

Whither the Regulatory Reform Bill in India

A Discussion on the Regulatory Reform Bill

New Delhi, October 21, 2010



Planning Commission
Government of India

1. Background

1.1 For the Indian economy to achieve and sustain an annual growth rate of 10 percent, the creation of quality infrastructure is critically important. It is estimated that India needs more than a trillion dollars of investment in infrastructure over the 11th and 12th Plan periods (2005-17).

1.2 Such a large magnitude of investment cannot come from the public sector alone. The private sector too will have to be engaged in a massive scale. In order for private sector investment to be meaningful and large, at least two pre-conditions need to be met. First, missing markets for infrastructure services must be identified and created. Second, these markets must be regulated properly so that non-market risks are minimised through a predictable legal environment.

1.3 The regulatory environment in India, which is still developing, is far from uniform and predictable across sectors and/or states. Thus, an important step towards achieving the political and economic objective of regulatory reform is the proposed Regulatory Reform Bill that has been drafted by the Planning Commission, Government of India. The Draft Bill has been placed in the public domain for eliciting views and opinions on the nature and extent of necessary legislative action for reforming the regulatory environment in India.

1.4 Against this background, CUTS International with the support of the Planning Commission has been organising meetings with several stakeholders. This meeting held at New Delhi, on October 21, 2010 brought together consumer groups and other civil society organisations (CSOs) on a common platform to discuss the future of this important subject of economic governance with a focus on the Draft Regulatory Reform Bill. Its purpose was to promote exchange of views and sharing of experiences so as to provide valuable inputs to the politico-economic aspects of regulatory reform in India.

1.5 The meeting was a part of the consultative process being followed by the Planning Commission to receive comments/suggestions on this Bill from various stakeholders. Its objective was to further the cause of regulatory reform in India and engage the Indian

consumer movement with the process of regulatory reform. More than 40 participants representing the Indian consumer movement took part in its deliberations.

2. Proceedings

2.1 Gajendra Haldea, Adviser to the Deputy Chairman, Planning Commission of India

At the outset, Mr Haldea emphasised that the entire rationale for having regulation is to enhance consumer protection. In view of the monopoly of certain enterprises and insufficient competition, which gives excessive powers to providers of goods or services, regulations become pertinent to serve the consumer interest. In fact, competition is the best guarantee to consumer protection.

Highlighting the contrast between telecom and electricity sector, Mr Haldea stressed on the need to have vibrant and fair competition, monitored and facilitated by a proper regulatory mechanism. Indian telecom industry has the highest growth rate and lowest tariffs in the world due to the advent of competition and technology.

Contrary to this, in view of lack of competition big private electricity companies are reaping huge profits while the distribution losses of government electricity distribution companies stood at around Rs 60,000 crore in 2009, which is one percent of gross domestic product (GDP). Pointing out the reasons, Mr Haldea said that this happened because of regulatory capture in the electricity sector as powers were given to the regulators without any accountability. All this calls for a proper regulatory framework in the electricity sector.

Commenting upon the existing regulatory framework in India, Mr Haldea said that regulators cannot function properly because they have no independence and serve as appendages to the government. Further, the selection process characterises cronyism. Regulation in India is weak and prone to regulatory capture due to non-accountability and shortsightedness of regulators which is further aggravated by faulty selection procedure. Therefore, there was a need to lay down common standards for regulators in terms of selection procedures, powers, functions etc., for which purpose a draft

regulatory reform bill was prepared to harmonise the system of regulation and get rid of inconsistencies and lacunae in existing laws.

Mr Haldea further stressed upon the need to adopt a common regulatory framework at the earliest. Giving the reasons he said, private investment is increasing enormously and from 10th to 11th five-year plans only, it has increased three times. 11th Five Year Plan envisages 36 percent contribution of private investment. Private sector brings efficiency and therefore, to develop infrastructure private investment can serve as a boon. However, he cautioned that private sector does have the tendency to exploit and therefore, a proper regulatory regime is imperative to safeguard against this and to provide a level playing field.

Emphasising on the need of democratic accountability in regulation, he said it is important to make regulators directly accountable to the legislature. Discussing the issue of accountability, Mr Haldea cited examples from international experiences. In the US, regulators are accountable to the Congress at the federal level, whereas in UK, regulators are accountable to the government. In terms of financial accountability, the budget should be passed by the legislature and autonomy be given in terms of expenditure, subject to audit by the Comptroller & Auditor General (CAG).

With regard to judicial accountability, there is a need to have designated appellate authorities so that precious time can be saved which is wasted in appeals in various High Courts. The final appeal should lie to the Supreme Court, only on the questions of law and process of decision making.

Mr Haldea requested the assembly to focus and assist the Planning Commission on following issues:

- How the interface/overlap between sector regulators and the Competition Commission of India (CCI) can be resolved?
- How, if at all, consumer organisations can be funded through any provision of law?
- How consumers can be adequately and fairly represented before forums when they are pitted against legal experts?

2.2 Pradeep S Mehta, Secretary General, CUTS International

Mr Mehta said that consumer organisations are in favour of an effective regulatory regime in India so that they could benefit from good quality services at affordable prices. Responding to the question regarding interface between sectoral regulatory laws and competition law, Mr Mehta said that following the European model, behavioural aspects having effects on competition should be left with the competition authority, whereas structural issues should fall in the domain of sector regulators. Also, there should be a mandatory consultation requirement between sectoral regulators and competition authorities because there can be overlap also.

He also expressed his concern over lack of funding with consumer organisations which adversely affects their ability to advocate consumer interest and suggested to have a provision of consumers' cess on utility bills as is the model in the US. However, such a fund should be administered by an independent body.

On the issue of independence and accountability of regulators, Mr Mehta opined that existing selection procedure needs an overhaul. Selection by committee headed by the Cabinet Secretary will lead to appointment of retired bureaucrats which may not be the best in their roles as regulators. Instead, selection procedure should be made independent of government intervention.

2.3 Ashim Sanyal, Chief Operating Officer, VOICE

Mr Sanyal, by giving example of telecom sector, emphasised that competition is *sine-qua-non* for consumer interest. Answering to a very pertinent question that why in India there are success stories along with failures in various sectors, he said that it depends on the respective regulatory laws. Further, he added that the major issue *vis-à-vis* regulation is elimination of bias from the decision of regulators.

Making his view known, he said that to achieve optimum results just one competition authority is not enough and it should be aided by other regulators as well. Mr Sanyal also extended his support for a Consumer Advocacy Fund.

Commenting upon the draft regulatory bill, Mr Sanyal said that health and educational sectors should also be brought within the purview of the bill. He further said that regulatory bodies should not serve as sinecures for retired bureaucrats but be formed of young professionals and technical experts. Option of reappointment should be open but subject to superannuation.

2.4 Shantanu Dixit, Prayas

Welcoming the regulatory reform bill, Mr Dixit said that the bill gives thrust to regulation in all the sectors. He pointed out that presently there is no uniformity in regulatory governance across sectors. On the question of accountability, he said that regulators should pass reasoned orders.

Raising a very important question, he asked that if the draft bill seeks to give excessive powers to the concerned/line ministry in terms of notification procedure. He also said that the draft bill is silent upon as to what would happen when the licence expires. He demanded that selection procedure should be transparent and regulators be accountable.

Mr Dixit further highlighted that for any regulatory framework to be successful consumers ought to understand and realise its benefits, and this needs regular exposure. Furthermore, there is a constant need for capacity building of staff of regulatory bodies. He said that CSOs should play the role of a watchdog and be more vigilant as their demands force the government to provide results. He demanded periodical independent scrutiny of decisions of regulators by research groups, academia etc. Mr Pradeep Mehta also supported this demand.

3. Discussions

Participants raised their concerns regarding draft regulatory reform bill and sought clarifications as well. It was the concern of a few participants that draft bill which seeks to provide an overarching law, will create a super regulator in terms of its overriding effect on other laws. Mr Haldea dispelled such doubts and said that the bill does not intend to create any super regulator and overriding powers are only in terms of some characteristics, such as selection procedure, transparency and accountability. Mr Pradeep

Mehta added that the draft bill is a framework law and is in the nature of a directive to all branches to follow when designing a regulatory body.

3.1 It was a general concern of participants that regulatory bodies must have at least one member from consumer organisations. Further, participants also wanted to know as to how unorganised sectors and professional bodies like Bar Councils, Indian Medical Association etc. can be brought within the purview of this bill.

3.2 Participants also made it clear that a proper regulatory bill alone is not sufficient to further consumer interest. Grassroot activists stressed that consumer groups suffer from paucity of funds and unless adequate funds are made available a holistic consumer movement cannot be successful. From a consumer's point of view there is a crying need to include more sectors such as real estate and education within the purview of regulation. Mr Haldea acknowledged their concerns but said that the purpose of the present draft bill is to streamline already existing regulators in the infrastructure sector and does not seek to bring in other sectors under its purview.

4. Conclusion

In his concluding remarks Mr Haldea acknowledged concerns of all the participants and requested them to give their suggestions and comments on each section of the draft bill. Requesting CUTS to take a lead on this, he said that this approach will help the Planning Commission to make the bill more effective. Therefore, the assembly formed a working group to accomplish this task which comprises of:

M.M. Sharma, Vaish Associates, New Delhi;

Shirish Deshpande, MGP, Mumbai;

Dr. S. Chakravarthy, Consultant, Hyderabad;

Hemant Shah, CEC, Ahmedabad; and

Pradeep S Mehta, CUTS, Jaipur.

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