PolicyWatch

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

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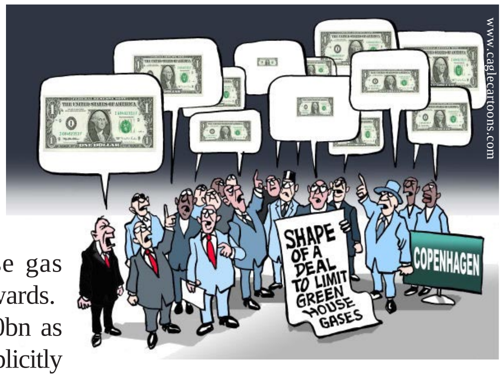
INSIDE THIS ISSUE

HIGHLIGHTS

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

Defining the Right Strategies for Sustainable Growth

All night plenary sessions in Denmark's capital have neither evolved a non-generic climate change agreement nor reformed the perspectives of world leaders regarding the (non)urgency of addressing this calamity. The only development has been the evolution of a strong BASIC (**Bra**zil, **S**outh Africa, **I**ndia and **C**hina) group of emerging economies, which has triggered a rift among the Group of 77 (G77) because of difference in demands and reluctance to compromise on national interests.



Although agreement among BASIC and developed nations on the Copenhagen Accord resulting in financial assistance for climate change mitigation is a step forward, the silence among advanced nations on the more important question of binding greenhouse gas emissions represents a step backwards.

The accord promises US$100bn as climate change aid by 2020, tied implicitly to a requirement that aid-receiving nations design a blueprint for mitigation strategies. India has also committed to reduction of its emission intensity which would be subject to domestic monitoring and preconditioned on policy initiatives to build a *green economy*. The Indian Ministry of New and Renewable Energy should adopt an even-handed approach to encourage demand for and supply of renewable energy.

The Reserve Bank of India recognises renewable energy as a *priority sector* for lending purposes, but only for small-scale industrial units involved in manufacture and use of alternative energy producing equipments. It is essential that the government prioritises the entire sector and thus allocates sufficient resources for large-scale module manufacturers and related research and development. This would stimulate entry by large-scale firms, however, care must be taken to ensure that assistance does not breed inefficiency and dependence of a permanent nature.

The government's initiative to ensure that special economic zones compulsorily generate between 2 to 25 percent of their lighting needs from alternative sources and fit government buildings with such modules is deserving of appreciation. However, this increase in capacity should be supplemented by awareness generation through the Indian Renewable Energy Development Agency Limited among people at the grassroots who are still unaware about alternative energy equipments as well as financially weak. An encouraging sign is that, according to a study, a high percentage of Indian consumers, when made aware, are willing to buy eco-friendly products and provide a boost to green industries.

Policy makers must neither allow the lobbies of strong oil and coal suppliers to obstruct the growth of renewable energy nor dissolve strict pollution control regulations. Timely exploitation of latent renewable energy potential will bring unprecedented advance in India's energy security along with creation of a green base for sustainable development. Enduring government strategies can harmonise economic growth and environment protection.

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POWER

NTPC Stake Sale

The government has approved the sale of stakes in two state-owned undertakings – NTPC Ltd and *Satluj Jal Vidyut Nigam Ltd*. The sale of shares in NTPC alone could net the government Rs 8,600 crore, based on current prices, and bring some relief from fiscal pressure.

NTPC, India's largest power generation company, is valued at around Rs 1.7 trillion and registered a net profit of Rs 7,827.40 crore on revenue of Rs 42,182.40 crore in 2008-09. The company has reserves of Rs 53,000 crore and the government could expect to raise around Rs 8,600 crore with a five percent dilution.

(www.Livemint.com, 20.10.09)

Filling in the Gaps

The Power Ministry, striving to bridge the widening gap between demand and supply has proposed to explore opportunities to interconnect South Asian power grids on the lines of the Nordic Power Exchange, ASEAN Grid and North American Grid. There is a capacity addition target of 78,700 MW in the 11th Plan.

The project envisages interconnection between India and Bhutan (3,000 MW), between India and Nepal 400 kv transmission line, between India and Sri Lanka the 1,000 MW high voltage direct current (HVDC) system, with Bangladesh 1,000 MW HVDC back-to-back. With Pakistan, India plans to tap HVDC back-to-back link. India will have access to green hydro power while the other South Asian countries can provide a good demand market to harness all resources. *(FE, 05.11.09)*

Fines for Overdrawing

There seems no escape for power distribution company BSES Rajdhani from having to pay up the Rs 1.68 crore penalty levied on it by the Delhi Electricity Regulatory Commission. The discom's plea for reconsideration has also not been reviewed favourably by the power regulator.

The regulator's order has a judicial binding that has to be met, failure of which may lead to punitive action. The company's then Chief Executive Officer too was asked to pay Rs 1 lakh as penalty for "managerial failure" on account of inadequate procurement of power by the company. The company claims that another discom, the Tata-owned North Delhi Power Limited, had also overdrawn power to meet its requirement during the summer.

(TH, 21.11.09)

New National Power Grid

State Electricity Minister for Tamil Nadu has requested the Centre to establish a national power grid by extending the grids of northern, eastern, western and north-eastern regions (inter-connected since August 2006), to southern states on priority basis. The southern grid continued to function separately therefore the southern states were unable to enjoy the benefit of surplus power available in the rest of the grid.

Chairman of Central Electricity Regulatory Commission made it clear that unbundling of State Electricity Boards was not a precursor to privatisation. Power sector reforms were initiated in 1990 with the objective of giving the consumer a choice to source his supply. However, it might take many years to achieve this goal.

(TH, 09.12.09)

Overall Growth

The capacity addition of just 60,000 MW against the target of 78,700 MW could be possible by end of 2011-12. The Parliamentary Standing Committee of Energy will set up various groups to make recommendations for an overall growth of the power sector. It was decided that members will make their suggestions on the formation of various groups that will look into the issues and possible solutions.

Moreover, the flagship schemes of United Progressive Alliance government such as accelerating power development and reform programme and *Rajiv Gandhi Grameen Vidyutikaran Yojana* (RGGVY) have been lagging behind their targets and further push is needed. The ministry said bottlenecks such as delay in awards of contracts, in land acquisition, in finalisation of 'Below Poverty Line' list and theft of materials are affecting the implementation of RGGVY. *(FE, 05.10.09)*

Sunshine Pulls Investment

Rajasthan is soon set to bask in the sunshine. The desert state is likely to attract an investment of Rs 45,000 crore in the solar energy sector. Rajasthan Renewable Energy Corporation Chairman and Managing Director Naresh Pal Gangwar told that 72 power companies have registered with the corporation for the generation of 2500 MW in the solar energy sector.

The state government has already sanctioned projects worth 66 MW distributed between 11 companies. The state receives the highest solar radiation in the country. According to an estimate, there is a whopping 1.5 lakh MW untapped potential of solar energy in this part of the country. *(HT, 14.11.09)*

CFL Bulbs Good or Bad?

With no proper disposal facility for CFL bulbs in sight, the government is worried that large-scale use of CFL bulbs may damage the environment in the long run. CFL bulbs contain mercury and disposing them might create environmental hazards. The Delhi Chief Minister is worried about the impact of these bulbs and has suggested lamps based on Light-Emitting Diode (LED) technology as an alternative. LED bulbs are being replaced in government buildings to test their efficacy and energy efficiency.

"Think of all the money we are going to save on our utility bills!"

Tata Energy Research Institute (TERI) was approached to carry out an exercise in 100 buildings and fit them entirely with LED lights. The Delhi government and The Energy and Resources Institute (TERI) have signed an agreement to retrofit 100 existing buildings with over 10,000 sq ft area to make them energy efficient. LED lights are very expensive, but they do not contain harmful chemicals, last longer and can be recycled. *(HT, 20.10.09)*

OIL & GAS

Oil Regulators not Empowered

The Planning Commission has slammed the weak regulatory regime in the oil and gas sector, blaming it on the petroleum ministry's 'reluctance to give up its powers'. Planning Commission member, BK Chaturvedi rued that both the regulators in the oil and gas sector – the Director General of Hydrocarbons (DGH) that oversees upstream activities and the downstream regulator, Petroleum and Natural Gas Regulatory Board (PNGRB) – lack independence and have not been granted powers by the ministry.

The regulatory regime in the sector is very weak. The upstream regulator, is recommended to be strengthened, made more independent and given more powers. The downstream regulator is also very weak.

(FE, 12.10.09)

Making up Failed Bonds

Prime Minister Manmohan Singh may deliberate on freeing auto fuel prices while reviewing the financial health of state-run oil firms with the finance minister and oil minister. The issue of freeing petrol and diesel prices from government control may come up for discussion as Indian Oil, Bharat Petroleum and Hindustan Petroleum are projected to lose Rs 45,000 crore on selling the two auto fuel and domestic LPG and kerosene at rates below cost during the current fiscal.

Sources said the government had failed to provide the promised oil bonds to make up for the revenue loss on LPG and kerosene, in the absence of which HPCL and BPCL reported losses in the second quarter. Besides the three, private fuel retailers Reliance Industries, Essar Oil and Shell have also sought freeing of petrol and diesel prices to give them level playing field.

(ET, 23.12.09)

Economically weak oil companies will be getting help from FM through 'OBC' quota – Oil Burden Cess.

Gas Highways Authority Soon

The government will soon set up a national gas highway development authority to facilitate setting up of gas highways across the country. The proposed authority will plan, develop, manage and regulate gas highways and focus on creating gas pipeline infrastructure in remote areas. However, the government clarified that it has no intention to wind up PNGRB, the licensing authority for city gas distributors.

The amendments will adequately empower PNGRB to perform the desired functions. The Delhi High Court is scheduled to hear a public interest litigation regarding the alleged delay in notifying Section 16 of the PNGRB Act that deals with authorising pipeline construction.

(FE, 26.11.09)

Going the Whole Hog

Ensuring the nation's energy security and assuring supply of energy to poor at an affordable price are the twin pillars of the Manmohan Singh government's energy policy as it encourages companies to buy global energy assets and increases exploration within the nation.

The government has got its hands full in terms of required policy changes. They are deregulation of auto fuel prices, which drains the exchequer in the current practice where the government subsidises fuel when crude prices shoot up, and providing direct fuel subsidies on cooking gas and kerosene to the poor through smart cards top the list. The current subsidy regime that regulates retail prices of four 'politically sensitive fuels' — petrol, diesel, kerosene sold through fair-price shops and cooking gas — needs to be reworked.

(ET, 30.10.09)

Diesel Generators Banned

The West Bengal Government has issued a notification banning installation and operation of diesel generators at mobile towers in order to curb air and noise pollution. Most of the mobile phone operators including Airtel, BSNL and Vodafone have already agreed to comply with its requirements at a meeting held about two months ago. The move will substantially help cut down on emissions and noise pollution, especially for people in the surrounding areas.

According to the notification, no new mobile towers can be installed at upcoming mobile towers and existing towers have been given time till May 2010 to switch over to a battery-operated or solar system. Mobile towers install generators for their power requirements for the duration of a load-shedding or a power failure.

(TH, 14.11.09)

Curbing Adulteration

Despite the introduction of a series of technological and institutional measures, the Ministry of Petroleum and Natural Gas is concerned over the growing menace of adulteration of petroleum products. Similarly, the ministry is also worried over the diversion of kerosene, to be sold through the public distribution system, which goes on unabated. The ministry has asked the oil marketing companies (OMCs) to further step up their efforts to curb adulteration of petroleum products.

The government and the OMCs had launched regular and surprise inspections of retail outlets and tamper proof tank-truck locking systems. Moreover, the OMCs have created a separate wing responsible for monitoring all activities and operations to curb adulteration. Marketing discipline guidelines had also been issued in 2005 under which OMCs take penal action against the erring dealer.

(BS, 22.12.09)

COMMUNICATION

Non-IMEI Handsets Disconnected

Over two crore subscribers with handsets without the unique 15-digit international mobile equipment identity (IMEI) number lost their cellphone connection following a government order in this regard. In view of terror attacks and heightened security arrangements, central security agencies requested the Department of Telecom (DoT) to ban mobile phones without the number as they cannot be tracked in the absence of IMEI.

These cheap phones are mainly illegal imports from China and other nations in the Asia Pacific region. Leading mobile operators including Airtel, Vodafone and Idea are among those who have started disconnecting phones without IMEI numbers. *(TH, 02.12.09)*

Special Courts for Mobile-users

With the mobile telephone market adding 18 million consumers a month, the government feels the time is ripe to introduce a separate grievance-redressal mechanism for the sector. The law ministry has asked the concerned ministry to work towards setting up consumer courts specifically for mobile-users.

Currently, if a consumer has grievances against an operator, he has no recourse but to approach normal courts. The only alternative to the consumer at present is to approach the Telecom Regulatory Authority of India (TRAI) as a group which is a very cumbersome and costly process for the consumers. Surveys have revealed that there are frequent problems related to billing and call drops. *(HT, 26.11.09)*

No Ombudsman in Telecoms

The government ruled out appointing an ombudsman to redress the complaints of poor mobile telephony services, like call drops, saying state-run *Bhartiya Sanchar Nigam Ltd* and *Mahanagar Telecom Nigam Ltd* were taking effective steps to upgrade technology and avoid call drops.

The telecom minister said the per-second metering of call, recently introduced by major mobile operators, was to ensure consumers were not made to pay for full one minute when the call might not have lasted more than a few seconds because of call drop. The government was providing a level playing field to public and private telecom operators. *(BS, 26.11.09)*

MNP Likely to be Delayed

Mobile Number Portability (MNP), a service that allows a user to switch operators while retaining the number, is likely to be delayed as state-run MTNL expressed inability to implement it by March 31, 2010 due to technical constraints. The government had earlier said MNP will be introduced on December 31, 2009 in the metros and by March 2010 in other telecom circles.

The government has set a maximum fee of Rs 19 that telecom companies can charge from users for a switch to another operator. MNP is expected to help in increasing competition between service providers. *(PTI, 27.11.09)*

Number portability will take some more time. It's more complicated than ideology portability.

Cheaper Digital TV Option

Consumers will soon get a cheaper option of watching digital television with the Ministry of Information and Broadcasting proposing to charge zero annual licence fee from Headend In The Sky (HITS) service providers. HITS involves delivery of digital television signals directly to cable operators via satellite which are then passed on to consumers, using cable lines.

Compared to existing digital broadcasting platforms HITS has the advantage of spreading digitalisation throughout the country at one go because of the country-wide footprint of satellites. DTH players are, however, not too happy with the move as they have to pay 10 percent of their annual revenues to the government as licence fee. *(BL, 11.11.09)*

Regulator for Broadcasting

The government has no intention to regulate the content of television news channels but will create an independent body to look into all aspects of the broadcasting sector, says Information and Broadcasting Minister, Ambika Soni. The regulator would be an independent autonomous body, without government control, which will look at all the ministry-related issues.

There is a debate going on for a long time on what kind of a body should be there. The minister added that she did not want the ministry to play the role of a regulator. Regulator will not function on behalf of the ministry but through some other mechanism which is autonomous. *(TH, 20.10.09)*

Revamping Policies

TRAI has initiated the first move towards overhauling all rules governing the country's telecom sector in an attempt to formulate a clear and definite policy to govern the industry. A new roadmap is being designed to address every issue on the policy front, plug loopholes in existing norms and also bring about changes that could facilitate consolidation in India's mobile phone market.

TRAI has sought opinion on how spectrum should be allotted in the future and whether the issuance of license can be delinked from the airwaves. Several possibilities are being explored such as: awarding spectrum through auction; introducing a cap on how much spectrum can be held by telco, penalties for inefficient use of airwaves; and differential allocation based on the population of an area. *(ET, 17.10.09)*

TRANSPORT

Port Development Policy

The shipping ministry has objected to environment ministry's proposal to draft a new policy on development of ports, fearing that it could prove fatal for the government's ambitious National Maritime Development Programme (NMDP). The environment ministry decided to form a new policy on initiation of port development projects.

Prior to this, it issued interim guidelines that required conducting hydro-dynamic study and comprehensive environmental impact assessment studies to judge the effects of such projects on the shoreline and neighbouring ecology.

In preparation of the new policy, the environment ministry has initiated a micro-level study of changes in the 7,517 km-long coastline of the country due to existing projects and identifying suitable sites to locate the new projects. The policy is likely to come after October 2010. *(FE, 29.12.09)*

Railways Pulled Up

The Parliamentary Standing Committee for Railways has pulled up the Indian Railways (IR) for lagging behind in the first two years against the targets set for the Eleventh Five-Year Plan period.

In the first two years of the Eleventh Plan, the Railways achieved 513 km of new lines, 2,612 km of gauge conversion, 789 km of doubling and 1,299 km of electrification. This is against a Plan target of 2,000 km of new lines, 10,000 km of gauge conversion, 6,000 km of doubling and 3,500 km of electrification.

According to the committee, there is a need for IR to make sincere and conscious efforts to address the problems and achieve the targets in remaining Plan period. Track renewals was the only area where the Railways surpassed the set target for 2008-09.

(BL, 21.12.09)

Land Buys in Less Time

The government plans to halve the time it takes to acquire land for road projects, a move that is expected to help it and construction companies save over Rs 10,000 crore.

According to the Union Road Transport and Highways Minister, Kamal Nath, the focus would be on eliminating the many "unnecessary procedures involved" in the land acquisition process.

The National Highways Authority of India (NHAI) officials said land acquisition typically takes 24 months, and the plan is to pare that time to 11 months. There are plans to centralise process by setting up special units in each state who will report to the NHAI through project directors. *(BS, 04.10.09)*

New Administrative Entity

The Directorate General of Civil Aviation (DGCA) is planning to set up a separate body called the Civil Aviation Authority of India (CAAI) to lay down the administrative guidelines for the industry. The CAAI will perform the administrative functions while DGCA will continue with the regulatory role relating to the industry.

The Asia-pacific region could soon see seamless movement of aircraft as all the 37 countries in the region have agreed to work towards such an arrangement. Asia Pacific Air Planning Implementation Board will oversee such an integration is brought about in the policies and procedures of various countries regarding safety and technology.

(FE, 20.10.09)

White Paper Shows Black Spots

The white paper (official position statement) on organisational, operational and financial performance of the railways, was presented in Parliament which busted former railway minister Lalu Prasad's claims of raking in record profits during his 2004-09 stint.

The document says changes made in accounting norms during the last five years had inflated 'cumulative cash surplus before dividend' by a whopping 55 percent to the claimed Rs 88,669 crore.

Dismissing Prasad's claims that his regime had witnessed the financial best of the Railways, the report holds, "The best period for Indian Railways financially in the last two decades was not the last five years, but the period between 1991-96". *(BS, 18.12.09)*

The Weak Regulator

India's airports regulator is off to a bad start. In its very first order, the Airports Economic Regulatory Authority (Aera) has let Delhi International Airport Pvt. Ltd (DIAL) off the hook. DIAL imposes a development fee of Rs200 on domestic passengers and Rs1,300 on international travellers. This fee will allow DIAL to garner roughly Rs1,827 crore, the funding gap in the project.

DIAL demanded an extension, and got it – for a second time. More serious is the absence of any reasoning in the order of the regulator. The bigger danger lies in the circumstances surrounding the liberalisation of the aviation sector since much of the discretionary power continues to rest with the ministry.

Unless the right precedents are set now, there is a danger that governmental inefficiency may be traded for crony behaviour by the private sector. Aera will simply be unable to do its job if it does not get its act right, quickly. *(www.Livemint.com, 12.10.09)*

MIXED BAG

Direct E-payments

In what would make online commerce faster for customers, the RBI has mandated that all payments for such transactions be credited directly to merchants, instead of getting cleared by intermediaries or payment gateways. Currently, until a payment is authorised and processed by intermediaries, a transaction is not completed. Under the new system, all payments to merchants shall be effected within a maximum of three days from the date of transaction.

From now on, no payment other than the commissions at the pre-determined rates/frequency shall be payable to the intermediaries. The existing system has some pitfalls. Often, there is a delay in transferring money to the merchant, at times it is more than seven days. Even intermediaries are welcoming the RBI move. *(ET, 30.11.09)*

Hitting the Target by 2015

The Government is unlikely to meet the US$500bn infrastructure investment target by 2012 but would be able to do so over the next five-years (by March 31, 2015). "Due to the global (economic) meltdown, we may not be able to meet the target by 2012. But we will reach the target by 2015," said Gajendra Haldea, Adviser, Planning Commission on infrastructure. India was targeting about US$500bn of investment during the period in infrastructure projects such as road development and power production.

We are trying for leveraging budgetary resources and multi-lateral assistance for PPPs in the country's infrastructure development," Haldea said. "The private sector will now participate in infrastructure building and it will help to meet the target, he said *(FE, 01.12.09)*

Sanitation Ratings

The Ministry of Urban Development has launched initiatives to give ratings to cities in terms of their sanitation standards. This move aims at strengthening implementation of the safe sanitation initiative, the National Urban Sanitation Policy, launched by the government in 2008.

The rating will be carried out in 441 cities that have a population of over one lakh. The ministry has also launched a national communication campaign under the National Urban Sanitation Policy in which the urban development ministry will do radio campaign on civic issues and try and make the urban citizens aware about keeping the city clean and healthy. *(ET, 18.12.09)*

SEBI Back on Radar

A proposal to bring the commodities derivatives market under the regulatory purview of Securities and Exchange Board of India (SEBI), the capital markets regulator, is back on the government's agenda. Both the RBI and SEBI are at loggerheads with the former having made a strong case for retaining its oversight over the fledgling currency derivatives market.

Although Forward Markets Commission is the regulator for the commodities markets, the Consumer Affairs Ministry tends to micro-manage and interfere on its affairs. Moreover, policy decisions such as a ban on trading of commodities are taken more on political considerations than any scientific study of the impact of futures on spot prices of commodities. *(FE, 22.11.09)*

Consolidating Banks

The finance ministry is set to push for consolidation in the public sector banking space and has started work on a road map to create eight to 10 large entities. The ministry was in favour of such a consolidation but could not push the process due to opposition from the employee unions and the Left parties.

The government and chiefs of some banks such as Union Bank of India and Bank of India have in the past explored the option of merging. However, the process could not be completed. As a result, public sector players have had to be content with acquiring weak players in alliances pushed by the government and RBI. *(BS, 21.10.09)*

Overarching Powers

The tittle-tattle involving former Andhra Pradesh governor ND Tiwari has brought to focus some key changes in India's information technology (IT) law that gives the government overarching powers to control information on the Internet.

Recent amendments to the IT Act 2000 have empowered the government to ask websites such as YouTube to remove any content deemed unlawful. The IT law can go after a company based anywhere in the world. It also provides for action against officials responsible for the conduct of the business of the company at the time of the contravention of the law. *(ET, 30.12.09)*

Transparent Lending System

RBI has rapped banks for continuing to charge unduly high interest rates from retail customers even after announcing a series of cuts in lending rates. This came at a pre-monetary policy meeting with bankers after the latter sought retaining of the soft interest rate regime.

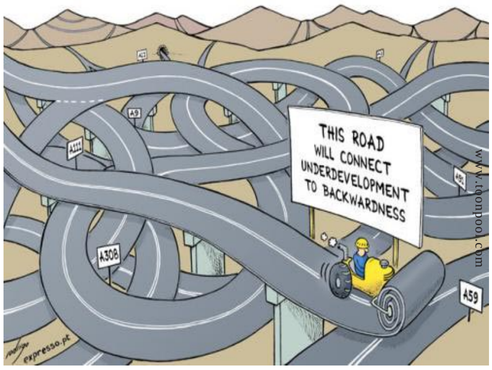
Even after announcing lending rate cuts, the rates being charged were still high which has been reflected in the periodic data banks send to RBI. RBI is not dictating the interest rate structure to banks, it is only trying to maintain a status quo on interest rates and on the cash reserve ratio, its main concern would be ensuring transparency in the effective interest rates charged by banks from their retail customers. *(BS, 22.10.09)*

Road Construction Suffers Capacity Constraints

– Mukesh Kacker*

Highways development, which remained largely comatose during UPA-I, has got an adrenalin injection with the induction of Kamal Nath as the minister in-charge. But his pitch to create 20 km of highways, despite his good intentions, looks hard to achieve, primarily because of capacity constraints in the road construction industry – an issue that has got much less attention than it deserves.

The domestic industry is beset with capacity constraints on two fronts. One, there is an extreme shortage of skilled and semi-skilled human resources. Two, there is a shortage of quality construction equipment.



Reasons and solutions for the slow progress in this sector have been discussed by various committees. Policy attention have been mainly on three areas: (a) reducing pre-construction delays – land acquisition, tree-felling and shifting of utilities; (b) changes in the policy environment – changes in request for qualification or proposal documents, model concession agreements, viability gap funding, public-private partnership format and fiscal concessions & taxation, besides introduction of new windows of financing; and (c) strengthening the capacity of NHAI to implement a vastly enlarged programme.

The BK Chaturvedi committee has been entrusted with the job of finalising the changes in the policy environment, and a formal announcement of the changes is expected. Strengthening NHAI's capacity is proving a daunting task, and nothing concrete has been done so far. Theoretically, even if these three factors were to be handled, it would still be impossible to make a quantum leap in the speed of project execution, since the road construction industry lacks the capacity to execute projects quickly. This area is not under the government control, and hence received poor attention.

When the National Highways Development Authority was launched and 100 percent foreign direct investment was allowed in the sector, the objective was to bring about a paradigm shift in the quality and execution of road projects. It was then hoped that foreign road construction companies would bring in better technology, equipment and experts and global best practices. In the initial years of National Highways Development Project, (NHDP) there were encouraging changes in these spheres. The change over to a managerial system based on 'supervision consultants' and 'independent engineers' vastly improved project execution and monitoring.

There were also bigger and better pavers, hot-mix plants, concrete batching plants, rollers, levellers and crushers. More companies jumped into road construction and suddenly, there was a huge demand for civil engineers and skilled and semi-skilled workers. It appeared as if the road construction industry was going through a process of qualitative change. There has been little consolidation in the industry and the number of companies that can take up big projects is pretty limited. The size and quality of machinery and equipment have also reached a plateau. While technology has moved everywhere else at a face pace, we no longer see equipment capable of delivering projects quickly. There is a massive shortage of qualified civil engineers, diploma holders, masons, carpenters, electricians, mechanics, cutters, welders and machinery operators. No lessons seem to have been learnt on imbibing best practices.

If the NHDP has to speed up the pace of project execution to the level envisioned by the minister, then the average capacity of present road construction contractors will have to increase manifold. This can happen only if big foreign construction companies enter the scene. The minister's plan to introduce ultra-mega projects to attract big foreign companies is a step in the right direction.

On both these fronts, the domestic industry will have to raise its capacity by a factor of three. The construction industry needs to sit down with the government and adopt a time-bound action plan for: (a) increasing the number of civil engineers, diploma-holders and other semi-skilled workers; (b) introducing capacity building courses for each segment of human resources; (c) bringing construction specifications to international standards; and (d) increasing the availability of latest equipment and machinery. The government and the road construction industry need to wake up to this challenge of capacity constraint.

* *Director-General, CUTS Institute for Regulation & Competition. Abridged from an article that appeared in the Financial Express, on November 17, 2009.*

Impact of Mobile Phones on Farmers

– Gaurav Tripathi*

Under the grim situation faced by farmers across India due to scarcity of rainfall, the mobile platform offers a glimmer of hope

While substantial anecdotal evidence on the impact of mobile phones on farmers has been reported in the media, rigorous demonstration of its potential has only recently been attempted. Among the most celebrated of such studies is the Jensen (2007) paper that estimated the welfare impact of introduction of mobile phones among the fishing community in some of the districts in Kerala.

The study concluded that the economic impact of mobile is likely to be strongest when the absence or inadequacy of existing telecommunications facilities acts as a barrier or bottleneck to private economic activities. An Indian Council for Research in International Relations (ICRIER) study on the impact of mobile phones on farmers across several Indian districts highlights the key role played by mobiles in lowering transaction costs and raising the income-levels of farmers, by efficiently addressing their immediate agricultural-information requirements.

Information asymmetries are a well documented source for inefficient functioning of markets; farmers can bridge or alleviate the information gap at three major stages of the agricultural cultivation cycle by the use of mobile phones. One, while deciding the crop and choosing the best seed variety based on soil-type of their land; two, deciding the month/season of sowing and addressing plant protection issues during the growth of crop; and three, deciding where and at what price to sell the farm output.

Mobile phones enable farmers to access this information from a host of information providers such as scientists from seed and pesticide companies, cooperative committee office-bearers, input dealers, government agriculture extension officers, market-commission agents/traders, veterinary doctors, and so on.

In the discussions with farmers, they emphasised that timing of precise information is central to minimising wastage and therefore increasing efficiency.

The recent launch of mobile-based agricultural information services in India, such as IFFCO Kisan Sanchar Ltd and Reuters Market Light programme provided a reasonable method to test the above hypotheses. UP, Rajasthan and Maharashtra, with sizeable subscriber-base, were surveyed during July and November 2008. In general, farmers were confident of the utility of the mobile phone in reducing costs and enhancing earnings. The biggest influence was reported from Maharashtra followed by Rajasthan and UP.

Maharashtra farmers took greater advantage of the mobile phone for their farming needs *vis-a-vis* farmers in UP and Rajasthan. It should be highlighted that the Maharashtra farmers were better placed in terms of both social and infrastructure indicators. They reported higher literacy levels, economic well-being, and had better access to agricultural infrastructure facilities like irrigation and road transport, than the other two states.

The study highlights the vital importance of complementary skills and other infrastructure to realise the full potential of better access to telecommunications. There is no benefit in access to better information if it cannot be leveraged.

At a time when the government agricultural extension services are unable to adequately fulfil their responsibility of providing information on scientific modern technology for farming to all the farmers due to resource constraints and the operative inefficiencies, mobile phones along with the mobile-enabled services present us with a ray of hope for uplifting our agricultural extension system. Mobile phone has the potential to effectively supplement the efforts of existing extension services and synergise the whole process.

Mobile phone has huge potential to enable the small farmer to diversify from self-sustenance farming to higher income generating ventures like horticulture crops, animal husbandry and fish farming in paddy fields. This is particularly useful when returns to farmers are decreasing due to decline in agricultural yields and shortage of fertilisers for the past few years, putting pressure on them. Mobile phones have the potential to play a key role in efficient logistics management and reduce costs for both farmers and the government. The government will be well advised to support the development of the complementary infrastructure to enable farmers to maximise the benefits that go with better access to information.

* *Researcher, ICRIER. Abridged from an article that appeared in The Economic Times, on October 12, 2009.*

Combating Capital Flows

The government is discussing a host of policy options to combat a sharp and sustained surge in capital inflows, anticipating that global investors who shun the dollar could park their funds in markets like India. Policymakers have started worrying that if the country, with its rather shallow capital markets, would have the capacity to absorb such an influx of capital without being shaken. Besides, there is the looming spectre of inflation, which warrants sound management of liquidity without hurting the seeming economic recovery.

India has received capital flows of over US$42bn in 2009. The government is concerned that the rupee may harden against the dollar and the euro and would pull down the exports, which had shrunk 31 percent in April-August 2009. *(FE, 28.11.09)*

Rebounding Growth

The Planning Commission expects the economy to stage a full recovery by next fiscal and register a growth of eight percent. It also expects 2009's final gross domestic product (GDP) number to be a tad higher than the revised estimate of 6.7 percent. The upward revision is likely because of a better-than-estimated performance by the manufacturing sector.

The Planning Commission expects GDP to grow at 6.3 percent in 2009-10. It expects that if overall global conditions are unfavourable, the Indian economy could grow at seven percent and if the conditions are favourable, growth could be close to nine percent. The Plan panel hopes that private corporate investment will pick up in 2010-11. *(FE, 22.10.09)*

Going for Gold

India's purchase of 200 tonnes of gold from the International Monetary Fund displayed the economic strength of the world's two fastest growing large economies. India and China had been adding to global output despite turmoil in the world economy.

India's return to building up gold stocks is described as soothing the "outrage" that Indians had felt when they had to pledge gold to the Bank of England just for borrowing dollars to support imports. With the latest central bank purchase of gold, Asia's third largest economy has joined the move by a group of large economies to diversify foreign exchange reserves and rebalance their holdings of dollar-denominated assets. India's gold holdings as a percentage of foreign reserves are now higher than China's.

(FT, 04.10.09)

Inking Pacts

India plans to enter into specific information exchange agreements with about 15 countries where illegal Indian money is alleged to be parked or which possibly serve as conduits for investments looking to avoid tax. This would make it difficult for tax evaders to park their unaccounted cash in secret bank accounts in some European location or bring it back through shell entities in tax havens.

The Central Board of Direct Taxes, the apex direct tax body, is also giving finishing touches to a model Tax Information Exchange Agreement. The model agreement would seek to ensure that information about flow of funds from banks, financial institutions, trusts or foundations is made available to taxmen in the country. *(ET, 04.10.09)*

Simpler Labour Laws

Representatives of micro, small and medium enterprises (MSMEs) are seeking a simpler labour law exclusively for the sector, saying it's not feasible for small firms with minimal resources to comply with multiple laws. The SMEs sector contributes 45 percent of India's manufacturing output. There are 44 Central Acts governing labour. Under the law, SMEs have to implement at least 15 of them, including those covering social security, minimum wages and payment of gratuity and bonus.

The MSME ministry has been opposing the labour ministry's move to bring establishments employing 10 people under the Central health insurance plan, the Employees' State Insurance, without simplifying overall implementation norms.

(Livemint.com, 05.10.09)

Law to Check Prices

A key committee of Parliament has recommended a new legislation to control prices of essential commodities and extension of the public distribution system to the middle class. The committee's recommendations assume significance in the backdrop of rising prices of food items. Prices of cereals, vegetables, milk and fruits were substantially higher than last year.

The committee noted that price monitoring cell of the government was merely collecting and disseminating information on prices. While suggesting a new legislation for controlling prices, the committee has recommended capping profit margin for various intermediaries.

(ET, 25.10.09)

Outcome Budget – Futile Effort

The Planning Commission's Deputy Chairman, Montek Singh Ahluwalia junked the exercise of producing outcome budget every year terming it a futile effort that did not produce the desired results. He instead emphasised developing a foolproof evaluation process with government.

The government started the practise producing outcome budget few years back to show the progress of various government programmes. It has now decided set up a separate independent evaluation office to assess the progress of the government's flagship schemes in benefiting the poor. *(ET, 13.10.09)*

Mrs G and the Licence Permit Raj

– Ila Patnaik*

The most striking move by Indira Gandhi, before the declaration of the emergency, was a mid-night ordinance in July 1969. At one stroke, the ordinance gave the government control over a big chunk of the savings of the Indian people. On July 19, 1969, India woke up to headlines that India's major private sector banks had been nationalised. That stroke of midnight brought a loss of economic freedom. Like much of the economic policy of the 1969-1976 period, this was one more instance of power being usurped by the state. Through the 70s, till the end of the emergency, economic enterprise and private initiative were severely restricted.

Nationalised banks had social objectives such as lending to the priority sector such as small-scale industry. Bank nationalisation was followed by small-scale industry reservation. The policy of explicitly reserving certain items for production by small companies was created. Indian industry has lost out for years because of being unable to harness economies of scale.

The licence and control raj of the 70s shapes every aspect of Indian banking

But then the logic of control raj can be strange. While on one hand there was a policy that industries should be small, if there was a large industry that wished to become small, the Industrial Disputes Act (IDA) was passed to prevent it. Until then factories with over 1000 workers used to require government permission for layoffs. The size threshold was amended in 1976 to 300. In 1982, when Indira Gandhi was back in power, this was further reduced to 100.

To offer nationalised banks protection from competition, foreign banks were prevented from coming in. Indeed, not just foreign banks, even foreign money was not welcome. Under the Foreign Exchange Regulation Act (FERA) draconian currency controls and restrictions on foreign investment were imposed in 1973. While FERA has been supposedly replaced by a more liberal Foreign Exchange Management Act (FEMA), the mentality of controls is very much there in FEMA as well. The central planning logic went into other areas was well.

For example, on February 17, 1976 the Urban Land Ceiling Act was passed. It covered 73 towns and cities and imposed a ceiling of 500 to 2000 sq m on urban land holdings. It constitutes a major distortion of the urban land market. While this was a state subject, the Constitution allows Parliament to pass a bill if more than two states agree, and this path was chosen during the emergency.

Another law giving disproportional powers to the state was the Monopolies and Restrictive Trade Practices (MRTP) Bill was proposed in 1967. It became an act and came into force from June 01, 1970. The MRTP Act, which gave huge powers to the government, sought to check the expansion of large industrial houses with assets over Rs 1 crore in businesses where their share in the market exceeded 33 percent. The MRTP remained in place even after liberalisation until 2002 when it was replaced by the Competition Act.

Banks need a licence to start and only a handful of new banks have been allowed since the bank nationalisation of 1969. Banks need licences to open branches and until recently, they even needed licences to open ATMs. Only 18 foreign bank branches are given the licence to open every year. If banks open branches abroad, they need permission. Every product that is launched needs permission from RBI. The authorities decide what the savings bank interest rate is. The authorities decide what the interest rate on lending to certain sectors is. The authorities define who to lend, how much to lend and at what rate to lend. They decide how much a bank has to lend to the government, to the central bank, to agriculture, to small scale industry, to exporters, to students, to rural businesses and so on.

Every element of the life a banker is dictated by the authorities. The salaries Public Sector Unit banks can pay are decided by the government, as are pension benefit. Loan decisions are often known to be influenced by politicians. In summary, nearly everything that can kill growth of a healthy and competitive banking system plagues Indian banking. Undoing all this is going to be a formidable task.

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* *Senior Fellow, National Institute of Public Finance and Policy (NIPFP). Abridged from an article that appeared in the Financial Express, on November 02, 2009.*

Check on Misleading Ads

The Food Safety and Standards Authority of India is working on a code that aims to stop false and misleading advertisements on food and beverages. The authority circulated a draft code to various stakeholders including the industry and civil society organisations and will soon invite public comments on it.

It discourages the portrayal of products as substitutes for meals, and endorsements by government agencies, professional bodies, independent agencies or individuals in a particular profession without their prior consent. The 2006 Act under which the authority was constituted prescribes penalties up to Rs10 lakh for publishing misleading advertisements and selling misbranded food. The new draft does not mention punitive action against those who breach the code.

(Livemint, 08.10.09)

Insolvency Professionals

The government is planning to establish a regulator for the growing tribe of insolvency professionals, who specialise in rehabilitation or winding up of sick companies. The Companies Bill, 2009 has given formal recognition to insolvency experts as professionals for the first time. It was felt that there should be a regulator for insolvency professionals.

Nowadays insolvency matters have become cross-border issues and there is a need for insolvency professionals who can match up to the global best. *(BL, 09.10.09)*

CSR Trading Draft

The government is working on a framework for quantifying the corporate social responsibility (CSR) initiatives of companies to permit trading in them. Backed with some tax incentives, the government expects such a framework to encourage companies to take up CSR initiatives more seriously.

There is no precedent of CSR credits being traded anywhere else in the world and the minister has asked his officials to look at a framework which is akin to the carbon credits trading mechanism. The idea of quantifying CSR and link it with incentives is workable idea. The draft will also suggest a structure that will quantify what a private company stands to gain for CSR activities beyond a certain level. *(ET, 08.12.09)*

CAs Volunteering for Audit

As the Ministry of Corporate Affairs (MCA) gears up for the process of scrutinising the balance sheet of around nine lakh registered companies in the country, the ICAI has asked chartered accountants (CAs) to volunteer for this.

With the Registrar of Companies finding it difficult to conduct a detailed examination of accounts of the companies, MCA has decided to outsource the work of scrutinising the accounts of both listed and unlisted companies also to cost and work accountants and company secretaries. The government decision of outsourcing this work of scrutinising the companies accounts would be in the interest of the CAs.

(FE, 04.10.09)

New Guidelines Released

MCA has released a set of voluntary guidelines on Corporate Governance and CSR. This was released at the conclusion of the first-ever India Corporate Week, the guidelines incorporate all Ten Principles of the United Nations Global Compact. Shri Salman Khurshid, Minister of Corporate Affairs, presided over the event. Shri Khurshid underscored various developmental challenges that need to be addressed while assuring continued corporate growth and emphasised the need for collaborative solutions and partnerships among government, the business sector, civil society organisations and citizens to address these challenges.

The corporate sector was urged to adopt these voluntary guidelines as a means to facilitate value generation throughout all societal sectors. India is the latest government to reference the UN Global Compact principles in formal CSR guidelines or strategies, as has previously been done in Norway and Denmark. *(www.csr-news.net, 24.12.09)*

Class Action Suits

MCA will soon start talks with the Insurance Regulatory and Development Authority (IRDA) for the development of concept of class action suit in India. "The class action suit has to go hand-in-hand with the insurance industry as it is in US," said Salman Khurshid, Minister of Corporate Affairs.

It is a good move on part of the MCA to at least make sure that there is some sort of financial reimbursement on account of malpractices or losses arising from the fraudulent practices resulting in losses to the investors. The class action suit will be a important tool in the hands of the investors as it would avoid mushrooming of the IPOs of companies who don't have any definitive business plan due to which investors really suffer. *(FE, 02.12.09)*

Authority for Audit & Account

The Government is planning to strengthen the National Advisory Committee on Accounting Standards (NACAS). NACAS was constituted in 2001 only to examine only Institute of Chartered Account of India's (ICAI) accounting standards for companies in the country. NACAS would be renamed the National Advisory Committee on Accounting and Auditing Standards (NACAAS) to make it the overall authority on accounting and auditing.

NACAAS will also advise the government in prescribing the policies on accounting and auditing. These changes have been incorporated in the new Companies Bill. NACAAS will comprise representatives from regulatory bodies such as SEBI, RBI etc. *(BL, 05.10.09)*

Recipe for Good Corporate Governance

– Satvik Varma*

www.thehindubusinessline.com

Four fundamental pillars of governance: state regulations, internal regulations, duty of loyalty and moral intelligence, all of which appear to be universally applicable

As the Corporate Affairs Ministry celebrates India Corporate Week, one's attention is again drawn to corporate governance. Broadly defined, this is the standard adopted by corporations to regulate and manage internal processes. Although not a new function of society, corporate governance, as a measure of corporate functioning, has gained significant importance over the past decade. Corporations have become complex beings as have their systems of governance.

Simultaneously, academics and lawmakers have undertaken substantial research to develop ways to quantify and devise objective criterion for evaluating corporate governance. The objective of all research has been to identify ways of achieving a system of 'better' governance.

Historically, two models of corporate governance exist: the shareholders model and the stakeholders model. The first caters only to shareholders' needs and individual interests. This is often critiqued when there exists a shareholder that directs decision-making in its own favour. By contrast, the stakeholder model is broader. It's structured to protect interests of employees, creditors, customers and all other persons that have a stake in a corporation, aside from just the shareholders.

Based on these models, various tools to measure corporate governance have been developed. But questions have also emerged about whether there can really be one model to measure corporate governance across all companies. Can there really be an ideal level of governance? Corporations vary and are too diverse for one rule to be universally applicable. A report, generated by Wharton University, which evaluated 500 companies, concluded that "the recipe book is big and there's a different recipe for each company." Scholars believe that culture plays a large role in governance and simply adopting a system that works in another country leads to companies with fractured systems of governance.

For governance to be effective, it must check greed and corruption, and address the lack of foresight. This needs to be achieved within a framework of financial discipline, law, ethics and values. It is difficult to accomplish any of these with a precise tool or under any model. Instead, it may be productive to rest the system of governance on four fundamental pillars: state regulations, internal regulations, duty of loyalty and moral intelligence, all of which appear to be universally applicable.

The first pillar is the structure of rules and regulations set by the sovereign. Systems and procedures must be devised to objectively monitor the functioning of corporates, taking into account public interest. Equally important are internal regulations, which must ensure smooth functioning and transparency. Further, proper internal structures reduce the risk of the external regulator hauling up a company for fraudulent dealings.

Duty of loyalty forms the next pillar and is broader than the commonly used legal concept of duty of good faith and duty of care. The duty of loyalty precludes acting for unlawful purposes and requires officers of a company to make good faith efforts to monitor its affairs. As fiduciaries, these officers cannot be driven by personal objectives and must only act in the best interests of the corporation.

The last pillar, moral intelligence, unlike economic factors, cannot be reduced to numbers and thus is difficult to measure. Moral intelligence stems from personal and organisational success, integrity, and responsibility. It originates from the duty of care towards the organisation to which one belongs and is so personal that it is based on an individual's conscience and ethics and is difficult to imbibe.

While regulations are essential as they prescribe the boundaries within which to act, it is the duty of loyalty and moral intelligence that prevents the corporate system from being faulty. In comparing a corporate to a house with four walls, while each wall is essential, not all four can be load-bearing. Moral intelligence is the differentiating load-bearing wall that separates corporate governance from good corporate governance.

* *Partner-designate at Amarchand Mangaldas. The article is co-authored with Komal Kalha, an associate in the same firm, and appeared in the Financial Express on December 21, 2009.*

Skills Shortage

India faces a chronic shortage of skills in its construction industry over the next decade jeopardising government's ability to sustain its nine percent growth target, the World Bank warned in its report on road construction industry. The number of civil engineering graduates needed to rise threefold to avoid a crippling failure to make improvements in infrastructure.

"As it competes for skilled manpower with other booming sectors, the road industry faces increasing turnover of its experienced staff, dwindling appeal to fresh talent, and several other constraints in the investment climate that inhibit its operations and attractiveness to firms, both domestic and foreign," the report said. *(FT, 06.10.09)*

States Performances on RTI

While the Information Commissions of Karnataka, Kerala and Punjab are performing exceedingly well in various aspects of implementing the much talked about Right to Information (RTI) Act, the performance of the Central Information Commission (CIC) has left a lot to be desired. Findings of a study to evaluate the performance of State Information Commissions and Information Commissioners reveals that Maharashtra and West Bengal were the other states at the bottom of the chart.

The criteria for evaluation included overall public satisfaction, effectiveness, deterrent impact and pro-disclosure. In overall public satisfaction, Karnataka topped the list, while West Bengal and the CIC figured at the bottom and fifth from the bottom respectively. *(TH, 22.10.09)*

Ration Cards to Cash

A study conducted by Self-Employed Women's Association (SEWA) on whether poor people in the capital want to change from the Public Distribution System of rationing to cash transfers has revealed that a majority of about 60 percent are agreeable to the idea while 40 percent opposed it. The study also revealed a link between the economic well-being of the respondents and their responses, "with the poorest groups strongly opposing cash transfers and the better-off groups supporting it".

The two main reasons for opposition to the cash transfers are, first, women felt that cash would be used for other needs and not spent on food, and second because inflation would soon reduce the value of the cash they received and they would be able to buy less food. *(TH, 26.11.09)*

Higher Growth Sectors Identified

Sectors such as telecom, capital goods, cement, construction, and non-banking financial institutions are expected to post highest revenue and earnings growth in the second quarter ended September 30, 2007 while others like automobiles, pharmaceuticals, metals will report lowest growth, according to a study.

Sectors like telecom, cement, construction are expected to report a solid 19 percent and 10 percent year-on-year growth in earnings and in revenues respectively, according to the report. However, given the political uncertainty, high oil prices and increasing impact of global factors, a near-term-correction is not just possible but quite likely. Some of the overweight sectors are bank and non-bank institutions, capital goods, power, telecom, cement and real estate. *(FE, 08.10.09)*

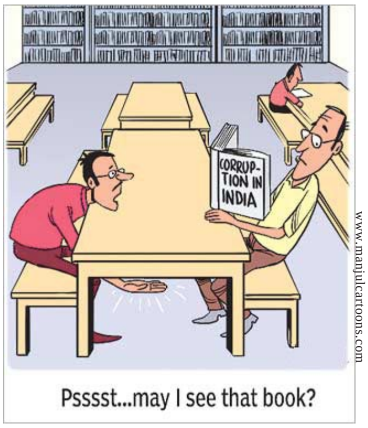
India First in Pay TV Piracy

India tops a list of 15 Asia-Pacific nations in so-called pay television piracy, a study said. Pay TV piracy is defined as cable operators reporting a lower number of subscribers than they actually service, according to Anjan Mitra, India executive director of Cable and Satellite Broadcasting Association of Asia (Casbaa), which conducted the annual survey in association with Standard Chartered Bank.

This leads to the government earning lower taxes and lower revenue for broadcasters. The Casbaa survey said the Asia-Pacific region loses US$1.94bn in annual revenue due to TV piracy. However, an analyst said the increasing spread of digital TV services would lower such piracy in India. *(Livemint.com, 05.10.09)*

Corrupt Public Life

Public life is seen as much more corrupt in China, India and Russia than in leading western economies, says a report published recently. The three big emerging markets, which were all criticised for their failure to give stronger backing to global anti-corruption rules, have all finished below 75th place in annual rankings of 180 countries by Transparency International, a campaigning group.



The survey results were of "great concern" because they showed corruption continued to "lurk where opacity rules, where institutions still need strengthening and where governments have not enforced anti-corruption legal frameworks". *(FT, 18.10.09)*

More Investment to Fuel Growth

The power sector will need a total investment of about US$250bn in the next eight years to achieve planned growth, an A T Kearney study, commissioned by the Confederation of Indian Industry (CII), said. By 2014, a new era of competition would emerge, leading to the addition of 80,000-85,000 MW of new generating capacity while the demand for power is expected to grow at a steady annual rate of 7.5-8 percent till 2017, the report said.

Effective implementation of the next generation reforms, addressing constraints in fuel, financing, distribution and improved access, reach of power and realisation of latent demand would ensure sustained growth of the power sector, the report said. *(TH, 03.11.09)*

RTI has Hit Rate of 27%

In the four years that the pioneering RTI Act has been in force, an audit shows that the legislation has achieved a success rate of about one in four. The proportion of appeals filed under RTI that have succeeded in getting the information sought has been put at 27 percent in a study by the National RTI Awards Secretariat instituted by the Public Cause Research Foundation (PCRF), a Delhi-based organisation that works in the area of transparent, accountable and participatory governance.

The study, based on orders passed in 51,128 cases by information commissioners and benches during 2008, shows that at a national level, orders have been passed in favour of disclosure in 70 percent of the cases. "Despite this, there has been 61 percent of non-compliance of these orders, with only 39 percent actually receiving the information", said Arvind Kejriwal, RTI activist and founder of PCRF.

That does not take away from RTI's success in bringing transparency to a system where there used to be none, said Jagdeep Chhokar, founding member of the Association for Democratic Reforms (ADR), a Delhi-based non-governmental organisation. "It's the way we interpret this data", he said.

The landmark legislation was passed during the Congress-led UPA government's first term as part of its efforts to make the officialdom more accountable. In the area of overall public satisfaction, Karnataka tops the list with 55 percent petitioners happy with the functioning of the commission, with Kerala (52 percent) and Punjab (47 percent) next in line. At the bottom of the ladder is West Bengal, where only six percent of the petitioners were content with the response they received.

A figure like 39 percent people getting information is a positive figure if you see that it has been a jump from zero

Interestingly, the CIC itself falls in the bottom five.

The study does not include Uttar Pradesh, Tamil Nadu and Sikkim because of inadequate information. Experts opine that RTI has "actually brought out the poor governance structure in the country". Shailesh Gandhi, Commissioner with CIC, defended its functioning even while welcoming such studies, saying they would help in making RTI more effective. "There have been other studies on RTI, which have given a better rating to the effectiveness of the Act", he said. The parameters used by the study include effectiveness, deterrent impact and the pro-disclosure factor.

"Under the Act, information commissioners have powers to levy penalty on defaulting government officers as well as issue summons and order arrests. But hardly any information commissioner actually uses these powers", said Kejriwal. "In all the cases in which pro-disclosure orders were passed, which means that a violation of RTI Act was established, only two percent were penalised", he added. RTI has, in the past, contributed towards the better implementation of the National Rural Employment Guarantee Act another flagship programme of the UPA government.

For instance, workers in Balisana village in Gujarat's Sabarkantha district, who were grossly underpaid, received their payments under the Act as per minimum wage provisions after an RTI appeal was filed by a civil society group asking for muster rolls and payment sheets. Another instance where RTI has proved useful is in the area of transparency of political funding after CIC directed the income-tax department to make public the returns of political parties following an RTI filed by ADR. The RTI Act also helped in creating greater accountability in the appointment of government officers.

For instance, the Delhi high court came under the RTI scanner recently when CIC held that people have a right to know the procedure that went into the appointment of its public information officer. Reports about the government's plans to further amend the Act have not gone down well with activists.

"Its first agenda should be to make implementation more effective and strengthen it, rather than focusing on amending it," PCRF's Kejriwal said. Others called for a more careful selection of officials. "The single biggest problem with the implementation of the Act is the appointment process and criterion" used to choose the information commissioners, ADR's Chhokar said.

– *This study has been contributed by Ruhi Tewari and Liz Mathew which appeared in www.Livemint.com on October 22, 2009.*

Strengthening Consumers

The government has decided to come up with a National Consumer Policy that will ensure uniform national and international standards in the various arms of the central and state governments, the regulatory bodies and on consumer fora, and to lay down the guiding principles of complaint resolution.

The draft policy seeks to ensure that goods, services and technology are available to consumers "at reasonable prices and at acceptable standards of quality". It recognises that trade practices need to be identified and regulated, and law and codes should be re-engineered. Consumers should be aware and empowered to make real choices. *(TH, 31.12.09)*

Face-lift for Urban India

Reforms in the urban sector are imperative to ensure sustainable development, efficient infrastructure services and strong local governance. Recognising this, the Jawaharlal Nehru National Urban Renewal Mission (JNNURM) was launched in 2005 as a major flagship programme emphasising on improving urban governance. JNNURM envisage states and cities undertaking a total of 23 reforms during the seven-year mission period from 2005 to 2012.

The reform agenda should also focus on definite milestones to be achieved as far as service level benchmarking set for water supply, sewerage and storm water drainage, solid waste management, e-governance and urban transport sectors are concerned. There is a need to build up further the momentum created in states and cities to bring about substantial changes in urban governance. *(ET, 15.11.09)*

No Big-ticket Social Reforms

The government's big-ticket social sector programmes covering education and food security are not likely to take off this year. Though no cost estimates for implementation of food security scheme have been worked out yet, it is estimated that the right to education could cost the centre and states together about Rs 1.78 lakh crore over the next five years.

There may be some adjustment of funds through what is called a technical supplementary where money saved under one head is utilised in the other but we are not likely to increase spending substantially. The thinking within the finance ministry is that ministries should not park funds available with them and utilise it instead of seeking more funds from government.

(BS, 02.10.09)

UID Numbers Soon

The first set of 16-digit unique identification (UID) numbers for citizens of the country will roll out by August or December 2010, said chairman, Unique Identification Authority of India (UIDAI). He said states could prepare their data in about six months for blending with the UID numbers programme, launched as a social security card to serve all purposes as in the US.

Centres would be opened for people to enroll and get their UID numbers. He said the programme would be implemented in Andhra Pradesh on a pilot basis. The UID programme would not exclude the identity cards already issued by state governments but would take care to avoid duplication. *(TH, 22.10.09)*

Poverty Takes a Dip

The proportion of poor people in India has come down from 45.3 percent in 1993-94 to 37.2 percent in 2004-05, with these falling from 50.1 percent to 41.8 percent in rural areas and from 31.8 percent to 25.7 percent in urban areas. The 37.2 percent all-India head count poverty ratio for 2004-05, estimated by an expert group under Prof. Suresh Tendulkar on the basis of a new methodology to arrive at poverty lines, is higher than the existing official figure of 27.5 percent.

The discrepancy *vis-à-vis* the old methodology is particularly evident for rural poverty. For 2004-05, the old estimate is 28.3 percent which the working group has re-estimated at 41.8 percent. Even for 1993-94, the old methodology had put the rural poverty ratio at only 37.2 percent against the reassessed figure of 50.1 percent. *(TH, 11.12.09)*

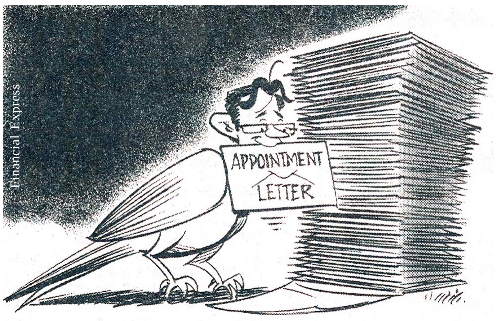
The Reluctant Litigant

The Cabinet has approved a proposal to reduce the petitions by governments, the largest litigant in courts with 3.5 crore pending cases, said the Law Minister. The Law Ministry was working out a blueprint to implement the National Litigation Policy.

The idea is to reduce the pendency levels before 2012 by bringing down the time taken to dispose of cases from the present 15 years to just three years. For the purpose, the Law Ministry has come out with a National Litigation Policy, in consultation with other ministries and after compiling the number of pending cases of each of the ministries. *(BS, 09.12.09)*

GST to Increase Employment

Goods and Services Tax (GST), which is proposed to be implemented from April 01, 2010, will help increase employment in the manufacturing sector and also reduce prices of manufactured products. This will also attract more investments in the manufacturing sector.



As "tax cascading" disappears, the industry will move to the lagging regions, bringing them into the growth dynamics. For GST to be successful, all states and the centre should implement it in a similar fashion. Only this will bring about the national common market, which is one of its goals. This will be possible when there is be a common law, common exemptions, a common assessment procedure and perhaps even a common return.

(BS, 13.10.09)

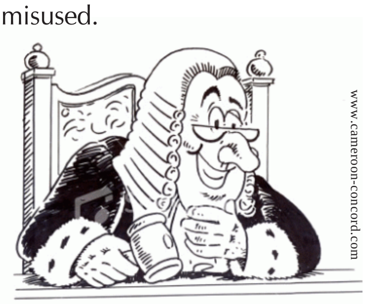
WB Health Regulatory Bill

The West Bengal government passed the controversial Rural Health Regulatory Authority Bill 2009 in the state assembly by majority vote. In doing so, the state government created a precedence in the sense that it over-ruled thereby the collective decision that was taken by the Left Front to send the bill to the assembly select committee in view of the differences that existed over various tenets of the bill among the Opposition.

The Bill introduces a three-year diploma course on medical science and the apparent objective is to deploy these diploma holders in various parts of rural Bengal to meet the acute shortage there in terms of qualified medical practitioners. *(ET, 17.12.09)*

Judges Accountability

The Centre plans to bring a "state-of-the-art" legislation in the Winter session of the Parliament to deal with complaints of corruption against judges and ensure accountability in higher judiciary. The Judges Standards and Accountability Bill will cover the "entire judiciary" and would not be a "one sided affair". It would also provide appropriate protection to the judges so that it will not be misused.



The government's plan assumes significance in the context of growing complaints of misconduct against judges of the higher judiciary and a feeling that redress system was not effective. The "forward looking" bill has been drafted after taking into consideration "the best of lessons" learnt from all over the world, including UK, France and the US. *(TH, 09.10.09)*

Bill to Amend Copyright Act

The government has approved a proposal to introduce a Bill in Parliament to amend the Copyright Act, 1957, which includes a host of changes including giving independent rights to authors of literary and musical works in cinematograph films.

The amendments propose to ensure that the authors retain their right to receive royalties and the benefits enjoyed through the copyright societies. The amendments also ensure that the authors of the works, particularly songs included in the cinematograph film or sound recordings, receive royalty for the commercial usage of such work.

Amendments are being made to bring the Act in conformity with the World Intellectual Property Organisation Internet Treaties, namely WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty. (*TH, 24.12.09*)

Trademarks Amendment Bill

A Bill seeking to amend the Trade Marks Act 1999 with a view to enabling Indian nationals as well as foreign nationals to secure simultaneous protection of trademarks in other countries was tabled in the Parliament.

Titled The Trade Marks (Amendment) Bill, 2009, it said currently a person desirous of obtaining registration of his trademark in other countries has to make separate applications in different languages and disburse different fees in the respective countries. The Madrid Protocol gives a simple, facilitative and cost-effective system for global registration of trademarks

(BL, 06.12.09)

Law Against 'Ponzi Schemes'

West Bengal will introduce a new law to stem the mushrooming of Ponzi schemes in the state's rural areas. Under the law, be introduced in the assembly during the ongoing winter session, police would have the power to launch investigations, detain the operators of such schemes and seize their assets even without complaints from investors.

Illegitimate investment schemes offering huge returns, which are paid out of money raised from new depositors, are called Ponzi or pyramid investment schemes. Named after Charles Ponzi, who gained notoriety in the early 1920s for running illegitimate schemes and for duping investors in the US, such scams typically collapse when the operator fails to raise more money through fresh deposits than is due for repayment *(www.Livemint.com, 09.12.09)*

Gram Nyayalayas Act

More than 5,000 village courts, aimed at providing inexpensive justice, set up under the provisions of the *Gram Nyayalayas* Act, 2008, will start functioning from Gandhi Jayanthi. The Act has been enacted to establish *Gram Nyayalayas* (GNs) at the grassroots level for providing access to inexpensive justice to the citizens at their doorstep.

It will be a court of the Judicial Magistrate of the first class. The GN will be established for every *Panchayat* at the intermediate level or a group of contiguous *Panchayats* at the intermediate level in a district or where there is no *Panchayat* at the intermediate level in any State, for a group of contiguous *Panchayats*. The GN will be a mobile court and exercise the powers of both the criminal and civil courts. *(TH, 01.10.09)*

Equal Opportunity Bill

The Bill that will seek diversity profiling of employees in public and private sectors to help in better recruitment of the disadvantaged people is to be introduced in the Parliament. The legislation that will recommend incentives and disincentives to employers based on information in their records and on their performance in the diversity index is in the final stages of preparation.

The Law Ministry is working on its final draft and it is the next major step in bringing the majority and the minority together in concern for equality. The diversity index will show how far a company concerned had gone about in providing affirmative action to the underprivileged sections as per Equal Opportunity Commission guidelines and its strengths and shortcomings in this respect.

(BS, 01.10.09)

In Search of Civic Virtue

– Gurcharan Das*

In the 1990s I travelled widely across India. From these travels emerged a conviction that India would soon rise economically, and for the first time in history Indians would emerge from a struggle against want into an age when a large majority would be at ease.

Prosperity has indeed begun to spread. During a quarter century of high growth, the middle class has quadrupled to around 250 million, while one percent of the poor have been crossing the poverty line each year since 1980, and this has added up to almost 200 million people. If our economy continues to grow rapidly over the next two to three decades – and there is no reason why it should not – then large parts of India should turn middle class in the first quarter of this century. At that point poverty will not vanish, but the poor will come down to a manageable level, and the politics of the country will also change. That is the good news.

It used to be the other way around. During our socialist days we despaired over economic growth but we were proud of our institutions. The Indian state is in steady decline today. Where it is desperately needed – in providing education, health, drinking water – it continues to perform dismally. Where it is not needed, it is hyperactive. According to the Centre for Civil Society, it requires 11 licences to start a school in Delhi, including an 'Essentiality Certificate', and most of these come with a bribe.

The bad news is that prosperity is spreading alongside the most appalling governance. It is an amazing spectacle — in the midst of a booming private economy, Indians despair over the simplest public services

When I speak of governance failure, I am not thinking of corruption in its usual sense — of the politician who is caught with a bribe. I feel anguish that one in four teachers in a government primary school is absent and one in four is not teaching. Two out of five doctors do not show up at a state primary health centre; a cycle rickshaw driver routinely pays a sixth of his daily earnings as bribe to the police. A farmer in an Indian village cannot hope to get a clear title to his land without bribing the *patwari*. One out of five members of the Indian Parliament elected in 2004 had criminal charges against him; one in twelve had been accused of murder or rape.

This raises an uncomfortable question: Is India rising despite the state? Indians are being forced to depend on themselves for the basic services that people take for granted in civilised societies. The poor, for example, are removing their children from government schools and placing them in indifferent private schools that are opening in the slums and villages of India. The same is true for health and water. The Indian state is so riddled with perverse incentives that accountability is impossible.

What is eroding at our moral fabric is not the big news on which the media focuses attention – Jehadi terrorism, Gujarat 2002, Naxalism - but these quiet, everyday failures. When a school teacher does not show up for duty, she wounds the dharma of our society, which has always regarded the guru as a model of behaviour. She also leaves her students with a terrible example in civic virtue. Every transaction of the citizen with the state, it seems, is morally ambiguous. As my driving licence is expiring soon, what nags me is this question – will I have to bribe to renew it? The reform of the Indian state is more important than even economic reform. We desperately need police, judicial, administrative and political reform. Scandinavian countries, the UK also suffered from poor governance. But they threw up leaders – Gladstone, Disraeli, Thatcher – who had the courage to fight vested interests and bring accountability to the state. Shouldn't this be or ought to be at the top of the mind of UPA leaders and on this government's agenda?

* *Former CEO, Procter & Gamble. This essay appeared in the Hindustan Times, on October 21, 2009.*

The Worrisome Babu-neta Nexus

– C P Bhambhri*

The moot question is: can permanent government officials indulge in corrupt practices without the protective umbrella of politicians?

Chief Justice K G Balakrishanan has set the cat among the pigeons by making a public statement on September 12, 2009 that 'if a public official amasses wealth at the cost of the public, then the state is justified in seizing such assets.'

Down to Earth

This made law minister Veerappa Moily to ask for a constitutional amendment and 'revisit' Article 311 of the Constitution which shields civil servants because they cannot be prosecuted without prior approval of the government. The persistent and prevalent evil of corruption among civil servants has infected the whole body-politic and it deserves to be tackled very effectively. Politicians in a democracy are the protectors and promoters of either corruption-free good governance or they are themselves engaged in governance based on the system of patronage.

Indian reality is that politicians have exercised their authority with a view to maximise their private benefit in cahoots with permanent officials. As a result, a nexus has developed between politicians and bureaucrats. Corruption has eroded the moral foundations of the Indian state and society. And politicians and public servants have completely weakened the foundations of democracy based on the principle of rule of law and equality of every citizen before the law. The Indian bureaucracy, headed by the IAS, the real Brahmans of the power structure, has played a relatively autonomous role whether during the period of economic planning or during the present phase of economic deregulation and liberalisation.

The prime minister is worried because the bureaucracy is not able to deliver the services to the public under schemes launched for the *aam aadmi*. While the delivery of services to the targeted public is a legitimate concern of the PM, it also deserves to be mentioned that the same bureaucracy which is not responsive to the needs of common man, is quick to perform the work of the powerful strata of society.

It should not be forgotten that the higher echelons of bureaucracy, both at the Centre and at the level of state governments, have developed close linkages with other centres of power, especially in the new sectors of economy like telecommunication, petro-industry, and every upcoming infrastructural projects for development. Big players are involved in the new sectors of the economy and these investors have shown immense capacity to 'co-opt and integrate' the public decision makers and a quid pro quo basis has been established between private business and industrial power centres and politicians and bureaucrats.

Many senior bureaucrats have migrated from public service to serve private Indian and foreign investors in the energy sector, telecommunications, and so on. Indian bureaucrats try to establish linkages with powerful private business elite while in public service by 'obliging' them at the cost of public interest and in return, the obliged big industrialists employ the kith and kin of the serving bureaucrats on lucrative terms and conditions.

Further, many important bureaucrats who have worked in crucial and critical ministries walk out of the government for lucrative private jobs. It's a worrisome situation that, of late, public bureaucracy has been privatised and has become the handmaiden of big Indian and foreign economic players. This privatisation of public bureaucracy is at the cost of public interest because public policies are bent and broken to the benefit of favourites in industry.

It is not only corruption, or casteisation or communalisation of bureaucracy but India has to be saved from its public servants who are at the beck and call of politicians and private powerful players whose interests are at variance with that of the government of the country. The upshot of the above narrative is that Indian bureaucracy has become an autonomous centre of power because of corrupt and obliging politicians who are fully linked with big business. This linkage of politician, bureaucrats and big business has corrupted the whole body politics of India. The cohabitation among these three powerful centres of power has adversely affected good governance in India.

* *Columnist, The Economic Times. Abridged from an article that appeared in the Economic Times, on October 03, 2009.*

Settling Mergers Faster

The Competition Commission of India (CCI) has decided to move faster in giving clearances to mergers and acquisitions (M&As) following concern that the limit of 210 days is too long a period when compared with practices prevalent in the US or European Union. Realising this they have set an internal standard of 45 days for those mergers which *prima facie* appear to have no appreciable adverse effect on competition. For cases, which need further investigation gathering, we would take another 65 days.

The 45-day limit would be the commission's own internal standard and would not be binding on it, clarified the acting chairman, CCI. The commission, he said, is empowered to revisit any merger approval even after a year if it appears that the process is distorting the market dynamics. *(FE, 08.10.09)*

Short of Hands – Less of Work

India's six-month-old competition watchdog does not have enough staff to tackle cases. The CCI probing complaints against companies such as HDFC Bank Ltd, Jet Airways (India) Ltd and even a division of the ministry of external affairs, has not been able to make much progress.

The CCI has had nine cases pending since May 2009, when it started operating. The complaints pertain to cartelisation or the abuse of a dominant position intended to eliminate or deter a competitor. "The main reason for cases not being disposed of is lack of officials at CCI", said a senior official at the MCA. CCI is armed with more powers than its predecessor, the MRTPC but has been strapped for staff.

(www.Livemint.com, 09.11.09)

The Future of Competition

– Rahul Singh*

India's competition authority – the CCI – is in an incipient stage. While the legislation was passed way back in 2003, the competition watchdog came into existence only a few months ago through the much-awaited notification of the legislation. CCI has an onerous responsibility ahead. It ought to make optimal choices as it focuses on its mandate of consumer welfare and seeks to earn legitimacy in the eyes of the market. Among other things, this would involve getting the commission's appellate structure right.

The fundamental economic rationale behind the promotion of competition is the reality of the scarcity of resources. In order to carry out its mandate of enforcement, CCI faces competing demands upon its available resources. This is exacerbated owing to the lack of adequately trained staff. Accordingly, the need of the hour is to select those few cases that involve a substantial impact upon consumers, and then to concentrate the commission's energy on them. That means prioritising cases. The legislation provides CCI with powers to facilitate such prioritisation.

It's worth noting that competition law is about protecting competition, not competitors. Businesses, however, have perverse incentives to utilise such a law to protect their entrenched interests. CCI needs to be cautious in order to ensure that it does not become a handmaiden for rent-seeking behaviour.

But there are legal problems ahead. As per the legislative framework, CCI's orders would be subject to appeal at the Competition Appellate Tribunal (CAT) and ultimately at the Supreme Court. In spite of the emergence of a plethora of regulatory authorities after 1991, Indian courts have been reluctant to employ the US doctrine of deferential review. In this doctrine, courts give adequate value to the decision of expert bodies such as CCI. Contrary to deferential review, Indian courts have in the past applied the standard of what is called de novo reviews – here, the appellate authority is willing to start hearing the case from scratch. This perhaps explains why a multitude of SEBI orders are often overturned by its appellate authority, the Securities Appellate Tribunal.

The trouble is that such reversals lead to uncertainty and unpredictability, increasing transaction costs for stakeholders. CCI's endeavour to seek legitimacy and credibility in the eyes of consumers here would mean getting courts to adopt some kind of deferential review.

Such legitimacy, if earned, will enhance certainty and predictability in CCI's decision-making process. As a result, businesses would have the opportunity to arrange their affairs in such a manner that they would be in a position to voluntarily comply with the law. Indeed, it is unfair to expect businesses to adhere to competition legislations if decision-making and jurisprudence at the competition authority suffer from fits of unpredictability. CCI is currently at a critical juncture. Carefully calibrated steps have the potential of ensuring that it does not become yet another humdrum regulator.

* *Assistant Professor at National Law University, Bangalore. Abridged from an article that appeared in Livemint.com on December 15, 2009.*

Competition Law Regime: New Regulations and Uncertainties

– Aparna Mehra*

The Competition (Amendment) Ordinance 2009 promulgated by the President of India on October 14, 2009 the competition law regime in India finally saw the end of the 40-year-old competition law regulator, the MRTPC.

The ordinance provides that section 66 of the Competition Act, 2002, which deals with repeal and saving, has been amended such that all cases relating to monopolistic trade practices and restrictive trade practices, or those involving a combination of restrictive and monopolistic trade practices or unfair trade practices will stand transferred to the Competition Appellate Tribunal (CAT) with effect from October 14. However, such cases will be decided by CAT in accordance with the older legislation, that is, the Monopolies and Restrictive Trade Practices (MRTP) Act. Prior to the ordinance, these cases were to continue with the MRTPC for a period of two years with effect from September 01 and transferred to CAT only after the expiry of the two-year period. However, as the MRTPC stands dissolved with effect from October 14, the two-year window granted to the MRTPC no longer exists.

Further, the ordinance provides that all cases pertaining to unfair trade practices will stand transferred to the National Commission under the Consumer Protection Act, 1986, with effect from October 14, which the National Commission will decide in accordance with the MRTP Act.

Apart from the changes mentioned above, the ordinance has not effected any other change to Section 66 of the Competition Act. All pending investigations or proceedings relating to unfair trade practices are to be transferred to the National Commission, and all pending investigation or proceedings (other than unfair trade practices) will be transferred to the Competition Commission of India (CCI), with effect from September 01. The CCI and the National Commission will have the power to conduct or order for conduct of such investigation or proceedings in the manner as they may deem fit.

If the ordinance is passed by both the houses of Parliament, the ordinance will become an Act and the shift from the MRTPC to CAT will become permanent

However, while these changes in the legal framework are noteworthy and will have a significant impact on the legal regime relating to competition, an important consideration is the nature of the promulgation bringing about this change. It may be noted that an ordinance is a law that is passed when Parliament is not in session and so the tenure of the ordinance is temporary. But during the life of the ordinance, it has the same effect as an Act of Parliament. When Parliament is not in session, the President can assume the legislative powers of both the houses of Parliament temporarily and promulgate an ordinance.

Accordingly, each ordinance has to be tabled in Parliament when the houses reassemble for their approval. The ordinance will cease to operate six weeks after Parliament reassembles or before the expiry of this six-week period if both houses of Parliament disapprove the ordinance. In the latter case, the ordinance will cease to exist from the date the second house of Parliament disapproves the ordinance. Therefore, the life of the ordinance extends to a maximum of six weeks from the date Parliament reassembles.

However, it is noteworthy that the lapse or disapproval of an ordinance will not affect the initial validity of the ordinance and the acts done and completed under the ordinance. Also, the ordinance will not become void merely because it ceases to operate. Therefore, any decision taken by CAT with effect from October 14 until the ordinance lapses will not affect the validity of the decisions or orders passed by it.

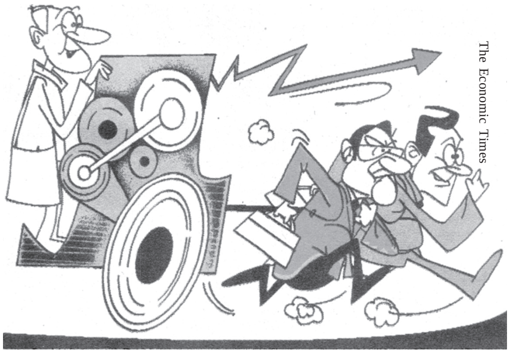
In the unlikely event that the ordinance lapses or is disapproved, the government will have to bring into existence the same state of affairs as existed before the ordinance was passed, even though the MRTPC has been dissolved. This scenario would certainly cause uncertainty and confusion that could only be detrimental to industry, by shifting regimes back from CAT to the MRTPC. However, if the government is persistent in dissolving the MRTPC, in the case of lapse or non-approval of the ordinance, it could table a new amendment Bill for the same before Parliament.

* *AZB & Partners, Advocates & Solicitors. The column appeared in Livemint.com on November 08, 2009.*

Competition Law & Inclusive Growth

– **Madhav Mehra***

Competition law is more a public policy challenge than a legal argument, and lawyers and judges dealing with it must both understand economics and show inventiveness to serve the cause of justice



The principal objective of competition law is to foster competition as an instrument for accelerating growth through innovation and economic efficiencies thus maximising consumer welfare by offering better products at lower prices. It achieves its objectives in three ways *viz*., prohibiting anti-competition agreements and practices that harm free trade and competition; preventing abuse of dominant position and anti-competitive practices that lead to such a dominant position; and regulating M&As.

Competition is irrefutably beneficial for every market participant. Competitive markets give consumers wider choice and lower prices. It gives sellers stronger incentives to minimise their costs through innovation and other productivity enhancing techniques. This enables firms to pass on cost savings to the customers and offer better products and greater choice at lower prices.

While there is a broad consensus on the competition policy objectives there is considerable divergence in the application and practice of competition law leading to question marks about its efficacy.

US antitrust decisions in the first half of 20th century exhibited hostility to large successful firms. This has since changed. Recent judgements have shown greater understanding of market economics and have been more judicious. Competition law poses more a public policy challenge than a legal argument.

The need for competition law becomes more evident when FDI is liberalised. The impact of FDI is not always pro-competitive. Very often FDI takes the form of a foreign corporation acquiring a domestic enterprise or establishing a joint venture with one. By making such an acquisition the foreign investor may substantially lessen competition and gain a dominant position in the relevant market thus charging higher prices. Another scenario is where the affiliates of two separate multinational companies (MNCs) have been established in competition with one another in a particular developing economy, following the liberalisation of FDI.

An economy that has implemented an effective competition law is in a better position to attract FDI than one that has not. This is not just because most MNCs are expected to be accustomed to the operation of such a law in their home countries and know how to deal with such concerns but also that MNCs expect competition authorities to ensure a level-playing field between domestic and foreign firms.

It has to be emphasised that a robust competition policy is central to economic reforms. Liberalisation, if not accompanied by competition laws and policy aimed at controlling economic behaviour and structures, can result in substantial price increases and reduced benefits for the overall economy. Hence the need for a strong and effective competition law which will ban anti-competitive agreements and encourage conduct where there are demonstrable net public benefits.

This is why India decided to abolish its archaic MRTP Act and passed the Competition Act 2002 thus shifting its focus from curbing monopolies to promoting competition. Competition policy is a complex, cross-cutting policy instrument which is affected by a number of interconnected factors. Its effective implementation requires a holistic and integrated mind with ability to hold two opposing views in mind and still have the capacity to function. Its practitioners, more than anyone, need to be men of "significant learning".

Competition law is essentially an economic law. It is anathema to the purists and doctrinaires. We are living in a world of harsh inequalities, inequity and injustice. There appears a widening disconnect between law and justice. Lawyers are heirs to a noble tradition of inventiveness. The most ennobling element of a lawyer's profession is his ability to ensure justice for his client. As Pope Paul VI said: "If you want peace, work for justice". Competition law is essentially an instrument that helps us achieve that elusive goal.

* *President, World Council for Corporate Governance, UK. Abridged from an article that appeared in the Economic Times, on November 04, 2009.*

Candle-Light Vigil

– Gajendra Haldea*

People don't seem to realise that part of the electricity they consume costs over Rs 11 per unit simply because someone is making a quick buck. Unscrupulous traders are selling to distribution companies at about Rs 7 per unit. After adding distribution costs and transmission and distribution losses of 30 percent, the delivered cost crosses Rs 11.

Such profiteering in an essential commodity like electricity would have normally attracted strong reactions but it has not happened primarily because distribution companies blend this high-cost electricity with cheaper supplies from dedicated sources and the impact is thus diffused. This would, however, lead to ever-higher consumer tariffs with each passing year.

If only open access to consumers were provided in pursuance of the Electricity Act, we would have seen a vibrant electricity market, leading to a lot more growth and welfare

According to the latest Economic Survey, traders sold 2,192 crore units in 2008-09 at an average price of Rs 7.29 per unit as compared to Rs 3.14 in 2005-06, implying a rise of 132 percent in just three years.

In addition, over 2,150 crore units were 'traded' through Unscheduled Interchange (UI) at an average price of Rs 5.37 per unit. In the last eight months of 2008-09, two power exchanges sold about 270 crore units at an average price of Rs 7.49 per unit. The total payments for 'traded power' thus aggregated about Rs 30,000 crore in 2008-09 and this amount is sure to increase in 2009-10. Assuming an average generation cost of Rs 2 per unit, profiteering exceeded a whopping Rs 20,000 crore in 2008-09 alone. All of it would be passed on to the hapless common man, who also bears the brunt of power cuts.

This exploitation occurs because the consumer is hostage to an interconnected chain of monopolies. There is no power producer in India who has open access to any consumer, howsoever large. In other words, no consumer buys electricity from a competing producer or supplier. He can buy from none other than a state-owned distribution company.

Even where privatisation of distribution has occurred, such as in Orissa and Delhi, public monopolies have been substituted by private ones. The scourge of monopolies has virtually decimated the power sector in India and the peak shortage increased from 11.2 percent to 16.6 percent over a five-year period ending 2007-08.

State-owned monopolies neither have the credit-worthiness to raise the required capital nor the ability to build the additional capacity necessary for meeting the rising demand. Nor can they inspire sufficient confidence to attract private investment, which accounts for only about 28 percent of the total investment, including captive generation.

As a result, about 40 percent of the households remain without access to electricity even after six decades of Independence and those who do get electricity suffer from poor quality of supply. The loss in terms of productivity, quality of life, employment and incomes is enormous by any standards, and diminishes India's hope to be at the forefront of emerging economic powers.

In contrast, a single private company has provided mobile phone connections to no less than ten crore customers across India, and it is not a monopoly as it has four strong competitors.

Every company can connect its subscribers to any other telephone through open access to the networks. This has created unprecedented opportunities, with about 65 percent of the total investment coming from the private sector. As a result, teledensity has increased from 7 percent in March 2004 to 37 percent by March 2009 when mobile connections exceeded 42.8 crore.

Over a crore new connections are added every month while call charges in India are, perhaps, the lowest in the world. Thanks to competition and open access, the telecom revolution has reached the *aam admi*—not just as rhetoric, but in reality!

The debate on introducing competition in the power sector began in February 2000 when the draft Electricity Bill was presented at the chief ministers' conference chaired by the prime minister. An extensive debate within and outside Parliament led to enactment of the Electricity Act 2003, which provides the legal framework for competition and open access, much the same way as telecom does.

Yet, no state has enabled open access to a single consumer during the past six years and the regulatory commissions have only been mute spectators. If there can be a good example of contempt of Parliament, this is it.

The electricity sold by power producers is only purchased by 20-odd state-owned utilities in what can best be described as a 'non-market'. Power-surplus states are 'exporting' to deficit states at exorbitant prices in violation of the constitutional provisions that prohibit barriers to inter-state trade.

Electricity is, perhaps, the only commodity market where all buyers are state-owned, most are loss-making. In an environment of shortages, these state-owned entities are driven more by political impulses than economic considerations. What is being passed off in the name of 'trading' and 'markets' is no more than a camouflaged vehicle for rent-seeking of unprecedented proportions.

If all mobile users were to get their connections only from a state-owned monopoly, the telecom sector would have resembled the power sector. Remember how hard it was during the pre-1990s to get a telephone connection?

A vibrant market got created only after competing players were allowed to access millions of potential consumers. Air travel went the same way; competition led to massive investment in expansion, besides reducing fares to less than half. As a result, the annual growth rate of air traffic exceeded 20 percent for several years.

In contrast, denial of open access to electricity consumers has meant the absence of a market, which in turn has led to scarcity of investment. If investors must remain confined to a handful of loss-making state-owned monopolies, they would rather venture elsewhere. If only open access to consumers were provided in pursuance of the Electricity Act, we would have seen a vibrant electricity market, leading to a lot more growth and welfare.

In 1990, the UK provided open access to all bulk consumers of one megawatt. This was gradually extended to smaller consumers and went right up to the household by 1999. Most of the developed world has followed this path over time. The electricity markets so created have benefited the consumers, suppliers and producers, and the respective economies too.

For example, a household in London can choose from among twelve competing suppliers of electricity. In India, even if you consume five megawatts, you can only buy from the area monopoly, your entitlement to choice under the Electricity Act notwithstanding.

The unmistakable objective of competition and regulation is to protect consumer interests. In the power sector, however, both seem to have deserted the common man. Competition is completely absent as no consumer of electricity is able to exercise any choice in the face of monopolies. As for regulation, the all-pervasive apathy of regulatory commissions to rampant profiteering in bulk supply suggests they have been captured by entrenched interests. No less than the Central Electricity Regulatory Commission has recently decreed that the price cap for bulk power will be Rs 8 per unit, thus legitimising sales up to that exorbitant ceiling in the name of "ensuring reasonable prices". A regulated wholesale price of 17 cents per unit would be a world record of sorts! In comparison, Enron was an angel at 7 cents!

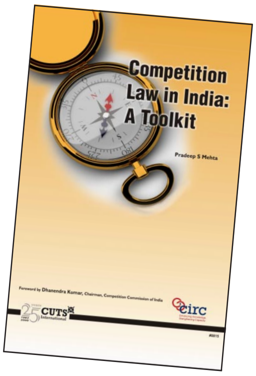
Incumbents in the power sector argue that India is not yet mature for open access and the examples of telecom in India or the power sector in developed countries are irrelevant. They forget India is in the select club of nuclear powers, it is a software leader and its growth in the telecom sector is second to none. It has enough entrepreneurs and capital for turning around the power sector if only the state-owned utilities would let go of their monopoly and licence raj. The power sector needs a shake-up.

As a first step, the government needs to declare that come 2012 (by when it has promised electricity for all), government offices in the state capital will observe a voluntary power cut of two minutes for an average outage of 100 minutes suffered by the common man. This would hopefully set the ball rolling. If not, it will at least demonstrate that the government identifies itself with the common man!

* *Adviser, Planning Commission. The article appeared in OutlookIndia.com on October 05, 2009.*

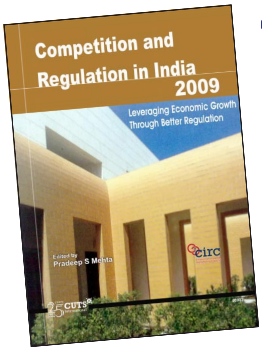
PUBLICATIONS

Competition and Regulation in India, 2009



This 2009 report, second in the series, is an effort to educate the public and the policy community about the effect of these various facets of public policy on competition and regulation. It focuses on the evaluation of quality of regulation in five sectors: power, ports, civil aviation, agricultural markets and higher education. India. The first report, published in 2007, lay down the rationale for a holistic competition policy and law regime in India. This study is an important contribution towards enriching the available literature in the public domain and encouraging a dialogue to promote a healthy and competitive environment as evolving an appropriate regulatory culture is always a learning curve.

Suggested Contribution: Rs 395/US$50



Competition Law in India – A Toolkit

India enacted its Competition Act in 2002 (amended in 2007) to deal with competition issues in a more liberalised economy. This law is a successor to the Monopolies and Restrictive Trade Practices Act, 1969. The CCI and the CAT are fully operational now. This Toolkit is researched, compiled and customised in the Indian context, and is meant to provide a simple and concise handbook on various implementation issues surrounding the Competition Act 2002. It provides the definitions, characteristics of and ways to deal with the trade practices which are forbidden by the Competition Act 2002, which are relevant in the Indian market currently, with practical case studies which can help the readers understand the issues relating to competition in India.

Suggested Contribution: Rs 195/US$40

ReguLetter

The October-December 2009 issue of newsletter, 'ReguLetter' encapsulates the Linkages between Informality, Competition and Economic Growth' in its cover story, which presents an argument as to how the informal sector may impact economic growth by altering the degree of competition in an economy.

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 Joseph E Stiglitz analyses that banks that are too big to fail are too big to exist. If they continue to exist in what is called a 'utility' model meaning that they are heavily regulated. Another special article by Asha-Rose Migiro says that developing economies are not only attracting investment, they are becoming investors in their own right.

About a Competition Law dwells on the competition scenario in Mozambique, 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/reguletter4-09.pdf

Competition Distortion in India

(October-November 2009)

This is the 4th volume of the bimonthly dossier that we are producing to report on distortions to the competition process in India. In this volume, we continue to report on issues which have cropped up in the printed media on likely adverse effects on competition and growth.

For example, two of the news items in this Volume relate to inputs for the power sector: equipment and coal, and how they have an adverse effect on not only competition but also the crucially required growth. We are in much deficit in the power sector and the current management of the situation do not show any hope of resolving the power famine.

For previous issues, please refer: http://www.cuts-ccier.org/Competition_Distortions_India.htm

SOURCES

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

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.