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Competition and Regulation in the Indian Port Sector

Ports are very critical in international trade, as they provide linkages between international and domestic production and distribution networks. They are now transport centres and logistic platforms for international trade. The government used to monopolise the port sector, which can be attributed to the requirement of large-scale investments and long gestation periods, particularly when returns from the investment would also be uncertain. However, this has since changed, especially in the context of the globalisation and economic liberalisation, which saw increased commercialisation stemming from the growth of international trade. This called for the need to adopt new and improved technology, which also entailed considerable investment and augmentation of existing infrastructure, making it imperative that the private sector also be called in as a partner in the sector.

As a result, a privatisation programme was initiated in the sector under the broad privatisation programme of the 1990s, which was aiming at improving the performance of the port sector, through the speeding up of the investment process. This opened up the sector to private players as well, thus shaping the nature of competition that is prevailing on date. An overview of the port sector services and initiatives that have been taken to promote private participation in the maritime sub-sectors are examined in this paper.

Introduction

India has a coastline of about 7517 km, which has given rise to several seaports. From the regulatory point of view, Indian ports have been classified into two categories: major and minor ports. Minor ports, numbering about 187, have always been less regulated, compared to the major ports. Major ports are governed by policy directives of the Ministry of Shipping, under the Indian Ports (IP) Act, 1908, and the Major Port Trust (MPT) Act, 1963. There are about 12 major seaports in India at the moment.

Ports cater to about 95 percent of India's international trade by volume and 77 percent by value. The major ports dominate in terms of business volume, accounting for 75 percent of the cargo handled. However, in recent times, minor ports have also been witnessing growth in traffic. The overall capacity of minor ports is expected to double from its present levels by 2011-12.[1]

The performance of Indian ports is said to be inefficient and below international norms. The inefficiency of Indian ports results in higher container handling costs and slower ship turnaround times. As a result of the inefficiency, operators end up charging a higher freight rate from India, compared to other ports in the region[2].

The briefing paper tries to explore the regulatory and competition scenario in the Indian port sector. The rest of the paper is organised as follows. Section 2 gives the regulatory scenario on ports, particularly the general regulatory framework governing port operations. Section 3 takes a look at the nature of competition in the sector, where some players are identified together with some measure of market shares. Section 4 gives concluding remarks.

Port Regulation in India

Tariff competition among operators in the 'major ports' sector is limited, given that the tariffs are regulated. Tariffs in major ports are regulated by the Tariff Authority of Major Ports (TAMP), a regulatory body established in 1997, in terms of the Major Ports Trust Act, 1963. The roles of the TAMP include regulating both vessel-related and cargo-related tariffs as well as regulating rates for lease of properties in respect of Major Port Trusts and the private operators located therein. Despite being a regulatory body, the TAMP has limited autonomy, being largely under the Central Government's control, and its lack of power to regulate performance and select private parties for contracts and other services implies regulation limitations. Above all, the 'cost-plus' approach[3] to tariff fixation adopted by the TAMP has been criticised on the grounds that it does not recognise and reward efficiency improvements. Moreover, cost estimation may be difficult.

Indian ports are also generally administered and regulated by the Central and State governments. The Major Port Trusts, governed under the Major Ports Trust Act, 1963, and the Indian Ports Act, 1908, have also been established to administer all major ports (except the Ennore Port run by Ennore Port Limited). The reform process, initiated during the 1990s, as part of the broader strategy of infrastructure development, called for private sector participation, due to the inadequacy of public resources.

The Ministry of Shipping, in consultation with the Ministry of Surface Transport, control the major policy decisions in the port sector in India. The government is envisaging the pursuit of the objectives of upgrading technology and overall improvement in performance levels by strengthening the regulatory structures, tariff rationalisation, establishing corporate structure and promoting foreign investment. Policy initiatives have focused on the development of existing public sector ports, with a segmented approach to privatisation, rather than the development of greenfield projects. This would involve resources and labour-related complications. In this regard, some policy initiatives have been introduced in the sector to drive the objectives forward.

Policy Initiatives in the Sector

Public Private Partnerships (PPPs)

An unstructured regime of PPPs existed in India between 2000 and 2007, before becoming more organised and predictable in 2007. In 2008, a new model concession agreement was developed with a huge bearing on PPPs, serving as a guideline and template document for drafting concession agreements.

One model PPP that has been used in the sector is the Build-Operate-Transfer model (BOT). This model is generally used for private sector participation to facilitate implementation of development schemes and better management practices, with the assets reverting back to the port trust after the concession period. It has enhanced competition by allowing joint ventures between major ports and foreign firms, minor ports and other companies.

Liberalisation/Privatisation

The extent of privatisation in any sector plays a role in determining the degree of competition in the sector. Privatisation in the sector was initiated as a means of enhancing the efficiency of transportation and reducing the cost of logistics. In India, private participation in the port sector has been mostly restricted to the development of minor ports, especially greenfield ports. The success of a greenfield port project hinges on the extent of the collaboration between a wide range of institutions, including maritime development boards, railways, state governments and other service providers, under a commonly agreed port development plan.[4] Although such collaboration is not really that clear, the entrance of many players and the increase in trade volumes and movement due to liberalisation and privatisation can be cited as a success.

Regulation Tools

Among the tools used under the general regulation framework include the following:

- Tonnage Tax: These are the taxes paid by a shipping company based on the total tonnage of its ships. It puts a tax burden of only one-two percent, as compared to the current corporate tax of around 35 percent. It facilitates a level playing field in the Indian Shipping Industry and increases port profitability and makes them more competitive with foreign lines.
- Marine Charges: The old regime of marine charges has been restructured to match the levels prevalent in neighbouring foreign ports. This will wean away the transhipment cargo from foreign ports to Indian ports and, thus, reduce the freight rate. Moreover, the introduction of hourly berth charges has provided incentive to ships to leave ports immediately after completion of discharge or loading.[5]
- Cabotage Law: It restrains entry to the country's coastal trade only to national ships. In India, sections 407 and 408 of the Merchant Shipping Act of 1958 govern it. Many marine consultants worry that protection under it may no longer hold true with foreign shipping lines allowed to pick up to 51 percent stake in the Indian Maritime Major SCI.

Competition in the Sector

The government's neglect of port expansion in the 1980s, through controls on spending of accruals, led to deteriorating port services, obsolete equipment and infrastructure and, hence, a decline in the quality of port services. As a result of which, today, very few ports can deliver world-class service at a competitive cost. The Ministry-centric port management system is a complex bureaucratic process and leads to unnecessary delays and opens up opportunities for wielding political influence[6] .

Despite various policy measures to promote private participation, the public sector still dominates, for example, the government owns and operates the Shipping Corporation of India, which has a 34 percent share in Indian tonnage in terms of gross tonnage, and the Dredging Corporation of India, which is the largest dredging company in India and the seventh largest in the world, controlling around 90 percent of the maintenance dredging in the major ports in India. The government thus dominates the port sector, a reflection of the inherent bias in the port policy towards the public sector, with no competitive neutrality.

However, in recent times, despite the bias, port policies have encouraged the private sector to take the lead in the development activities and operations in these public ports, through formation of joint ventures between a major and a minor port and among major ports and private operators. The first major step towards corporatisation came in 1996, when collaborations among major ports and minor ports, foreign ports and other private operators started. The earlier mode of 'service-port model'[7] was restructured to 'landlord-port model',[8] in the form of BOT, in introducing PSP in the port sector. Many major ports now operate largely as landlord ports – international port operators have been invited to submit competitive bids for BOT terminals on a revenue-sharing basis. Foreign players, including Maersk (JNPT, Mumbai), P&O Ports (Cochin and Vishakapatnam) and PSA Singapore (Tuticorin) have undertaken significant investment on BOT basis. Domestic and international private investors are already developing minor ports.

There are three categories of port-related competition: inter-port, intra-port and intra-terminal competition.[9] Inter-port competition exists when two ports, either in the same country or in different countries, are competing for the same cargo; the scale of the competition often depends on the size of the hinterland of the concerned ports. Intra-port competition is where two or more terminal operators within the same port area compete for the same type of cargoes. Intra-terminal competition refers to two or more companies competing within the same terminal, a situation which is rare and usually only exists within small ports operating under the service port model.[10]

In the case of Indian ports, it is largely inter-port and intra-port competition that prevails. Both inter-port and intra-port competition are at a nascent stage, with inter-port competition being hindered by insufficient hinterland connectivity and also because not all ports can offer similar facilities[11] . Hinterland connectivity is a major issue with rail and road connectivity inadequate at a number of ports, especially the minor ports. It is largely a result of poor hinterland connectivity at other ports that JNPT caters to as much as 55 percent of container cargo and often experiences severe congestion. Further, not even all the major ports in India can provide similar facilities in terms of draft requirement, storage, etc. Therefore, often, shippers have to skip certain terminals or ports which may otherwise be competitive options[12] .

In terms of activity, all major ports are fairly busy, enjoying a fair share of the market (defined in terms of throughput per year). Table 1 gives some market shares for the major ports, giving a fairly competitive market situation in terms of market shares. In terms of the picture presented by the market shares, there are generally low competition concerns.

However, government policies, rules and regulations that pose a threat to fair competition in the port sector in India do exist. The TAMP-determined tariff ceilings, for example, under which all major ports are regulated, are a cause for concern. Very often, port operators shy away from providing customised services, as they cannot raise their prices beyond this ceiling. Reducing tariffs below the ceiling as a means of fighting competition also brings with it viability challenges, particularly due to high overhead costs.

Port operators also do not have much incentive in promoting inter and intra-port competition, as almost all ports in India today operate at full capacity. For instance, JNPT has three container terminals catering for similar cargo and all are operating at full capacity. One of the private terminals, GTI, has tariffs almost 30 percent higher than the other two terminals, but it continues to get sufficient traffic. The expected entrance of a second container terminal at Chennai, to compete with the existing terminal operated by DP Port (earlier P&O Ports), as well as the other one expected to come up at JNPT, is likely to see intra-port competition emerging[13] .

Table 1: Major Ports Traffic Throughput (in millions of tonnes)

PORT	TRAFFIC THROUGHPUT		MARKET SHARES	
	2007-2008	2006-2007	2007-08	2006-07
Kandla	64.89	52.98	12.51	11.42
Vishakapatnam	64.59	56.38	12.45	12.16
Mumbai	57.03	52.36	11.00	11.29
Chennai	57.15	53.41	11.02	11.52
Kolkata & Halida	57.28	55.05	11.05	11.87
JNPT	55.75	44.81	10.75	9.66
Paradip	42.43	38.51	8.18	8.30
New Mangalore	36.01	32.04	6.94	6.91
Mormugao	35.12	34.24	6.77	7.38
Tuticorin	21.48	18	4.14	3.88
Kochi	15.31	15.25	2.95	3.29
Ennore	11.56	10.71	2.23	2.31
Total	518.6	463.74	100.00	100.00

Source: "Port Planning", Prakash Gaur & Tarun Sharma, 2008, CEPT University

Furthermore, there are rigidities in pricing, as a result of which traffic of nearby ports cannot be enticed through value-added services or reduction in tariffs. A few of TAMP's decisions have also left little incentive for ports to vie for traffic from nearby ports. Moreover, the powers of the Director General of Shipping to give directions regarding route, cargo etc., limit competition. These issues need to be resolved to promote inter-port competition.

Conclusion

The Indian port sector has undergone several changes, which were also in line with the policy and regulatory changes taking place in the sector. The changes in the policy initiatives also resulted in changes in the prevailing competition scenario, with the sector seeing a change from government monopoly to one where private sector players are also actively participating. There is also scope for more players and growth of the sector, especially given the imminent new terminals.

Although there have been positive developments, as far as promoting competition is concerned, some possible areas of concern still exist. The public sector has maintained dominance in the sector and some rules and regulations are not necessarily promoting competition. Lack of sufficient hinterland connectivity, especially due to inadequate rail and road connectivity at a number of ports, also hinders competition. The current regulatory framework, comprising of many regulators and multiple legislations, is also complex and might need simplification to enhance integration and better co-ordination.

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Endnotes

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2 Shashikumar, 1998
3 Where all or part of the total costs plus expected returns are recovered as taxes
4 'Port Management Services', by TM Logistics International accessed at website http://www.tmilltd.com/port_management_knowledge.htm
5 Jain P. (March 11, 1997), "Policy Initiatives by Central Government in Major Ports", CII Conference on Ports and Roads investment, Hotel Oberoi, New Delhi.
6 Mahmud and Rossette, 2007
7 Where port authority and operator are one and the same (The Major Ports of India). Source: http://www.tmilltd.com/port_management_knowledge.htm
8 Where the port authority only owns all the port assets and leases them out to private operators. Source: http://www.tmilltd.com/port_management_knowledge.htm
9 From 'Legal Tools for Port Reform', in Port Reform Toolkit, by PPIAF, World Bank *et al*
10 *Ibid*
11 TERI, 2008
12 *Ibid*
13 Supra note 11

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