



Competition and Regulatory Issues in the Railway Sector in India

The Indian railways form an integral part of the transport sector and its growth, efficiency and competitiveness are essential for the rapid growth of the sector vis-à-vis the economy. However, recent statistics have reflected a negative growth of the monopolistic railway sector. This Briefing Paper aims to provide an overall understanding of the railways sector and suggestions to revamp it in an inclusive and sustainable manner. Tools such as separation of powers, injection of competition and setting up of a regulator have been advocated herein as important measures to ensure an overall growth.

Introduction

Indian Railways (IR) consists of 17 zonal railways. It is state-owned monopoly under the Government of India, through the Ministry of Railways (MoR). The Seventh Schedule of the Constitution of India describes railway as a union subject, where all activities regarding construction, maintenance and operations of the railways are governed by The Railways Act, 1989.

Recently, various reports have highlighted a decline in the share of railways in the inter-modal transport mix of the country. To illustrate, in goods transportation, the share of railways which used to be 71 percent in 1970, dropped to 35 percent in 2007. Even, in passenger transport, the share of railways has plunged from 36 percent in 1970 to almost 14 percent in 2007.¹

There are several factors which have daunted the growth of the railway sector. Being managed as a monopoly under the MoR, the sector is politically sensitive. Furthermore, the sector faces acute supply-side shortages due to inadequate infrastructure.

Private Participation in the Railways

At present, the private sector can only participate in railway activities (barring haulage), such as catering, wagon ownership and leasing and in the creation and maintenance of railway infrastructure, etc.² The Eleventh Five Year Plan had envisaged 26 percent private investment in the IR of the proposed investment during the plan period, while, the actual investment was only four percent.³

In 2006, the container business which was earlier restricted to the Container Corporation of India (CONCOR), a public sector undertaking under administrative control of MoR, was opened for private participation where 15 companies were given licences for the containerisation of freight on IR. Through these licences the private companies got limited access for operating container services on specific routes for a certain number of years on the IR network. Although, the private participants were entitled to own and supply the rolling stock for container operations, given the public nature of Railway transport, the haulage rights were retained with the IR.⁴

In spite of the allowing private entry, the management was highly dominated by the CONCOR, resulting in meagre private participation. Similarly, the MoR has also come out with a draft policy for private participation in rail construction and capacity expansion projects by welcoming concessionaires. The policy includes different models to attract private capital for accelerated construction of fixed rail infrastructure. However, with the unsuccessfulness of the container business, the success of the private investment is uncertain.

Indian Railways: The All-inclusive Policymaker, Regulator and Operator

Tariff Fixation

Currently, under Section 30 of the Railway Act, 1989, the Railway Board is to fix tariff. In the passenger segment, tariff fixation is politically influenced. As a result, the tariff is mostly lower than the costs of service provision. While passenger traffic constitutes around 64 percent of the total traffic on the railways (in terms of train-kms), it contributes less than 30 percent to the total revenue earned.⁵

This loss from the passenger transport segment is cross subsidised by the earnings from the freight segment. Freight tariff is often increased irrationally to counter the loss from the passenger business. This is also one of the reasons why the railways have lost some share in the overall freight movement.

Logistics Plan

As the Railway Board is the operator and provider of railway services in the country, there remains a lingering suspicion that commercial interest sometimes may influence its actions.

For instance, in 2010, the Railway Board issued a logistics plan for rationalising routes for the movement of imported coal from ports to thermal power stations. The plan has been criticised by both ports and power utilities as it restricts movement of imported coal to thermal power stations located in central India from the closer Eastern ports due to capacity constraints on routes. Thermal power stations in central India have to incur much higher transport costs in bringing coal from ports located on the Western coasts. As a result, the logistics plan for movement of imported coal not only increases the transport costs of coal for thermal power stations affecting their competitiveness and profitability, but it also affects the volume of traffic loadings from the Eastern ports.

Safety

At present, safety in railway operations is being regulated by a body outside the railway system. According to the Railways Act, adherence to safety rules in the railways is overseen by the Commission of Railway Safety (CRS), headed by the Chief Commissioner of Railway Safety (CCRS). The main tasks of the CRS are to inspect and open new railway lines for public carriage, conduct statutory enquiries into accidents involving death or grievous injury to passengers including train crew and to advise IR with respect to the safety of train operations.

As the CRS has consistently failed to ensure safety standards, Railway Safety Authority has been suggested to be set up.

Grievance Redressal

The Railway Rates Tribunal (RRT) and Railway Claims Tribunal (RCT) were established for ensuring the non-discriminatory setting of freight charges and addressing claims of railway users.

The RRT is an independent body comprising a senior judge and two members with the primary function of ensuring non-discriminatory setting of freight charges and also ensuring that railway administrations do not make or give any undue advantage to any particular person(s). These functions of the RRT are outlined in Section 39 of the Railways Act.

However, certain matters like classification or re-classification of any commodity, fixation of wharfage and demurrage charges, fixation of fares levied for the carriage of passengers and freight levied for the carriage of luggage, parcels, railway material and military traffic and fixation of lump sum rates are not within the jurisdiction of the RRT. Consequently, the RRT has remained virtually ineffective.

The RCT, on the other hand, was established through the Railway Claims Tribunal Act, 1987 with the objective of adjudicating and providing relief to rail users by payment of compensation against loss, destruction, damage, deterioration or non-delivery of goods entrusted to IR for carriage and for death, injury or loss to a passenger in a railway accident or untoward incident. However, like the other railway tribunals, the efficiency of this agency remains questionable.

Need for Separation

Given this background, there is an imperative need to separate the roles of the policymaker, regulator and the operator in the IR.

Domestic Experience

In the telecom sector, the Department of Telecommunications (DoT), like the Railway Board was the policymaker, regulator and monopoly service provider of telephony in the country. In 1986, two new public sector corporations the Mahanagar Telephone Nigam Limited (MTNL) and the Videsh Sanchar Nigam Limited (VSNL) were set up under the DoT. Private participation in the value added services was introduced in 1992 with the new economic policy of the Government of India. The participation of private players was extended to basic services by the National Telecom Policy, 1994.

Further, with the Telecom Regulatory Authority of India (TRAI) Act, 1997 the regulatory powers of the DoT were separated and vested in the TRAI⁶ which was empowered to regulate the service providers including the public sector who were licensed to provide both basic and value added services.⁷ A similar restructuring was also seen in the Electricity sector. Statistics indicate that the said restructuring directly resulted in the inclusive growth of the two sectors.

In a recent case, (CCI case number: 64/ 2010, 02/2011 & 12/2011), the Competition Commission of India (CCI), observed that there is a conflict of interest in, as much as Railway Board/IR exercise multiple roles as a licensor and operator, apart from owning the railway network. In view of this, it is desirable that these functions be delegated to independent entities.

International Experience

In the international context, it is relevant to note that the MoR in China which owned, regulated and operated the Chinese Railways, has recently been abolished and its policy making, regulations and operation functions have been separated.⁸

In similar initiatives, introduction of Amtrak in the US, VIA in Canada and JR Freight in Japan as early as 1970s saw increased transparency in tariff setting and improved market participation. In the early 1990s, the European Commission's and UK's efforts to separate their infrastructure from rolling stock operations also led to increased competition by the introduction of private participation. It should be possible for the IR to learn from these experiences for attracting private investments and for introducing competition.

Case for an Independent Regulator

The need for an independent railway tariff regulator in the IR has been repeatedly emphasised in the various Five-Year Plan documents. A Railway Tariff Authority (RTA) was also proposed in the

Railway Budget, 2013.⁹ Some reports suggest that the Railway Ministry appears to be exploring the option to establish this RTA through an executive order, rather than an enabling legislation. Regulatory experience has shown that regulatory independence cannot be achieved unless the regulator is setup through an enabling legislation which cannot be altered or amended by executive whims. There is thus a need for an independent regulator set up through an enabling legislation to regulate not only tariff, but also to address broader concerns such as:

- Protection of consumer interests
- Quality of service standards
- Ensuring transparency
- Rationalisation of tariff and subsidies
- Prevention of anticompetitive practices

As far ensuring fair competition is concerned, it is important that the Railway Regulator, when established, is vested with powers to promote and maintain competition as the regulator would have more intimate knowledge of the rail business as compared to the competition authority. This would be similar to Section 60 of the Electricity Act 2003 which empowers the CERC to maintain competition in the electricity sector.¹⁰

Further, it is also important to ensure that the issue of overlap of powers between the CCI and regulator is addressed in such a manner that there is no conflict of interest. While, the regulator's duties should be to promote competition, the Competition Commission should protect competition.

Different models have been adopted by different countries to address such issue of overlap of powers. In UK, for example, there is a working group comprising of representative of the competition authority and sector regulators which meets to decide as to which of them is best equipped to deal with the competition issue. There is also a common appellate authority to ensure convergence in application of competition and regulatory laws whenever there is an overlap

Recommendations

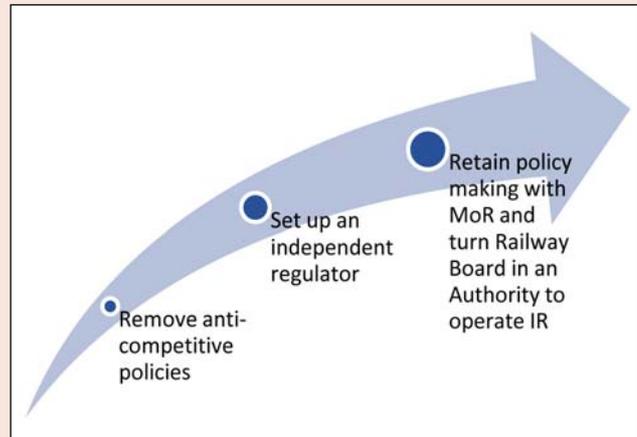
Based on the discussions above, recommendations have been made to increase the competitiveness and improve the regulatory practices of the IR. However, given that some of these recommendations would require significant structural changes, they would have to be undertaken cautiously over a five to ten year period so as to not disrupt the daily railway operations. Keeping this in mind, the recommendations have been identified as long and short term actionable items.

Short term recommendations: Setting up of an independent regulator and removal of regulations that hinder competition in Railways

1. The regulatory powers of the MoR should be vested in an independent regulator established through an enabling Act. That regulator should set and rationalise tariff, protect consumer interests, set quality of service standards and ensure transparency. This regulator should also be vested with powers to promote competition.
2. The Industrial Policy Resolution, 1991 which requires railway transport or haulage to be in the public sector should be amended to allow private participation in railway transport as well.

Long term recommendation: Separation of policy making and operation functions of the Railways

1. Policy making, regulations and operations which are today combined in the Railway Board, need to be separated. While it is felt that policy making should rest in the MoR, the Railway Board should be constituted through an enabling legislation to operate and manage the IR. The setting up of an Authority, rather than vesting operations in a corporate entity would enable the railway business to be conducted with larger social interests in mind and not be dictated by profit considerations alone.



Conclusion

Separation of the policy making functions and management of railways coupled with setting up of an independent regulator, as outlined in this paper, will go a long way in promoting accountability, transparency and both intra and inter modal competition in the railways. The first step towards introduction of competition within the railways should start by removal of regulations and acts that prohibit the introduction of private players into the railway business. This could have an immediate effect on increasing industry confidence and enhanced private investments in the Railway sector to meet the objectives as has been envisaged in the 12th Five Year Plan of the Government of India.

Endnotes

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