



Competition and Regulatory Issues in the Coal Sector in India

India, as a growing economy, faces increasing challenges in the form of energy security. This briefing paper examines various aspects of the coal sector, which has remained the primary resource of energy as it contributes over half of India's primary commercial energy. Coal India Limited, a public sector entity, accounts for almost 80 percent supply in coal sector, and is practically a monopoly purveyor of coal in India. This paper presents an inclusive overview of the coal sector in India, while studying competition and regulation in the sector. It looks at other related issues and specifically examines the need for independent regulatory oversight in the sector. It concludes with a set of recommendations.

Introduction

Coal is a primary resource in achieving energy security in India to assimilate economic growth. Inconsistent supply and inferior quality remain problems despite sectoral reforms paving the way for new and greener sources of energy.

However, currently and for years to come, coal will continue to play an important role for the power sector, given that about 76 percent of coal consumed in India is used by the power sector and that 67 percent of the electricity generated comes from coal. This is on account of limited domestic production capacity for oil, falling production of natural gas with no new discoveries being reported, resistance to large hydro-electric and nuclear projects and attendant spurring of demand for coal. Harnessing and use of coal reserves efficiently is, therefore, critical.

In India, production of coal has been a natural government monopoly with over 90 percent of the production coming through Coal India Limited (CIL) along with its subsidiaries. Captive mining as a policy instrument was introduced in the year 1993. This policy was instrumental in encouraging

private players in the sector. However, private players have not yet provided promising progress. Out of the 200 allocated blocks (22 have been de-allocated); only 30 mines have commenced production and the rest are stalled.

Although India has the fifth largest reserves of coal in the world, it is not able to meet its domestic demand. Since 2007, CIL has constantly failed to achieve production targets. It has been projected that the likely overall demand for coal for the 12th Five Year Plan ending 2016-2017 is going to be 980.5 MT, of which the demand from power utilities would be 75 percent (inclusive of captive generation) with other industries, such as steel, cement and sponge iron having only a marginal impact on demand. The projected gap between demand and supply is likely to escalate to 423 MT in the 13th Plan period (2017-22)¹.

The reason for this gap between demand and supply are procedural delays in project clearances, delays in adopting new excavation technologies and inadequate facilities for evacuation of coal, etc. This gap is considerably bridged every year through coal imports by various industries and sometimes by the

state governments too. Increased use of imported coal in power generation has led to debates on whether the increased costs of such power generation should be passed on to the consumers.

Competition and Regulation in the Sector

The economic growth target of India as set out in the 12th Five Year Plan cannot be achieved unless there is a massive increase in infrastructure services in various sectors, including energy.

Coal mining started in India in 1774, and then initiatives were taken up by the East India Company. However, after independence, mining became part of a public domain. Prior to 1970, several private players were engaged in the mining and production of coal in India. Unplanned growth, inability of the sector to cater to the needs of the economy (acute shortage) along with unscientific exploitation of coal reserves etc. lead to a series of enactments nationalising coal mining in the early 1970s².

The government first took over the management of the coking coal and coal mines³ and thereafter nationalised the mines⁴. All existing mines at that time were brought, under the umbrella of one behemoth, namely, CIL.

Since nationalisation, public sector companies are statutorily conferred with the exclusive right to carry out exploration, prospecting, mining and production of coal (to the exclusion of captive mining). Since then there has been change in the autonomous monopolistic nature of CIL. However, various legislative initiatives and regulatory orders have been set up to break this monopolistic nature.

Recently, the Competition Commission of India (CCI) has recommended that the government must initiate a process through which more players can be introduced in the mining sector. In a case against CIL for abusing its dominant position in the market, CCI has observed that, *the effects of various anti-competitive factors identified in the coal sector on the rest of the economy are widespread and create systemic risk. Inefficiencies in any one segment are felt in the entire value chain with a cascading impact on the end consumer of electricity...there is an imperative need to...restructure the sector by introducing more players to reduce the dominance of any one player and facilitate competition.*

The Order also stated that with over 250 billion tonnes of coal reserves, and despite the

domestic demand for coal growing by 8 percent annually, CIL's production has stagnated around 350 million tonnes, over the last three years. CCI ruled that CIL through its subsidiaries operated independently of market forces and enjoyed undisputed dominance and has imposed unfair/discriminatory conditions in the matter of supply of non-coking coal to power producers and in lieu of its observations imposed a penalty of ₹1773 crores, a first of its kind over a public sector enterprise. CIL is not only the nation's largest coal producer, but is also the single largest producer of coal in the world⁵.

Subsequently, CIL approached Competition Appellate Tribunal (COMPAT) challenging the order passed by the CCI. Though the appeal has not been heard on merits yet; meanwhile a stay on penalty has been given where CIL has been asked to deposit ₹50 crores as security.

In 2011, CIL saw a decline in both production and sector-wise dispatches due to problems pertaining to procedural delays, land acquisition, adverse geo-mining conditions, tender finalisation for equipment, and delays in getting railway siding leading to a loss of 115.95 million tonnes of production⁶. It was in this background the Planning Commission, Comptroller and Auditor General (CAG) and further pursuant to order recommendations by the CCI, voices emerged for restructuring of CIL.

By introducing the Coal Regulatory Authority Bill 2013, the government postulates an independent regulator and a transparent and efficient process for auctions. Further, articulations are in progress for selling stakes in CIL to bring in private equity. A diminished control of the Ministry of Coal and monopoly of CIL, less scams and price distortions are expected.

Regulatory and legislative framework

There are around 12 legislations governing the coal sector, however, not all call for referendum for change. The analyses of the legislative and regulatory rules and policies, which affect competitiveness in the sector have been covered as follows:

Mines and Minerals (Development and Regulation) Act, 1957(MMDRA): The MMDRA is considered as the parasol for legislations pertaining to mining of major minerals in India. A concerned section of this Act pertains to competitive bidding of coal blocks. However, the

participation has been restricted only to steel industries, power industries and washeries, provided that it is for their captive consumption. Thereby it excludes all other industries from commercial exploitation of coal. Furthermore, the provision of reserving coal blocks by the State/ Union government, a practice that has been criticised by many, end up securing prime blocks for the State Utilities (PSUs), while the private companies participate through competitive bidding. It should also be noted that PSUs are not restricted to participate through competitive bidding and thereby have a generous advantage.

Coal Mines (Nationalisation) Amendment Bill 2000: With the initiative of introducing private players to mine and produce coal “either for own consumption, sale of for any other purpose in accordance with the prospecting licence or mining lease or sub-lease”, the Amendment Bill 2000 was introduced to overcome the coal supply scarcity. However, no consolidated decision has been reached so far. The view that still surrounds the Preamble of the Principle Act, i.e. Coal Mines (Nationalisation) Act, 1973, is the word Nationalisation as represented in the title of the Act would be contrary to the insertion of the amended provisions pertaining to inclusion of private players and thereby re-nationalising the coal mining sector. Therefore, keeping in mind the harmonious construction rule of interpretation of Law, there is a need to amend the title and scope of the Act of 1973.

Other related issues

PPP in State joint ventures

While the above amendment Bill has been pending, various state governments undertook steps to involve private sector in commercial mining. The Central Government having power in allocating coal blocks would allocate to state governments, which, in turn, would hand these allocated blocks to the state utilities, who then partner with private companies for commercial mining. This practice mechanism has not only helped in securing more production of coal, but has also increased the efficiency within the sector and thereby fostering positive competitiveness.

Policy ambiguity in allocation of blocks

A comparative study of the Laws reveals their inadequacy to create a level playing field and promoting competition. For example, provisions

for acquisitions of a virgin coal bearing land, under the Coal Bearing Areas (Acquisition & Development) Act 1957 allows possession by the central government for a centrally controlled public sector company only. Further, the new Land Acquisition Rehabilitation and Resettlement Act (LARR Act) has not cured weaknesses related to inadequate compensation, illegal squatting, etc. Certain segments in the mining industry like provisions of health, education and housing for mine workers can be outsourced but the Contract Labour (Regulation & Abolition) Act does not allow outsourcing perennial jobs.

Issue of coal pricing

According to the Mines and Minerals Development and Regulation Act (MMDRA) and other related provisions, the central government possesses the right to determine the price for coal in accordance with its grade and quality. However, such power is entirely dependent upon the price advised by CIL. Being monopolistic in nature, CIL completely diminishes the entry of other private players in the market. And thereby it has been observed that absence of competitive approach also raised the issue of price distortion in the sector.

Sustainable production of coal

An environment non government organisation (NGO) study suggests that the ‘extractable’ coal reserves would not last more than 17 years at the projected domestic demand. The projected private investment may fall.

Surplus production to be transferred

The Law provides that a private company can indulge in mining activity for captive consumption. Although the guidelines and procedures are clearly laid down for captive mining, however, in case of surplus production, the companies can transfer the surplus outside the end-use sector. Recently, after an inter-ministerial deliberation, the Planning Commission of India had suggested that such transfer should be restricted and that any transfer of surplus production should be done at the notified price to the nearest CIL subsidiary or other firms in the same sector facing shortage in linkage coal from CIL. The recommendations made by the Commission seems like an another attempt of the government to protect CIL from its inefficient and ineffective method of mining and supporting cases of opening for fuel supply agreements. The private sector works for profit.

If these participants are not given right over their production, the interest in the sector is likely to decline and so would the investment.

Need for a Regulator

At present, there is a significant need for reforming India's coal sector in line with other parts of the energy sectors⁷. Prices are being fixed by CIL and there is no involvement of Ministry of Coal in price setting. Evidently, enough coal consumers do not directly participate in price negotiations. Nonetheless, there are no comprehensive frameworks that govern the licensing and operational setups of coal mining/trading companies. It is, therefore, voices emerge for setting up of a regulator in this sector.

With this background, the Cabinet for the Government of India initiated the Coal Regulatory Authority Bill, which was tabled in the lower house earlier in 2013. The Cabinet has already started the process for establishing an independent coal regulator for the sector by passing an executive order. However, the proposed regulator, is weak and in all possibilities an extraneous position created with the ideology of accountability and transparency but disguised by retiring plans of the incumbent bureaucrats. As the legislative mandate is missing, so would be the powers of the regulators.

The regulator as conceived by the Cabinet has only advisory/recommendatory powers to frame principles and methodology. If there is any violation of the same, powers to impose penalty or take up any other corrective measures to remedy such violations, the regulator will have no decisive role in the cancellation or suspension of mining licences. It is also unclear how a non-statutory body can effectively adjudicate disputes between Public Sector Units (PSUs) and buyers. If the government has serious thoughts about the coal regulator, then it must first break the monopoly nature of CIL by bringing in private players and accentuating the level playing field. Unless a legislative mandate is put in place, the regulator being merely a non-statutory body would only raise red flags without any concrete effect on corrupt practices.

Conclusions and Recommendations

Recently the government has taken initiatives to bring reforms in the legal system governing the mineral sector. The latest MMDR Bill 2011 has attempted to address the key industry concerns of

transparent concession systems, scientific mining, sustainable development and curbing illegal mining by repealing MMDRA. The draft Act, in line with National Mineral Policy 2008 aims to achieve speedy application processing by delegating power to the state government for award of mineral concessions with prior consent of central government required only in case of coal and atomic minerals.

In case of the coal industry in India, the legislation restricts entry and confers exclusive rights, by statutorily limiting the production of coal to government companies. In terms of the effects on competition in the coal sector, the Coal Mines Nationalisation Act creates and maintains a monopoly in favour of the government companies. Although the Act does not confer a monopoly on a particular company, in reality there is no competition between public sector/government companies, unlike the petroleum sector in which some level of competition appears to exist between public sector companies⁸.

The Coal Mines Nationalisation Amendment Bill 2000 was aimed at opening up the sector for private participation. However, it could not be passed given the opposition from the unions and political obligations.

The government could consider promoting state level public sector companies on the lines of Singareni Collieries Company Ltd. (SCCL) and give them greater managerial freedom, so that these companies become true competitors to CIL. Another idea to increase CIL's production capacity has been to introduce contract mining, whereby the private player would be paid at a per tonne basis by CIL, which would be eventually selling the mined coal on per tonne basis.⁹

Also, streamlining of procedures for giving a decision on the application of mining of coal in a block within a specified time by the Central/State Ministries of Environment & Forests is a must, as the achievement of production targets depends on timely clearance of project proposals. Similarly, there is a need for inter-ministerial coordination for development of infrastructure facilities in the nature of roads, railway lines and ports for speedy exclusion, distribution and import of coal.

The bottlenecks and the legislative hurdles in accompanying greater sectoral productivity have been a source of debate and many a committees and expert groups have identified and suggested reasonable solutions to overcome the same. However, a majority of the recommendations

(including those discussed above) have not been implemented. There is a lack of political will, given the legislative measures that may have to be taken given the dynamics of alliance politics.

It is clear that the effects of various anti-competitive factors identified in the coal sector on the rest of the economy are widespread. Some initiatives have already been taken to reform the sector and there is a need to further carry forward the same.

It is required to define the reform objectives in the coal sector and ensure that policy changes are coherent in nature and can help in achieving the stated objectives:

- Restructure the sector by introducing more number of players, so that it can reduce the dominance of any one player and can facilitate competition.
- Keep a close track on the licences issued for captive mining periodically.
- Bring the coal sector under an independent regulatory oversight. It is also required to streamline process, procedure and remove discriminatory provisions in the existing legal framework against the private players in order to incentivise and expedite coal production.
- Address sustainability issues and secure private investment through coal block banking mechanism.

Endnotes

- 1 Planning Commission. 2012. Report of the Working Group on Coal and Lignite for the Formulation of the 12th Five Year Plan (2012-2017). Planning Commission. Government of India. New Delhi. 2012. Available on http://www.planningcommission.nic.in/aboutus/committee/.../wg_Coal1406.pdf, Last accessed on March 03, 2014.
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- 3 The Coking Coal Mines (Emergency Provisions) Act, 1971 and the Coal Mines (Taking Over of Management) Act, 1973.
- 4 The Coking Coal Mines (Nationalisation) Act, 1972 and The Coal Mines(Nationalisation) Act, 1973.
- 5 CIL Annual Report & Accounts 2011-2012, Chairman's Statement, p.18, can be accessed at www.coalindia.in/Documents/Coal_India_AR_2011_-2012_17082012.pdf, last accessed on March 03, 2014.
- 6 Office of the Comptroller and Auditor General, Report No. - 7 of 2012-13 for the period ended March 2012 - Performance Audit of Allocation of Coal Blocks and Augmentation of Coal Production (Ministry of Coal), 2012,p. 20, can be accessed at http://saiindia.gov.in/english/home/Our_Products/Audit_Report/Government_Wise/union_audit/recent_reports/union_performance/2012_2013/Commercial/Report_No_7/Report_No_7.html. Last accessed on March 03, 2014.
- 7 Oil and Gas sector is regulated by Director General of Hydrocarbons and Petroleum and Natural Gas Regulatory Board, whereas Power has central regulator as Central Electricity Regulatory Commission and State Electricity Regulatory Commission.
- 8 *IOC sees PSU rivals eat into market share*, Business Standard, May 11th 2011, can be accessed at <http://www.business-standard.com/india/news/ioc-sees-psu-rivals-eat-into-market-share/134787/on>, last accessed on 04.12.2011.
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