PolicyWatch

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

Volume 15, No. 4 October-December 2014

CUTS International

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*

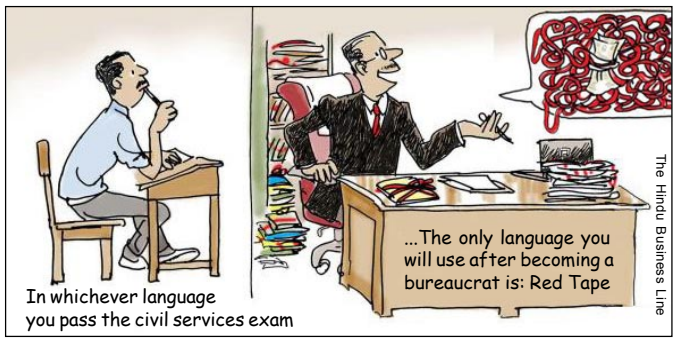
Will India Ever Change?

In spite of improving on some parameters, India has slipped down two notches in 'Ease of Doing Business' from 140 to 142 out of 189 countries in the last World Bank (WB) 2014 rankings report. The slide in position is also due to the fact that other countries have improved considerably since 2013.

This wake-up call has provoked the Government to ensure that our rankings will improve in the coming year as massive efforts are being taken to acquire 50th position in the not so distant future. This conflates with the ambitious programme of maximising 'Make in India'.

The Secretary in the Department of Industrial Promotion and Policy (DIPP), Government of India, Amitabh Kant, along with the WB, is leading the 'Make in India' campaign, under the leadership of Nirmala Sitharaman, State Commerce and Industry Minister.

In terms of starting business, Single Window Clearance has been adopted by various states. But is it functioning as well as it should? Other Ministries hate to surrender their turf.



Likewise, state issues like getting an electricity connection or registering properties require a cooperative federalism type of approach to create incentives for states to attract investment. A crucial ingredient is finding the right officer to lead this exercise in each state, otherwise all good intentions will remain on paper.

This leaves us mainly with two major problems. The first one is getting construction permits from city authorities, which are notorious for their uncooperative, rent-seeking ways. For acquiring such permits India has lowest ranking in the WB scale. Changing laws and procedures are not sufficient to deal with the delays. The other major problem is in the judicial system (delay in contract enforcement), which lies beyond the executive's domain. However, the executive could install ombudsmen to deal with investor grievances or encourage the use of an alternative dispute settlement system.

What the Government could do in this direction is get senior lawyer-ministers, such as Arun Jaitley or Ravi Shankar Prasad to engage our judges to improve the system. This is also critical for the common man who has to wait forever to get decisions from the courts.

At present, Amitabh Kant or other bureaucrats have to run their departments with a thousand routine and expedient tasks to attend to, apart from taking on these crucial larger responsibilities. The way forward for such task forces is to undertake regulatory impact analysis (RIA) and share the results with the public. An enlightened and capacitated public is often the best driver.

Published by **Consumer Unity & Trust Society (CUTS)**, D-217, Bhaskar Marg, Bani Park, Jaipur 302 016, India
Phone: 91.141.228 2821, Fax: 91.141.228 2485 Email: c-cier@cuts.org, Website: www.cuts-ccier.org
Printed by: Jaipur Printers P. Ltd., M.I. Road, Jaipur 302 001, India.

COMMUNICATION

Plans to Review M&A Norms

The Government of India will review the merger and acquisition guidelines for the telecom sector and a committee has been formed to look into the issues concerning the sector. "I have instructed the Secretary to look into issues of stakeholders and if there is a need to revisit merger and acquisition (M&A) guidelines, do that", Minister of Communications and Information Technology, Ravi Shankar Prasad, said. Telecom players have been pushing for a relaxation of M&A rules and a framework to buy and sell spectrum.

He said that the broadband needs to penetrate the way television has reached every nook and corner of the country. He also said that he wants his Government to be available to every citizen on mobile phone, adding that around 360 facilities are presently available on cellphones. *(BT, 05.12.14)*

Allocating Free Spectrum

Inter-ministerial Panel Telecom Commission has approved free allocation of 20 megahertz (MHz) of spectrum for cordless telephone system that can be used for communication within a premise or a similar small area for non-commercial purpose. This move will reduce telecom bills of business houses within their premises and also boost development of cordless telephone systems in the country.

The Commission has said that implementation of the Telecom Regulatory Authority of India (TRAI) recommendations would advance the objectives behind Digital India. The Defence Ministry had objected to the recommendation as the 20MHz frequency spot lies in the band, which is used for its communication services.

The Ministry has raised security concern on freeing up spectrum for general public. The Telecom Commission suggested that the Department of Telecommunications (DoT) and Defence can continue their discussion for an amicable solution. *(NDTV, 10.11.14)*

DoT Agrees on Defence Band

In a move that will free up the 3G telecom spectrum for at least three new carriers, the DoT has finally agreed to the Defence Ministry's demands for a defence band and a so-called defence interest zone (DIZ).

Provisions for the defence band and DIZ were laid down in an agreement signed between the DoT and the Defence Ministry in May 2009 for vacating spectrum by the defence forces.

Once the rules are cleared, the defence will vacate 15 Megahertz (MHz) of 3G spectrum in the 2100MHz band. While the Defence Ministry has been willing to vacate 150MHz of spectrum out of 300MHz in this band, the DoT said that internationally around 230MHz of this highly valued band is used commercially. *(LM, 12.11.14)*

Generating 40 Lakh Jobs

India's telecom industry is expected to generate 40 lakh direct and indirect new jobs in the coming five years, spurred by growing potential in rural markets and rising Internet penetration, said the experts. The surge in demand would be seen for skilled technicians, engineers, installation and maintenance service providers, sales, marketing, etc. in the sector.

"The telecom sector has been growing aggressive at an average for 35 percent a year for close to two decades and continues to be a job creator even though the boom period is over", Randstad India Chief Executive Officer, K Uppaluri said. Experts also opined that making more spectrum available and rationalisation of tariffs, among others, would help while the challenge will be to get the right talent. *(ToI, 02.10.14)*

Penalty Imposed on Telcos

A total penalty of about ₹2,179.41 crore was imposed, since the inception till September 30, 2014 on telecom operators for violations of verification guidelines. Ravi Shankar Prasad, said that the verification of identity of mobile phone users is mandatory and the DoT has been issuing instructions from time to which contain procedures for verification of identity of mobile subscribers.

"These stipulate that mobile connection should be issued on the basis of documents as proof of identity and proof of address", he mentioned. Prasad also said that the Department has found from the audit of customer application forms (CAF) that only about 4 percent of CAF were non-compliant to the subscriber verification guidelines during 2013-14. *(BL, 10.12.14)*

No Roaming Charges

Mobile users will be able to retain their numbers even if they relocate from one telecom circle to another and will not have to pay roaming charges while travelling out of their city, from March end. At present, the mobile users can change service operators within the circle. Telecom Commission's decision will be placed before the Communications and Information Technology Minister for final approval.

TRAI had suggested that telecom operators should be given six months to make necessary changes in their network. Implementation of full Mobile Number Portability (MNP) is expected to help pan-Indian players gain subscribers at the cost of the operators, whose customers relocate to states they are not present in. According to data, free roaming is likely to benefit at least 12 percent of mobile users. *(BS, 29.12.14)*

• TRANSPORT •

New Civil Aviation Policy

A new civil aviation policy is being prepared by the Government and is reviewing the work in connectivity-linked infrastructure sectors, Prime Minister Narendra Modi has emphasised the need for faster inter-ministerial coordination and resolution of issues, and laid stress on achieving visible results in clear timeframes.

Modi directed strict monitoring of the projects, based on monthly completion of targets and said that he looked forward to a meeting with the coastal states to discuss infrastructure, coastal security, island development and tourism in an integrated and holistic manner.

The review focussed on the progress of work towards achievement of targets in the sectors of road, railways, shipping and civil aviation. Modi also underlined that the development vision of various connectivity-related infrastructure sectors should be inter-related and closely coordinated. *(FE, 05.11.14)*

New Road-building Target

Road Transport Minister Nitin Gadkari said that there would be ten times increase in the pace of road construction activities in the following two years. He said that the new Government has, in the first four months of coming into power, cleared projects worth ₹1,87,000 crore, while work on projects is currently in progress.

Gadkari also said that the Government has formed a committee to review the model concession agreement for road development. "The present agreement is very much against contractors and bankers. The new model concession agreement will be built on international standards", he added.

Ajit Gulabchand, Chairman of Hindustan Construction Company said that contracts must have a credible dispute mechanism and should be followed in spirit.

(BS, 05.11.14)

Development of Waterways

The Government will increase its focus on development of waterways for passenger traffic and goods movement, Nitin Gadkari said. "We should give more stress on development of waterways as it is a cheap mode of transportation", he added.

Gadkari also opined that as compared to China where 44 percent passenger and goods traffic were transported through inland waterways, it was the only three percent in India. Moreover, the Government would notify more national waterways for which a Bill would be tabled in the Parliament.

According to the Chairman of Inland Waterways Authority of India (IWAI), Amitabh Verma, there were five notified national waterways in the country at present and the states should also make efforts to develop their waterways, which would feed the national waterways to form an integrated grid. *(TH, 25.12.14)*

Protest against the Centre

In a significant move, the Bihar Government has decided to put up posters of Prime Minister Narendra Modi on proposed roads in villages where works could not begin for lack of central funds, under the *Pradhan Mantri Grameen Sadak Yojna* (PMGSY) scheme.

"The State Rural Works Department will put up boards of Prime Minister Narendra Modi on the proposed roads in villages where work could not be taken up due to absence of funds under PMGSY scheme", threatened Rural Works Department Minister Shrawan Kumar.

The Minister also declared that during the upcoming winter session of the Assembly, he would request for allocation of special fund for putting up boards with Prime Minister's name on such roads 'so common people know why their roads could not be made'. *(TH, 03.12.14)*

Changes in Road Contracts

The Government is set to overhaul highway contract documents to provide extra comfort to lenders and project developers. Some of the major changes proposed include the provision to align National Highways Authority of India's (NHAI) total project cost (TPC) with that of assessment made by lenders, which will ultimately reduce the gap between lenders TPC and that of the NHAI.

This is crucial for lenders considering the fact that in the past they have suffered due to divergence in the project cost estimated by the developer and that of NHAI.

To facilitate greater participation of private players, there is also a proposal for change in ownership and full divestment of equity by the developers immediately after NHAI allows it to collect toll.

(ToI, 20.10.14)

Tariff Model for Bids

In an attempt to protect consumers and airlines from escalating prices at private airports, the Ministry of Civil Aviation might, for the first time, seek tariff-based bids from companies seeking to operate airfields at Jaipur and Ahmedabad, where bidders quoting the lowest tariff would win the projects.


www.alisarhotelsrajasthan.files.wordpress.com

The move is aiming at curbing sharp increases in charges at airports after they are privatised, as seen in some cases that were awarded on a revenue sharing basis.

"The model is being discussed...the cost that the prospective airport operator would incur in terms of expansion or construction would be known to the bidder beforehand. Airports Authority of India (AAI) would either ask for a one-time charge for using the infrastructure or lease rentals", explained a senior AAI official. *(ET, 14.11.14)*

• OIL & GAS •

Pipeline Safety Guidelines

The Petroleum and Natural Gas Regulatory Board (PNGRB) has floated a draft of new guidelines for implementing a safety mechanism for the country's oil and gas pipeline infrastructure. The Integrity Management System for Petroleum and Petroleum Product Pipelines Regulations, 2014 will be applicable uniformly to all oil companies.

Under the new system, all pipeline operators would have to conduct in-line inspection of pipelines to locate deformation, corrosion, detection of pressure loss due to rupture and use of sensors for detecting oil and gas leakages.

Moreover, the companies would have to conduct ground, aerial and electronic surveys at regular intervals to locate and check leakages and pilferage. Satellite imaging methods will also be used to check pipeline disruptions every month.

(BS, 13.12.14)

Positive Impact of Prices

Key oil and gas sector reforms like diesel deregulation and a new gas pricing policy will have a positive impact on companies engaged in fuel retailing and gas production, according to a report by Fitch Ratings.

Expecting oil prices to remain under pressure, Fitch Ratings reported that the deregulation of diesel prices will help in lowering the under-recoveries. The reduction in under-recoveries will mean a substantially lower working-capital requirement and related debt for the state-owned oil marketing companies. The lower crude oil prices will also reduce working-capital needs.

The deregulation provides a level playing field for private players to market petroleum products. However, it will take some time for these players to meaningfully expand their retail network. *(ET, 17.12.14)*

Fuel Conversation Education

As part of the Government's effort to lower consumption and wastage of fossil fuels, the Ministry of Petroleum and Natural Gas will write to the Ministry of Human Resource Development to introduce fuel conservation in school books.

The focus of this outreach programme will be students, home-makers, domestic helps, drivers and diesel genset users.

The Ministry will also launch a citizens' drive to connect with the masses. The Conservation Fortnight will include activities, such as technical seminars, symposiums, quizzes, painting competitions and marathons.

A national level essay competition will be organised to propagate the message of conservation among students, while orientation programmes will be held for homemakers, domestic help and public transport drivers. *(ET, 12.12.14)*

Crude Fall to Oil Economy

Nearly 40 percent down since June, international crude prices are close to levels last seen in 2009, when the global economy was gripped by its worst slump, since the 1930s. Indians though are not enjoying commensurate savings on fuel bills, retail prices of petrol and diesel are not declining at the same pace as the plummeting price of crude. Consumers are paying 8.32 percent less for diesel and 11.31 percent less for petrol than on June 01, 2014.

The sharp fall in global crude prices has a favourable impact on India's macro economy, setting off multiple growth boosters. Investment bank Nomura estimates that the US$40 fall can potentially boost the growth by up to 0.4 percent points to 6 percent in the current financial year.

(TH, 09.12.14)

Mixed Blessing for India

As the world's fourth largest importer of crude, India can afford to exult at the precipitous crude price decline the long-term impact of lower oil prices is likely to be felt beyond the economic domain.

India can leverage the current low oil prices for long-term gains. It can foster long-term crude supply relationships with the exporters in return for stable prices, upstream engagements, inbound investments, etc. It can enter into oil-for-infrastructure barter deals to boost project exports.

Moreover, it can restructure public sector oil companies to make them more productive and globally proactive for leaner times ahead. It can channel some of the oil bonanza to mitigate the increased cost disadvantage of renewable and alternative energy sources. Further, it can build its own strategic oil reserves. *(TH, 29.11.14)*


www.livemint.com

Energising Gas Firms

In the year 2013, two controversial and one politically sensitive decision were taken. One was the Government deciding to stop controlling diesel price, allowing it to be set by the market and the other to increase the domestic price of natural gas to US$5.6 per million metric British thermal units (mmBtu) from the earlier US$4.2 per mmBtu. The Government also relaunched a scheme to directly transfer cooking gas subsidies to customers' bank accounts.

Together, the three decisions have set the stage for companies in the sector for the next few years. They no longer have to sell the fuel below cost, which adds to under-recoveries. This also clears the way towards higher marketing margins and lower working capital needs. *(Mint, 22.12.14)*

• POWER •

Hike in Rates Approved

The Uttar Pradesh Electricity Regulatory Commission (UPERC) has approved the tariff hike of domestic, industries, commercial and agricultural connections of about 12 percent, 7.38 percent, 6.28 percent and 12.20 percent, respectively.

For residential consumers, the average rate has been raised from ₹3.55 per unit to ₹3.97. Similarly, for industries, commercial and agricultural connections tariff has been increased from ₹7.04 -7.56, ₹6.64 -7.05 and from ₹3.19-₹3.58 per unit, respectively. The UPERC informed that the tariff for consumers having lower consumption would be lesser as compared to consumers with higher consumption pattern.

Meanwhile, the representative of Consumer Forum will study the order and respond appropriately to protect the interests of the consumer as it would only put additional burden on the consumers. *(BS, 01.10.14)*

Discoms Checking Losses

The Discoms (distribution companies) have asked the farmers to voluntarily declare their electricity loads to prevent revenue loss due to electricity supply in agriculture fields. In current practice, they do not disclose their actual load but deploy heavy electrical appliances in the fields.

It exerts a load on the system installed to cater to the load declared by the consumers. As a result, the whole system crashes disrupting the whole electricity supply.

These steps have been taken after continuous losses in revenue from agriculture sector. If agriculture consumers start declaring their true load than it will enhance the quality of electricity supply in the agricultural areas and also help Discoms to provide continuous supply in agricultural areas. *(DNA, 26.10.14)*

Funds for Solar Power

Solar power plays a major role in achieving the ambitious target of the Government to provide 24x7 power to entire country. At present, it is just 2,500 MW out of total installed power generation capacity of close to 250,000 MW. To take this to 100,000 MW of installed solar power over the next 10 years, it would need funds to the tune of ₹6 lakh crore or US$100bn.

A programmatic engagement is underway with funding agencies on solar sector supporting the government's initiatives. These would be done through a long-term partnership with Solar Energy Corporation of India, focussing on three dimensions: supporting ultra-mega solar power plants through long tenure financing; large scale 100 MW rooftop decentralised solar power; and by setting up solar power projects. *(HT, 03.10.14)*

Tackling Power Theft

The Government will strengthen sub-transmission and distribution networks to cut technical and commercial losses and improve collection efficiency. The project will cost ₹32,600 crore, of which, ₹25,300 crore will come from government to tackle rampant theft of electricity.

The Government will roll out meters on distribution transformers, feeders in urban areas, the Power Ministry said in a statement, following the Cabinet's approval of the project.

Cutting electricity theft and reducing transmission losses are part of Prime Minister Narendra Modi's efforts to bring uninterrupted power to the whole country. Cheap or free power is viewed as a right rather than a privilege by many, and poor policing and antiquated transmission lines result in as much as 40 percent of electricity going unpaid for in some states. *(BL, 21.11.14)*

Plans to Cap Mining Cos.

The Coal Ministry has decided to have tighter monitoring norms for mine developers in the next round of allocations/auctions. The draft rules for the e-auction and allocation of blocks intends to cap the number of coal blocks a company can bid for to prevent any monopoly in the sector. The cap will be applicable for public as well as private sector entities.

Developers will have to furnish a performance bank guarantee, which can be encashed if they fail to meet work commitments. There are instances of coal miners, including those in public sector undertakings, not commencing any work on the assets they own. The Government can impose terms and conditions as needed, adds the draft. *(BL, 19.11.14)*

Restoring Electricity Supply

The Appellate Tribunal for Electricity (Aptel) has passed an interim order, asking Adani Power to restore and maintain supply of electricity to Haryana's state utilities, as against the contracted capacity of 1,424 MW, without interruption.

Adani Power cut electricity supply from Mundra based power plant to Haryana utilities for default in providing an escrow account, just two days after Supreme Court stay on Central Electricity Regulatory Commission (CERC) and Aptel earlier orders granting compensatory tariffs for cost inflation attributable to imported coal.

The order further said that tribunal is concerned with the conduct of Adani Power in not informing the Tribunal before taking decision to abruptly stop the supply of power to Haryana utilities. *(FE, 02.10.14)*

Kotak Acquires ING Vysya

The private sector banking space witnessed its first consolidation move in four years with ING Vysya Bank and Kotak Mahindra Bank (KMB) announced their merger in an all-stock deal. The deal, valued at US$2.5bn (about ₹15,000 crore).

Under the share swap ratio, ING Vysya's shareholders will get 725 equity shares of ₹5 each of KMB for every 1,000 equity shares of ₹10 each that they hold. Once the amalgamation goes through, the resulting entity will become the fourth-largest private sector bank.

KMB, which has established itself in the consumer and wholesale banking segments, will benefit from ING Vysya's strong SME business. The transaction will be subject to statutory approvals, including those from RBI and Competition Commission of India (CCI), in addition to the shareholders' approval. *(BL, 20.11.14)*

FDI Rules Eased

The Union Cabinet eased foreign investment rules in India's construction sector. The new rules, proposed in the Union Budget, include reducing the built-up area requirement for Foreign Direct Investment (FDI) in construction projects to 20,000 square metres from 50,000 square metres. The minimum capital requirement has also been reduced to U$5mn from U$10mn.

The new rules will make it easier for Prime Minister to attract investments to build smart cities and affordable homes in the country. It is also likely to help improve the crumbling infrastructure in Asia's third-largest economy and provide impetus to key manufacturing industries, such as cement and steel. *(Mint, 30.10.14)*

Enforcing FSLRC Proposals

Amid opposition from the Reserve Bank of India (RBI), the Government is hoping to implement a majority of recommendations of the Financial Sector Legislative Reforms Commission (FSLRC), including setting up a financial sector appellate tribunal. The FSLRC was formed, under the chairmanship of retired Justice B N Srikrishna, which submitted its report in 2013, in which it suggested an overhaul of financial sector laws and forming a unified regulator.

The FSLRC recommendations were vehemently opposed by RBI Governor Raghuram Rajan, who recently termed them as 'schizophrenic'. Rajan also said that too many checks and balances would vitiate the flexibility accorded to regulators. "No one, not even the regulator, is above the law", said Justice Srikrishna. *(FE, 29.11.14)*

Privatisation Back on Table

Privatisation of state-run firms may be back on the policy radar after a decade. Finance Minister Arun Jaitley said that the Government will consider in 'due course' capital infusion to the extent of ownership change in Central Public Sector Enterprises (CPSEs) that are on the verge of closure.

The scope of such a policy change is big, given that as many as 79 CPSEs including Air India, Bharat Sanchar Nigam Limited (BSNL) and Mahanagar Telephone Nigam Limited (MTNL) reported losses in FY13. Of these, 48 have been recommended for revival and others for closure by the Board for Reconstruction of Public Sector Enterprises.

There are large number of companies that are substantially on government support and this is not a sustainable proposition, he said adding that taxpayers cannot endlessly finance loss making enterprises. *(FE, 05.11.14)*

Hike in ATM Charges

The ICICI Bank has announced a hike in its Automated Teller Machine (ATM) charges for saving account holders from January 01, 2015. Under the new method, the number of free transactions in a month is fixed at five using own ATMs, while it has been capped at three for other banks' machines.

Customers can enjoy only five free transactions, including financial and non-financial, at the bank's own ATM, it said in a post on its website.After exceeding the free transaction limits, customers will have to pay ₹20 per financial transaction excluding service tax and ₹8.50 for every non-financial transaction, it said. *(FE, 08.12.14)*

REFORMS AND POLITICS

Impact of Tax Policy

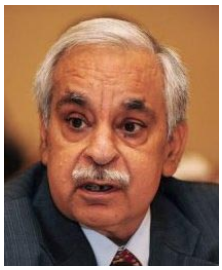
FM Slams 'Unsustainable' Taxes

Arun Jaitley, Finance Minister of India, said that an unsustainable tax demand would only earn the country a bad name as an investment destination. The Minister's comments come in the wake of the Income Tax department losing its battle against Shell in Mumbai High Court. He, however, maintained that those who are supposed to pay taxes must pay.

Referring to retrospective amendments to the tax laws by the previous government, he said, if the government was not investor-friendly, people would start looking elsewhere. The Minister said he would like the Insurance Bill, Coal laws and Goods and Services Tax (GST) to get passed in the ensuing winter session of Parliament. "Economic reforms have also to be blended with competent and clever politics", he added. *(TH, 22.11.14)*

Defence-DoT Tussle Needs Political Resolution

In its recommendations to the Government, TRAI has made it clear that holding an auction in February without adequate spectrum could spell doom for the industry and consumers. But the Telecom Commission has rejected the possibility of getting additional airwaves from defence services and sent the suggestions back to the regulator for reconsideration.



The Telecom Commission has quashed earlier recommendations and referred those back to TRAI. How realistic are its points?

Officially, we have not yet received a back-reference from the DoT. When we do, we will respond. Like in 2010, it is likely to be a supply-constrained auction this time as well. So, we need to increase the availability of 900 megahertz (MHz) and 1,800-MHz spectrum. If the Government cannot presently release spectrum for commercial use, it should give a clear road map for 700-MHz and 2,500-MHz bands, for the future.

But a shortage of spectrum cannot be mitigated till defence services vacate 2,100-MHz spectrum for commercial use.

If the aim is to deliver on broadband and 'Digital India', the Government has to make more spectrum available for commercial use. What is required is a proper mapping for allocation. Defence services have spectrum sitting idle. That can easily be vacated for commercial use, after considering security concerns.

What do you think can resolve the Defence-DoT tussle?

The Defence-DoT tussle needs political resolution. The way things are moving, the industry might be heading for serious issues; this inter-ministerial impasse cannot be allowed to continue. The health of the industry should surely be on the Government's mind. After all, the industry is the source of recurring revenues. Besides the spectrum auction price, the government also gets the licence fee, spectrum usage charges, corporation taxes and service tax. By comparison, with spectrum sitting idle, the government actually loses money.

If the Government decides to go ahead with the auction without resolving the spectrum crunch issue, what could be the result?

If the incumbent operators, after having invested years in building infrastructure, fail to retain their current spectrum holding, they will have to shut shop. This will disrupt the entire ecosystem.

Then why is the Government not resolving the issue?

With a shortage of spectrum, the Government's 'Digital India' agenda will fail. To realise the objective, we need to take hard decisions for making airwaves available.

Should the planned auction be put off till there is enough spectrum to offer? If operators and consumers, as you say, are likely to be affected – why did you not recommend extension of licences?

Postponing the auction was never on TRAI's agenda. In fact, extending licences could have been very dangerous. How would you decide a market-determined price for spectrum if you extend licences and do not auction spectrum? And, if you ensure availability of spectrum to incumbents, what will you auction?

Is there an alternative to resolve the crisis?

Globally, apart from the auctions, there are a few other models as well. In several other countries, the number of operators is capped and the licences are renewed from time to time.

Are TRAI and the Government heading for a policy impasse?

Like it happened in 2013, the Government will take a final decision after response to back-references. But, an impasse is unlikely. As we said earlier, if TRAI's idea of reserve pricing is not acceptable, DoT could devise its own methodology. The problem is that nobody wants to take a decision.

DoT has also rejected the proposal for an extended-Global System for Mobile Communications (GSM) band. It has also said it cannot take back spectrum from BSNL because that is not legally tenable.

The extended-GSM band is only one way of increasing spectrum that is equivalent to 900-MHz. What is the problem in getting back 900-MHz spectrum from BSNL? The Government owns the company. BSNL has not paid for the spectrum to boot. We have suggested taking back part of the spectrum it holds in the 900-MHz band and giving some 1,800-MHz spectrum instead. This is a policy issue, not a legal one.

– Excerpts from an interview of Rahul Khullar, Chairman, TRAI. This was published in Business Standard *on November 13, 2014.*

Why Indian Ports Cannot Compete with Colombo?

TE Raja Simhan*

Currently, no Indian Port has the infrastructure to rival the facility in Colombo, which is equipped to handle large ships. India should develop a port that has the capability to challenge established regional hubs, such as Dubai and Colombo for the title of preferred relay point in the region

Cargo ships are getting bigger to handle larger volumes from Asia, particularly China, to Europe and the US. The container ship CSCL Global is the new 'monster at sea' over 100 mega ships with carrying capacity of around 15,000 boxes on board sailing across the oceans.

However, not one such vessel calls at Indian ports due to inadequate volumes and infrastructure – both at waterfront and onshore.

The average ship size handled at Indian ports is of a capacity of around 5,000 boxes. This is enough for at present but as volumes increase multi-fold in future, ports need to be ready.

The smaller size vessels came to the market two decades ago and could become defunct over the next five years to make way for large vessels that will call at ports that have good infrastructure, industry sources said. Currently, cargo to US or UK are taken to transhipment ports, such as Colombo, Singapore or Jebel Ali to be shipped to final destinations in large mother vessels.

This increases logistics cost by 10-20 percent. Also, if there is a delay in containers reaching the Chennai port, there is a chance that the box will miss the connecting ship at the transhipment port.

Poor infrastructure

In 2013, the Mundra port handled the 14,000-twenty-foot equivalent units (TEU) container ship MSC Valeria – the record still holds. Indian ports cannot dream of handling vessels, such as the CSCL Globe which is 1,312-ft long, 192-ft wide and 100-ft deep in the near future due to poor infrastructure, according to the industry sources.

Ports are enhancing their infrastructure to handle larger ships. Over the next 5-6 years, should the goals of the Maritime Agenda 2020 be realised, there should be at least "transshipment capable mega ports", said Srinath Manda, Programme Manager, Transportation and Logistics Practice, Frost & Sullivan. There is significant demand related to India's own exports and imports, which is being fulfilled through medium sized or feeder vessels from Colombo and Singapore.

This may continue for the next few years until one or two major transhipment capacity ports are developed, he added. Nhava Sheva handles around 45 percent of India's container volume but does not have deep draft.

In the near term, India will handle vessels with carrying capacities up to 9,000 TEUs, according to sources in Gujarat Pipavav Port Company (GPPL) of APM Terminals, Netherlands.

Sources in GPPL said that currently no Indian port has cranes with the outreach required to handle large ships. India should develop a port that has the capability to challenge established regional hubs, such as Dubai and Colombo for the title of preferred relay point in the region.

Skipping port

There should be an internal hub and spoke model that will allow smaller ports to feeder cargo to the hubs. This will also call for relaxation of Cabotage.

K Ravichandran, Senior Vice-President, ICRA Ltd, said that major ports handling containers have drafts of 10-14 m, which does not permit handling of vessels of over 15,000 TEUs. Due to lack of volumes, large mainline vessels skip Indian ports. As a result, infrastructure has also not kept pace with trade requirements.

* *Business Journalist. The article appeared in* The Hindu Business Line *on December 16, 2014.*

Supreme Court Turns Heat on Coal

In a major blow to companies involved in coal mining, the Supreme Court has ordered the cancellation of 214 of the 218 coal blocks that were allocated between 1993 and 2011 considering it illegal and arbitrary. It has also imposed a penalty of ₹295 per tonne on the coal illegally extracted by 42 companies which had commenced production.

The verdict evoked strong reactions from the corporate sector. Most companies hoped the Government would have a Plan B that would, among other things, make clear on what happens to the investments already made.

The judgement did no deal with any individual case. It dealt only with the process of allotment of coal blocks and found it to be illegal and arbitrary

A three judge Bench comprising Chief Justice RM Lodha and Justice Madan Lokur and Kurian Joseph rejected the argument made on behalf of the coal companies that the cancellation of the blocks would have a huge impact on the economy. The court rejected the argument that, as many of the allottees had not yet entered into any mining lease or commenced production their allocations should not be cancelled. Four blocks that were spared are Moher and Moher Amroli Extension of Sasan Power (ultra mega power project); Tasra allotted to Steel Authority of India Limited (SAIL); and Pakri Barwadih to National Thermal Power Corporation (NTPC).

Blocks allocated to Anil Ambani-run Reliance Power's 3,950 MW Moher and Moher Amroli Extension of Sasan Ultra Mega Power Project and one each belonging to SAIL (Tasra) and NTPC's (Pakri Barwadih) were spared the de-allocation. The reason for exempting Reliance's two coal blocks was that the Sasan project was awarded to Reliance Power through a tariff-based international competitive bidding process.

Re-allocation of 74 Coal Blocks to Begin

Furthermore, among the captive coal blocks cancelled by the Supreme Court, re-allocation of the first lot of 74 will be completed by March 15, 2015, according to Coal Secretary, Anil Swarup. A clutch blocks to be identified among the 74 will be made available to the companies with specified end-use plants like power, steel and cement, including those in the private sector, through an e-auction process that will commence on February 11. The remaining will be allotted to the central and state Public Sector Undertakings (PSU) Surplus Asset Management (SAM) auction.

For coal mined prior to the Supreme Court order, that is up to September 24, the additional levy will have to be paid by December 31, 2014, and for the coal extracted from September 24 to March 31, 2015 (when the cancellation will take effect), the levy will have to be paid by June 30, 2015.

The mines classified under Schedule II (42 operational mines) in the Ordinance issued will be available for those end-users who have made an expenditure of 80 percent of the total project cost. For Schedule III mines (32 near-operational mines), only the end-users who have made investment of 60 percent of the total project cost can bid for the coal blocks. "Apart from the 74 blocks, we may also include a few blocks from schedule I (204 cancelled blocks) depending on the preparedness of a coal block", Swarup said.

As per the draft rules, the e-auction of coal blocks will involve a two-stage tender process of technical and financial bids. The details regarding valuation and mines available for auction will be finalised before December 22, the likely date for issuing the request for proposal (RFP).

Although the companies that currently hold the coal blocks being re-allocated would not have the right of first refusal (ROFR), the process will involve a lot of operational leeway for them to offset the absence of the ROFR. The winners of the 74 blocks will be allowed to swap the coal produced from the blocks among themselves, provided their end-uses are the same.

The companies that would get the captive coal blocks by bidding for them will have to pay 10 percent of the respective blocks' 'intrinsic value', or floor price, immediately after they win the bids. The successful bidder will then pay the intrinsic value minus the upfront payment in annualised instalments on R/tonne basis. The state-sector companies and case two power projects that will be allocated the blocks will have to pay reserve prices for the respective blocks to be determined.

– *This feature has been abridged from articles published in* Business Standard *and* Financial Express *on September 24 and November 20, 2014 respectively.*

Amending MSME Act

The Government has proposed amendments to the Micro, Small and Medium Enterprises (MSME) Act with the twin objectives of time-bound exit and revival of loss-making units.

The proposed amendments include establishment of revival and exit committee as an adjunct to MSME facilitation council and establishment of appellate authority.

Moreover, the MSME can file an application voluntarily if accumulated losses of the enterprise equals to half or more of its entire net worth for last financial year and enterprise apprehends failure of its business specifying revival plan or exit through liquidation proceedings.

The changes proposed are in tune with the Companies Law and Limited Liability Partnership (LLP) Act, 2008 with regard to limiting liabilities and improving process for winding up with affordable litigation process/ administrative mechanism.

(BS, 16.11.14)

M&As Need a Big Push

India needs to encourage M&As to promote the size of its corporates, Finance Minister said. "We have reached a situation where a huge amount of capacity building is taking place".

He expressed confidence that the Indian economy's learning curve would substantially increase in the coming days in the area of 'merger control' as it draws upon global experiences on this front.

The CCI Chairman Ashok Chawla said that the merger control regime in India was only three years old. However, the competition regulator has in these three years handled over 200 M&A cases, including some involving extensive investigations due, in substantial part, to learnings from global experiences, Chawla said.

(BL, 01.12.14)

Road Map for Economy

If India wants to build a US$10tn economy by 2034, growing at 9 percent a year, it will have to focus on investments in R&D and undertake radical improvements in the Human Development Index, PwC said in its recent report.

The report defined three possible scenarios for India's economic growth. First is the "Winning Leap", the most aggressive growth scenario and the only one that will generate the 240mn new jobs India's growing demography needs, as per the report.

"India can only build shared prosperity for its 1.25bn people by transforming the way the economy creates value", said PwC Global Chairman Dennis Nally. The other two scenarios in the report are "Pushing old ways faster" and "Turbocharging investment". *(TH, 25.11.14)*

Rise in Total Transactions

M&A activity involving domestic companies has seen a jump buoyed by the improvement in gross domestic product (GDP) growth numbers and projections of better prospects for the economy going forward. The first nine months of calendar 2014 saw a 16.5 percent rise in the M&As deals at US$26.1bn over that in 2013.

According to a report by Thomson Reuters, the activity has been led primarily by domestic M&As while the cross border deals saw a decline. The value of domestic M&As stood at US$11.1bn, up by 207 percent, over the same period in the year 2013.

Cross border M&As, however, dropped by 40.2 percent to US$10.7bn over that in the same period in 2013. This pick-up benefited the advisory firms the most as their fee incomes rose. *(IE, 04.10.14)*

Minstry Proposes Changes

The Ministry of Information Technology (IT) has proposed changes in the two-year-old special incentive package scheme. The revisions include lowering the eligibility threshold and extending the benefit to new product categories, such as A/Cs and refrigerators.

However, there is no change in the actual incentive. The scheme provides a subsidy in the form of reimbursements of capital expenditure. Companies get a 20 percent subsidy for investments in Special Economic Zones (SEZs) and 25 percent in non-SEZs. The scheme was open to applications made before July 2015. The IT Ministry proposes to extend this by another five years. One of the limitations of the scheme is the time taken to process applications.

(BL, 08.10.14)

Reforms for Growth

The implementation of new reforms promised by the new Government will be key to putting India on a strong and sustainable growth path, said the latest economic survey of India released by Organisation for Economic Cooperation and Development (OECD).

OVERCOMING THE ODDS

India Recovers Faster than Other Economies Hit by Slow Growth: OECD

FORECAST	Proposals for 8 Percent Growth
Economic Growth 5.4 % in 2014-15 6.6 % in 2015-16 6.8 % in 2016-17 **Consumer Inflation** 7.1% in 2014-15 6.3% in 2015-16 6.0% in 2016-17	• Implement tax, labour reforms • Free up funds for infrastructure • Ensure early implementation of GST • Reduce structural barriers to job creation • Switch subsidy spending to social & physical infrastructure

For India to achieve 8 percent growth in the coming years, it will have to switch subsidy spending to social and physical infrastructure, introduce tax reforms, clean up the banking system to free funds for infrastructure and reduce structural barriers for job creation through labour reforms.

Since taking charge on May 26, the Modi-led National National Democratic Alliance (NDA) Government has been on the path of reforms, but it still has to push some important legislations including goods and services tax (GST) through. *(Mint, 20.11.14)*

A Reforms Vote Bank

Rajiv Kumar*

It has been yet another triumphant foreign visit for Prime Minister Narendra Modi. Going by the frenzied display at Madison Square Garden and now in the Allphones Arena in Sydney, he is a rock star among the Indian diaspora. During the current visit that saw him attend two multilateral summits he has also emerged as a global leader, whose words count enough for a pre-cleared G20 summit communiqué to be changed! Modi has thus ensured that India is firmly back on the global stage.

Having raised unprecedented expectations not only among Non Residents of India (NRIs) but also amongst his peers in G20, Modi surely realises that it will require a Herculean effort to meet these sky-high expectations. In his G20 speech Modi talked of reforms having to be necessarily beneficial for the poor and undertaken only with popular support. This brief remark gives us an insight into his evolving focus on the domestic reform agenda. His emphasis on the need for generating public support for reforms is a radical change from the past, when reforms were sought to be implemented by stealth.

The media explosion combined with the most fiercely competitive political arena has ensured that nothing can remain hidden from the public gaze, which focusses laser-like on the real beneficiaries of proposed reforms. Populism and empty rhetoric will not hoodwink the people any longer. The political leadership and senior bureaucracy, following Modi's lead, should henceforth design reform packages with an eye to enhancing public welfare and take the trouble to 'market these reforms' in case these benefits are not immediately visible.

In emphasising the importance of changing the public mood in support of reforms, Modi is responding to the complex ground realities in India. If successful, he will join the ranks of global leaders who changed their country's destinies. He surely realises that India's audacious attempt to build a private sector-led capitalist economy within a well regulated framework for markets and in conjunction with universal franchise is an audacious and unprecedented attempt.

Leaders like Deng Xiaoping, Margaret Thatcher, Lee Kuan Yew did not need to take the people along with them as long as they could show positive results at the end of a rather long reform process. Modi realises that he does not have that degree of freedom because the robust Indian media and negative verdicts in state elections can stop such reforms in mid-track.

Therefore, he must build a public case for reforms by demonstrating that these will benefit the largest sections of the population. Paraphrasing his own words, he cannot

and will not allow reforms that result in dogged fights with entrenched oppositions, social conflicts.

Modi's strategy does not in any way imply that the country is destined to slow, marginal and incremental reforms. He knows by now that business as usual will not suffice and bold, out-of-the-box initiatives alone will take India forward at the pace required to generate 12mn jobs each year for the next 15 years. But these bold measures and reforms will have to be sold to the public.

A case for private sector-led, better governed, zero corruption economy will have to be made with as much persistence and finesse as was done by Pandit Nehru and Indira Gandhi in support of a centrally planned socialist economy. If the two of them could push forward these ideas in a country with a centuries-old tradition of private enterprise, then it is surely possible for Modi to do the same in the reverse direction. For example, it is now amply clear that the land acquisition law, in its present form, is a huge impediment to expanding manufacturing capacity notwithstanding its unanimous passage in Parliament. It will, however, surely be disastrous to try and push through the necessary amendments simply on the basis of brute majority in Parliament.

Instead, Modi as master communicator, should devote his next two *'Mann ki Baat'* programmes and other direct addresses to the nation to explain that proposed amendments will expand manufacturing capacity and generate real jobs. His party spokespersons should spread this message through electronic and print media. This will ensure that the law's Luddite features are changed with least social conflict and minimum political costs.

It is now time to devote far more resources and effort to building a case for reforms in the public domain. Those desirous of an accelerated programme of reforms should contribute to building this case in the public domain rather than continue to criticise, crib and cringe.

---

* *Senior Fellow, Centre for Policy Research, Delhi.* *This article was published in* Times of India *on November 20, 2014.*

India Acquires 31st Rank

India still has a long way to go in terms of international image in which manufacturing prowess plays only a small role. An annual nation branding survey carried out by research firm Anholt-GfK measures the reputation of countries, and ranks India at 31st among 50 countries in 2014.

The study measures global perceptions of each country based on 23 different attributes that make up the six overall dimensions on which national image is based: exports, governance, culture, people, tourism and immigration/investment. India, at 23rd, also ranks higher with respect to its culture than its overall 31st ranking.

Moreover, India's overall 31st rating is the worst among Brazil Russia India and China (BRIC) nations.

(ToI, 17.11.14)

Internet Freedom Improves

India is only 'partly free' with a rank of 30 out of 65 countries in Internet freedom. The improvement in India's score, from 47 out of 100 in 2012-13 to 42 out of 100 in 2013-14, is the largest by any country. Among Brazil, Russia, India, China and South Africa (BRICS) and South Asian nations, Brazil and South Africa rank better.

Freedom House, an independent US-based watchdog group in its report on 'Freedom on the Net 2014' ranked the countries on 21 categories under three broad heads – obstacles to access, limits on content and violations of individuals' rights.

Key Internet controls that existed in India between May 2013 and May 2014 included political, social, and/or religious content being blocked, localised or nationwide shutting down of information communication technology, pro-government commentators manipulating online discussions and Internet or phone users being arrested for political or social writings. *(ToI, 05.12.14)*

Delays in Infra Projects

Highlighting the plight of the country's infrastructure sector, the then Planning Commission informed that 83 percent of over 700 central sector projects have sustained cost overruns of nearly ₹1,90,000 cr and delays of up to 12 years.

Investments of ₹5.6 lac cr have already been made on 707 central sector projects including roads, railways, airports, etc. however ₹5.7 lakh cr is required for completion. Of these 707 projects, the Railways incurred the biggest delays, with 274 of its projects missing completion targets.

The Road Transport and Highways Ministry has been able to toll only 435 km of highways in 2013-14 against a target of 2,148 km. The Ministry along with NHAI has completed construction of 1,984 km out of targeted 6,300 km. *(IE, 12.11.24)*

Delhi: Most Polluted City

In May 2013, the World Health Organisation (WHO) announced that Delhi's air quality is the worst in the world. This might not be true because the air quality information being generated by the State and Central Pollution Control Boards is badly flawed, and there is no credible information about air quality in any place other than the capital.

Delhi has 23 high-end ambient air quality monitoring stations that can report real-time numbers on air quality whereas Mumbai has just one at Airoli in Navi Mumbai and cities, such as Bangalore and Chennai have three stations. In the rest of the country, State Pollution Control Boards collect data on their own, using older, manual techniques.

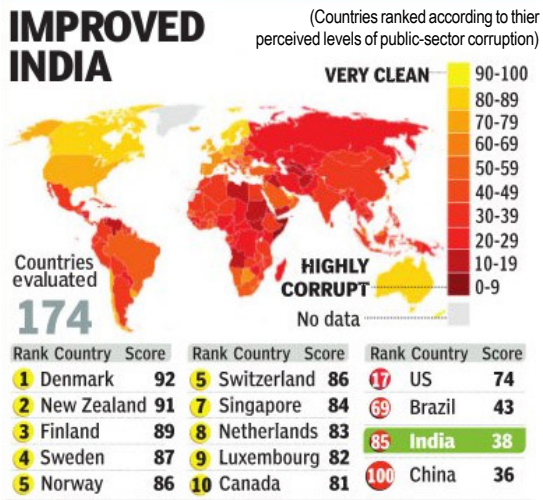
However, in the inexplicable absence of certification, there is no way of knowing whether these machines measure what they claim to.

(ET, 02.12.14)

India Ranks 7th in World List

If citations by peers of research work done by scholars is a good benchmarking index, then Indian scholars rank second to China in the Asiatic region but is pushed to seventh place in the world rankings. The US tops the rank with 1.6 lakh citations with China at 36,000 citable documents in the business, management and accounting areas, while India had nearly 14,000 citations.

Balooni, IIM Kozhikode, at the Indian Institute of Management (IIM) World Management Conference mentioned that they do not have any choice but to accept the citations as an important indicator of the quality of research paper. Those who have joined the new IIMs have an enormous responsibility on their shoulders to shape the academics of their respective institutions. The trend across IIMs is to push the research agenda and this augurs well for young research scholars", he said. *(BL, 06.11.14)*



Source: Transparency International's Corruption Perceptions Index for 2014/PTI

Improved India

India has shown some improvement in addressing corruption in 2014, ranking 85th among 175 countries against 94th in 2013, graft watchdog Transparency International India (TII) said. Denmark retained its position as the least-corrupt country in 2014 with a score of 92 while North Korea and Somalia shared the last place, scoring just 8.

In India's neighbourhood, China moved to 100th place, down from 80th in 2013, while Pakistan and Nepal were at 126th position. Bangladesh was 145th and Bhutan 30th in the ranking. Sri Lanka was ranked 85th with India. Afghanistan was at a bleak 172.

According to the Corruption Perception Index (CPI) report by TII, "the CPI score for India increased by 2 points in 2014 from its 2013 score, helping India's rank move up to 85 in 2014 from 94 in 2013". India's score stood at 38 compared to 36 in 2013.

India's World Talent Ranking

Switzerland emerged as the top country with the ability to develop, attract and retain talent out of the 60 countries surveyed in the IMD (a top ranked global school) World Talent Report 2014. India slipped to the 48th position from the 29th position it held in 2005.

The Switzerland-based IMD, a top-ranked global business school, on Thursday released its first World Talent Report which assessed countries on their ability to invest in and develop home-grown talent, ability to retain home-grown talent and attract overseas talent and the ability to fulfill market demands with its available talent pool. The report draws upon the IMD World Competitiveness Centre's historical database to assess how the ranking has evolved from 2005 to 2014.

The only Asian country to rank among the top five was Malaysia, which improved its position from the 20th place in 2005 to 5th in 2014. Denmark, Germany and Finland were the other countries among the top five in 2014. "The best-ranked countries have a balanced approach between their commitment to education, investment in developing local talent, and their ability to attract overseas talent", said Arturo Bris, Director of the IMD World Competitiveness Center. "Countries with smart talent strategies are also highly agile in developing policies that improve their talent pipeline". Brazil too witnessed a sharp fall in its ranking from 28th in 2005 to 52nd in 2014.

For India, only public expenditure on education showed an increase (from 3.14 percent in 2005 to 3.80 percent in 2014), while other indicators like prioritisation of employee training, female labour force, availability of competent senior managers, ability to attract highly-skilled foreign people, availability of finance skills and management education fit to the needs of the business community, all witnessed a fall since 2005. The sharpest drop was seen in the access to skilled labour, which fell from 7.58 points in 2005 to 5.75 points in 2014.

In comparison, the availability of skilled labour in Malaysia improved from 5.77 points to 6.95 points. Indian companies' struggle to improve female labour participation was also reflected in the ranking, as women's participation fell from 31.65 percent in 2005 to 25.30 percent in 2014. In comparison, Switzerland's female labour force increased from 44.69 percent to 46.16 percent. Malaysia's rose from 36.06 percent to 37.03 percent in the same period. "Fluctuations in a country's ranking from 2005 to 2014 may stem from cyclical economic and socio-political issues that affect immigration policies and/or investment in education", Bris said. "In some cases, such policies could reduce a country's ability to attract overseas talent despite strong commitment to local talent development".

www.google.com

World Talent Ranking

The best-ranked countries have a balance approach between their commitment to education, investment in developing local talent, and ability to attract overseas talent

2014 Ranking	Country	Score
1	Switzerland	100
2	Denmark	91.769
3	Germany	86.177
4	Finland	86.079
5	Malaysia	85.770
6	Ireland	83.767
7	Netherlands	81.756
8	Canada	80.566
9	Sweden	79.942
10	Norway	77.842
48	India	31.631

Source: IMD World Talent Report

Countries that showed a positive balance between investing in and developing local talent, and the ability to attract and retain overseas talent, performed consistently well. In addition, the Malaysia example shows that a strategy aimed at improving both the home-grown and overseas talent has a positive impact on the country's performance. The performance of India and Brazil show that imbalances across all talent competitiveness criteria are detrimental for the sustainability of an effective and dynamic talent pipeline.

– *This news item has been taken from* Mint *published on November 21, 2014.*

Enforcement Key for Tougher Corporate Governance Laws

The Securities and Exchange Board of India (SEBI) barred India's largest real estate firm DLF Ltd from accessing the capital market for three years. A regulatory probe had found the company and its top officials guilty of violations, which included the nondisclosure of related party transactions, non-disclosure of financial details related to subsidiaries and inadequate disclosure of outstanding litigation. The company has challenged the order at the Securities Appellate Tribunal (SAT).

In another instance, Financial Technologies India Ltd. (FTIL) is under the scanner of SEBI and the Ministry of Corporate Affairs for its alleged role in the ₹5, 574.34 crore payment crisis at National Spot Exchange Ltd (NSEL), in which the company holds a 99.9 percent stake. Among the many allegations against FTIL and its management are charges of a number of related-party contracts executed that may not have been in the best interest of shareholders of its group entities, such as Multi Commodity Exchange of India Ltd (MCX) with whom these contracts were signed.

The two examples are quite recent and well-publicised instances of poor corporate governance practices that have plagued corporate India, over the years despite stringent regulations being put in places by agencies like SEBI and strong legislation, such as the new Companies Act.

"One cannot deny that in the past corporate governance regulations have been flouted by various companies in spite of them being stringent", said Neerav Merchant, partner, Majmudar and Partners, a corporate law firm.

Merchant cites the cases of FTIL and DLF which, among many others, have been found to be in violation of disclosure requirements to the detriment of investors. To be sure, corporate governance regulations in India are comparable to those in the best-regulated markets of the world. Yet, enforcement remains a weak link.

In April, SEBI had announced an overhaul of corporate governance norms for listed companies in an effort to improve transparency in their transactions and give minority shareholders a bigger say in management decisions. In September, however, it issued a circular saying it has received representations from market participants, including companies and industry associations, highlighting certain practical difficulties in ensuring compliance and seeking clarifications on certain provisions.

As a result, it relaxed its proposed corporate governance norms by bringing related-party transaction norms in line with the Companies Act, exempting smaller firms from complying with the new law and extending the deadline for listed firms to appoint women directors. The regulations as they stand seem to be practical enough for implementation, more so after SEBI has recently relaxed certain stringent norms and timelines for compliance, he said. Among the changes made by SEBI is the definition of a related party. A party will be considered a related party only if it falls under the definition of related party, under the Companies Act or the accounting standards. Under the original proposal, SEBI's definition of related party was much tougher than what was prescribed by the Companies Act.

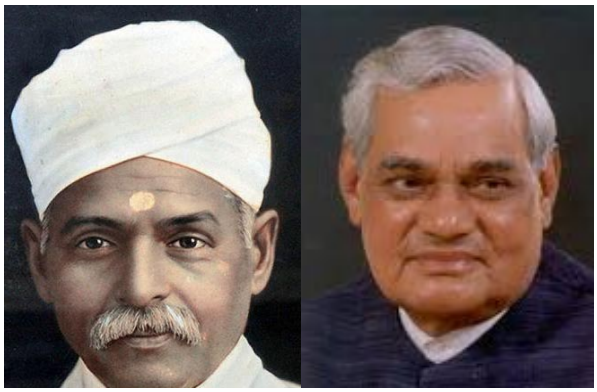
SEBI has also eased the benchmarks used to define "material related party transactions", bringing them in line with the Companies Act. Under the listing agreement, all material related-party transactions have to be approved by a majority of minority shareholders in order to ensure that business decisions taken by promoters or majority shareholders are not detrimental to the interests of small shareholders. According to the new norms, material transactions will be defined as those that account for more than 10 percent of the annual consolidated turnover of an entity. The original provisions had set the cutoff at 5 percent of the annual stand-alone turnover or 20 percent of the stand-alone net worth.

Importantly, SEBI has exempted related-party transactions between a company and its wholly owned subsidiary from minority shareholder approval. The deadline for listed firms to appoint at least one woman director on their board has been extended. As many as 755 out of a total 1,469 National Stock Exchange-listed companies or 51 percent of the companies were still to appoint a woman Director as on August 31, 2014. Despite the concessions given by SEBI, the fear remains that companies will comply with regulations in letter but not in spirit.

– *This news item was published in* Mint *on November 24, 2014.*

Bharat Gets Two More *Ratans*

The Modi Government's decision to confer the Bharat Ratna on former Prime Minister Atal Bihari Vajpayee and freedom fighter Madan Mohan Malaviya evoked a positive response even while striking a chord with its key Hindutva constituency. If Vajpayee will be the first *swayamsewak* to be honoured with the Bharat Ratna, Pandit Malaviya, though essentially a Congressman, had also been the president of the *Hindu Mahasabha*.



As the BJP's first Prime Minister, Vajpayee holds a special place not just in his own party but across the political spectrum where his qualities of head and heart earned him respect. As for Pandit Malaviya, the *Rashtriya Swayamsevak Sangh* (RSS) had on his 150th Anniversary in 2010, recommended the Bharat Ratna for him. With both men sharing a birthday, December 25, the Government decided to honour them together. *(TH, 25.12.15)*

Punjab to Launch e-Sarkar

Consolidating its plans to ensure absolute e-governance, Punjab would soon become the first state in the country that has the status of e-Sarkar covering all the 47 departments and its 143 branches with Integrated Workflow and Document Management System (IWDMS) to process common tasks online.

Besides, 22 treasuries and 74 sub-treasuries across the state have been connected with the Integrated Financial Management System (IFMS) to distribute and sanction budget online.

Describing it a unique initiative to streamline and bring efficiency and transparency in public functioning, Punjab Deputy Chief Minister Sukhbir Singh Badal added that a three-tier governing mechanism has been institutionalised by Punjab Infotech for effective implementation and review of this project. *(BS, 02.12.14)*

Big Challenge for *Babus*

Keeping an eye on the future assembly polls, especially Bihar and Uttar Pradesh, and rationalse subsidy regime to improve fiscal health, Prime Minister Narendra Modi has not only adopted United Progressive Alliance (UPA) Government's *Aadhaar* platform fully but to the dismay of many critics within the Government, has advanced the date of collecting biometric details of the entire entitled population from September 2015 to March 2015.

Generation of *Aadhaar* numbers to nearly 110 crore residents will allow the Central Government to dole out cash transfers for schemes, such as *Pradhan Mantri Jan Dhan Yojana*, Mahatma Gandhi National Rural Employment Guarantee Scheme directly into the bank accounts of the targeted population, which can be game changer for the *Bhartiya Janta Party* (BJP) in assembly elections. *(DNA, 10.11.14)*

DTH Operators' Benefit

Irregularities in allocation of satellite capacity to private direct to home operators by the Department of Space (DoS) has been highlighted by the Comptroller and Auditor General (CAG). Tata Sky, which was fifth in the order of preference of first-come-first-serve policy for allocation of satellite capacity was granted precedence over the national broadcaster 'Doordarshan'.

In another case, there was financial mismanagement in transponder lease agreements with Sun DTH, which resulted in unintended benefits of over ₹4 crore accruing to Sun.

The auditor further criticised the national space agency for keeping available capacities idle and failing to implement its decision to revise the transponder lease charges. The same prices were maintained for periods of six to ten years causing a loss of over ₹36 crore.

(ToI, 29.11.14)

Massive Revenue Loss

More than 50 percent of land allotted to Special Economic Zones (SEZ) across the country remains idle and its very purpose defeated, with no significant increase in employment. A performance audit on SEZs by the CAG revealed that ineligible tax deductions were extended to companies, some of which diverted land allotted to them to other uses and there was overall decline in manufacturing.

"Tax concessions to SEZs for the period 2007 to 2013 works out to ₹83,104 crore on account of direct taxes and customs", sources said, adding that this revenue foregone did not include loss to the exchequer on account of central excise and service tax that could have accrued if these companies were brought out of the SEZs. *(ToI, 24.11.14)*

RIL to Lose Investment

The Federal Auditor has raised a red flag over allowing Reliance Industries Ltd (RIL) to recover US$970mn of the investment it has made in the KG-D6 oil and gas block off the Andhra coast. The CAG has observed that Reliance has recovered US$9.2bn out of the US$10.44bn invested in the field till March 2013. The Ministry has slapped a total penalty of about ₹14,200 crore for failure to meet output target in the four financial years.

Instead of blocking RIL from recovering the entire investment, CAG has suggested the government share the cost of discoveries, which are commercially viable "in the interest of the country's energy security". RIL would not be allowed to recover costs of the remaining wells. *(ToI, 29.11.14)*

PM Gets Cracking on 'Make In India' Plan

Shiv Visvanathan*

Eager to make its 'Make in India' campaign a success, Modi Government has identified eight key areas to bring in reforms in the existing business regulatory processes and substantially improve India's position in the World Bank's 'Doing Business Report' and bring it among the top 50 favoured countries.

"The Prime Minister is very keen to initiate the processes as soon as possible to bring down huge delays and cut red tape involved in the processes. The Department of Industrial Policy and Promotion (DIPP), under the Commerce Ministry has been given the identified task to identify sectors, specific activities and concerned ministries where reforms are required," top government sources said.

The eight core areas identified to overhaul the licence regime and drastically cut down the times and processes are:

Starting a business

The DIPP has identified obtaining 12 procedures like environment clearance, land procurement, construction related permits and no-objection certificates as the major bottlenecks. It has given three months to the Corporate Affairs Ministry to reduce the time taken in registration of business from 27 days to one day, by integrating Director Identification Number (DIN), name availability and payment of registration fees and stamp duty.

Doing away with requirement of company seal, remove requirement of minimum paid-up capital for starting business. It has given 30 days' time to Employees Provident Fund Organisation (EPFO), Employees' State Insurance Corporation (ESIC) and Labour Ministry to implement single registration for all labour laws.

Dealing with construction permits

Right now it takes 168 days and 35 procedures to complete. The government wants to consolidate and streamline building laws at both national and state level by removing overlapping and contradicting building bylaws and has asked the urban Development Ministry to act on this in three months. It has asked state and local government to introduce online portal with composite application forms and provide checklists to give one stop construction permit like 36 advance economies of the world.

Getting electricity

It takes 67 days and seven procedures to get electricity connection, which the Government wants to reduce to one single procedure and approval within a week with third party certification for installation. The Environment Ministry has been asked to remove requirement of pollution control certificates.

Registering property

Currently, it requires five different procedures and at least 30 days. The Government wants to make the process online with option of online payment like in the case of issuance of passport.

Paying taxes

On an average, firms make 33 tax payments in a year and spend 243 hours every year in filing taxes. The Government wants to reduce number of taxes, simplify tax processes and allow online payment. It has also asked the Finance Ministry to expedite implementation of direct taxes code (DTC) and GST and abolition of minimum alternate tax for developers of SEZs, simplification of VAT refund and advance ruling of tax for state level taxes on the lines of Income tax Act.

Trading across borders

The Government wants to reduce documentation process and bring it down to just three documents – Bill of lading, commercial invoice and custom declaration. Allowing electronic submission and processing for custom declaration and introducing only risk-based inspections with automated selection of inspection based on predetermined criteria, such as in the US and Georgia.

Enforcing contracts

The trial and judgment in India takes almost three years and enforcing a judgment again takes 305 days that increases the burden for businesses. At present, the Government wants to set up specialised fast track commercial courts with time bound decision with a proposed limit of 60 days like in Slovak Republic for disposal of cases. It also wants to make provisions for not more than one adjournment for each party and make it enforceable.

Resolving insolvency

As India has four different and overlapping laws for resolving insolvency and lacks in having single comprehensive and integrated law on corporate insolvency, the Government wants to introduce one single Bankruptcy law or unified insolvency code. Based on the model of US's Bankruptcy code (UNCITRAL Model law) it would encompass aspects of recovery, revival, reconstruction and winding up and also domestic and cross border insolvencies.

---

* *An Indian Public Intellectual and Social Scientist. This article was published in* Hindustan Times *on October 02, 2014.*

Bad Enactment, No Enforcement

India's approach in tackling the age-old problem of corruption has been Janus-faced. On one hand, being responsive to public clamour for the eradication of corruption of all kinds, grand or petty, India's Parliament has been steadily engaged in passing legislation, commencing with the extension of powers granted to the wartime Special Staff in 1942 till the enactment, in 2014, of the *Lokpal* and *Lokayuktas* Act.

On the other hand, lawmakers, public servants and law enforcement agencies, who can count among their lot the vast majority of perpetrators of corruption, have been seeking loopholes in the law and avenues to avoid punishment. Political and administrative expediency, not principles of good governance and the rule of law, rule the roost, regardless of which set of political parties is in power.

Offences by public servants

The Central Vigilance Commissioner (CVC) was accorded statutory status in 2003 only after a directive in the judgment of the Supreme Court in Vineet Narain v. Union of India. In September 2010, the CVC released the Draft National Anti-corruption Strategy, a good document that deserves more attention than it has received. It contains a thoughtful critique of shortcomings in India's legislative framework. The CVC Act 2003 gives the CVC powers to inquire into alleged offences committed by officials, under the Prevention of Corruption Act, 1988.

The CVC does not have direct powers to investigate and must depend on the Central Bureau of Investigation (CBI) for that. The requirement of obtaining prior sanction of an appropriate authority before any court takes cognisance of an offence by a public servant is a serious limitation. There have been long delays before sanction is accorded. The provision serves to protect public servants though a wrong has been committed because the sanctioning authority is normally a senior officer of the 'accused' officer.

A sanction after having been accorded can be challenged at the trial stage and cases have been discharged on the basis that the sanctioning authority had not applied its mind while according sanction. This provision goes beyond the protection offered, under the Code of Criminal Procedure, 1973 (which only protects actions in discharge of official duty).

The Supreme Court had earlier struck down the 'single directive' that had provided immunity to senior civil servants from *suo motu* action of the Central Bureau of Investigation (CBI). The Government has restored this provision through statute and entrusted the authority of pre-inquiry scrutiny to the Secretary of the Administrative department. This has diluted the powers of super superintendence of the CVC and the CBI.

Lokpal and Lokayuktha

The Santhanam Committee, in effect, recommended that the CVC should also function as an ombudsman in India, taking cognisance of cases of maladministration as well as corruption. The Government of India ruled out accepting this recommendation claiming that the importance and urgency of providing machinery to look into the grievances of citizens against the administration and to ensure the just and fair exercise of administrative power would require a separate agency. But no such agency was created. It took a Gandhian-style movement led by Anna Hazare to put this matter back on the policy agenda of Parliament in 2011. The Lokpal law came into force on January 16, 2014.

In its twilight hour, when its days were ended, when according to Hegel, the owl of Minerva spreads her wings and wisdom dawns, the UPA Government managed to enact legislation to partially protect whistle-blowers, but none of the other complementary laws, which India is obligated to pass after becoming party to the UN Convention against Corruption, has been enacted. The present Government does not seem to be in a hurry to constitute the Lokpal and enact those complementary anti-corruption laws.

Prime Minister Narendra Modi is a modern-day Tacitus who claimed: "The more corrupt the state, the more laws". Sadly, our lot seems to be both the non-enactment of essential legislation and the non-enforcement of laws that already exist.

– *This feature has been abridged from an article published in* The Hindu *on November 28, 2014.*

Tax Burdening Unfair

Replying to a question on whether his budget would look at widening the tax base to maximise revenue, Finance Minister Arun Jaitley said that he does not favour burdening the salaried and middle-class with more taxes but would go after the evaders in widening the net. In fact, he would encourage more money being put in the pockets of tax payers that will lead to spending and collection of more indirect taxes.

Later, he also explained the meaning of 'widening the net' that "I pay the same indirect tax as my attendant. Our volume of consumption may be different. So everybody is paying indirect taxes". Therefore, the Minister said that he was against reducing the exemptions to widen the tax net. *(BS, 22.11.14)*

Acceptance to Reforms

Andhra Pradesh Chief Minister N Chandrababu Naidu said that reforms are not against the common people, but the message needs to be communicated in the right manner. Also, he said that "We have to do economic reforms. If you create wealth, only then can we go for inclusive growth", India is witness to a 'new energy' after 10 years of being overshadowed by corruption, policy paralysis and non-performance, the Chief Minister said. Naidu's Telugu Desam Party (TDP) is a member of the *Bharatiya Janata Party* (BJP)-led National Democratic Alliance (NDA). Naidu also talked about the challenges of heading a new state and said his State Government was focussing on infrastructure development to ensure growth. *(Mint, 06.11.14)*

Participatory Policy-making

Marking on current trend of policy-making, Former Union Finance Minister Yashwant Sinha said that policy-making at present has become far more participatory than it was in the 1960s and 1970s, with contributions from a large number of stakeholders.

While delivering the G Ramachandran Memorial Lecture organised by the Southern India Chamber of Commerce and Industry, he said that think tanks play an important role in US and other countries. Also, they are used for setting longer term goals; suggest solutions to the Government to take good steps. "We have think tanks, but unfortunately they do not play that kind of role", India should learn from developed nations in promoting the role of think tanks. *(BL, 12.12.14)*

Reasons for Call Drops

"There are call drops because signal levels are lower as we (India) have adopted a standard, which is one-tenth of international standard of radiation", RK Arnold, member, Telecom Regulatory Authority of India (TRAI) said at a session on "Mobile Telephony and Public Health" organised by Cellular Operators' Association of India (COAI) on the sidelines of the International Telecommunication Union-T SG5 meeting.

In India, the specified limit of radiation is one-tenth of the global norms, while 90 percent of the countries follow the international limit. This is despite a recent Gujarat High Court verdict holding that base stations for wireless data and mobile communications pose no threat to health. *(BS, 15.12.14)*

EDUCATION SECTOR

Overlooked Quota Norms

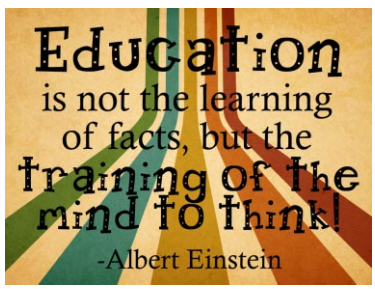
The Human Resource Development (HRD) Ministry is not aware that states and educational institutions do not comply with a key provision of the law that stipulates 25 percent reservation for children from economically weaker section (EWS) in the neighbourhood.

In response to one Right to Information (RTI) application, HRD said it has nil information. Asked if Ministry has any official document or record containing a description of the action that must be initiated to end discriminatory practices towards students of EWS category, HRD said it had issued two guidelines in 2012 regarding the processing of grievances/ complaints against the violation of child rights and abolition of discriminatory practices against children in schools. *(ToI, 18.12.14)*

Call for Enhancing Education

President Pranab Mukherjee at the closing ceremony of the 150th Anniversary celebrations of Metropolitan Institution said that the standard of education must be improved and made affordable for meritorious students of all backgrounds in India.

Later, he said that more than two lakh meritorious students leave the country for pursuing higher studies in foreign universities and none of our institutions are ranked in the top 200 positions by reputed international surveys. Yet, there was a time between 6th century BC and 12th century AD when scholars from around the globe used to flock to Indian seats of higher learning like Nalanda, Takshashila and Vikramshila. *(ToI, 07.12.14)*



Delay in Launch of Drugs

Some multinational companies (MNCs) have been delaying the launch of life-saving drugs in India years after getting monopoly rights, while cheaper generic versions of exorbitantly-priced medicines are going off the shelves, under the product patenting law.

"MNCs keep prices of their breakthrough treatments unaffordable for many in India, and in certain cases delay the launch here, worried that the country may become a good example of reference pricing for others to follow", a public health activist said. These MNCs target the more lucrative mature markets as against treating those in the developing world.

For instance, Novartis's respiratory medicine Onbrez, affordable versions of anti-cancer drugs, such as sunitinib and dasatinib have been taken off the retail shelves in accordance with the patent law.

(ToI, 30.11.14)

Access to Healthcare

A new global coalition of over 500 development organisations worldwide was to stress the importance of providing universal access to health services for saving lives. December 12 was the first-ever Universal Health Coverage (UHC) Day observed to underline the importance of providing everyone access to quality healthcare without being forced into poverty.

The coalition will urge Governments to end extreme poverty, build resilience against the health effects of climate change and end deadly epidemics, such as Ebola.

UHC Day marks the two-year Anniversary of a United Nations resolution that endorsed universal health coverage as a pillar of global security. It underscored the widening gap between those who can access health services without financial hardship and those who cannot.

(TH, 14.12.14)

Drug Demand Reduction

In an effort to tackle the menace of drug abuse in the country, the Government has come up with the national policy on drug demand reduction, 2014.

The policy envisages strengthening of the medical support infrastructures significantly and taking up sensitisation and preventive education programmes in schools and colleges in a big way.

Some of the major points in the new policy which has been formulated by the social justice ministry include supporting at least one de-addiction centre in each district of the country; establishing separate and specialised de-addiction treatment centres for drug dependent females and children in the government hospitals and providing treatment facilities in juvenile homes and prisons across the country.

(ToI, 11.12.14)

Dengue Vaccine Tested

The world's first dengue vaccine CYD-TDV has passed the crucial India test and could be available in the country as early as by the end of 2015.

The vaccine makers Sanofi Pasteur revealed that their first study of the vaccine on Indian adults (aged 18-45 years) across five sites in India – Delhi, Ludhiana, Bangalore, Pune and Kolkata found the vaccine "safe and immunogenic in Indian adults" with results comparable to other clinical studies in Asia.

The study showed that 87 percent of Indian adults in the trial were positive to dengue at enrolment, confirming the significant endemic nature of the vector borne disease in the country. *(ToI, 03.11.14)*

Bulk Drug Pharma Policy

"The Government is working on industry-friendly bulk drug pharma policy. It is likely to be rolled out by the Prime Minister in next 10-15 day". Pharmaceuticals Secretary V K Subburaj said.

The committee and task force set up by the Government for preparing the policy have finalised their recommendations, which have been sent to the Prime Minister's Office, he said.

Drug Controller General, G N Singh, said that the regulator is addressing all the pending issues to liberate the pharma sector and to simplify export regulations which will be reflected in the forthcoming policy.

(FE, 20.11.14)

Shortage of Doctors

The Indian healthcare delivery setups are dealing with acute shortage of healthcare professionals and severe challenges in acquiring the right talent, according to the 'Via HRx Healthcare Talent Issues Study'. It mapped the talent crunch in the healthcare delivery industry to understand the specifics of the challenges it brings.

The study, which included Chief Executive Officers (CEOs), medical directors and Human Resources heads, revealed that 99 percent of the hospitals are dealing with shortage of doctors due to which 47 percent of the hospitals fail in aligning the right professionals. *(TH, 03.11.14)*

Drugs, Doctors and the Ethics Code

www.thehindubusinessline.com

Doctors can work for a pharmaceutical company as consultants, provided there is transparency in the association and decisions are not influenced by the company and need to disclose this association upfront to avoid allegations of conflict of interest

In September 2013, a missive from the Ministry of Chemicals and Fertilizers directed the Medical Council of India to investigate 300 doctors for alleged violation of the ethics code.

The ensuing investigation brought into focus the simmering issue of a doctor-drug company nexus. And the niggling worry that such a relationship could lead to irresponsible prescription. Unethical promotions do not afflict only the Indian market or local companies. Large multinationals too are grappling with bribery and fines in different markets.

Pharmaceutical industry voices and doctors advocate self-regulation, stressing on transparency and disclosure to keep interactions above suspicion. But probe a little, and grey areas surface on the fine ethical line doctors walk when appointed as consultants to drug companies.

Decoding ethics

An ombudsman (public advocate) could be one way for the pharma industry to navigate the not-so-clearly defined ethical path, so complaints can be dealt with transparently, said some representatives, especially, since the Medical Council of India (MCI) has no authority, over the drug industry. But doctors have a clear medical ethics code,said K K Aggarwal, Senior National Vice-President with the Indian Medical Association. They cannot take gifts, favours, cash, grants, hospitality or travel, from a drug company and transgressions get punished by anything from warnings to disbarment, said Agarwal. In fact, doctors can work for a pharmaceutical company as consultants, provided there is transparency in the association and decisions are not influenced by the company, he clarifies. Besides, the doctor needs to disclose this association upfront to avoid allegations of conflict of interest.

In the absence of the Government conducting continuing education programmes for doctors, updates on drugs and science come from drug companies. But, the transaction needs to be transparent, financial details should show up on tax statements and there should be no *quid pro quo* or return favour sought from the doctor, Aggarwal explained.

Amit Sengupta of *Jan Swasthya Abhiyan*, though, is not comfortable with doctors being empanelled with drug firms. Cruises and gifts for doctors have been replaced by more sophisticated methods, observed Sengupta, referring to doctors becoming consultants with pharma companies. It may not be illegal, he clarifies, but it sits uneasy and requires clarity.

Ready reckoner

Ranjana Smetacek, with the Organisation of Pharmaceutical Producers of India (OPPI), a platform largely for multinational drug companies, said that they have a group of adjudicators who examine complaints against members. The previous year saw a handful of complaints, largely related to promotions and marketing.

In an earlier stint with a multinational, a 24/7 helpline gave clarity on government rules in nine languages. Smetacek suggests a similar ready reckoner for industry representatives to explain complexities in different regions.

For instance, would a Diwali gift be seen in cultural context (okay with a price cap) or is it an ethical transgression? The OPPI is for a universal code of pharma marketing, Ranjana said.

Representing large local players, the Indian Pharmaceutical Alliance is pushing for an ombudsman, said D G Shah, adding that industry should be given a shot at self-regulation before the Government steps in.

But the Government does indeed need to step in and push the ethics issue much higher on its agenda, since it directly involves the health of ordinary, unsuspecting people.

– *This news item has been taken from an article published in* Business Line *on December 13, 2014.*

Complaints against Flipkart

The Competition Commission of India (CCI) has received a complaint against online retailers including Flipkart for alleged unfair business practices. The complaint has been received against these online trading entities weeks after an uproar over Flipkart's massive discount sale which had raised concerns of anti-competitive practices. In recent times, many e-commerce portals have been coming out with steep discount sales.

Flipkart said that its 'Big Billion Day' sale witnessed 1.5mn people shopping at its portal. It also claimed that products worth over ₹600 crore were sold in just 10 hours, under the scheme.

Trader's body Confederation of All India Traders had demanded the Commerce and Industry Ministry to take steps to monitor and regulate online businesses. *(TH,05.11.14)*

Cease and Desist Order

The CCI has directed Coal India to modify terms and conditions of Spot e-Auction Scheme 2007, which was in contravention of Section 4(2)(a)(i) of the Competition Act. There is a provision in the scheme where a buyer is liable for penalty for non-lifting of coal after successful participation in the e-auction. However, there is no liability upon the miner and its subsidiaries for failure.

CCI asked to cease and desist from unfair business practices. Coal India through its subsidiaries operates independently of market forces and enjoys undisputed dominance in the relevant market of sale of non-coking coal to the bidders under the Spot e-Auction scheme in the country. *(ET 28.10.14)*

Conditions for Approval

Sun Pharma agreed to acquire Ranbaxy from its Japanese parent Daiichi Sankyo for a transaction worth about $4bn. There could be significant overlap in their anti-infective and gastro-intestinal drug businesses, which could stifle competition.

They may have to give price and supply commitments, which include ensuring price caps on some drugs for a specific period, before the CCI gives its approval to their proposed merger.

The deal would acquire 9.5 percent market share in the Indian pharma sector. If the proposed combination is allowed, Sun Pharma will have a market share of more than 40 percent for 25 drugs. Through behavioural remedy, the fair trade regulator could prevent the merged entity from foreclosing the market to its competitors. *(ET, 18.10.14)*

HC Opposes CCI Decision

The Delhi High Court reprimanded CCI for imposing 'shockingly disproportionate' penalties on two small-scale manufacturers of jungle boots. In August 2013, CCI fined 11 companies with a total of ₹6.25 crore and issued a cease and desist order.

The case related to bid-rigging and market allocation in a tender for supplying jungle boots. The companies took it before the Competition Appellate Tribunal, which did not interfere with the cease-and-desist order. The companies then moved the Delhi high court.

The court found that CCI had imposed penalty even though CCI's 'cease-and-desist' order was not violated and had been fully complied with. CCI claimed that its regulations allowed it to levy such penalty and that it had acted well within its powers. *(Mint, 21.11.14)*

CCI Recovers the Penalty

The CCI disclosed that it has recovered a meager amount of ₹1,000crore in the form of penalty imposed by the Commission for non-compliance of competition laws by corporates against the penaltied amount of close to ₹12,000 crore so far.

The CCI Chairman advised corporates to take advantage of the RTI Act to dig out any information relating to CCI laws and their fall out on corporate governance since the CCI is a public office and thus falls on RTI Act's domain.

Referring to shabby transactions taking place in the real estate sector, Ashok Chawla advised the central and state governments to hurry up setting up real estate regulatory authority to regulate the sector to the best satisfaction of all stakeholders in it. *(BS, 24.11.14)*

Coca-Cola's Deal Cleared

The CCI has cleared Coca-Cola's proposed deal with US-based Monster Beverage Corp in the energy drinks market. Under the deal, Coca-Cola would directly and through European Refreshments acquire one share less than 16.666 percent of the common stock of New Co. This would be done in a way that New Co would acquire energy drinks assets from Coca-Cola and its subsidiaries while Coca- Cola would buy some non-energy drinks assets from Monster.

In India, Coca-Cola has insignificant presence in the energy drink segment while Monster has minimal presence with some of its energy drink brands that are imported. The CCI observed that post combination, the vertical arrangements between the parties was not likely to result in the foreclosure of competition in the energy drink segment in India. *(Mint, 19.11.14)*

CCI Slaps ₹2,700 Crore Fine

Wielding its powers for fairness, the CCI clamped down on violators and slapped penalties worth about ₹2,700 crore in 2013, with its ruling in the US$4bn Sun-Ranbaxy deal becoming a watershed moment. Stamping its presence in the economic arena, the fair trade watchdog is presently probing possible anti-competitive practices in sectors as diverse as real estate and e-commerce, with many big names including DLF and Flipkart coming under its scanner and decisions in these cases are keenly awaited in the coming year. However, it faces an uphill task ahead in 2015 for showing improvement in its performance with regard to recovery of penalties imposed by it, as most of its orders got challenged in the appellate tribunal and courts.

The year passing-by also saw the regulator using its rarely-used powers ranging from a forced public scrutiny of mega deals that raise anti-competition concerns to fines on top executives and other individuals for violations of fair trade norms. Even as a perception persists about the CCI being yet another hurdle for doing business, the regulator cleared nearly 70 M&A deals this year. In a reflection of its regulatory prowess, CCI imposed penalties of ₹2,675 crore on 169 entities in 2014. Also, the number of penalised entities is the highest ever in more than four years. Embracing a carrot and stick policy, the regulator has embarked on sensitising people and departments about the competition rules, apart from penalising individuals involved with entities at the time of violations. The orders passed against a number of chemist associations and some of their office bearers are cases in point.

Completing a prolonged probe into anti-competitive practices in the auto spare parts and after services market, the watchdog in August imposed a fine of ₹2,545 crore on 14 car makers. The ruling, though challenged by many auto players, was yet another assertion of the Commission's efforts to ensure "greater choice and freedom to the consumers". Not just the private sector, CCI again directed state-run mining behemoth Coal India and its subsidiaries to 'cease and desist' from unfair business practices in at least five separate orders in 2014. While deciding not to impose additional fine, as Coal India was already slapped with ₹1,773 crore penalty in December 2013, this year's rulings highlighted the need to do away with the monopoly enjoyed by the miner.

Showing its face as the hawkish scrutiniser of business activities that may lead to anti-competitive trends in the future, the Commission ordered Sun Pharma and Ranbaxy to sell off some of their assets as a condition for approval. In an unprecedented order on the proposed $4bn Sun Pharma-Ranbaxy deal, the Commission after subjecting it to public scrutiny – has directed both companies to divest as many as seven products between them to address monopoly concerns.

The transaction, once consummated, would create India's largest and world's fifth largest drug manufacturer. After minutely scanning the Sun-Ranbaxy deal, the CCI is currently in the process of combing a mega transaction in the cement sector – between Holcim and Lafarge. This is the second deal ever to be subjected to public scrutiny amid concerns of unfair business practices. At the same time, the regulator cleared many a merger and acquisition transactions in the current year. Deals spread across diverse areas including power, financial services, aviation, steel, fertilisers, stock exchanges, pharmaceuticals and infrastructure, received its green signal.

The prominent ones include Adani Power's ₹6,000 crore deal to snap up the 1,200 MW Udupi thermal plant from Lanco Infratech, and BSE's acquisition of United Stock Exchange. All said and done, the Commission continues to stare at a poor recovery of penalties imposed on violators as many of the orders have been challenged in appellate tribunal and courts. Even though it has so far imposed more than ₹12,000 crore penalty, less than one-tenth of that amount has come to it and it may require greater efforts in 2015 to improve its performance on this front.

– *This feature has been abridged from an article published in* Economic Times *on December 23, 2014.*

Competition and Regulatory Reforms in Public Procurement

Need of the Hour

Public procurement refers to the procurement activities undertaken by public authorities using public funds to obtain goods, services and technology essential to carry out its functions in an efficient manner. As per the CUTS report titled 'Government Procurement in India' (2012), public procurement is estimated to be 25 to 30 percent of its gross domestic product (GDP) in India. Besides, the substantial economic implication of public procurement towards the growth of the nation, there are several other socio-political factors, especially in a developing country like India, which affects the government like ensuring the adequate supply of basic necessities, such as schools, hospitals, water supply, sanitation, roads etc.

The enormous size of procurement market makes it imperative for a central legislation and policy, however, such a framework is yet to be established in India. At present, it is governed mainly by General Financial Rules, (GFR) 2005 along with the Delegation of Financial Powers Rules (DFPR) and Government orders regarding price or purchase preference.

Although the GFR firmly favours competition, in most cases procurement process in India is marked by remarkable disappearance of essential principles of competition in the bidding process. This is because GFR does not provide for enough enforceability and is treated as general guidelines for government expenditures. Also, the GFR provisions rarely attract penalties in case of violation by firms. The CAG of India and the Central Vigilance Commission (CVC), plays a vital role of monitoring and vigilance of procurement processes in India.

Furthermore, to prohibit the anti-competitive behaviour in procurement, Competition Act, 2002 under section 3(3) empowers CCI to not only monitor and prohibit the anti-competitive practices. However, CCI lacks the powers to investigate the indicted public officials when firms indulge in anti-competitive conduct, such as collusion with public officials, as per the Organisation for Economic Cooperation and Development (OECD) report on 'Policy Roundtables – Collusion and Corruption in Public Procurement', 2010. This indicates limitation of the Competition Act in dealing with malpractices in public procurement system in India. Besides, competition is also affected by the opaqueness or lack of transparency in public procurement processes.

As per the CUTS report titled 'Government Procurement in India' (2012), public procurement is estimated to be 25 to 30 percent of its GDP in India

Thus, absence of central legislations nor there exists a National Public Procurement Policy and presence of multiple agencies and rules have provided fertile ground for misuse of public funds in India, consequently affecting the economic growth of the country. In this vague legal structure of public procurement in India, the Public Procurement Bill, 2012 turns out to be a ray of hope towards introducing the proper structure of procurement.

The Bill entails many provisions specially designed to counter the anti-competitive concerns in procurement process, prescribing penalty for those who engage in any form of bid-rigging, collusive bidding or anti-competitive practices. Unfortunately, the Bill had lapsed due to dissolution of Parliament in 2014. However, Tamil Nadu, Karnataka and Himachal Pradesh are few states, which have come up with state legislations on procurement. Rajasthan is the recent one to come up with its legislation in 2013.

In order to enhance efficiency and capacity of domestic producers and widening of supplier base it is necessary to ensure competition in the entire process involved in public procurement. Infusing competition in the public procurement process would help in achieving transparency, value for money and fairness in the system. In addition, adoption of National Public Procurement Policy should also be adopted to address interfaces between public procurement and related macroeconomic policies like trade, competition and fiscal policies.

– *This article has been contributed by Mamta Nayak, Programme Officer of and for CUTS Centre for Competition, Investment & Economic Regulation (CCIER).*

Economiquity


ECONOMIQUITY

WTO Must Prevail Over Splinter Groups

The October-December 2014 issue of Economiquity carries an article entitled, 'WTO Must Prevail over Splinter Groups' in its cover story, which states that trade between members of a group affects the rest of the world. It is critical to focus efforts on the multilateral system and not to succumb to the ease and appeal of plurilateral agreements. Rather, countries must strengthen the inclusivity and empowerment of the WTO system, particularly for the world's poorest and marginalised.

A special article by Jeffrey D Sachs states that the problem with free-market and Keynesian economics is that they misunderstand modern investment. Another special article by Tulsi Jayakumar states that the WTO's objections over our grain stockpile do not make sense. Hence, the July stand-off and the recent resolution.

This newsletter can be accessed at: www.economiquity.org/

Trade Buzz


Trade Buzz

Reducing NTMs Crucial to Strengthen Intra-Regional Trade

Trade Buzz is a quarterly e-newsletter of the SAARC Trade Promotion Network Secretariat and jointly produced with CUTS International. SAARC TPN is a network on business associations of South Asian countries. It is an initiative of the Federal Ministry of Economic Cooperation and Development (BMZ), Germany and the German Cooperation Agency (GIZ).

The cover story of the current issue entitled: Reducing NTMs Crucial to Strengthen Intra-Regional Trade, states that intra-regional trade in South Asia is still low and is a matter of deep concern in trade policy-making circles. Despite a gradual reduction in tariff under the Agreement on South Asian Free Trade Area (SAFTA), in 2013, intra-regional trade in South Asia is just about four percent of their total world trade.

http://www.cuts-citee.org/pdf/Trade_Buzz-Sep-Nov2014.pdf

ReguLetter


REGULETTER

World Competition Day

Promoting Fair Competition in Public Procurement

The October-December 2014 issue of ReguLetter encapsulates 'World Competition Day (WCD): Promoting Fair Competition in Public Procurement' in its cover story. This year (2014) the theme for WCD was *'Competition Issues in Public Procurement'* as supporters of the WCD believed that an agenda for proper functioning of public procurement would enhance the economy of any country by generating demand and consumption.

A special feature by Timothy Kitundu states that the Government of Tanzania has admitted that a good number of traders in the country are aware of the laws and regulations regarding fair competition and the protection of consumers, but there are a number of challenges that need be addressed.

This newsletter can be accessed at: www.cuts-ccier.org/reguletter.htm

We want to hear from you...

Please e-mail your comments and suggestions to **c-cier@cuts.org**

We put a lot of time and effort in taking out this newsletter and it would mean a lot to us if we could know how far this effort is paying off in terms of utility to the readers. Please take a few seconds and suggest ways for improvement on:

- Content
- Number of pages devoted to news stories
- Usefulness as an information base
- Readability (colour, illustrations & layout)

SOURCES

BL: The Hindu Business Line, **BS:** Business Standard, **BT:** Business Times; **DNA:** Daily News Analysis, **ET:** The Economic Times, **FE:** The Financial Express, **HT:** The Hindustan Times, **NDTV:** New Delhi Television Limited, **TH:** The Hindu, **ToI:** Times of India,

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