portability allows users to change their mobile operator without having to change their phone number. The system was supposed to be implemented by June-end but going by the current status, the facility will not be available before 2011.

*(BL, 27.06.10)*

### Boosting Broadband Services

The Telecom Regulatory Authority of India (TRAI) has proposed to set up a National Optic Fibre Agency to roll out a backbone network across the country to boost broadband services.

The National Agency will be set up through a consortium of operators according to the regulator's plan. A clear correlation is evident between the adoption of broadband and increasing Gross Domestic Product (GDP).

Broadband has also been seen as a platform for solving the challenges of education, healthcare, public safety and environment. *(BL, 28.05.10)*

### Task Force for TV Channels

The Information and Broadcasting Ministry has set up a task force to address the issue of monitoring content on TV channels. It is mooting a three-tier system to address issues of content regulation. On the first level the task force will handle ad-related complaints at the content creator's level. On the second level it will deal with handling the complaint at the industry level and on the third level, one will concentrate on getting a government body in the fray.

Currently, there are over 750 TV channels in the country. These channels beam ads and allied content, which are impossible to monitor on a regular basis. The Ministry proposes to regulate the content with the help of the task force. *(BS, 10.06.10)*

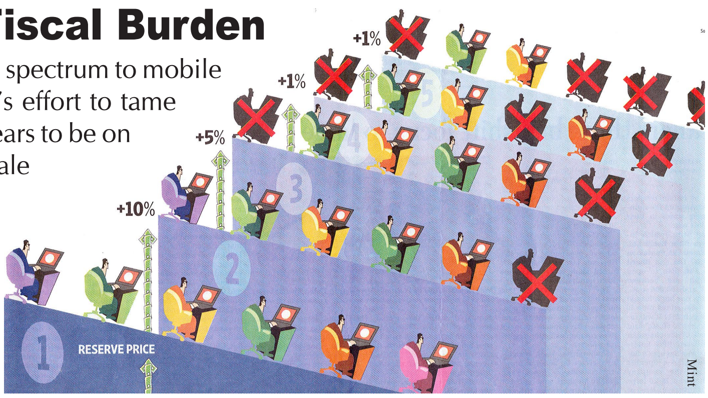
### Survival of the Fittest

When consolidation takes place in India's telecom sector, there will be five or six operators left, but only three of these will make any money, according to Sanjay Kapoor, Chief Executive Officer, Asia Pacific, Bharti Airtel Ltd. In the long run, those with just 2G (second-generation) or 3G spectrum may find survival tough.

Consolidation will be "largely led by the economics". On the auction of third generation (3G) spectrum, he reiterated that his firm was forced to make some hard choices, including letting go of circles such as Gujarat, Maharashtra and Punjab. As no one has pan-India 3G spectrum coverage, network sharing will be the order of the day. There is revenue to be made from sharing. *(www.livemint.com, 02.06.10)*

## Telecom Bounty to Ease Fiscal Burden

An unexpected bonanza from auction of radio spectrum to mobile operators looks set to give the government's effort to tame fiscal deficit a major boost. The government appears to be on course to raise around Rs 90,000 crore from the sale of 3G and Wimax spectrum, well ahead of budgeted targets. An additional Rs 35,000 crore could come the government's way if the new pricing norms proposed by the TRAI are implemented.




But there are apprehensions that the calculations could go awry if petroleum prices are not freed and the government is forced to pay a higher fuel subsidy than the Rs 3,108 crore budgeted on this account. If the government manages to deregulate oil prices and keep the subsidy low, the extra revenues could give it freedom to increase spending on some key areas. *(ET, 12.05.10)*

# Rlys Slammed for Poor Performance

As the Railway Ministry works out models for implementing projects in partnership with private players, a standing committee of Parliament has slammed railways for shoddy execution of projects. It also pointed out that railway does not know the impact of delays on the cost-benefit ratio.

Railways has to lay 2,000 km of new lines, convert gauge of 10,000 km route, double 6,000 km lines and carry out electrification of 3,500 km during the Eleventh Plan, which ends on March 31, 2012. At the completion of half of the Plan, the national transporters could achieve only 513 km of new lines, 2,612 km of gauge conversion, 789 km of doubling and 1,299 km of electrification.

*(FE, 15.04.10)*

## TRANSPORT

### Fares to Rise

The fares for commercial road transportation are likely to go up by a 3-10 percent range on account of the fuel price hike. In the contracts between logistics service providers and their large customers, there is usually a fuel-linked freight clause, which specifies the extent of increase. Indian Foundation of Transport Research and Training (IFTRT) estimate that there may be an increase of three-four percent in truck rental on account of the Rs 2 a litre diesel hike.

The truck freight market and manufacturing industry had been expecting Rs 3.20 a litre hike in diesel price, therefore, the truck rentals across the country on medium and long haulage had remained firm.

*(TH, 25.06.10)*

### New National Permit

Inter-state transport of goods is set to become hassle free and cheaper with the state governments agreeing to give up their powers to issue separate transport permits. Transporters would now have to pay an annual fee of Rs 15,000 per truck for moving across the country, according to the new rule agreed to by the states transport ministers.

The new national permit regime will strengthen the efforts to obtain a national market for goods and services through the proposed goods and services tax (GST) that seeks to create a seamless pan-India market. It will also help cut down on operations cost for truckers as they would not have to stop at state borders on account of permit related issues.

*(ET, 17.04.10)*

### MoRTH Pulled up

The Parliamentary Committee has pulled up the Ministry of Road Transport and Highways (MoRTH) for delaying issuance of new toll notification – for both public and private-funded highways. Such delays result in loss of toll revenue to the party which is responsible for collecting tolls depending on the project model used – government or concessionaire.

The Road Transport Ministry is required to issue notification for levy of toll as soon as the newly completed sections of highways are opened to traffic for timely collection of revenue on the national highways. As on April 01, 2010 the Ministry had not notified the new toll policy for 74 toll plazas located on the public-funded National Highways stretches, resulting in revenue loss to the National Highways Authority of India.

*(BL, 24.05.10)*

### No to Privatising Ports

The Water Transport Workers Federation of India has urged the Shipping Ministry to immediately drop the move to corporatise major ports in the country. Such a step would not only be detrimental to the interests of the workforce, but be a first step to privatise the port sector by disinvesting the corporatised ports later on.

Referring to the move to relax the Cabotage Law to allow participation of foreign lines in the country's coastal cargo movement, the Federation pointed out that it would hurt the national carriers but benefit foreign lines and terminal operators. The Federation has also requested the Ministry to allow major ports to dredge their channels in order to augment the large-size vessels' entry into the ports. *(TH, 23.06.10)*

### Help – A Call Away

The next time you see an accident on the highways, do not panic. Rising number of fatal accidents on the national highways has forced the MoRTH to facilitate quick medical services for highway users. The Ministry is planning to set up a call centre which will act as a medium between medical authorities and highway users.

Highway users can inform the call centre about any accident and even register their complaints about the construction and maintenance of the roads. The government has already approved a draft Bill to set up the National Road Safety and Traffic Management Board for improving safety provisions on the national highways. *(FE, 11.04.10)*

### Council of Aviation Safety

The government has set up a Civil Aviation Safety Advisory Council under the Chairmanship of Director General of Civil Aviation (DGCA) in order to strengthen aviation safety environment.

The Council will advise DGCA in areas of operations of aircraft – aerodromes and heliports, air navigation services, air operator certification, airworthiness of aircraft including maintenance, certification of aeronautical products, and human performance and training. It would also review the existing regulatory framework and give recommendations to further strengthen the aviation safety.

Besides it will also develop, examine and recommend incorporation of best regulatory practices, recommend short, medium and long-term measures for safety enhancement and reflect public views on aviation safety matters. *(BL, 31.05.10)*

## OIL & GAS

### Plan for Pruning Subsidies

The Deputy Chairman of Planning Commission, Montek Singh Ahluwalia, stated the need for pruning subsidies not surpassing the 2009-10 budgeted level on food, fertiliser and petroleum subsidies through revision in their end prices. The Plan panel is of the view that further fiscal correction in 2011-12, would call for continued expenditure restrained and enhanced revenue realisation.

According to Raghuram Ranjan, former Chief economist of International Monetary Fund, it is high time to re-examine the inefficient subsidies, especially like oil. It is time for being more circumspect about the policy, given those countries like India, Brazil, and China are in global spotlight. *(BL, 03.04.10 & FE, 25.05.10)*

### PNGRB to Hear Case on Fuel

The Petroleum and Natural Gas Regulatory Board (PNGRB) will resume hearing the case on petroleum product pricing between private oil companies and government oil marketing companies.

Private companies, including Reliance Industries, Essar Oil and Shell India had filed a petition before PNGRB against the OMCs – Indian Oil Corporation, Bharat Petroleum Corporation Limited and Hindustan Petroleum Corporation Limited – alleging that they had indulged in ‘predatory pricing’ in sale of transport fuels.

The private companies appealed to the Board to levy a penalty on the government-promoted companies for the losses incurred by them. The government companies sell petrol and diesel at cheaper rates and control over 90 percent of the market.

*(BS, 13.04.10)*

### Refiners’ Compensation Delayed

The finance ministry will wait at least until the end of May to gauge oil companies’ losses before deciding on compensating refiners for selling fuels below cost last fiscal, a finance ministry official with direct knowledge of the matter said.

The compensation for the current year ending March 31, 2011 will depend on the extent to which companies will be allowed by the government to raise prices of gasoline and diesel. India caps retail fuel prices to curb inflation and shield the poor. A government-appointed panel in February recommended lifting such controls. *(Livemint, 08.04.10)*

### Natural Gas Pipelines Soon

LPG cylinders may soon be a thing of the past and residents can hope to receive natural gas supply via direct pipelines by April 2011. The line, being laid between Saharanpur and Ludhiana via Ambala, is likely to be extended to Chandigarh as well. The wait for cylinders will soon cease to exist and the stock can be diverted to rural areas.

Murli Deora, Minister of Petroleum and Natural Gas has also agreed to extending LPG supply to all residents who use kerosene to cook their meals. Oil companies will bear the entire security amount and the consumer will only have to pay for the burner and LPG. The step has been taken in the wake of a cut in kerosene ration given through the Public Distribution System. *(IE, 30.05.10)*

### LNG Only Option for Gas Supply

India will need to import about 36 billion cubic metres (bcm) of gas, mostly liquid natural gas, to meet an expected doubling of demand by 2015. The Gas Authority of India Limited, which operates the largest gas pipeline network in India, is investing US$6.6bn to lay new pipelines and augment capacity of existing pipelines to double its transmission capacity to 300 million cubic metres a day.

Although Indian gas production is set to grow substantially over the next few years, a surge in demand for power generation, fertiliser, and domestic uses would outpace that growth, requiring India to import the equivalent of about 27 million tonnes of LNG a year by 2015.

*(Reuters, 24.06.10)*

### States to Reduce VAT on Oil

Union Petroleum and Natural Gas Minister Murli Deora has urged state governments to reduce and rationalise Value Added Tax (VAT) on petrol and diesel. He said increases in the international oil prices exerted an upward pressure on domestic prices of petroleum products.

Enclosing a statement of VAT rates in different states, the Minister pointed out that the VAT rates were very high in most of the states and needed to be reduced. He said, in the current taxation structure, VAT is levied by the state governments on an *ad valorem* basis, i.e., as a percentage of the price of the product. This means that when oil prices are high, the taxation on the products is higher, rendering the product even more expensive. *(NNN, 21.06.10)*

## Govt. Hikes Fuel Prices

After much deliberation, the Centre announced an across-the-board fuel price hike – petrol by Rs 3.50 a litre, diesel by Rs 2 a litre, kerosene by Rs.3 a litre and liquefied petroleum gas-LPG (cooking gas) by Rs 35 a cylinder. The government has decided to completely deregulate petrol and diesel partially controlled by Effective Group of Ministers. The move will help the government cut its deficit and generate funds for social schemes but will also push inflation up. Importantly, the government will continue to subsidise the common man’s cooking fuels, LPG and kerosene.


Petroleum Secretary S Sundareshan said: “Market-determined pricing of petrol and diesel is expected to do away with the OMCs’ under-recoveries on these two products, which are projected to be around Rs 22,000 crore during the remaining part of the current fiscal.” *(TH, 06.06.10)*

## POWER

### More Wind Energy

The Union Secretary for the Ministry of New and Renewable Energy (MNRE) has called upon wind energy power generation firms to use the generation-based incentives and accelerated depreciation to help achieve the Plan targets of new capacity addition. The country is faced with shortage of power and wind and solar energy have the potential to plug this gap.

The country is poised to add about 2,200 MW of additional wind energy capacity in the country during the year. The generation-based incentive of additional 50 paise/unit and accelerated depreciation for developers has become another attractive offering for investors.

*(BL, 04.05.10)*

### Mounting T&D Losses

Mounting losses in the country's power transmission and distribution sector could reach Rs 68,000 crore by the end of the current fiscal, said the Planning Commission Deputy Chairman. Last fiscal, T&D losses were about Rs 40,000 crore. Both state governments and the regulatory establishment need to take proactive steps, including possible tariff hikes, to arrest the plummeting loss levels.

The new power generation capacity of 22,302 MW had been added in the first three years of the Eleventh Plan, which is more than entire capacity addition during the five years of the Tenth Plan. The country with the close cooperation and active support of the state governments, can add another 40,000 MW capacity in the remaining period of two years. *(BL, 28.04.10)*

### Tariffs May go Down…

The Central Electricity Regulatory Commission (CERC) unveiled new norms for inter-state transmission of power, based on the distance and direction of electricity, which would result in lowering of tariffs in the long term.

These regulations will implement the point of connection method of sharing the cost of inter-state transmission services in India. The states will now pay for point-to-point transmission of electricity.

The new mechanism will benefit transmission network development and users of the transmission system, the statement said, adding that it would facilitate integration of electricity markets and enhance open access and competition. *(ET, 16.06.10)*

### FDI in Power Sector

With first major foreign direct investment (FDI) into the power sector coming through from Sembcorp Utilities into Gayatri Projects and investment of Rs 1,100 crore, the Union Power Minister, said that the country is poised for more overseas investments into the sector in future.

Even though the Centre had decided as early as 2003 to allow 100 percent FDI into the power sector, the investment flow has not come through. There are enough signals to show more investment flow is likely into the power sector. Most of the foreign investors used to come in, enquire and then stay away from making any new investments. But the situation has changed, which is evident from increasing interest from lenders to fund power projects.

*(TH, 25.05.10)*

### LED Lamps to Replace CFLs

Even as a gradual switchover from incandescent bulbs to compact fluorescent lamps (CFLs) for domestic lighting is under way, the government is working on simultaneously ensuring the Light Emitting Diode (LED) technology, touted as the future of lighting. Energy Efficiency Services Ltd, an energy efficiency firm floated jointly by National Thermal Power Corporation (NTPC) Ltd, Power Grid Corporation, Rural Electrification Ltd and Power Finance Corporation, is likely to be roped in to promote LEDs.

The LED technology has the potential to light up an entire village with less energy used by a single conventional 100 watt incandescent bulb. LED lamps offer the best hope for the ongoing rural electrification efforts, especially in case of off-grid connections. *(TH, 06.05.10)*

## Government Backs Discoms on Power Hike

The Delhi government has defended its direction to Delhi Electricity Regulatory Commission (DERC), seeking statutory advice and clarification on the issues raised by the power distribution companies in their representations to the government. The government also made a pitch for raising power tariffs on the ground that it will ensure uninterrupted supply of power in the city.


Siding with the discoms on the issue of speedy recovery of fuel costs, the government has quoted the Electricity Act, 2003, which provides for speedy recovery of the fuel costs as well as power purchase cost from the consumers so that the new consumers are not burdened with the past cost.

*(TH, 29.04.10)*

### MP's Thermal Power Policy

To curb non-serious private players in power sectors, the Madhya Pradesh government has approved a private thermal power policy. The new policy will set up a timeframe for the private players to invest in the state and in case of failure the private players will asked to pull out their proposals.

The new policy will also put a condition before potential investors in private thermal power players to have a networth of Rs 50 lakh per megawatt if the proposal is less than 2,000 MW, if it is for more than 2,000 MW than the networth should be more than Rs 1,000 crore or Rs 25 lakh per Mw of the maximum specified capacity. *(BS, 10.06.10)*

## MIXED BAG

### Credit Woes Not Over

Trends in credit ratings of agencies such as Credit Rating and Information Services of India Ltd. (CRISIL) and Internet Content Rating Association (ICRA) show that a good number of companies are still grappling with debt-related problems. For both the agencies put together, the number of downgrades at 259 was higher than the 228 upgrades for the half-year ending March 2010.

This suggests that while the overall credit scenario is improving, a good number of companies continue to face a deteriorating credit situation. Credit rating of corporates is an opinion on the chances of timely future debt repayments by companies.

*(BL, 26.04.10)*

### Time for Reforms

The Finance Minister of India Pranab Mukherjee said that it is time to revisit some of the age-old financial sector norms to usher in the next wave reforms in the sector. The government had announced the setting up of an apex-level Financial Stability and Development Council (FSDC) to strengthen and institutionalise the mechanism for maintaining financial stability.

Mukherjee clarified that there would be dilution of power of the existing regulators, which "were doing a good job in the current scenario". He further said the government had decided to set up an apex level council for macro-level prudential supervision of the economy, including functioning of large financial conglomerates and address regulatory coordination issues. *(BS, 10.04.10)*

### No Payout for Agents

The Finance Minister asked all the financial sector regulators to work towards "no load plus fee model" for the entire financial sector. The financial sector experts are viewing this as setting the direction of reforms in the financial sector.

If such a model comes into place, the worst-affected could be the over 3 million insurance agents in the country as they may end up losing their 'commission' income on the insurance policies sold by them. Both the insurance agents and the Insurance Regulatory Development Authority (IRDA) had reservations on the recommendations, which sought to trim the payout to life insurance agents. *(BL, 13.04.10)*

### Super Regulator for Infra

The government has revived a proposal to set up a super regulator for the infrastructure sector in a bid to fast track public-private partnership (PPP) projects. The super agency would also be expected to facilitate inter-ministerial coordination.

Although the proposed agency may be useful in working out inter ministerial issues that often come up in large projects, but experts are sceptical of the idea, as a similar proposal was mooted two years ago but was opposed by some on the grounds that infra projects were already under some form of institutional supervision.*(ET, 06.05.10)*

### Turf Issue Unresolved

The Central Government ended a two-month-long turf war between the IRDA and the Securities and Exchange Board of India (SEBI), saying unit linked insurance products (ULIPs) will be regulated by the IRDA.

SEBI banned 14 life insurance firms from issuing fresh ULIP schemes. However, the IRDA asked the life insurers to ignore the SEBI order and the matter then went to the Finance Ministry, which advised them to move the court and in the meanwhile had asked them to maintain *status quo*.

ULIPs are a hybrid instrument that combines both insurance and investment. ULIPs account for more than 50 percent of the life insurance business and the money collected is invested in equities. While the SEBI saw ULIPs as investment products and hence asserted its right to regulate those products, the IRDA treats them as insurance instruments.

*(TH, 20.06.10)*

### Autonomy Under Assault

The independence of central banks is coming under increasing assault post the global financial crisis, even as their advocacy for independence should be through "more vigorous and voluntary efforts to be transparent, responsive and accountable".

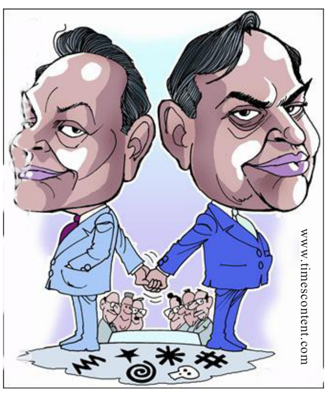
Though the responsibility for financial stability must be shared by the government, the central bank and other regulators which in itself is not a problem, there are two related concerns. First, is that the rescue of financial institutions is an inherently political act and involvement in such decisions might compromise central banks' technocratic credentials, he cautioned.

Second, there is a risk that coordination with the government for the purpose of financial stability might spill over into other areas that are within central banks' purview, thereby undermining their independence.

*(BL, 16.06.10)*

## Breaking the Ice

Mukesh Ambani's Reliance Industries Ltd (RIL) and Reliance Anil Dhirubai Ambani Group (ADAG) led by Anil Ambani, cancelled all non-compete arrangements signed in January 2006 and entered into a new simpler, non-compete agreement with respect to only gas-based power generation. The agreement will open up new avenues of growth for both, besides facilitating greater operational flexibilities.




The agreement would come in handy for ADAG, to raise the much-needed funds for their massive investment plans, by selling stakes in group companies. RIL can now conceivably enter telecom, power and financial services – three potentially high growth areas where it has hitherto faced an entry bar, owing to 2006 separation agreements or MoU signed by the two. *(FE, 31.05.10)*

# Needed, Consumer-focused Regulators

– Sumit Gulati*

The consumer needs a guardian. And, a powerful, devoted one at that. Regulators mostly focus on the big picture and tend to miss the daily routine pain of the consumer. Action in favour of consumers often comes in bursts and after long lags. And, once it does come, it takes long for the spirit of the change to filter down. Thereafter, enforcement remains a big issue.

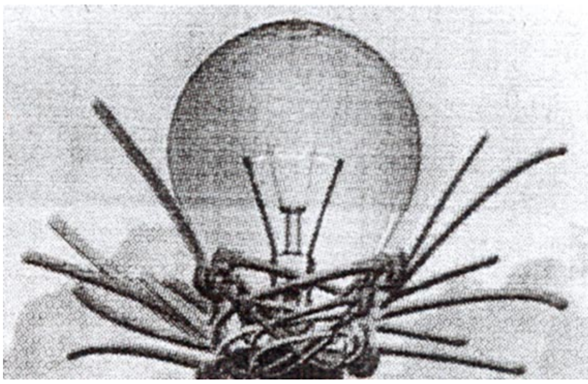
The criticism may sound harsh, especially when it comes at a time when most regulators are literally in overdrive. Take the case of RBI — the regulator of banking services in India. The central bank has pursued vigorously the case of existing home loan borrowers who get left out of downward home loan interest rate changes even as new home loan borrowers are enticed with lower interest rate offers. SEBI, the markets and mutual fund regulator has brought in dramatic, consumer-centric changes — modification of the IPO process, scrapping of compulsory commissions to mutual fund distributors etc. IRDA, the insurance regulator, has done its bit by moving on initial expenses of the popular (and highly mis-sold) unit-linked insurance plans and TRAI, the telecom regulator, regularly publishes a quality of service audit of all mobile services providers.

The reason for delay in corrective action perhaps lies in the way regulators structure their priorities. For instance, TRAI can hardly be expected to scan mobile phone billing closely at a time when there is a huge government-corporate and corporate-corporate war going on over allocation of new licences and spectrum.

The same holds for RBI — inflation, withdrawal of loose monetary policy is perhaps what is taking most of its time right now and not some piddly interest rate calculation on a co-branded credit card. In a nutshell, the regulator-to-business (R2B) aspect overwhelms the regulator-to-consumer (R2C) one in the way things happen right now.

One would expect in the current day and age that there would be intelligent systems capable of classifying consumer complaints and detecting a pattern. Timely detection of such patterns will mean that the regulator will be in a position to move all by itself to plug gaps that are being used to rip the consumer off. This unfortunately does not seem to be happening.

Plus, mandatory information disclosure still has a long way to go. For instance, why can't banks post a standard home/car/personal loan agreement clearly on their websites so that customers can read through carefully before picking up the phone to ask for a loan? Why can't insurance companies be asked to disclose publicly on their websites the percentage of claims they pay? Why can't the finest of the finest detail about each insurance policy be available for download from the company website?


The Economic Times

***Consumer and financial markets have indeed become better and safer over the years. But, at the same time one can argue that the regulators took an inordinately long time to respond to problems that were well known for years***

Topping this is a huge unregulated space where the law of the jungle rules. Real estate is one good example. Consumers continue to fight delayed allotment, poor workmanship & pure cheating and get swindled on something as basic as built-up area, carpet area and super area. Is no one aware or is someone not listening or does someone not have the time to act? Addressing little-little aspects at the consumer level will go a long way in removing the source of a large number of consumer complaints.

This is not about a grievance redressal mechanism. This is more about combing through tonnes of communication and data to identify areas about which consumers are complaining the most and identifying specific areas which need to be tightened. Perhaps, one solution is to set up a body which records and classifies all kinds of consumer complaints. This body can find patterns and identify weak areas. It should also be the job of this body to pursue the appropriate regulator or ministry or department to plug the gaps found.

This body could also devise a mechanism that electronically tracks the status of a consumer's complaint till the time it is resolved or till the time the disputing parties agree to fight it out in court. Various consumer organisations and NGOs can interact with it to put law change requests forward. Effectively, it means regulators can outsource the nitty-gritty details of their 'C' (consumer) aspect to this body if they are not in a position to focus on it themselves.

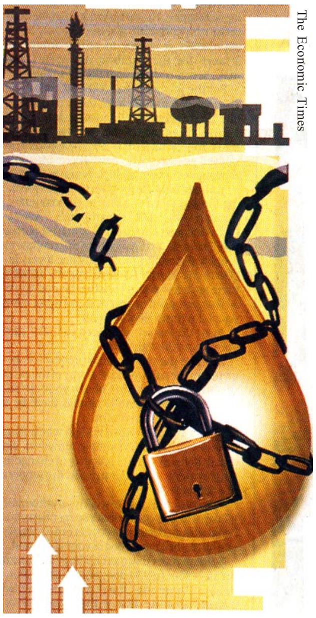
* *Assistant Editor, The Economic Times. The article appeared in The Economic Times, on April 06, 2010.*

# Open Access in a Supply-short Economy

– S L Rao*

***Open Access was a concept that came into Indian law in the Electricity Act, 2003. The Act mandated open access, that is the opportunity for any supplier to use the wires for in transmission and distribution of electricity, subject to capacity being available and the price mutually agreed. Later the same concept was introduced in the transmission on pipelines, of oil and gas, and the owner of the pipelines had to allow all suppliers to use the pipeline. It was a concept that was necessary since wires or pipelines were natural monopolies; more than one such link might not be viable and so there is no choice. Open access is intended to prevent exploitation of a position of natural monopoly***

If open access is to be applicable in all situations, there must be ample supply so that the buyer has a choice of suppliers. The application of the concept to India should have taken account that electricity is in short supply, will probably remain so for long. It should also have recognised that the concept could not override supply arrangements that had been made earlier, and were either formally in written agreements or by custom. Neglect of these two pre-conditions has led to the situations that have arisen, in distribution and in interstate transmission.



The Economic Times

A pre-existing supply arrangement to distributors that was in operation for decades could not be suddenly abandoned because open access makes better prices possible from sales to other prospective customers. This would disrupt the existing distribution arrangements based on that supply and suddenly raise the cost of electricity to the users there.

Many buyers are willing to pay higher prices, subject to transmission capacity being available. Political compulsions make state governments to try to ensure adequate supply in their states and without sudden large increases in tariffs. When there is a shortage because of sudden demand surge, monsoon failure, heat waves, etc, state governments are loath to allow electricity generated in their state to go on their wires under open access to customers not approved by the state. The supplier is selling it to other customers because he gets a better price. The originating state is reluctant to match such higher price because it will mean a tariff increase and/or a fresh burden on state budgets.

The solution obviously is for the state to enter into long-term supply contracts even if the contract results in over supply. If there is excess supply, it can be sold elsewhere. The state should also fine tune its tariff arrangements to maximise earnings from those who can afford to pay, raising efficiencies in use, preventing theft, adjusting tariffs for time of day and season,

Hence, the provision for open access in the Act should recognise these pre-conditions:

1. It should not apply when there are pre-existing supply arrangements, whether entered into formerly or in practice for long.
2. It must require state governments to take actions to minimise demand, maximise earnings and improve efficiencies sin use and then approach the Central Electricity Regulatory Commission (CERC) for permission to forbid open access.
3. State governments should not be too hesitant about raising tariffs but leave it to the state regulatory commission.
4. The state regulatory commission should not enter into the tricky waters of consumer choice of the electricity supplier unless the supply needed to meet demand is ensured to be adequate.
5. If supplies are ensured and choice is allowed by the State Electricity Regulatory Commission (SERC), the SERC must estimate the proportionate cross-subsidy costs and ensure that they are met by the new distributor.
6. If however, the generating plant was set up for captive use and/or merchant sales, the sate government cannot intervene to stop its interstate sales.
7. In any amendments to the Act to ensure open access, the central government must provide for these conditions.

It is obvious that a supplier should be entitled to sell his produce to any customer within the country at a price negotiated between him and his customer, or determined on an exchange. The issue is complicated by the unwillingness of local customers and local political leaders to pay a higher price than they are accustomed to paying. There must be limited open access till supplies improve. It should be made operational immediately for captive generation, and to merchant plants.

* *Chairman, Institute of Social and Economic Change, Bangalore. The article was exclusively written for CUTS on June 04, 2010.*

# Petroleum Price Fixation

– Mukesh Kacker*

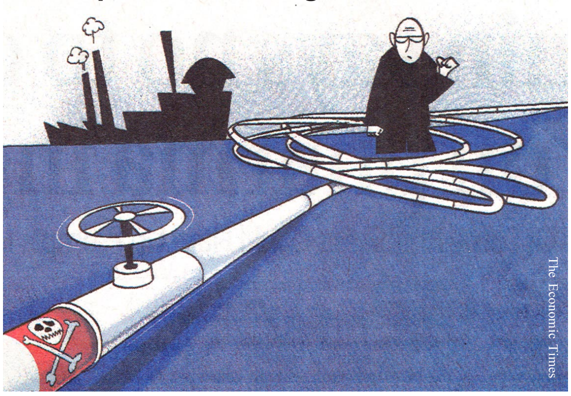
Much has already been written about how competition and regulation of competition, or more correctly, regulation of anti-competitive behaviour leads to increased allocative efficiencies and consumer welfare. Less, however, seems to have been written on whether the structures of regulation put in place secure these desirable ends. This is particularly true in case of India where independent regulation is of relatively recent origin and is still evolving. It is, therefore, of immense importance that the structures of regulation put in place in different sectors be put under both intellectual as well as public scrutiny to see whether they are truly independent and empowered to regulate anti-competitive behaviour. It will be worthwhile to take a close look at the state of regulation in the Petroleum and Natural Gas (PNG) sector, which has been consistently in the news of late.

The PNG sector consists of four sub-sectors: exploration and production of PNG, oil refining and marketing, natural gas transportation and marketing, and crude oil and petroleum products pipelines. Of these four, the first, referred to as upstream, is supposed to be regulated by the Directorate General of Hydrocarbons (DGH) while the remaining three downstream sectors fall under the domain of the Petroleum and Natural Gas Regulatory Board (PNGRB) of India.

The DGH was created by a government resolution in 1993 and posited as the regulator of the upstream sector. The DGH operates under direct and complete administrative control of the ministry. It functions with the assistance of an advisory council and is predominantly an advisory, rather than a regulatory body.

The DGH has been mandated to regulate only one area – the preservation, upkeep and storage of data and samples pertaining to petroleum exploration, drilling, production of reservoirs, etc. – and to cause the preparation of data packages for acreages on offer to companies. In 2006, the PNGRB Act, 2006, was passed and the PNGRB was notified on October 01, 2006. The PNGRB has been invested with tangible regulatory powers and the statutory nature of its genesis gives it its independence.

***Three and a half years after the government set up a regulator for the downstream petroleum and natural gas sector, it still insists on fixing product prices, violating the statute***




Before March 28, 2002, the marketing and pricing of petroleum products including transportation fuels, namely, motor spirit (MS) and high-speed diesel (HSD), were controlled by the government under a mechanism known as administered price mechanism (APM). The APM was dismantled by a notification dated March 28, 2002, under Section 3 of the Essential Commodities Act, 1955. Then, in 2006, the PNGRB came into existence. As a result of these two events, the theoretical position obtaining since October 01, 2006, is that all entities are free to price their products and the PNGRB is to regulate anti-competitive behaviour like predatory pricing. However, strangely, the government still fixes the prices of MS and HSD and the PNGRB appears to be either powerless or disinterested in doing anything about it. How can the government fix these prices now? What is the role of PNGRB?

These issues have been examined brilliantly in a landmark judgment, dated October 05, 2009, by the Appellate Tribunal for Electricity, in Appeal No. 50 of 2009. The judgment, either directly or indirectly, establishes the following positions: Sections 11(a), 12 and 25 of the PNGRB Act, 2006, together gives wide amplitude to its duties and powers to foster fair trade and fair competition among the entities. The dismantling of the APM by the notification dated March 28, 2002, was a policy decision that has not been reversed by another policy decision. The government, therefore, cannot fix prices under the garb of policy.

Section 2(x) of the Act specifically provides that it is only the entities that can fix the price and not the government. The above power given to the entities to fix the price cannot be usurped by the government. If the prices are to be fixed by the government as a sovereign, then it has to be declared as a public policy after observing formalities as provided under the Constitution.

The PNGRB has so far been a mute spectator and has hardly lived up to the expectations of the firms and the nation at large. And this brings into focus another important observation: that independence may be a necessary condition but is certainly not a sufficient condition for a regulator to be effective.

* *Director General, CUTS Institute for Regulation & Competition, New Delhi. Abridged from an article that appeared in the Economic Times, on April 30, 2010.*

### World Wants Us to Grow

Prime Minister Manmohan Singh, on his return from the Summits of Nuclear Security, India, Brazil and South Africa (IBSA) and Brazil, Russia, India and China (BRIC) said that world takes a benign view of India's growth, and is on the other hand apprehensive about China's rise. He was of the view that we must take advantage of this situation by first tackling our internal issues.

The prime minister expressed these views subsequent to the feedback he got after meeting a host of leaders US President Barack Obama, Russian President Dmitry Medvedev, Chinese President Hu Jintao over a week visit to Washington and Brazil.

*(BS, 17.04.10)*

### Drug Prices below Inflation

Drug price watchdog National Pharmaceutical Pricing Authority (NPPA) told the government that when it has to raise prices of medicines due to higher input costs and a weaker rupee (in case of imported brands), it would keep the increase in price below the prevailing general rate of inflation in the economy.

The move holds importance as imported brands are costly and small price rise sought by firms in percentage terms translate into a larger amount in absolute terms. The drug price controller wants to protect the domestic prices of expensive imported drugs, particularly the ones used to fight cancer, transplant rejection and HIV Aids, from volatility in the exchange rate.

*(FE, 18.04.10)*

### National Fibre Policy Soon

The government has proposed a National Fibre Policy (NFP) to improve cotton production, supply and calibrating exports. The draft policy placed in the public domain for comments also targets aggressive procurement by the government agencies so as to ensure secured supply of cotton to textile mills at competitive prices.

The domestic fibre consumption ratio is highly skewed in favour of cotton against man-made fibres. Almost 60 percent of fibre intake in the country comes from cotton and the rest from the man-made fibre. The trend needs to fall in the global ratio which is highly favourable to man-made synthetic fibre, the draft said. Recently, the government had put restrictions on cotton exports in the wake of rising domestic prices.

*(ET, 24.04.10)*

### New FDI Norms Working Well

Commerce and Industry Minister Anand Sharma said that the new foreign direct investment (FDI) rules have defined the concepts of ownership and control with much clarity and the policy is working very well. But there are some banks that are having problems with the new rules for which the RBI, commerce ministry and the finance ministry are currently holding talks on.

According to the rules, if a company has more than 51 percent foreign stake or the control of the company was in foreign hands then it will be treated as foreign company. Moreover, any investment such a company makes in subsidiaries or other companies will be treated as foreign investment.

*(ET, 06.04.10)*

### Indo-US Pact to Open up Markets

India and the US launched the 'India-US Financial and Economic Partnership', an initiative aimed at easing the entry of foreign capital, especially in the financial and infrastructure sectors. The partnership is part of the US initiative to encourage other countries to open up their economies even as the Barack Administration attempts to limit domestic consumption, increase the savings rate and reduce borrowings.

US Treasury Secretary Timothy Geithner said the move would spur trade, investment and job creation in both countries. India invited US investors to participate in its US$600bn-infrastructure programme in the next five years, even as America sought greater financial cooperation for bringing about global economic stability.

*(TH, 07.04.10)*

### Nod for Dual-rate GST

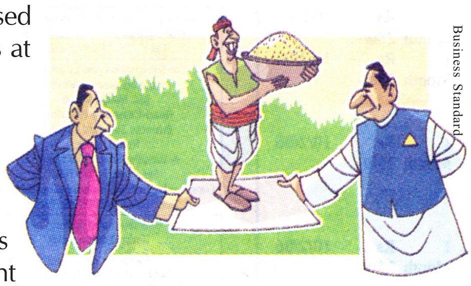
In what may be termed a last-ditch attempt by the Centre to form a consensus on the basic structure of the proposed Goods and Services Tax (GST), the government has given its consent to dual rates for goods – one standard and the other lower for essential commodities – proposed by the Empowered Committee (EC) of state finance ministers.

Not just rates, the Centre has also acceded to other demands of the states regarding various contentious issues such as consumption of alcohol, fuel and natural gas in the GST. The decision is a major shift from the government's previous stance of bringing in all commodities and taxes under the GST while maintaining a single rate.

*(www.in.news.yahoo.com, 18.06.10)*

## Fert Subsidy Paints Green Picture

The nutrient-based subsidy (NBS) regime that came with decontrol of farm-gate prices of phosphatic and and potassic fertilisers has kept the farmers happy with increased availability of these fertilisers at prices which they can pay.




A Department of Fertilisers official told that since the decontrol from April, the price of Di Ammonium Phosphate, the fertiliser rich in phosphorus has gone up by just six percent while that of Muriate of Potash, which contains potash, has remained unchanged. In the case of Single Super Phosphate, the fertiliser rich in both phosphorus and the micro-nutrient sulphur, the NBS regime has allowed a 20-36 percent fall in prices and resultant hope of a spurt in its use, he said.

Moreover, certainty about subsidy and its timely disbursal has encouraged fertiliser companies to take the unprecedented step of contracting for imports of the entire quantity of phosphatic and potassic fertiliser for 2010-11.

*(FE, 25.04.10)*

# Our Politicians and their Little Playthings

– Vir Sanghvi*

***The recent Air India crash and the flash strike that followed shortly afterwards have reawakened the issue of the privatisation of Air India. As the airline's losses mount and its performance slips to new lows, more and more people are asking: why does the Indian taxpayer need to subsidise this mess?***


The pilots, already the highest-paid public sector employees in the country, went on strike because of some work-related issue. The effect of that strike was not just to cast the pilots as the nation's number one villains, but also to increase the clamour for private sector involvement in the domestic aviation sector. From that point on, the private airlines, which had been run largely as charter operations till then, began to be perceived as the saviours of the Indian passenger and many people gave up completely on Indian Airlines.

Something like that is happening with Air India. As the bad news keeps flowing in, the majority of Indians are ready to give up on the airline. Our attitude to the public sector in non-manufacturing areas has been: let there be lots of private sector competition but let's not close down the public enterprises.

In the 1990s, when this doctrine was propounded, it seemed like a painless way of ensuring better service to consumers. First of all, the public sector has proved unable to cope with private competition. Air India and Indian Airlines are now irrelevances whose share of passenger traffic drops with each passing year. The India Tourism Development Corporation (ITDC), or what remains of it, runs second-rate shops and hotels that simply cannot match up to private sector rivals.

Doordarshan is a massive embarrassment, a hotbed of politics, intrigue and ineptitude, which is not even taken seriously by the rest of the broadcasting sector. Here too, the argument of social obligation is employed. At one stage, this had a vague plausibility, largely because the government had legislated to prevent the private sector from entering terrestrial broadcasting. But as more and more of India is cabled up, the figures show that nobody watches Doordarshan if he has a choice. The so-called social obligation consists entirely of government propaganda that has viewers reaching for their remotes. India would not lose anything if this absurd 'social motivation' ceased to exist.

What we did not realise way back in the 90s, when the doctrine of public vs. private was propounded, was that the private sector would so completely out-perform the public sector. Far from providing an alternative and keeping the private sector on its toes, the public sector has collapsed as competition. Air India is rarely anybody's airline of first choice.

This permanent second-ratedness has had other disastrous consequences. None of these organisations even talk about competition any longer. They only talk of survival. The key question before Air India is not whether it can out-perform the private airlines. All we ask is: can it stay afloat? Nobody thinks Doordarshan will ever beat Zee, Colours or Star Plus. That's not even an option. We never look for an ITDC hotel on lists of the world's great hotels, the way we look for Taj, ITC, Oberoi or Leela properties.

No ITDC hotel can command the same rates as its private sector competitors. Doordarshan is easily out-performed by private channels in every cable and satellite market.

As survival becomes the only issue, the good employees leave. The no-hopers who cannot find better jobs constitute the bulk of the work force. (The exception is Air India, which still has outstanding professionals). No decent manager will touch these companies.

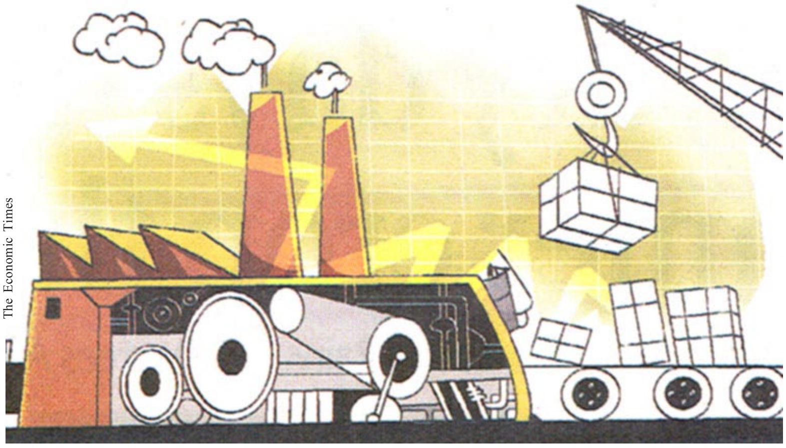
The government, which is unwilling to let go of its toys, installs bureaucrats to do the jobs of managers. Ministries start interfering in the functioning of the corporations. Politicians rape them. Unscrupulous chief executives line their pockets. And through it all, we are the ones paying the bills. Every penny stolen from Air India goes from our pocket. Every rupee wasted on Doordarshan is a rupee that could have been spent on providing better facilities to Indian citizens.

It would be a shame if we let our outrage over the Air India strike settles into a general anger against Air India engineers. There are deeper issues here. Our entire attitude to those public sector operations that provide services that are replicated by the private sector needs to be re-examined. We need a national debate.

* *Editorial Director, Hindustan Times. Abridged from an article that appeared in the Hindustan Times, on May 29, 2010.*

# A Manufacturing Strategy for India

**– Arun Maira***


The Economic Times

***The country needs an effective strategy for manufacturing to become a powerful engine for inclusive and sustainable double-digit economic growth***

Since the 1990s, growth of India's manufacturing sector has declined relative to the economy's growth. From the 1960s through the '80s, the sector had grown faster than the overall economy: it was an engine pulling the economy. However, by the end of the 1990s the overall economy had overtaken the manufacturing sector. Some may argue that if the overall economy is growing well there should be no concern with the slower growth of a particular sector. After all, other sectors must be growing much faster to compensate. In India's case, the service sector has emerged a winner, and so be it.

Nevertheless, there is concern with the relatively poor performance of the manufacturing sector. A principal concern is with the need to create more jobs in which the manufacturing sector should have a larger role to play at our stage of development. It is estimated that an additional 200 million Indians will enter the job market by 2025, with overall population growth and large numbers of young people who will be joining the workforce. Moreover, with desperately needed improvements in agricultural productivity, there will be a shift towards manufacturing and services for jobs. Therefore, manufacturing must pull its weight and contribute more for inclusive growth of the country. There is also concern that India's manufacturing sector is not developing sufficient depth.

India needs a strategy for its manufacturing sector, not only to increase its rate of growth, but also the shape of that growth. The organised manufacturing sector must create more jobs, which it has not since the 1990s, and also create more depth with more value addition. Therefore, we must develop an effective manufacturing strategy to achieve its goals. Strategy is about making choices about what to do to achieve the desired results.

Choices must be made about which manufacturing sectors will be more important for inclusive and sustainable growth in the next 25 years. Choices must also be made about the best ways to stimulate that growth. Improving the physical infrastructure for manufacturing must be an essential element of the strategy. Here too policymakers must make choices. Choices about infrastructure will, in turn, determine the manufacturing industries required for building the infrastructure. Thus, the selection of manufacturing sectors that should get higher priority is not a trivial exercise because there are linkages between industrial sectors and also linkages with overall economic needs for inclusion and sustainability.

Strategy-making cannot be left entirely to the market. Policymakers have a vital role to play. However, policymakers cannot shape strategy within an ivory tower cut-off from reality. The task of shaping industrial policy is to elicit information on significant externalities and their remedies. As it advances and grows, the productive sector bumps into the constraints in the economy: it feels the stones underfoot, or the 'pinch in the shoe'.

In a world in which not only companies, but countries too, are rated on their competitiveness, and a world in which all must strive to climb that scale, the only sustainable source of competitive advantage can be a company's or country's ability to learn, change, and improve faster than any potential competition. Therefore a country's competitive ability lies in the capability of the collaborative process between producers and policymakers to produce effective strategies and policies.

India, in the 21st century has to be even more conscious of environmental and human rights and has to also operate within a more open global trade regime. Therefore, processes of consultation in India must involve not only industrialists but also those who represent labour, land users, and concerns for the environment. Even foreign companies whose investments and technologies can help India must be consulted.

The country needs a strategy for manufacturing to become a powerful engine for inclusive and sustainable double-digit economic growth. The challenges are many: in choices of priority sectors, architecture of consultation processes between policy-makers and producers, design of policies, and governance of agents for the strategy's execution.

* *Member, Planning Commission. Abridged from an article first appeared in The Economic Times, on April 08, 2010.*

### Corporate Frauds on the Rise

Almost 75 percent of corporate India surveyed felt the overall incidence of fraud was rising, according to 'India Fraud Survey Report 2010' by KPMG. The survey was conducted across 1,000 firms, both Indian business establishments and public institutions, with an annual turnover of Rs 500 crore to over Rs 10,000 crore.

Weak internal control systems, eroding ethical values and a reluctance on the part of the line managers to take decisive action against the perpetrators, are cited as the main reasons for fraud being on the rise. Accountability is no longer restricted to a company as a whole, but also streams down to each and every individual. *(BS, 07.04.10)*

### Inefficient Babudom

India, Indonesia and the Philippines have Asia's most inefficient bureaucracies, with red tape a constant blight to citizens and deterrent to foreign investment, says a survey of expatriate business executives by the Political and Economic Risk Consultancy (PERC).

Singapore and Hong Kong have the most efficient bureaucracies. Ranking 12 key countries and territories on a scale from one to 10, with 10 as the worst possible score, the executives rated India as having the region's most inefficient bureaucracy. India had a score of 9.41.

In India, "politicians frequently promise to reform and revitalise the Indian bureaucracy, but they have been ineffective in doing so – mainly because the civil service is a power centre in its own right," said the survey report. *(HT, 04.06.10)*

### Corruption Mars NREGA

A government-sponsored study on National Rural Employment Guarantee Act (NREGA) has found large-scale corruption and irregularities in the implementation of the programme in several states with authorities in some areas "misappropriating" central funds and "threatening" workers to keep their mouth shut.

The study found that in many cases, workers performed one day's job but their attendance was put for 33 days. The workers got money for one day while wages for 32 days were "misappropriated by the people associated with the functioning of NREGS". The study, sponsored by Rural Development Ministry, was initiated in September 2008. The research team visited Andhra Pradesh, Bihar, Gujarat, Madhya Pradesh, Rajasthan, Tamil Nadu, Uttar Pradesh and West Bengal. *(ET, 24.05.10)*

### Best Performing CM

Gujarat Chief Minister (CM) Narendra Modi has been the best performing head of a state government in the last one year, according to a survey by NDTV news channel with GfK Mode, a market and social research firm.

The opinion poll, conducted on the eve of the Congress-led United Progressive Alliance government's first anniversary in its second term, rated Orissa CM, Naveen Patnaik as the second best performer, with only one percent fewer votes than Modi.

Interestingly, chief ministers belonging to the main opposition Bharatiya Janata Party dominated the top five list of best performers with Patnaik and Assam CM Tarun Gogoi being the exceptions. *(www.livemint.com, 20.05.10)*

### Unaware Food Industry

A survey carried out by the Federation of Indian Chambers of Commerce and Industry indicates that a large portion of the domestic food industry is unaware of the existence of the Food Safety and Standards Act (FSSA) and its rules. In order to correct this, the chamber has called for conducting more capacity building programmes and in-department training programmes to enable smoother transition from the Prevention of Food Adulteration Act to the FSSA.

A majority of the survey respondents (86 percent) also said that FSSA has served the purpose of a unified food law. This survey reveals that top three issues faced by the industry are lack of testing facilities, less industry representation and lack of transparency. *(TH, 11.06.10)*

### Indians Most Eco-friendly

Indians are the most eco-friendly people while Americans the least, according to a 17-nation survey on consumers' progress towards environmentally sustainable consumption patterns. India topped the Consumer Greendex, compiled by National Geographic which studied 17,000 consumers in 17 countries.

The consumers were asked about energy use and conservation, transportation choices, food sources, the relative use of green products versus traditional products, attitudes towards the environment and sustainability and knowledge of environmental issues.

According to the study India toped the list, followed by Brazil, China, Mexico, Argentina, Russia, Hungary, South Korea, Sweden, Spain, Australia, Germany, Japan, UK, France, Canada and the US. *(FE, 10.06.10)*

## India Slips in Competitiveness

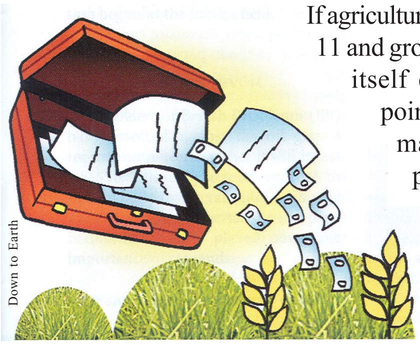
India has slipped one rank below to 31st in the annual World Competitiveness Yearbook (WCY) among the top 58 nations of the world. Singapore is at the top followed by Hong Kong and US at the third slot. China has improved its position to the 18th position.


India's low ranking among the 58 nations – which is even below the midway mark – however, improves considerably when it is ranked among countries with population of more than 20 million. Here India is ranked 13th among 29 nations – just a notch below Japan in the 12th position, three notches below France at 10th position and four notches below Korea in the eighth position. *(FE, 19.05.10)*

# EXPERTS SAY

## Farm Sector is Key to Growth

The economy could grow between 8 and 8.5 percent in 2010-11, but much will depend on how agriculture performs in 2010-11, said C Rangarajan, Chairman of the Prime Minister's Economic Advisory Council.



Down to Earth

If agriculture performs very well in 2010-11 and grows by four percent, then this itself could add one percentage point to the GDP growth even if manufacturing and services performance continue to remain at the same level.

Agriculture grew by 0.7 percent in the fourth quarter of 2009-10 (negative growth of 1.8 percent in the December quarter). He also expressed confidence that manufacturing sector growth for 2010-11 would at least maintain the growth level of 10.8 percent recorded for the entire 2009-10.

*(BL, 31.05.10)*

## Bureaucratic Reforms Needed Growth

The return of economic normalcy may assure nine percent growth, but a couple of reform, including bureaucratic, is required to achieve a sustainable 10 percent expansion, says Chief Economic Adviser Kaushik Basu.

He further said India can surpass China as its growth story is more sustainable since it is coming from all sources, unlike in the neighbouring country where it is being orchestrated by the government, which is a matter of concern.

From 9 percent economic growth to a sustainable 10 percent, it is a big step, he said, adding for the economy to take that jump, India needs to reform its bureaucracy, food distribution mechanism and agriculture, among others.

*(BS & ET, 24.05.10)*

# E-GOVERNANCE

## Nagpur Push to e-governance

The General Administration Department (GAD) has directed all departments to spend 0.5 percent of their budget and non-plan allocation on e-governance to provide services to citizens from 2010-11. The directive has been issued to 34 departments, government-run companies, corporations and boards.

The departments and corporations have been asked to create a separate head of e-governance in their record books and record the expenditure incurred. GAD has prepared a vision document for implementation of e-governance. This lists the citizen centric services to be provided online by each department.

*(ToI, 21.06.10)*

## Web Portal for Public Grievances

Haryana became the first Indian state to launch a web portal for quickly addressing public grievances. Haryana is the first state in the country to launch such a web portal. Redressal of citizens' grievances is a priority area and this user-friendly portal would help them to get their problems solved quickly.

The portal will act as a fool-proof system for registration of complaints and provide a sound monitoring and evaluation mechanism. It would undoubtedly facilitate in providing transparent, responsive and efficient vehicle to fulfil the aspirations of the people.

*(ET, 18.06.10)*

## Cabinet Clears e-link Treasuries

To ensure greater efficiency in financial administration, the Union Cabinet approved a Rs 626-crore project, under the National e-governance Plan, to computerise the State treasuries and enable them to share data among themselves as also the Reserve Bank of India and other agencies.

Briefing the media, Information and Broadcasting Minister Ambika Soni said: "The scheme is aimed at supporting the State governments to computerise their treasury functions".

*(TH, 11.06.10)*

## Online Passport Faces Troubles

The mega e-governance project to simplify passport processing has been hit by bugs of a different kind: Resistance and inertia from certain Ministry of External Affairs (MEA) staff, negative propaganda by travel agents and impatience and lack of understanding from citizens.

The pilot project, currently on in Bangalore, Mangalore and Hubli, is expected to be completed in 12 weeks and the country wide roll out across 77 *passport seva kendras* (PSK) will happen in six months. The system has been seeing teething troubles, and there have been times when the system has been down. The project involves development of a new system – network, software, infrastructure and application.

*(ToI, 30.06.10)*

## Special Express Train Soon

A very special express train, Technology Express is going to be launched from IIT-Kharagpur just after the Commonwealth Games. The Indian Railways has devised a new way to popularise information technology (IT) across the country.

The train will showcase the progress India has so far made in technology while travelling to 48 stations across the country. It has 11 coaches out of which six have been dedicated to IT.

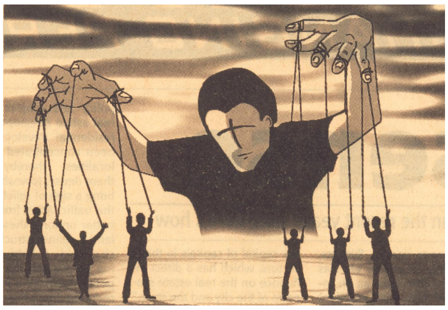
The IT Department will showcase the capacity and the work done in the country in the ICT area and the initiatives taken by the Department and its affiliated entities in the fields of e-governance, infrastructure, technology relevant to rural India, language interfacing technology etc.

*(Merinews, 28.06.10)*

# Begin with a Uniform Approach

– Udai S Mehta*

***Regulatory reforms in India lack a consistent and coherent approach. There is no uniformity across regulatory commissions that oversee different infrastructure sectors. A common approach to framing regulatory laws and to cross-cutting considerations like independence, selection mechanism and overlap issues are largely absent***



The Economic Times

The Planning Commission has taken an important step to introduce a Regulatory Reform Bill, with the aim of evolving a uniform approach to the regulatory architecture across sectors of the economy.

Infrastructure regulators have been created in an *ad hoc* manner, paying little attention to coordination between them and relevant ministries. To make matters worse, there is considerable disparity in powers across regulators. While some have not been given tariff-setting powers, in some cases the powers under the law have not been notified by their respective ministries. There is an imperative need to streamline the regulatory process in India and bring in more coherence.

India needs more than a trillion dollars of investment in infrastructure over the next decade. Such a large magnitude of investment cannot come from the public sector alone. The private sector also will have to be persuaded to invest more. To attract the private sector, it is vital to have a predictable regulatory environment characterised by coherence across and coordination among its regulatory components. Sectors are linked to each other through forward, backward and horizontal linkages, and regulatory impediments in one sector can spell trouble for another.

According to S L Rao, who participated in a recent discussion on the Bill organised by CUTS in Delhi with the Planning Commission said there is a need to control regulatory diarrhoea, by creating multi-sector regulators for cognate sectors, in energy (electricity, petroleum, gas), transport (air, rail, road, water), etc. Given that sectors covered by a single regulator might involve different ministries, one single ministry can hardly influence the functioning of the regulator. Further, it would also necessitate that the regulator reports directly to Parliament than to the line ministries. In this manner, the regulators can work smoothly.

However, the Bill has its share of glitches. For instance, the requirement that the selection committee for a regulatory body/appellate tribunal consists basically of serving and retired bureaucrats makes no sense. The selection committee should include non-government representatives, academia, civil society representatives and professional bodies. This would enable selection of experts from the non-government sector.

Another key drawback of the Bill is that it empowers the regulatory commission to deal with anti-competitive behaviour, which has been a mandate granted to Competition Commission of India (CCI). It has been suggested that there is a need to foster harmony across commissions and formalise the process of interface between regulatory and competition commissions in legal terms. It is best to leave behavioural issues to CCI and structural issues to sector regulators. To avoid a possible conflict between sectoral regulators and CCI, mandatory consultations should be held between them in cases that lie in the intersection of jurisdictions.

The Bill recognises the importance of consumer protection and suggests the establishment of a National Advisory Committee to represent the interests of consumers in each regulated sector. The Bill does not have provisions for creating a consumer advocacy fund to support consumer organisations. Further, issues relevant for regulatory accountability have not been dealt with in the Bill. Currently, regulators are accountable through the annual report they submit to the government, which then submits it to Parliament.

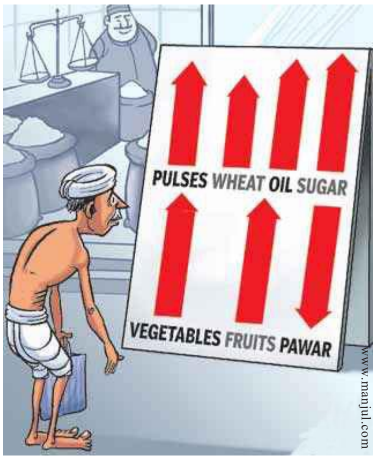
Given that the call for regulatory reforms came from the Prime Minister himself, it is imperative to have sound regulations in place. It is time to look at Regulatory Impact Analysis (RIA) as a tool for effective decision-making. RIA enables systematic assessment of positive and negative impacts of proposed and existing regulations. It encourages decision-makers to think in a structured way and also increases accountability of regulatory actions. It can be used to analyse existing as well as new regulations.

There is a lot of scepticism among relevant stakeholders on the Bill. It is important for the Planning Commission to engage with the stakeholders and take their views before placing the Bill before the Cabinet. Sensitising the stakeholders about the intricacies of the Bill and building a regulatory culture in the country is the need of the hour and a participatory process would ensure a better buy-in from stakeholders.

* *Policy Analyst, CUTS. Abridged from an article that appeared in the Financial Express, on June 30, 2010.*

# Food Security – Denied

The draft food security legislation readied for cabinet's approval is much narrower in scope than what was initially envisaged and, hence, stops short of assuring an entitlement as had been previously pledged. The final draft Bill which has been approved by the Empowered Group of Ministers and reviewed by *Mint* restricts coverage only to poor citizens, confines it to the supply of 25kg of wheat and rice, does not lock in the government to a fixed issue price and excludes destitutes from the purview of other welfare schemes covered by the proposed food security Bill.




Thus, it is unlike what has been provided under the Mahatma Gandhi National Rural Employment Guarantee Scheme, which guarantees employment to one member of every rural household and does not restrict it to those living below the poverty line. *(ET, 14.05.10)*

### Help for Distressed Firms

The government plans to introduce a separate legislation to speed up insolvency proceedings and help distressed firms wind up operations quickly. The new law will shorten the legal processes involving insolvency operations of small and medium entities. The government is keen to make bankruptcy proceedings a time-bound procedure.

While the proposed company law has incorporated specific provisions relating to speedy corporate insolvency, the government may go in for an independent insolvency law to make the process more effective. The idea is to set up a single legislation that will cater to insolvency provisions for all types of business operations like a company, partnership, sole proprietorship firms and limited liability partnerships.

*(ET, 06.04.10)*

### Bill on Mining Regulator

The Bill to set up a regulator for the mining sector will be tabled in the Parliament, effectively fast tracking the legislation as a result of the Reliance Industries Ltd. - Reliance Natural Resource Ltd. (RIL-RNRL) case. The Bill will have strict provisions and punitive action for those defaulting on allotment of iron ore to the government steel plants and coal to government-run power companies.

Besides this, after the Supreme Court verdict on the RIL-RNRL case, pricing issues could also be included in the purview of this Bill," said a source. The Mines, Minerals (Development and Regulation) will act as a tribunal outside the ministry and will consist of independent members.

*(FE, 13.05.10)*

### Judges Standards Bill Postponed

The Union Cabinet has referred the Judges Standards and Accountability Bill to the Group of Ministers for further discussion. It will not be tabled in the ongoing Parliament session but in the next session, Union Minister for Law and Justice M. Veerappa Moily said.

Amending the Act, would ensure India becoming the most preferred destination for international arbitration. An arrears grid is being created, besides a National Litigation Policy and special purpose vehicle to provide necessary infrastructure starting from the Supreme Court to the last court. *(TH, 19.04.10)*

### Regulatory Bill on Healthcare

Any establishment involved with healthcare delivery will come under the Clinical Establishments (Registration and Regulation) Bill, 2010, recently introduced in the Lok Sabha. The Bill mandates the registration of all such healthcare establishments, except those run by the armed forces, in an effort to create a database and eventually a National Registry, besides setting out to ensure adherence to basic standards of operation.

The Bill lays the foundation for a National Council comprising stakeholders – including the Medical Council of India, the Quality Council, Nursing Council and others, who would oversee the implementation of the standards. *(BL, 17.04.10)*

### Widening the Purview of CAG

To bring in more transparency in the expenditure on its flagship schemes, the UPA government is likely to introduce a new Comptroller and Auditor General (CAG) bill in the Parliament that will empower its official auditor to review accounts of *Panchayati Raj Institutions* and NGOs. CAG is expecting the bill to be tabled in the coming session of parliament replacing the CAG Act, 1971.

It will have the new models of administration, new delivery channels to bring the institutions into the legal mandate. The new bill is also likely to give the official auditor the much required authority to review accounts of public-private partnership projects on the same lines that it does for government departments.

*(ET, 06.04.10)*

### Mandatory Minimum Wage

To protect incomes of workers, the Union Government plans to amend a law to make the national minimum wage mandatory across the country. At present, the Labour Ministry just recommends to states a minimum floor wage rate as a benchmark. In November, the floor rate was raised to Rs 100 a day from Rs 80. However, many states are yet to implement the hike as compliance is not compulsory, said a ministry official.

In a series of several planned amendments to the Minimum Wages Act, 1948, the ministry proposes to empower the central labour commissioner to revise the national minimum wage every six months on the basis of changes in the Consumer Price Index for industrial workers to protect them against inflation.

*(www.livemint.com, 02.04.10)*

### Govt Plans Extension of NRHM

The National Rural Health Mission (NRHM) – the flagship Central Government scheme for better healthcare in rural India – is likely to get an eight year extension from its current target year of 2012.

In the last five years, India has spent at least Rs 53,000 crore on this project. Under this scheme, the government has appointed 700,000 accredited social health activists better known as ASHAs and constructed and repaired over 10,000 primary and community health centres across the country.

The rural health programme has also helped in reducing maternal mortality from 301 to 254 for every 100,000 live births. Similarly, the infant mortality has gone down to 53 as against 58 for 100,000 live births.

*(www.igovernment.in, 13.04.10)*

### Manufacturing Policy on Cards

The Centre is taking calibrated steps to address industry concerns pertaining to appreciating rupee, hardening of interest rates and inadequate availability of physical infrastructure to sustain recovery. The share of manufacturing in national income has shown only a marginal improvement from 15.8 percent in 1991 to 16 percent now. This should be somewhere around 25 to 35 percent and requires the manufacturing sector to keep growing in double digits during the next decade.

The government is conscious of these constraints and taking calibrated steps to have a judicious policy mix that would sustain industrial recovery and at the same time result in fiscal consolidation. *(TH, 15.05.10)*

### SC Ruling on Policy Change

The Supreme Court has ruled that the government can change its policy and such policy cannot be vitiated only on grounds of change. The authorities have discretionary power to change government policy in public interest but such change should be reasonable and not arbitrary, said the apex court upholding the decisions of the governments of West Bengal and Orissa changing policies for award of contract for manufacture and supply of High Security Registration Plates for motor vehicles in their states.

The government has discretion to adopt a different policy or alter or change its policy calculated to serve public interest and make it more effective. Choice in the balancing of the pros and cons relevant to the change in policy lies with the authority. *(ET, 14.05.10)*

### Vaccine Policy Soon

The Ministry of Health and Family Welfare is formulating a national vaccine policy that aims to increase transparency and allow the general public a greater say in its development. The policy is being drafted by the Indian Council of Medical Research with technical inputs from vaccine and public health experts.

The aim of this policy is to ensure that a vaccine is introduced on strong evidence to benefit a larger section of people. The focal point of such a policy will be to determine what vaccines enter the national immunisation programme and whether they should be utilised on a national or selective basis. *(Livemint, 21.05.10)*

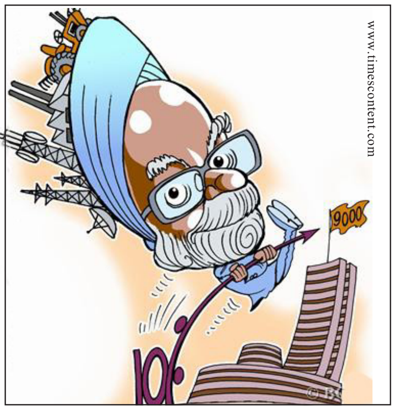
### Employment Policy on Anvil

The government would soon announce a National Employment Policy (NEP), and with this, employment creation would be mainstreamed into all macroeconomic decision-making. The NEP would provide a holistic framework towards achieving the goal of remunerative and decent employment for men and women in the labour force in a sustainable manner.

India was among the first few countries in the world to implement a broad-based, counter-cyclical policy package to respond to the negative fallout of the global slowdown. The National Policy on Skill Development had set a target of training 500 million people by the year 2022. *(TH, 18.06.10)*

## Give Inclusive Governance its Due

The Prime Minister Manmohan Singh is quietly working on an initiative that is likely to usher in inclusive governance by involving state governments in a number of key areas such as external affairs, climate change, science and technology, foreign trade and national security that have so far been the sole preserve of New Delhi.




First, the burning issue of climate change. Unless state governments are involved in checking industrial pollution, preserving forest cover and saving water bodies, progress on this front will not be effective.

Secondly, state governments have an important role to play in making external affairs successful. Thirdly, the Centre's export promotion task would become easier if states appreciate the employment-generation potential of exports and its benefits for the local population.

Next is the Unique Identity Number (UID) mission. States can use the new identity system to check leakages in the public distribution system that renders ineffective the thousands of crores of rupees spent every year to provide subsidised food to the poor.

Last and the most important is national security. Rather than being left to the National Security Council or key ministries like defence and home, this is an issue that has to be tackled with full cooperation of the states.

Inclusive governance could be as important as inclusive growth, but the more appealing growth factor enjoys all attention even though effective governance is as important for the poor. *(ET, 18.05.10)*

# Encourage Whistleblowers

– Kiran Karnik*

Following the Satyam episode, the biggest fraud in India's corporate history, there has been a flurry of activity on corporate governance within government, industry associations and company boardrooms. Some view this as bolting the stable doors after the horses have fled; however, the fact is that – to stretch the metaphor – there are many horses yet left. The numerous reports on corporate governance are, therefore, welcome and necessary. Corporate governance should be, first and foremost, about ethics and values.

The Economic Times

This is both, the first and last line of defence. However, it is not necessarily the best, since the real world includes many 'pragmatists', whose pliable ethics facilitates actions that benefit them, personally, or their company.

It is for this reason that good corporate governance requires a system of checks and balances. This must include, amongst other things strong and active independent directors; thorough and competent statutory auditors; rigorous internal audit; appropriate metrics to diagonise the health of the company; transparency and disclosures; and active shareholders. These checks need to be backed up by appropriate laws and strong enforcement by an independent regulator.

***Considering the primacy of whistleblowing in exposing the big scams that have come to light, a well-defined 'whistle-blower' policy has to be a vital element of good corporate governance***

Yet, the fact is that many large corporate frauds have come to light only through an insider speaking out or a confession, and not through an audit report or a regulatory investigation. In the case of Satyam, the fraud was brought to light by Raju's confession, and not by the auditor, who certified the accounts and the system, year after year. Similarly, the investigation into Galleon in the US is the consequence of a tipoff from an individual.

The IPL can of worms – a favourite of media – was opened and exposed, not by the auditors or the governing body, but by the key insider. Given these and many other experiences , it is clear that depending solely on auditors or the board is not sufficient . This needs to be supplemented by steps that encourage those in the know, the knowledgeable insider, to speak up – and to do so with no fear or hesitation.

A well-defined 'whistle blower' policy is, therefore, a vital element of good corporate governance, and must include three main elements: first, transparency and easy access to all non-confidential information about the organisation; second, guarantees that the whistleblower will be protected and will not be persecuted, pressurised, or otherwise discriminated against; and, finally, that the whistleblower can have direct access to one or more non-executive directors of the board. Of course, it is also necessary to have some mechanism of sifting out frivolous or mala fide complaints, and this is no easy task.

Whistleblowers are such an important check against fraud and malpractice that it is questionable as to whether appropriate policies in this regard should depend merely on voluntarism or should be mandated by law. It may well be desirable to require that a whistleblower policy be a part of every organisation's own policies, at least.

* *An Independent Strategy and Policy Analyst. The article appeared in The Economic Times, on May 04, 2010.*

# Sibal Snubs States on Right to Education


In a strong message to states that have expressed inability to provide funds for implementing the Right To Education (RTE) Act, Human Resource Development minister Kapil Sibal said this posturing shows they are not interested in ensuring education for all.

The minister's views came in response to statements from chief ministers of two major educationally backward states – UP and Bihar – demanding full funding from the Centre for implementing the RTE Act which came into force on April 01, 2010. The Act, which has made education a fundamental right of every child, will require an investment of Rs 1.71 lakh crore for the next five years for implementation.

Uttar Pradesh chief minister Mayawati has said that Rs 18,000 crore would be needed in one year for the purpose. Bihar Chief Minister Nitish Kumar has also demanded cent percent funding for implementing the Act.

A fund-sharing pattern of 55-45 is proposed between the Centre and the states for implementing the Act. The Finance Commission has already provided Rs 25,000 crore as assistance to states.

The UK government has initiated an inquiry into the manner in which funds from Department for International Development (DFID) have been used for India's flagship elementary education programme, *Sarva Shiksha Abhiyan* (SSA). The inquiry initiated following reports in the British media about "millions of pounds of aid for education and the 'SSA', that has disappeared into the depths of corruption without any benefit to the poor children".

The British media is also quoting the Comptroller and Auditor General's report stating that almost Rs 996 million had been spent on items and luxuries that had nothing to do with schools. *(ET, 15.06.10 & FE, 09.04.10)*

## CAG REPORTS

### As a Super Regulator

The CAG has asked the government to allow it to oversee decisions taken by regulators that do not have tribunals to listen to appeals against their verdicts. If allowed, regulators such as IRDA, Pension Fund Regulatory and Development Authority, PNGRB and CERC could come under its ambit.

*(Livemint, 19.05.10)*

### IT Dept Pulled Up

The number of tax assesses, especially corporates, declined in 2008-09 despite the swelling direct tax kitty of the government and the apex direct tax body Central Board of Direct Taxes (CBDT) needs to look into it, said CAG. It pointed out that the income tax department has not been able to retain the tax base in 2008-09 and asked the CBDT to reconcile the discrepancy in accurate assessment of gap in the filing of tax returns.

*(FE, 23.04.10)*

### Trimming Rising Subsidy Bill

The government asked the CAG to suggest ways to curb the rising subsidy bill on food, fertiliser and petroleum products without hurting the targeted population. The government intends to bring down the subsidies to Rs 1.16 lakh crore during 2010-11. Subsidies, which are aimed at providing cheap fertiliser, food and fuel to the needy, account for more than 10 percent of the total expenditure of the government. *(ET, 10.04.10)*

### Violations in Telecom Licence

The CAG has found a series of violations on the part of telecom minister A Raja in awarding unified access service licences to eight companies in January 2008. The violations were: arbitrary change of cut-off date for considering applications; lack of transparency in informing applicants; violation of instructions by TRAI and the Prime Minitser; tweaking the first-come-first-served policy to benefit some applicants. *(FE, 11.04.10)*

### Civil Society in Pollution Audit

The CAG would involve civil society groups and local communities before it audits water pollution projects, an unusual move in the government corridors. The channel of communication would now enable a conversation between the civil society groups and CAG on key issues such as what needs to be audited, flag areas of concern and indicate just how much is going wrong with schemes and their implementation on the ground.

*(FE, 17.03.10)*

### Rlys did not Fare Well

The CAG stated that the Indian Railways did not perform as well as claimed by former Railway Minister Lalu Prasad Yadav. In a 2009 report pertaining to Lalu's tenure as a minister, CAG said key indicators of the performance deteriorated during the period. Annual rate of growth of freight loading declined from a peak of 10.7 percent in 2005-06 to 4.97 percent in 2008-09, while the operating ratio deteriorated to 90.46 percent during 2009 from 75.94 percent in 2008.

*(FE, 24.04.10)*

### Kick off PDS Check

The country's supreme auditor has decided to carry out an audit of the public distribution system to check for leakages that prevent essential commodities from reaching the actual beneficiaries. The decision comes at a time when the government is planning to enact a national food security law that aims at providing 25 kgs of rice or wheat at a subsidised rate of Rs 3 to all families below the poverty line. *(ET, 03.04.10)*

### Delhi Discoms Rapped

The CCI has pulled up Delhi's power distributors – Reliance Anil Dhirubhai Ambani Group's BSES Rajdhani Power and BSES Yamuna Power North Delhi Power (NDPL) for using their dominant position by not allowing customers to install meters of their choice. CCI has issued show-cause notices to these discoms after examining a report that found evidences against the discoms for misusing their dominant position and entering into anti-competitive agreements.

The CCI has the power to penalise the discoms, if proved guilty. It can also direct the discoms to let customers buy their own meters. Discoms on their part can appeal before the Competition Appellate Tribunal (CAT) if they are not unhappy with the final order of the CCI. *(www.livemint.com, 12.04.10)*

### Yet to Rule on Any Case

A year after CCI started looking at cases related to cartelisation and abuse of market leadership, it is yet to pass judgement on even a single case. While the general opinion among experts attributes this to a shortage of staff, there is a growing feeling that this inertia could lead to a pile-up and backlog of cases.

There are currently 30 cases before CCI, armed with more teeth than its predecessor Monopolies and Restrictive Trade Practices Commission. CCI received statutory powers as a competition regulator in 2007. It will also approve mergers and acquisitions, but its powers in this area are yet to be notified by the government.

*(www.livemint.com, 12.04.10)*

### Raavan Banned in Karnataka

In a first of its kind ruling, CCI has issued an order allowing the screening of Mani Ratnam's Raavan in Karnataka. The interim order – in response to a petition filed by Anil Ambani's Reliance Big Entertainment (RBEL) – stayed the ban imposed by the Karnataka Film Chamber of Commerce (KFCC).

Initially, the chamber had said the movie will be allowed to be screened in 21 theatres in Bangalore and four theatres outside the state capital but then they restricted the number to only four multiplexes. KFCC had also sought an undertaking from RBEL that the limited number of release was done 'voluntarily'. KFCC has been taking such decisions with respect to all non-Kannada movies. *(BS, 19.06.10)*

### Threshold Limits as per Inflation

The CCI has urged the government that the threshold limit of companies coming under its purview should be increased for adjusting with the inflation rates. A CCI member said there is such a provision in the Competition Act 2002. He said the threshold limit was decided in 2002 and "is kept as it is" without any change for eight years.

The Competition Act of 2002, enacted in 2003, had kept a threshold limit of Rs 1000 crore worth of combined assets of a firm and Rs 3000 crore turnover to come under the purview of the CCI. Although the function of the CCI was to encourage competition but excess competition could be deterrent sometime.

*(www.livemint.com, 02.06.10)*

### Coal India under CCI Lens

State-owned Coal India Ltd (CIL), country's largest coal producer, is under scrutiny from CCI. CCI has initiated a thorough investigation against the coal producer following a complaint from the Explosives Manufacturers Association of India alleging bid rigging.

A senior CCI official said that there are numerous such instances when reputed domain players knowingly or unknowingly indulge in anti-competitive practices. The Commission, since its notification in May 2009, has initiated probe against several high-powered cases, however, is yet to pass its final verdict on any one of them. *(FE, 03.05.10)*

### Tussle with Appellate Body

Even before CCI has disposed of a single case, it is got into a tussle with its own appellate body. CCI has filed an appeal in the Supreme Court against an order of the CAT over an interim ruling.

The tussle relates to a complaint by Jindal Steel and Power Ltd filed with CCI, alleging that an agreement for supply of rails between Indian Railways and Steel Authority of India Ltd. was anti-competitive and amounted to the abuse of a dominant position. *(www.livemint.com, 22.04.10)*

## NSE under CCI Scanner

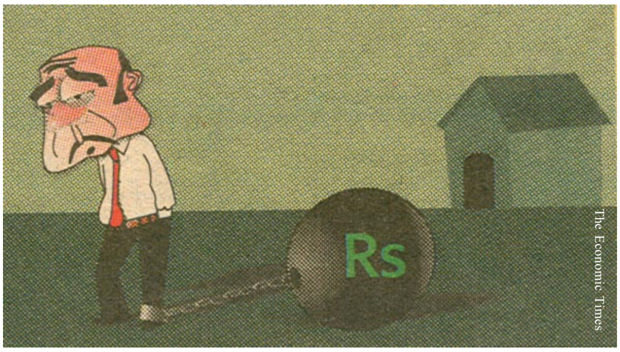
The CCI has ordered an investigation into the alleged misuse of dominant position by the National Stock Exchange (NSE), the country's largest bourse. The regulator was acting on a complaint by the MCX Stock Exchange (MCX-SX), which alleged that NSE was indulging in unfair practices by waiving the transaction fee on currency derivatives. NSE's waiver means that MCX-SX is also unable to levy such a fee leading to significant losses.

The commission has directed the DG to cause an investigation to be made into the matter and submit report within 45 days from the date of receipts of commission's order. The development is likely to worsen relations between the NSE and derivatives trading, and MCX-SX.

*(ET, 12.04.10)*

# CCI: A Champion of Consumers

– Sunil Barthwal*




***The Competition Act, 2002 gives the mandate to the CCI to inquire into Section 3 and 4 violations. Section 3 deals with anti-competitive agreements mainly forged by cartels. Section 4 deals with abuse of dominant position***

The country's competition watchdog, CCI, is inquiring into the issue of prepayment penalties imposed on retail customers in the home loan market. CCI after coming into being has yet to pass a judgment on any important issue. Therefore, a verdict in this case would be the crucial litmus test for this omnibus regulator in terms of establishing its credibility.

This case will be equally crucial for the consumers, who find it utterly confusing why banks are averse to prepayment of loans when their friendly neighbourhood lender would find the same as a welcome gesture. Evidently, the bankers view it as a cost arising from the structural need of a financial institution to match the asset-liabilities and, therefore, a price which a consumer needs to pay to compensate for the risk undertaken by a bank.

The CCI has reportedly issued notices to various banks and their association, Indian Banks Association, which has 160 member banks in its fold. It has also sought the comments of the Reserve Bank of India (RBI), rightly so, as it knows the banking sector best, being the most reputed apex financial and banking regulator of the country. This would also help avoid any possible conflict between both the regulators.

The Competition Act, 2002 gives the mandate to the CCI to inquire into Section 3 and 4 violations. Section 3 deals with anti-competitive agreements mainly forged by cartels. Section 4 deals with abuse of dominant position. It is so far not clear under what provisions the whole issue is being investigated by the CCI. The issue of prepayment penalties differs depending upon whether it is being inquired under Section 3/4. The issue under Section 4 inquiry will be whether the prepayment penalties fixed by a banker in a dominant position is a fair price/condition or not.

Thus the CCI needs to prove both the facts: that the banks were in a dominant position and they also abused that position. In this inquiry the CCI would need to see how different banks fix this price, i.e. rates of prepayment penalties and whether this price is determined by the market forces or is it driven by the market power arising out of the dominant position of a bank. Prepayment penalties are also seen as switching costs imposed by the banks to deter their customers switching to their competitors.

While some switching costs can be unavoidable, all switching costs need not be related to the administrative costs or based on economic rationale. Studies have found substantial switching costs in the banking industry. Therefore, the switching cost analysis would be useful in any such inquiry as prepayment penalties are considered the source of ex-post market power for a bank, the locked-in customers being restricted to exercise free choice in the market. The results of such an objective inquiry will prove whether it will be treated as an abuse of dominant position or simply another determinant arising out of economic fundamentals of the financial sector, the price of which can be best left to the market forces to decide.

The inquiry in case of Section 3 violation is simpler. If the existence of a cartel is proved along with the fact that such a cartel fixed the rates of prepayment penalties, then issue of it being fair price or not becomes irrelevant. This is an artificial determination of price, outside the purview of market forces, and therefore, clearly anticompetitive. If any regulation facilitates such determination, then such regulation may also come under the scanner and may need a review. Perhaps, this may result in bringing fresh perspective in looking at the sectoral regulations which may be hampering consumer interests, albeit, inadvertently.

What then does the CCI inquiry mean for the consumers? Any important discovery may actually result in demand for greater competition in retail banking in the country, as is being realised in many countries after the Bonn conference of International Competition Network, the organisation which brings the national competition authorities of the world under one roof. There is every possibility that it may, in fact, pave the way for removing all such switching costs in the retail banking sector which are not related to economic fundamentals of the industry and are against the competition principles, ushering the CCI as a new champion of consumers.

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* *Former Director, CCI. Abridged from an article that first appeared in The Economic Times, on June 12, 2010.*

# Competition and Overcrowding

– Ajit Ranadae*

Ever since the days of Adam Smith, economists have accepted the dogma that free and fair competition leads to optimal outcomes. It is good for consumers as they pay the lowest possible prices, and it also forces producers to be efficient. Socially, it leads to most productive allocation of aggregate resources. The competitive process just makes everybody pursue their own self-interest, but somehow miraculously the net outcome is socially beneficial to all.


***Too much competition has its problems, but there is no better alternative***

Over the past 200 years, the dogma that free competition leads to best economic outcomes has not remained unquestioned. But the questioning has been about what constitutes 'free and fair' competition, not about the benefits of competition itself. Much of modern economic policy is about promoting free and fair competition, and leaving the rest to the marketplace.

Indeed, one can safely claim that the most far-reaching reform in modern India was the abolition of industrial licensing to compete. This unleashed competitive forces, leading to huge gains for consumers as well as producers. Similarly, lowering of trade tariffs and barriers increased foreign competition, which again has been mostly positive for the economy. The recent establishment of the Competition Commission is again to promote, not restrict, more competition.

The one question that remains mostly unasked, and sounds almost like an economic heresy, is: Is there such a thing as too much competition? When does it begin to hurt consumers and society?

In the financial world, such questioning is not new. The Lehman crisis has, in fact, led to an emerging dominant view, that it was unbridled competition that caused the crisis. Policy-makers in the western world are busy putting in place measures to restrict competition, at least as compared to pre-Lehman days. Take the case of telecom. Indian telecom players in fierce competition among themselves have many pioneering innovations, which contributed to robust growth at the lowest cost in the world.

But ever-increasing competition has resulted in sub-optimal outcomes for all. Consumer satisfaction levels are falling due to increased congestion. Pricing wars have decreased everybody's profitability. Even the 3G auction, which caused so much euphoria, is already mixed with grave concerns about the sector's viability. Many rating agencies have downgraded the sector. The competition for the spectrum was fair and transparent, but may have contributed to the winner's curse. Even before 3G, the number of players in most circles in India is the highest in the world, leading us to the question, is this a case of too much competition?

Or, take the case of low-cost air travel in India. This is a sector which grew even when global players were filing for bankruptcy protection. But increasingly customer satisfaction is down, delays are mounting, stories of wasteful circling of airports are common. A case of too much competition?

Another example is from the microfinance sector. As this sector bloomed, it contributed hugely to financial inclusion. Multiple lenders are chasing the same borrower groups, leading to loan-pushing. The borrowers are mostly rural women, and loans go toward livelihoods or small businesses which then sell within the village or local region.

The other stark example comes from the Election Commission, which reports an almost daily growth in registered political parties. At last count, their number was getting closer to 1,000, with the Commission having no power to deregister them. Here too, one wonders what additional consumer welfare is generated from the mushrooming of competing political parties.

But returning to the economic arena, let's take this heresy a bit further. Even if you grant for a moment that there is such a thing as too much competition, the more basic question is who gets to decide?

We are then left with the ugly prospect of returning to the pre-1991 days of licence raj, if we go along with this 'excess competition' logic. Smith's paradigm was embellished by Joseph Schumpeter, who claimed that competition is actually a series of temporary monopolies, created by one-upmanship of competing innovators. This is what leads to creative destruction of companies, as newer and more innovative ones replace older, complacent and ultimately uncompetitive ones. Hence, even though the spectrum for telecom or the open skies for airlines may be looking overcrowded, there is no such thing as too much competition! Perish this heretical thought.

* *Chief Economist, Aditya Birla Group. Abridged from an article that appeared in The Business Standard, on May 25, 2010.*

# Economics of Honey, Flies and IPL

– TCA Srinivasa-Raghavan*

***The problem in Indian cricket is not only of excess demand but also that the differentiated products – test matches, 50-over games and 20-20 – are offered by the same entity, the BCCI. The IPL, which offers 20-20, is its subsidiary***

Nearly 20 years ago, the head of the DoT famously told a private meeting of journalists at the newspaper where I was working then that his job was to ensure that the waiting list for phones remained long. That arrogance was the consequence of the unshakeable belief he had in the continuance of DoT's monopoly.

Most people will also remember that before 1995, when the airlines business was opened up by breaking the government's monopoly, you had to 'know someone' in Indian Airlines (IA) in order to get on to an IA flight within a week. That, too, was a consequence of monopoly. The same thing used to happen with two-wheelers, cars, cooking gas, electricity, etc. It was all a consequence of short supply and monopolies or small oligopolies.

But once supply was expanded by allowing free entry of firms, the shortages disappeared. And when the shortages disappeared, so did the rentier incomes that used to hang around these industries like Delhi's dust haze.


**Huge demand-supply gap**

But the seekers of rentier incomes, some of whom can be sleazy, did not disappear. They simply found other businesses where competition was not yet free and started to feed on these.

The problem would appear to be as follows:

**To the** extent that cricket is the only sport that Indians seem to enjoy, the demand for it far exceeds supply.

**The convenience** that TV offers, of being able to watch it in the comfort of your home, has enlarged the supply-demand gap disproportionately because even those who would not otherwise watch cricket watch it now.

**Add to** this the fact that the Board of Cricket Control in India (BCCI) has the monopoly over cricket, and the perils of short supply become very evident. The flies begin to gather.

**Top it** all off with the terrifying amount of money floating about in the world looking for sure-fire investments, and what you get is an IPL-like phenomenon, namely, super-normal profits caused by a huge demand-supply gap and a monopoly.

**Theorem:** Honey will always attract flies, but for this special type of honey the number of flies attracted is inversely proportional to the number of honey-pots in the vicinity.

**Corollary:** A single pot of honey will attract the maximum number of flies, and in the ensuing scramble, some flies will get stuck to the pot, to perish.

**Lemma:** If you increase the number of honey-pots by allowing free entry, there will be a diminution in the number of flies.

The problem in Indian cricket is not only of excess demand but also that the differentiated products are offered by the same entity, the BCCI. The IPL, which offers 20-20, is its subsidiary.

**'Common carrier' principle**

This gives us the clue for solving the cricket problem. First, we need to pass a law that prevents the BCCI from claiming it is the sole representative of Indian cricket. The alternative is to nationalise it along the lines of other sports federations but that could kill the goose off completely.

Second, the law must mandate the local cricket associations to offer the grounds to all comers and not just those who have the 'blessings' of the BCCI. The 'common carrier' principle needs to be applied.

Third, the BCCI's self-granted right to choose players to represent the country must be negated so that it loses the sole right to select players at least for ICC's 20-20 games.

**Self-perpetuating body**

The simple truth about the BCCI is that its articles of association were designed in 1936 by our British rulers. Their objective was to keep all but the brown sahibs out by making it a self-perpetuating body comprising only or mainly of the whites. It is this self-perpetuating, self-granted monopoly that lies at the heart of the problem.

Until it is broken, the shortage of cricket will continue, the super profits will remain and the flies will continue to gather.

* *Associate Editor, The Hindu Business Line. Abridged from an article that appeared in the Hindu Business Line, on April 17, 2010.*

## Rationalising Electricity Subsidy in Farm Sector

This Briefing Paper makes a comprehensive analysis of the impacts of electricity subsidy on the financial performance of state distribution companies and quality of service. It concludes that the subventions given by respective state government were inadequate in bridging the revenue gap resulting from lower agricultural tariff. It is suggested that there is an urgent need to rationalise the electricity subsidy for restoring the financial health of distribution companies and promoting efficient use of power.

*This Briefing Paper can be viewed at: http://www.cuts-ccier.org/pdf/Briefing_Paper10-Rationalising_Electricity_Subsidy_in_Farm_Sector.pdf*

## Promoting Competition though Open Access in the Power Sector

This briefing paper highlights the progress and key challenges in promoting open access. It throws light on the key policy and regulatory issues in regard to open access including those at the state level, provides an update on the status of open access at the state level and progress in enforcing it. The paper also focuses on key barriers to open access and the channels through which such barriers impact open access; and makes policy recommendations for addressing issues related to open access.

*This Briefing Paper can be viewed at: http://www.cuts-ccier.org/pdf/Briefing_Paper10-Promoting_Competition_though_Open_Access.pdf*

## FDI in Higher Education in India: Regulatory Bottlenecks and Options

Education and knowledge resources have to be accessible to a large number of people through various means in a seamless way so that the gap between demand and supply, which is especially stark in regard to the availability of quality institutions, is alleviated and some standardisation of quality takes place across all institutions. This paper examines the problem of stimulating adequate but quality enhancing foreign investment in higher education in the context of the overall need for greater access coupled with higher quality.

*This Briefing Paper can be viewed at: http://www.cuts-ccier.org/pdf/Briefing_Paper10-FDI_in_Higher_Education_in_India.pdf*

## REGULETTER

The April-June 2010 issue of newsletter, 'ReguLetter' encapsulates 'Competition in the Agriculture Sector in select West African countries' in its cover story, which presents situation of the farmers in these countries, who are responsible for performing the most critical activity in agricultural production-farming – have remained poor, at a time when processors of agricultural output are comparably richer. This is partly due to the nature of the markets they are forced to operate under, which are largely not subjected to conditions of fair competition.


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 Bimal Jalan takes a close look at the currency of the European Union, i.e. € that is facing a crisis because of the acute fiscal problems of Greece and some other European countries. Another special article by Siddhartha Mitra and Udai S Mehta says that evidence from across the globe indicates that strong leadership stands out as an essential attribute that has facilitated emergence of effective competition regulators. Bangladesh, which is considering enacting a competition law, needs to learn a lot from the experiences of neighbouring countries.

About a Competition Law dwells on the competition scenario in Malaysia, 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-ccier.org/pdf/reguletter.htm*

SOURCES

**BL:** The Hindu Business Line, **BS:** Business Standard, **ET:** The Economic Times, **FE:** The Financial Express, **HT:** Hindustan Times, **IE:** Indian Express, **ILO:** International Law Office, **NNN:** Net Indian News Network, **TH:** The Hindu, **ToI:** Times 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.**