PolicyWatch

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

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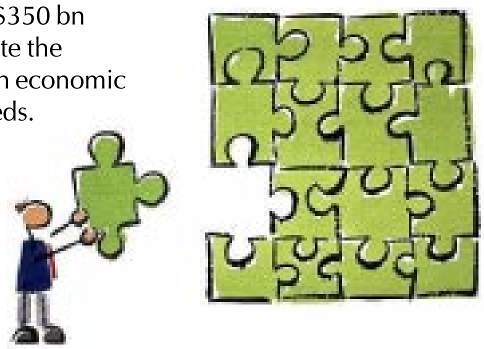
25 years CUTS International 1983-2008

INSIDE THIS ISSUE

HIGHLIGHT

"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*

Funding Architecture for Infrastructure



www.images.com

India needs something like US$350 bn over the next five years to create the infrastructure necessary to sustain economic growth and satisfy consumer needs. According to the ebullient Vinayak Chatterji, chairman of the CII's Infrastructure Council, of this huge amount nearly 70 percent has to come from the state; 20 percent from the private sector (foreign and domestic) and 10 percent from overseas development assistance, such as the World Bank (WB) and the Asian Development Bank (ADB).

These figures are based on his analysis of the WB data of investment flows in developing countries over the past decade or so. As for the future, the ratio may change depending upon what actually happens. And that must happen, if we have to achieve the target, otherwise we would not be able to grow at eight-nine percent.

In the last fiscal year (March 2006) the infrastructure investment was US$28.4bn or about 3.6 percent of Gross Domestic Product (GDP). It is not known how much of this came from the private sector and nor are any data available, but it is close to the Chatterji diagnostic.

Considering the budgetary limitations of investing public resources, we need more private flows and reforms in financial sector so that the infrastructure investment reaches at least eight percent of GDP.

Creating Modern Airports

In terms of private investment, there are splendid examples in the case of the New Delhi and Mumbai airports, with private sector operators rebuilding them to create modern airports in partnership with the government.

In this case, a constant revenue will be assured to the government under the Public Private Partnership (PPP) model, and the airports will revert to the state after 30 years. When the bids were invited, there was some opposition, but wisdom prevailed soon. We may see first-class airports in the two megapolis, as also in Kolkata and Chennai.

Minimum Leakage

Already the success of the PPPs model is visible in the roads sector. Done on transparent contracts, the PPPs have offered predictability to the private investors. The architecture of these model concession agreements has ensured minimum leakage.

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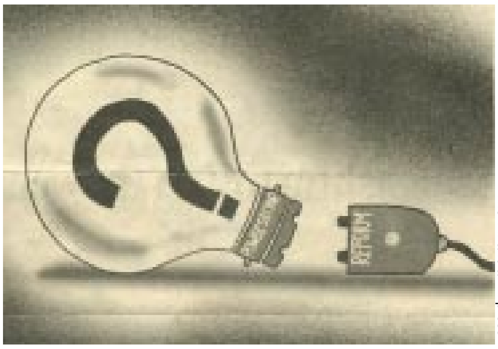
The Indian Power Sector – Finally Waking UP

– Banmali Agrawala



The Financial Express

The Ultra Mega Power Projects (UMPPs) seem to have shaken up the entire power sector. Power has long been identified as the one infrastructure sector where nothing was happening.

The Ultra Mega Power Projects (UMPPs) seem to have shaken up the entire power sector. Power has long been identified as the one infrastructure sector where nothing was happening.

We have most of our energy reserves in Central and Eastern India where power could be generated at a low cost. There is, however, limited infrastructure available to wheel the power from one part of the country to another. In fact, we still do not have a national grid. Western Maharashtra, for example, which is currently acutely short of power, could have been fed power from Eastern India had there been a transmission corridor available.

We have a problem in each segment of power, i.e. in generation, distribution, transmission fuel supply, and regulation etc.

Since the promulgation of the Electricity Act of 2003, there have been slow but certain improvements in the sector.

The Electricity Act of 2003 in itself was a remarkable piece of legislation that brought in substantial reforms. The impact of the Act is now being felt.

For example, the regulators in many states have ensured that industrial tariffs are rationalised.

The corporation of the electricity boards, which has been mandated in the Electricity Act, has also resulted in the improvement of financial performance. Many distribution companies now think like commercial entities and would want to cater to those consumers who are willing to pay. The Industry sector has clearly been the largest beneficiary of the changes in the power sector. Industry is free to set up captive power plants; they get preferential treatment from the utilities and also hefty discounts on tariff. The trend of increasing tariffs for industry has actually been reversed with industrial tariffs being reduced in many states.

In fact, the sector that has suffered in the bargain has been the rural sector as the load shedding in those areas is more than 12 to 14 hours.

The process that has been adopted for the UMPPs has indeed been innovative. One of the most time consuming activities in setting up generation facilities has been getting necessary approvals and particularly land. In the case of UMPPs, all this has been done beforehand and given to the companies on a platter. The successful bidders can therefore get started with these projects almost immediately. Further, the bidders do not have to factor in the cost of prolonged delays in getting the necessary approvals.

The private sector has responded brilliantly to these projects. The aggressive tariffs quoted are indeed competitive and clearly prove the merit of the basic concept. The credibility of the entire process has been enhanced by companies like Tata Power winning the bids.

The other aspect that this process has thrown up is the non-competitiveness of the public utilities. This is applicable to both the manufacturers of equipment like Bharat Heavy Electricals Ltd (BHEL) and generation companies such a National Thermal Power Corporation (NTPC). The difference in the tariffs quoted by the state owned utilities and the winning bids have been as high as 70 percent in some cases.

The Ministry of Power did not play favouritism and allowed the private sector companies to win the bids.

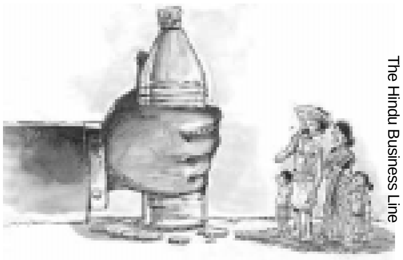
The next step is to ensure that these projects actually get implemented and that too in the least possible time.

While these projects would address the base load energy demand, we still do not have policies to address peaking shortages. People are willing to pay to rid themselves of load shedding and the policy framework should allow such consumers to have access to power even if it is relatively expensive.

Peaking demand would be better addressed by de-centralised plants operating on gas or liquid fuels. The cost of generation from these plants would be apparently high but as a share of overall cost of power it would relatively small.

Taking the example of success of the UMPP even further, can the same be extended to transmission and distribution?

Author is the Managing Director Wartsila India Ltd., Abridged from an article that appeared in Maharashtra Economic Development Council's Monthly Economic Digest, January 2007 issue.



Needed, a Water Policy that Taps Private Sector

– Udai S Mehta

Daily wage earners pay up to 20 percent of their incomes on water, and slum-dwellers pay Rs five for a can of water. This is the true but sad picture of water distribution in India where the poor are forced to pay for water. Yet, the mere talk of privatisation of water raises waves of protests as if it should forever remain a free public good.

It is high time the country's water situation was assessed, especially as the government has declared 2007 the Year of Water. Since the state's resources are limited, an aggressive effort at promoting private investment through the PPP route is imperative.

Tirupur in Tamil Nadu was the first town to implement a PPP water project. A thriving garments industry city, Tirupur required huge volumes of water for industrial use. A consortium of three private firms implemented the PPP project to ensure sustained supply of water. The project was designed on a Build-Own-Operate-and-Transfer (BOOT) basis for 30 years, after which it is to be transferred to the government.

Thanks to the project, Tirupur residents receive water everyday for four-six hours as opposed to receiving water alternate days. The numbers of household connections has increased by 8,000 and local industries have a reliable source of water. In contrast to the Tirupur case, the Delhi Jal Board (DJB) has been running into controversy though privatisation has not happened as yet. Lack of transparency in the process is a major concern and the allocation of risks and potential rewards is drawing heavy flak.

Thus, there is a need to have an independent regulator in place to set standards of service and to enforce the same. In this respect the steps taken by the Maharashtra and Gujarat Governments are noteworthy.

The Maharashtra Government has become the first to set up a water regulator when it passed the Water Resources Regulatory Authority Act, 2005. The Gujarat Government is set to become the second state to have a water regulatory authority. The Karnataka Government too is in the process of setting up a water regulator.

Surely, the private sector can play an important role in supplying water, supplementing government efforts and investments. The managerial capabilities of the private sector can improve operational efficiencies and the quality of services. However, the success of PPP projects would depend largely on the capability of governments to negotiate deals that take care of the interests of disadvantaged consumers.

Maintaining transparency in the processes is another important criteria for the successful implementation of PPP projects. While the government will have to create an enabling regulatory milieu, the private sector needs to demonstrate a willingness to accept business risks associated with such projects.

Abridged from an article that appeared in Business Line, February 21, 2007.

The Cochin International Airport Project

– P Rameshan

A Case Study in PPP Innovation

Public-private partnership (PPP) has become a buzzword in infrastructure development efforts in India. Looking at the vast possibilities in PPP, this model of funding is planned for 'softer areas' of infrastructure like healthcare, education and other local services. There are even efforts to develop slums in urban areas through the PPP route.

One of the best cases of a PPP involving an innovative approach is that of the Cochin International Airport that became operational in 1999.

Cochin International Airport was set up with equity participation of a large number of NRIs from Kerala as well as of the state government, among others. The venture was incorporated as a company, with the Cochin International Airport Society formally spearheading its birth. Its structure gave the company some reprieve against political intervention despite the government nominees (mostly ministers) on the board and the chief minister's presence as chairman. The project was partially funded through borrowing, while both public and private sector companies that subsequently became service providers at the airport also supplied capital in the form of interest-free deposits.

When the Airport Authority of India (AAI) expressed its inability to fund a new airport at Cochin, V J Kurian, its founding managing director, suggested funding it first through public deposits and later through public equity participation. The airport management showed tremendous determination, leadership, management capabilities and financial discipline.

In the early days of implementing the project, in fact, the airport was mired in controversy and massive agitations by landowners and evictees. If it was not for the determined stand taken by the management the project could not have been completed in such a limited time and at minimum cost.

.../...

The airport has been running at a profits and paying dividends from its early years.

The experience of Cochin International Airport reveals a formula for successfully implementing projects on PPP within short time periods, at significantly lower cost and with ample profit. Success is assured when the project is well conceived, its implementation is properly planned, is funded through imaginative but cost-effective means, is led by someone with vision, and it is operated with dedication to basic commercial objectives. By following the Cochin International Airport model in every segment, we can pull infrastructure development out of its current dismal state.

The writer is professor & chair (strategic management), Indian Institute of Management, Kozhikode.
Abridged from an the article that appeared in the Financial Express, March 28, 2007

Telecom Future is in Rural Areas

– By Rishi Raj

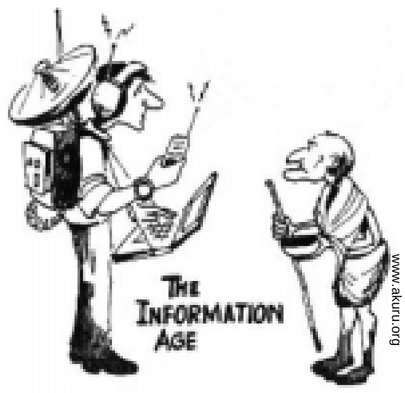
With a total telephone subscriber base of over 200 million (fixed plus mobile), India is one of the fastest growing telecom markets in the world. While Indian telecom players have consolidated their position in the last 10 years or so of operations by carving out a nationwide footprint, foreign telecom majors have also set their sights on this growing market.

Though the average revenue per user (ARPU) is falling with declining tariffs, telecom companies are still profitable and are expanding their networks largely because tele-density levels are still low (just 18.26 mobiles per 100), with penetration levels of just 13 percent (rural penetration is an abysmal four percent). Naturally, while the country boasts over 160 million mobile subscribers, there's plenty of scope to grow and this explains why India is seen as the most promising place in the global telecom space.

While urban markets are lucrative and would continue to be the focus of all operators, interestingly there is a sudden interest to tap the rural market, largely untouched by the telecom revolution. In 2006, the government amended the Indian Telegraph Act, 1885, to give private players access to the Universal Service Obligation (USO) fund as well. The USO fund aims to expand rural telephone services, and each operator contributes five percent of its adjusted gross revenue to it. The fund has a total corpus of around Rs 3,488 crore (US$859.5mn). The recent tender floated by the Department of Telecommunications (DoT) for assistance under the USO fund in two parts creation of infrastructure and providing services even saw some negative bids by operators; instead of taking funds out of the USO fund, they were willing to pay the government to let them provide rural services.

Clearly, with 70 percent of population in rural areas, private operators have finally realised the potential of the rural market. The government now plans to come out with a similar tender under the USO fund for broadband expansion in the rural areas. According to the vision plan drawn up by DoT, 200 million rural telephone connections are envisaged by the end of 2012, translating into a rural tele-density of 25 percent. An exercise carried out by DoT and the Planning Commission aptly reflects why private operators are bullish about rural India and why today's digital divide would be greatly bridged in coming years. The total number of rural households would be around 160 million, assuming five members per household, of which 130 million households would be above the poverty line. Considering one telephone for every three households and one telephone for every two households by the year 2012, the number of rural telephones would be around 80 millions by conservative estimates.

Taking into account lower tariffs and thereby affordability, there will be on average 1.5 telephones for every rural household above the poverty line by the end of the 11th Plan. Therefore, around 195 million rural telephone connections would be required by the year 2012. It is further expected that one out of every three households below the poverty line would also have a telephone, adding a further requirement of 10 million rural telephone connections. Thus, there will be a total requirement of 205 million rural telephone connections.



While the country boasts over 160 million mobile subscribers, there's plenty of scope to grow and this explains why India is seen as the most promising place in the global telecom space.

Rural tele-density will increase as telecommunications is seen as a fundamental requirement for economic and social activities in rural areas. It is an accepted fact that one percent increase in tele-density results in a three percent increase in the growth of GDP. Private operators have already entered into infrastructure sharing agreements amongst themselves to achieve faster rollout. For its part, the government is clear that this time, rural telecom growth targets will not be missed.

Abridged from an article that appeared in the Financial Express, April 11, 2007

COMMUNICATION

Cutting Infra Charges

The Telecom Disputes Settlement and Appellate Tribunal (TDSAT) has directed state-run Mahanagar Telecom Nigam Ltd (MTNL) to reduce the infrastructure charges collected from private operators.

The tribunal has further directed the Telecom Regulatory Authority of India (TRAI) to frame guidelines for these charges.

Infrastructure charges are paid by private telecom firms to MTNL and Bharat Sanchar Nigam Ltd (BSNL) as rental and maintenance fees to station their link equipment in the premises of the state-owned enterprises (SOEs) to get connected in their national long distance and international long-distance networks. *(BS, 19.03.07)*

TRAI Threatens BSNL

In a move that would cheer private telecom operators, TRAI has told the DoT that it would be forced to issue an order against state owned BSNL for blocking calls from private telecom operators within a Circle if the government did not clarify the policy on intra Circle STD calls.

The Hindu Business Line

Due to the stand off between BSNL and private telcos, consumers were facing problems as a number of calls made by private operator's subscribers to BSNL users within the same Circle were being blocked simply because the call was being carried on a private national long distance (NLD) network.

(BL,08.03.07)

Ombudsman for Telephone Users

Facing flak over increasing consumer complaints, telecom service providers announced the setting up an Office of Ombudsman for telephone users. Consumers will be able to directly take their complaints to the Ombudsman and the decision taken by the Ombudsman would be binding on operators. Telecom users, however, will have the option to take their grievances to any other forum like the consumer courts, in case if they are not satisfied with the decision taken by the industry Ombudsman.

(BL, 12.03.07)

Sharing Infrastructure

Cellular service providers have opposed a proposal from the TRAI to make the infrastructure-sharing mandatory as part of the licence agreement.

TRAI had said that sharing infrastructure would not only reduce costs but also enable operators to roll out network in order to meet government's teledensity targets.

In its response, the cellular operators has said that there is a need to encourage and promote infrastructure-sharing through policy intervention and suitable financial and other incentives rather than making infrastructure-sharing mandatory.

(BL, 07.01.07)

Seeking Regulation

The TRAI wants interconnection, set-top boxes (STBs) and quality of direct to home (DTH) services to be regulated.

Earlier, TRAI had floated a consultation paper seeking the industry's views on whether sharing of infrastructure should be made mandatory since most operators were currently doing it on an *ad-hoc* basis.

TRAI has issued a consultation paper on the subject seeking stakeholders' comments. According to TRAI, the issues were expected to gain significance as DTH increased in numbers.

It has sought to regulate interconnection issues with regard to DTH under "must-provide", "must-carry" and standardisation agreements. On the quality of service, the basic issue is whether these should be mandated and if so, in which manner.

Regulatory issues regarding STBs will focus on the need for inter-operability and whether this should replace the technical inter-operability.

(FE, 02.03.07)

OIL & GAS

Transparent Oil Pricing

The Prime Minister's Office (PMO) has called for a shift to a transparent oil pricing system where the regulator fixes cross-subsidies on petroleum products.

According to PMO, pricing of petroleum products should not be a political decision and a regulator should step in to decide on the price of petroleum products, and fix cross-subsidies in a transparent manner.

PMO has further questioned the rationale of providing subsidy on cooking gas to affluent sections of society. In this context, it suggested fixing subsidy on LPG cylinder with the pricing linked with international price parity. *(BL, 17.01.07)*

Plan Grounded

The Centre's much-touted policy to blend diesel with bio-diesel has hit a major roadblock, as the Petroleum Ministry has argued that oil companies do not favour long-term support price for these products.

However, oil companies have made a candid submission that they would be agreeable to blending only if it is commercially viable.

The Petroleum Ministry on behalf of oil companies, in a communication to the Centre, has conveyed the stand.

(FE, 15.03.07)

Upstream Regulator

The Petroleum Ministry is finally preparing the ground for an independent regulator for the upstream (exploration and production) sector. The move comes on the heels of recent confrontations between the DGH, the quasi regulator for the upstream sector and the oil companies, notably ONGC and RIL.

Official sources quoted that the DGH is a mere technical arm of the Petroleum Ministry, not a regulator.

The Planning Commission and various consultants, according to industry sources, have backed the call for an independent upstream regulator, which is over a year old.

(BS, 28.03.07)

Clipping Wings

In a significant move, the Petroleum Ministry has proposed to clip the discretionary powers of director general of hydrocarbons (DGH) relating to determining the unfinished minimum work programme (MWP) costs by contractors such as Oil & Natural Gas Corporation (ONGC), Reliance Industries Ltd (RIL).

The move was triggered by the revision in MWP costs made by DGH in the case of ONGC and RIL.

According to sources, Ministry is contemplating a slew of measures, including clear-cut, transparent guidelines in terms of the profit sharing contract (PSC) provisions for calculating the sums due to the government for the unfinished MWP.

(FE, 25.03.07)

LPG to Cost More

If the Planning Commission has its way, all income tax assesses will have to pay Rs 427 for a 14.2 kg cooking gas cylinder, against the current prices of Rs 294.75, from July 2007.

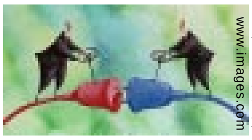
In its comments to the Petroleum Ministry's cabinet note on extending LPG and kerosene subsidy schemes until 2010, the Commission has proposed that LPG subsidies for taxpayers be phased out completely by June 30, 2007.

Further it suggested that those not paying income-tax be given only a maximum of eight subsidised cylinders a year. However, the Plan panel has also recommended that the Public Distribution System (PDS) kerosene subsidy scheme will be extended until March 2008. *(FE, 15.03.07)*

POWER

Projects Hits a Roadblock

The implementation of two transmission projects entailing an investment of Rs 5,000 crore (US$1.2bn) through private sector participation has been stalled, with the Finance Ministry inquiring the entire bidding process.



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According to Finance Ministry guidelines, projects with a capital cost (or the cost of underlying assets) of over Rs 100 crore (US$24.6mn) must be appraised by the Public-Private Partnership Appraisal Committee (PPPAC) after which they are placed before the competent authority for final approval.

Earlier, Power Grid Corporation of India Limited had invited bids based on the recommendations of the Central Electricity Regulatory Commission (CERC). Reliance Energy Limited was selected in both projects as the lowest bidder. *(FE, 28.03.07)*

Merchant Power Policy

The government is likely to finalise norms for setting up merchant power plants. Unlike a conventional utility, a merchant power plant does not have a pre-identified buyer or a long-term power purchase agreement (PPA) and its tariffs are not determined by the regulatory authority. Also about 12,000MW of such capacity is expected to be developed in the next three to four years through 15-20 merchant power plants. *(BS, 18.01.07)*

Pre-paid Power

To ensure that government departments pay for the electricity they consume, Delhi Transco Limited has suggested use of pre-paid electricity cards and automated system of calculating power consumption.

The benefits of using prepaid energy include better energy management, conservation of energy and also in doing away with the unnecessary hassles over incorrect billing.

The automated billing system will help track the real time consumption and will leave little scope for disagreement on consumption and billing, sources said. *(TH, 01.03.07)*

Order to Fix Profit Margin

Power-starved states such as Delhi and Maharashtra can look forward to cheaper electricity soon, with the Appellate Tribunal of Electricity directing all state regulators to fix profit margins on intra-state trading.

The Tribunal's far-reaching order came on a petition by noted expert Gajendra Haldea, who had argued that generating and distribution firms in surplus states such as Orissa, West Bengal, Himachal Pradesh and Uttaranchal were selling power at a price much higher than the tariffs fixed by regulators.

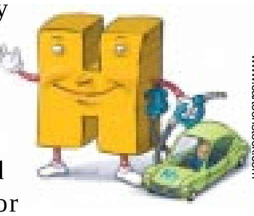
The order comes almost a year after CERC fixed margins at four paise per unit for inter-state trading to stop traders from profiteering.

(BL, 02.01.07)

Wooing Private Players

The government is likely to come out with the new hydropower policy. According to sources, government is taking several steps to make this sector attractive for private players.

The Power Ministry opines that the country has a huge hydro potential of about 1,50,000MW, of which only 33,600MW has been harnessed. There is an urgent need for PPP for development of untapped hydro potential



www.cartoonstock.com

Officials state that the revised policy may exempt states from adopting a tariff-based bidding process for hydroelectric projects, although it may include financial and technical criteria for the developers.

(BS, 05.01.07)

Surplus Electricity

The Union Power Minister, Sushilkumar Shinde said that the energy-hungry country will become an electricity surplus country in the next four or five years.

He said that the country currently has a 70,000MW deficit. However, the massive capacity addition programme including the introduction of ultra mega power projects with single generation unit of 4000MW had been launched.

The Power Ministry will initiate a change in hydro-electricity to tap 150,000MW of potential in the North East. Besides, the Ministry is hopeful that the capacity addition programme would facilitate in making India a power surplus country in the next four or five years. *(BS, 13.03.07)*

TRANSPORT

Bill on Cards

The Centre will soon introduce the Inland Vessels (Amendment) Bill, 2005 in Parliament to declare the Lakhipur-Bhanga stretch of river Barak in Assam a national waterway.

The Inland Waterways Authority of India will undertake developmental works, including dredging, excavation and widening of canals, and construction of terminals

According to sources, the Tenth Five-Year Plan, the Budgetary provision for the development of inland water transport infrastructure was increased to Rs 636.73 crore (US$157mn), against Rs 150 crore (US$37mn) in the Ninth Plan.

(FE, 18.03.07)

Damages for Delay

Private air carrier Air Deccan has been asked to pay Rs 75,000 (US$1,848) to a passenger whose flight was delayed due to a technical snag.

The order will cheer lakhs of air passengers who feel airlines treat them in a highhanded manner during delays and, at the same time, ensure airlines do not take passengers for a ride.

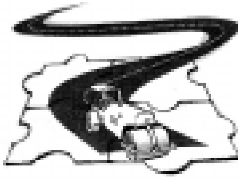
The order of the State Consumer Disputes Redressal Commission comes on the heels of an order by the same court, asking all airlines to pay compensation to passengers for delays due to technical snags.

The court, in its December 23 order, asked all airlines operating from Delhi to pay Rs 10,000 (US$246) to every domestic passenger for flight delays of more than two hours.

(HT, 27.12.06)

Rural Roads

A massive outlay of Rs 11,000 crore (US$2.7bn) has been earmarked in 2007 for laying of rural roads, a key component under the Bharat Nirman programme. The rural roads scheme envisages linking of every habitation with 1,000 population and above with all-weather roads.


The Financial Express

According to official sources, a "three-tier quality monitoring system" has been put in place to ensure proper quality of road construction. For ensuring people's participation, information is provided on boards installed at all work sites.

Besides, for transparency in management of the programme, an Online Management Monitoring Accounting System and Technical Audit Systems have been developed.

(FE, 27.03.07)

Flight Cartel Floored

The maiden attempt by domestic carriers to form a cartel has hit an air pocket even before it could be put to a test flight.

According to highly placed industry sources, the newly-formed Federation of Indian Airlines had in principle agreed at a recent meeting that full-service carriers like Jet, Kingfisher and Indian Airlines would not price their tickets lower than Rs 2.40 a mile. While low-cost airlines like Air Deccan, SpiceJet and Indigo would not price tickets lower than Rs two a mile. The move, they claimed, was to essentially bring some order to airfares and check the rampant use of gimmicks like tickets at throwaway prices.

The companies reached such an agreement twice, first to be executed in November 2006. The second attempt was made as late as the first week of January 2007.

But the cartelisation broke both times, with low-fare carriers like SpiceJet, Indigo and Air Deccan demanding a free run at the last minute, the sources said.

(FE, 29.01.07)

MIXED BAG

India Post Goes Corporate

Shedding its image of a mere service provider, India Post is all set to don the robe of a commercial entity at least in its mail business segment.

Mail Business Centre, the fresh initiative of India Post has been set up in the national capital catering to the bulk mailing requirements of the corporate and government organisations.

According to officials, government plans to develop Mail Business segment as the department's business arm. Further, plans are underway to make India Post just a phone call away from the customer to pick up wares from their end and get it delivered within the time-frame set by the customers.

(HT, 10.01.07)

Likely Relief

The private courier operators in the country can breathe a little easily. The Department of Post (DoP) is re-working the controversial India Post Office (Amendment) Bill, 2006.

While the details of the changes made are still under the wraps, sources close to the development say that both the proposals of exclusivity to India Post are being watered down.


www.images.com

The DoP has done so after it received suggestions from various quarters including customers, experts and the express industry. *(ET, 30.01.07)*

Banks Coming Under Lens

The interest rate war waged by banks to lure big depositors has come under the government scanner. The Finance Ministry has asked all state-owned banks to disclose data relating to bulk deposits, on which banks often pay a significantly higher return.

The Ministry has directed banks to report the government about the best rate offered on deposits up to six months, one year and above one year.

Bulk or high value deposits are deposits of Rs 15 lakh (US$36,964) and above. Banks are permitted to offer a higher rate on these deposits than the card rate for small deposits.

(ET, 25.03.07)

Water Saving Strategy

The Union Water Resources Ministry would be pumping an estimated Rs 5000 crore (US$1.2bn) in 31 farmer suicide prone districts for managing water security.

In certain water scarce belts it is exploring the possibility of introducing economically viable drip and sprinkle irrigation system that have already triggered fortunes in certain desert nations. *(ET, 30.01.07)*

Unhealthy Rich-Poor Divide

Corporate hospitals that charge more from patients, who occupy luxury rooms for the same treatment provided to others at a lower price, have come under the regulatory lens.

The investigation wing of the Monopolies and Restrictive Trade Practices (MRTP) Commission has made a preliminary probe and has told the Commission that there is need for a larger industry wide probe.

The Commission wants to find out if hospitals, which have received land at a subsidised price, are overcharging the rich to meet their obligation to give free treatment to the less privileged. It also wants to find out whether discrimination based on wealth by the private sector is constitutionally valid. *(ET, 15.03.07)*

Fined for Delay

The Central Information Commission (CIC) in a recent decision has imposed penalty on two former Deputy Commissioners (South Zone) of Municipal Corporation of Delhi (MCD) for delay in supplying the information sought under the Right to Information (RTI) Act 2005.

Stating that there has been clear violation of the mandated time period to provide information, the two officers have been fined Rs 5,000 (US$123) for 20 days period and Rs 15,000 (US$39) for 60 days period respectively.

According to sources, the appellant had sought information on March 09, 2006 under the RTI Act, which was provided to him only on June 26, 2006. *(TH, 09.03.07)*

PM Wants Competitive PSUs

Prime Minister Manmohan Singh has asked public sector companies to tap the capital market and pursue mergers and acquisitions (M&As) to emerge globally competitive.

"Public sector companies must also learn from the private sector and seize opportunities for mergers, acquisitions, amalgamations, takeovers and creating joint ventures. They should also form joint ventures with private companies to benefit from the latter's competitive advantage", the Prime Minister said.

According to Dr Singh, acquisitions would help public sector companies grow bigger and survive in an economy with a large number of private sector companies.

(FE, 08.03.07)

PHARMA BIZ

Action for Non-compliance

The government has empowered drug price regulator, National Pharmaceutical Pricing Authority (NPPA), to take action against pharma companies, which increase prices of products by more than 10 percent in a year.

The Department of Chemicals has asked NPPA to keep a track of all the non-scheduled drugs, whose prices have gone up by more than 10 percent in a year and take regulatory action against those companies that do not comply with these norms, an official release said.

If the authority detects any violation, it would issue notices seeking reasons for the price hike. Alternatively, the manufacturer would be asked to bring down the prices voluntarily and thereafter, to maintain the price level. *(FE, 16.03.07)*

Regulating Retail Pharmacies

The government is planning to tighten the norms for transporting, storing and selling medicines in the country even as big corporate houses are opening retail pharmacy chains and the existing ones get corporatised.

The proposed 'good distribution practices' would make it mandatory for every retail pharmacy to issue computerised receipts, employ a full time pharmacist who could guide the consumer to cheaper alternatives in case the prescribed drug is not available and to display the price list properly.

"Making it mandatory to issue receipts would check counterfeit medicines getting into the supply chain as well as overcharging. The idea is to bring in a host of consumer friendly policies", said a senior Chemicals Ministry official.

(ET, 21.02.07)

SUPREME SAY

SC Warns Babus

The Supreme Court (SC) has warned the bureaucrats that disobeying its orders would not be tolerated and erring officials would be dealt with sternly.

"We will not tolerate such types of officers who flout the orders of this court with impunity", a Bench comprising Justice A R Lakshmanan and Justice Altamas Kabir said while hearing a contempt petition against the two IAS officers from Tamil Nadu.

"You (bureaucrats) have no business to flout the orders of this court with impunity. Of late, it has become a tendency among IAS officers to disobey the Supreme Court orders because they think that they are so big that they need not implement orders," an anguished Bench said. *(ET, 15.03.07)*

Check on Ad Exepnditure

The SC has directed the government to place before it the guidelines prepared by it to regulate the expenditure of various departments on advertisements glorifying political leaders on taxpayers' money.

The SC had sought to know if the Finance Ministry had any regulations to check expenditure by the government departments on issuing advertisements in newspapers on birth and death anniversaries of political leaders.

The court had said there was a need for introspection on the issue and had cited the example of developed nations where such activities were sponsored by political parties themselves. *(ET, 31.03.07)*

Legislative Changes On Cards

Micro-financial Sector Bill

The much-awaited Micro-financial Sector (Development and Regulation) Bill was tabled in the Lok Sabha with a view to develop the sector under the regulatory ambit of National Bank for Agriculture and Rural Development (NABARD), which will ensure the management and governance.

In addition, NABARD would specify the form and manner of accounting of business operations of micro finance organisations, other than those accepting thrift services.

The Bill also proposes to set up a corpus fund called the Micro Finance Development and Equity Fund to aid the development of micro-finance institutions (MFIs).

The regulator will also carry out the registration of MFIs. No organisation will be allowed to carry business without obtaining a certificate of registration. This will also apply to existing MFIs. Organisations with a net owned fund of a minimum of Rs five lakh (US$12,321) will be eligible to operate as MFIs. In addition, the Bill also proposes to set limits for amounts to be provided by these MFIs. *(FE, 21.03.07)*

Bill to Cut Tax

The Lok Sabha has passed a Bill to cut Central Sales Tax (CST) by one percentage point annually, starting from April 01, 2007.

The CST rate will be reduced to three percent from four percent in 2007-08, and will be phased out by March 31, 2009. The government aims to merge the goods and services levies into a single goods and services tax (GST) by 2010.

"The CST phase-out is a pre-requisite for the GST to roll out by 2010", according to Finance Minister P Chidambaram. The Bill has to be passed by the Rajya Sabha and then receive the President's approval before becoming a law.

(BS, 19.03.07)

Bill on Broadcast Sharing

The Parliament has approved the Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharti) Bill 2007, making it compulsory for all private broadcasters to share their feed of major sports events with Doordarshan and All India Radio on free to air basis.

The Bill will replace the ordinance issued in February, 2007 after Nimbus Communications, which holds rights of telecasting all international cricket matches in India till 2010, refused to share telecast signals with Prasar Bharati.

The legislation seeks to ensure that access to sporting events is given to a large number of viewers and listeners, especially those who do not have access top satellite or cable television.

Most of this section is in rural India and regularly denied access to sports events because a few dominant exclusive rights owners refuse to share the feed with Prasar Bharati, which is the exclusive owner of terrestrial platform.

(TH, 10.03.07)

PARLIAMENTARY DIGEST

Multi-State Agri-Competitive Project

The Ministry of Agriculture informed the Parliament that there is a proposal to develop a Multi-State Agriculture Competitive Project with assistance from World Bank to foster the development of more competitive marketing system and improvement in market access for farmers, through knowledge and more effective producer organisations.

The proposed project would be linked to undertaking end-to-end reform of agricultural marketing sector and in the first phase, three or four states would be considered for implementation of the project. Depending on the proactiveness of the other states, the project could later be extended.

It is assessed that the size of the project in each state would tentatively be of the order of Rs 300 crore (US$74mn). Each state project would be taken on stand-alone basis and the assistance would be made on back to back basis through State sector project. *(Compiled from questions raised in the Budget Session, 2007)*

Aviation Say

In response to concerns expressed as to whether the government has asked airline companies to come up with a fresh proposal and detailed financial plans as the aviation industry is facing acute competition with low fares eroding profits of various airlines, the Ministry informed the House that the government has a laid down policy with regard to grant of No-objection certificate (NOC) to new airlines, which *inter-alia* stipulate the equity norms as well.

This policy is reviewed from time to time depending on the growth and requirements of civil aviation sector.

(Compiled from questions raised in the Budget Session, 2007)

Unemployment Rate Up

The unemployment rate in the country has risen by two percent since 1999. According to National Sample Survey Organisation (NSSO), unemployment rate, which was 7.32 percent in 1999-2000, rose to 8.30 percent in 2004-05, Minister of State for Labour and Employment Oscar Fernandes informed the Parliament.

(FE, 07.03.07)

No New SEZs

Fresh notifications and approvals for setting up special economic zones (SEZs) are being put on hold till an empowered group of ministers (EGoM) looking into the matter takes a final view, the Upper House was informed. The EGoM decided that no new SEZ approvals be granted till a final view is taken by it. *(FE, 07.03.07)*

Natural Monpolies

The proposal by the Competition Commission – for which the Planning Commission has been petitioned – on opening up 'natural monopolies' to the private sector will, if ever accepted, bring the benefits of competition to new arenas.

For long, India's strategy on 'natural monopoly' sectors such as electricity, railways, water supply or telecom has been to let the public sector dominate if not monopolise the market, with the role of regulator played by the same government department running the public sector operator.

The ultimate victim has been the customer at the receiving end due to the incompetence and inefficiency of both. The opening up of natural monopoly sectors should now be done with the wisdom of hindsight.

In power, for example, unbundling the business into production, transmission and distribution, and then let private producers and distributors compete for customers while granting them access to the monopoly part of the chain – transmission is a major step. Likewise, only water-pipe and railway track networks need remain under monopoly control, while private players operate services at the consumption point.

The next important element in making this policy a success is the role of a regulator. If there is a natural monopoly, then it is possible for a company to have a price and output policy that suffocates competition, favours the public sector or hurts the consumer. To avoid these dangers, it is important that regulators wholly independent of government departments or public sector enterprises be brought in to ensure that the market stays truly competitive.

Bureaucrats who have been part of the government framework tend to adjudicate in favour of incumbent Public Sector Undertakings (PSUs) and are reluctant to offer a level playing field to private players. Attracting genuine regulatory talent would require a change in salary packages and human resource (HR) practices for regulators. Top-class regulation involves business analysis skills of considerable sophistication — to assess the finer evidence of monopolistic abuse, for example — and these may be best found in the private sector. For an effective competitive environment, good regulation is essential. *(FE, 21.03.07)*

Introducing Sunset Clause

In a report submitted to the Planning Commission, the working group on competition policy has recommended to introduce a sunset clause even for natural monopolies.

In other words, monopolies – mostly state-led – in sectors like ports, roads, airports, power transmission and distribution of gas and water may be thrown open to competition sooner than anticipated.

This will ensure that market forces govern the industry once the regulator brings in competition in the sector. A typical case of state monopoly where the regulator has ushered in competition is telecom.

The working group suggested that most sectors, where there is state monopoly, may go the telecom way. The group opines that as competition expands, regulations should be relaxed and finally, eliminated.

(FE, 19.03.07)

Busting Cartels with Amnesty

In mid December 2006, the Parliamentary Standing Committee on Finance had tabled a report in the Parliament, recommending several proposals to improve the Competition (Amendment) Bill, 2006. One of the major proposals pertained to ways of busting cartels. The Committee has recommended guaranteeing complete amnesty to firms involved in cartel that give enough evidence to commence an investigation and reduced penalties for those giving "useful evidence" subsequently, provided that they continue to associate with the commission in the probe.

The Committee opines that if these incentives were given, the cartel members would then be "in a hurry to come forward with necessary evidence before others do so" which would help the regulator to destabilise the cartel.

It contended that since the CCI is devoid of powers of search and seizure, this arrangement would help unsettle cartels. Of late the Ministry of Company Affairs circulated a cabinet note wherein it also has largely endorsed the proposal to bust cartels with amnesty.

(ET, 24.01.07)

Competition Payment

The government is considering a proposal to give financial grants to those states ensuring that all their economic laws are competition-based. These grants would be called 'competition payments'.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Once the state governments submit their report on the quantum of losses incurred due to aligning policies and laws with the National Competition Policy (NCP), the Centre would then compensate them for such losses.

In its report submitted to the Planning Commission recently, a working group on competition policy recommended the institution of an incentive scheme for these grants to the states which align their policies and laws with the NCP, after it comes into effect.

To ensure that states and sub-state level organisations abide by the NCP, the working group mooted the setting up of an autonomous Competition Policy Oversight Council (CPOC).

The working group also suggested a "competition audit" or an "internal competition impact assessment mechanism" to review various policies, statutes and regulations which have an anti-competition outcome. *(FE, 20.03.07)*

Restructuring Economic Ministries

– Jayanta Roy

We need a whole new organisational set up in line with India's contemporary reality

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- **Organisational set up of key economic ministries has hardly kept pace**
- **We must also urgently revamp the Ministry of Commerce and Industry**
- **Finance Ministry needs to urgently focus on policy and its macroeconomic links**

India has embarked successfully on an economic liberalisation programme aimed at an outward orientation and making Indian industry globally competitive. There is now a reliance on market mechanisms to steer the economy to a high-growth trajectory, while ensuring that growth is more evenly shared and poverty is reduced.

But while India is stepping into the big league, the organisational set up of key economic ministries has hardly kept pace with time. Most developed countries have an experienced, multifaceted team to handle trade policy; they all allow the Finance Minister to focus mainly on fiscal issues and its link to macro policy, leaving the details of tax administration and implementation in the hands of an independent authority. Which major league nation boasts such an antiquated Planning Commission?

We must also urgently revamp the Ministry of Commerce and Industry as in our globalisation drive, because this is the most important ministry. The ministry needs to be better clued in the needs of industry and draft policies that reflect its concerns. Trade policy discussions at the bilateral and multilateral levels are becoming very complex and require expertise at various levels. A tiny trade policy department is unable to handle the job.

The Ministry of Commerce and Industry should be divided into two departments: the department of trade policy, and the department of export and industry promotion. The trade department should handle all multilateral and bilateral matters, as well as all unilateral trade liberalisation policies. The department of export and industry promotion should handle policies regarding SEZs, commodity boards, export promotion councils, competitiveness and industry promotion, and trade facilitation (a new role).

The department of trade policy should be entrusted with the task of inter-ministerial coordination on all trade policy matters, interaction with industry, and rely on its foreign offices to network with WTO members and key partners. While this department should be responsible for preparing all papers to be submitted to the WTO and all free trade agreement (FTA) proposals, coordination and consultation with concerned ministries, agencies and the private sector are crucial steps in the process.

The trade department should have an economics division, a legal unit, an information centre, divisions overseeing General Agreement on Tariffs and Trade (GATT), General Agreement on Trade in Services (GATS) and Trade Related Aspects of Intellectual Property Rights (TRIPs), and an FTA and bilateral/regional division. The economics division, led by a chief economist, should be responsible for preparing economic analyses of all the WTO and FTA issues, as well as all trade policy initiatives.

A budget for retaining outside consultants to undertake research tasks is required to have state-of-the-art tools for trade policy analysis. We need an office like that of the US Trade Representative. Simultaneously, the tariff commission should be made to function as a transparent, independent, and quasi-judicial body that determines the impact of imports and direct action against unfair trade practices.

The Finance Ministry needs to urgently focus on fiscal policy and its link with the macroeconomic framework. Its preoccupation with micro managing the Central Board of Direct Taxes (CBDT) and Central Board of Excise and Customs (CBEC) is crowding out this important function. These departments should be under an independent authority whose primary function should be implementing tax policy and tax administration.

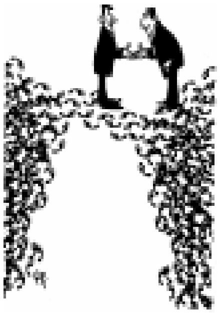
A separate ministry needs to take a holistic view of services, going beyond IT and IT-enabled services (ITES) to education, healthcare, construction, financial, legal, retail and accountancy. It should tie up policy advice, regulatory assistance, trade liberalisation needs, and international commitments.

Finally, it's high time we convert the Planning Commission into a Reforms Commission. As a secretariat of reforms, it should link macro, with sectoral policies to achieve high inclusive growth. Its main role should be to push through economy-wide reforms, agencies, the private sector and state governments.

There is also a crying need for absorbing a few more internationally reputed economists in the Planning Commission to help buttress arguments for accelerating reforms, and the downside of not doing so.

The writer is principal adviser, CII. These are his personal views. The article appeared in the Financial Express, January 15, 2007

India's Risky Corporate Stampede Abroad


The Economic Times

After a long history of rarely venturing outside their home market, Indian companies are suddenly discovering the international mega deal. Since Tata Steel acquired the Anglo-Dutch Corus group in 2006 for US$13.2bn, dwarfing all previous Indian acquisitions abroad – and Tata's own sales – something of a stampede has developed to buy foreign assets. The latest to join the herd is Reliance Industries, which is seeking a 13 percent stake in France's Carrefour supermarket chain.

The burst of activity says much about the mood of national self-confidence generated by faster economic growth and by the international success of India's software and services industry. Many Indian companies now view global competition as an opportunity to be embraced, rather than as a threat; much improved profitability, the fruit of extensive restructuring has provided the means to afford their new-found ambitions.

However, the trend raises some difficult questions, notably for the acquiring companies' shareholders. First, many of their targets look expensive and deals are commonly being financed by assuming large amounts of debt. Second, their quality is decidedly mixed. Corus suffers from falling profits and high costs, while Novelis, a Canadian aluminium company for which India's Hindalco is bidding US$6bn is in loss. Those factors leave the new owners with little margin for error.

Third, the industrial logic in a number of cases looks questionable. It is understandable that Indian companies should want to strengthen their competitive position by obtaining access to new technologies, knowhow and foreign distribution networks. They are also in a hurry to make up for lost time.

However, it is less obvious why they need to do so by making big acquisitions when other options, such as alliances, joint ventures and licensing deals would be cheaper and less risky. They would also consume fewer management resources. It is equally curious that so many Indian acquirers are focused heavily on expanding in the west, rather than in developing countries where the operating experience they have gained at home could be more of an advantage.

Many of India's top managers are, it is true, of high calibre and have shown an impressive ability to overcome severe obstacles and handicaps in their home market. Culturally, they are also better-equipped than Chinese managers to deal with the outside world. However, there is a danger that the current climate of national euphoria will induce corporate over-reach and that tribalistic rivalry between the large family-controlled groups that dominate much of Indian business could turn into a race to win status by snapping up ever bigger trophy assets.

(Abridged from FT Editorial, 20.03.07)

NEWS DIGEST

Shocking Variation

A market study of drug pricing has indicated a wide variation in retail prices of different brands of the same medicine that contains a single ingredient and is not available in varying combinations of ingredients.

What this effectively means is that the customer is paying much more than the cost of the same drug offered in the market by another reputed company.

While bargaining and bulk buying can bring down the retail prices of these drugs marginally, most customers who are not aware of the availability of cheaper versions of the same drug by another company end up paying more for the same "medical effect". *(TH, 31.08.06)*

Delhi-Mumbai Industrial Corridor

Unfazed by the row over land acquisition for SEZs, the government has begun preliminary work on the proposed industrial corridor along the Railways' Delhi-Mumbai dedicated freight route.

According to the DIPP sources, the government is considering a project to establish, promote and facilitate Delhi-Mumbai industrial corridor to augment and create social and physical infrastructure on the route, which will be world class and will help spurring economic growth of the region.

This infrastructure would comprise housing and market complexes along with the industrial and Railways' freight corridors, sources said. *(FE, 28.03.07)*

Smooth Ride for Business

The government has stepped on the gas to ease constraints on business activity in India. DIPP in the Commerce Ministry has asked state governments and central ministries to re-examine and streamline existing procedures, so as to provide a hassle-free environment for business.

The government is setting new targets and also plans to reduce start-up time for new ventures in India to 25 days, which according to a World Bank report, is 35 days in the country.

The government's move comes in the backdrop of the World Bank report (Doing business in 2007 — How to reform), released in September 2006. The report ranked India at 134 globally on the parameter, "Ease of Doing Business". *(BS, 16.03.07)*

Out of Forex Kitty

The Finance Ministry is considering a proposal to use part of India's US$177bn forex reserves for infrastructure projects, by floating a special purpose vehicle (SPV) called India Investment Corporation (IIC) with a corpus of US$10bn. The SPV, which will be formed to fund long-term infrastructure projects, will invest in corporate and infrastructure bonds. Apart from ensuring fund flow to India's creaking infrastructure, the move is also expected to ensure a better rate of return for Reserve Bank of India (RBI), which normally invest India's forex kitty in overseas treasury papers.

The proposed funding option is expected to come as a boost to sectors like power, roads, airports, ports and railways. Analysts opine that if the SPV can provide long-term debt, it will be a major boost to the resource-starved infrastructure projects.

(ET, 18.01.07)

Smart Cards for the Poor

The Planning Commission has favoured introduction of smart cards to make the subsidies more targeted. The proposal is to provide these cards to below the poverty line (BPL) families for use in buying monthly requirement of electricity, LPG or kerosene oil.

"The poor in this country need to be subsidised and introduction of smart cards could ensure that subsidies reach only the needy. A certain value could be stored in the smart cards that could then be used for purchasing monthly energy requirements," said member Planning Commission Kirit Parikh.

A beginning could be made by providing 30 kw/hour per month of electricity and 10 kg of LPG or 10 litres of Kerosene per month to needy families through this card, he added.

(ET, 19.01.07)

FDI WATCH

Whooping FDI Growth

RBI is at it again. It has drawn the attention of the Finance Ministry to the whopping growth in the real estate sector, which has seen a 400 percent rise in foreign direct investment (FDI).

RBI, which has been consistently cautious over the FDI flow into the realty sector, has warned that such massive flows could lead to speculation and over-heating of the real estate sector.

Sources said RBI had expressed concern at sudden rise in FDI inflow into the sector and the impact it could have on the prices in domestic market.

(ET, 11.01.07)

Uniform Investment Regime

The government is considering a proposal to bring uniformity to the level of FDI allowed in various business segments within a particular sector.

At present, varied levels of FDI are permitted in different business segments in at least half a dozen areas including petroleum, aviation, media, retail, telecom and the financial sector.

In telecom, for instance, basic and cellular services are allowed 74 percent FDI, Internet service providers (ISPs) without gateway 100 percent, and equipment manufacturing 100 percent.

Government sources report that the primary objective behind the move was to usher in simplicity in administering FDI norms. There could, however, be exemptions in certain sectors, they added.

A single FDI regime for a sector would also prevent companies from misusing any loopholes, a source said. Also, such a move will come handy while tackling security-related aspects. *(FE, 15.03.07)*

Removing the Distinction

The government is examining the possibility of redefining foreign investments in companies by removing the distinction between FDI and foreign institutional investors (FIIs) investments.

The new policy, which will require changes in the Foreign Exchange Management Act (FEMA) regulations, will look at foreign investments in a company as a whole, instead of treating FIIs as a separate entity.

The proposed policy change will impact several sectors, particularly those like asset reconstruction companies, direct-to-home distribution of broadcast signals and real estate, where separate sub-ceilings or conditions apply at present for FDI, leaving FII investments outside their ambit. Senior government officials report that it is becoming difficult to distinguish between FDI and investments from FIIs. Such distinctions are fast disappearing in developed markets.

(ET, 17.01.07)

Liberal Policy

The government plans to liberalise FDI policy for sectors that have a potential to become big employment generators and look at standardising foreign investment ceiling for sub-sectors of key segments of the economy.

"Based on our past experience we will see how a more liberal FDI policy can generate employment," Commerce and Industry Minister Kamal Nath said. The move to liberalise FDI policy for employment-intensive industries is in line with the foreign trade policy goal of providing more incentives for such sectors.

(ET, 18.03.07)

REPORT CARD

State GDP Tops National Growth Rate

Maharashtra's economy is projected to be growing at a higher pace than the country's economy with gross state domestic product (GSDP) growing at 9.30 percent in the current year 2006-07. The national GDP growth has been pegged at nine percent.

The state economy had grown at 9.20 percent in 2005-06. It was for the first time the state's growth rate exceeded nine percent. The average annual GSDP had grown seven percent during 2002-03 & 2003-04.

The recovery in agriculture and allied activities, which grew at about 6.60 percent each in the last two years of the Tenth Five Year Plan, appears to be the main driver for the higher growth. Compare this with the sector's negative growth of 5.40 percent in 2004-05.

The state has the potential to grow at a higher rate and could achieve double-digit growth rate in the near future, if proper thrust is given to create sector-specific, need-based and quality infrastructure. *(BS, 22.03.07)*

Broad Guidelines for PSEs

The Union Cabinet gave its approval to the guidelines on Corporate Governance for Central Public Sector Enterprises (CPSEs).

As per the guidelines, the board of directors of a company shall have an optimum combination of executive and non-executive directors with not less than 50 percent comprising non-executive directors.

The number of independent directors would depend on whether the chairman is executive or non-executive.

In case of a non-executive chairman, at least one-third of the board should comprise independent directors and in case of an executive chairman, at least half the board should comprise independent directors.

The proposed guidelines would be applicable to both listed and unlisted companies. *(BL, 09.03.07)*

Regulating Advisors

The Securities and Exchange Board of India (SEBI) is planning a system to separately handle serious offences in the capital market. It is also working on regulation of investment advisors.

According to sources, SEBI has decided to introduce consent orders for all matters which are pending regulatory action or pending before Securities Appellate Tribunal/courts.

Further, 'FAQs' will be put up shortly on the SEBI Website on what kind of cases the system will cover.

(BL, 28.03.07)

Practising Good Conduct

SEBI Chairman, M Damodaran, has came up with a piece of advice that domestic companies looking to go overseas through the acquisition route may well pay heed to.

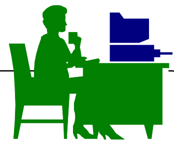
"If entities that are regulated in India conduct themselves well, then I think the level of preparedness for doing business abroad improves. If you make compliance and good conduct a habit here, it makes that much more easier for you to comply with rules abroad", said Damodaran.

This advice of the capital market regulator is quite timely, as the country's outbound investments this fiscal is expected to exceed the net inward FDI.

Stating that the world is a better regulated place every day than the previous day, Damodaran said the stronger level of coordination and cooperation among securities regulators has made transgression of rules that much more difficult.

(BL, 11.01.07)

E-GOVERNANCE



MP Leads in e-Governance

Madhya Pradesh (MP) has once again ranked fourth among the states on the e-governance front, ahead of some of the more developed states. Even in 2007 Dataquest has given the same position to the state.

According to sources, some of the projects that had received wide appreciation include the Treasury Network, Commercial Taxes Network, Mandi Network, Transport Department Network and the Land Record database.

The Treasury Network was a state-wide area network that allows transactions to be monitored online and in real time.

This project was connected with Cyber Treasury, which allowed money to be deposited straight into the government's account. Smart cards were now being used for driving licences and registration of vehicles.

Further it was reported that to improve transparency and accountability, all works departments in the state would be hooked on to the Electronic Tendering System and that steps were being taken to build up a state-of-the-art network infrastructure, which would include a State-wide Area network, Data Centre and a Common Service Centre (CSC), to provide connectivity and services to the remotest areas of MP.

(TH, 01.02.07)

Poised for Big Leap

Some 900 CSCs across MP will be set up by 2008 as part of the e-governance initiative. The Centre has already sanctioned Rs 80 crore (US$19.7mn) to the state government for the initiative.

The CSCs – a network of access points – will be laid across the country, especially at rural and remote areas as outlets for various services.

The draft framework provided by the Union Department of Information Technology (DIT) outlines the policy framework, strategy and contours of financial support of government for proliferation of CSCs across the country.

The framework is intended to create an enabling environment for establishment of 100,000 CSCs for the benefits of the citizens under e-governance. *(HT, 05.02.07)*

Computerising Courts

The Cabinet Committee on Economic Affairs has given its approval for computerisation of district and subordinate courts at a cost of Rs 441.80 crore (US$107mn) in the first phase.

The main objective of computerisation is to enhance judicial productivity qualitatively and also to make the justice delivery system affordable, accessible, cost-effective, transparent and accountable.

The first phase of the project will be implemented in two years. The whole project is likely to be completed in three phases.

(BL, 09.03.07)

Hike in Drug Prices

An investigation carried out by the Indian edition of the leading medical bulletin, the Monthly Index of Medical Specialties (MIMS), has found that several drug companies, including leading pharmaceutical manufacturers like Dr Reddys', Novartis and Torrent, have utilised a recent government directive to revise the maximum retail prices (MRP) of their popular brands beyond the desired level.

The government had, in an attempt to unify the MRP of medicines across the country, asked for a change in the way prices are printed on medicine packs. The government wanted MRP to be "inclusive of all taxes" instead of being "MRP + local taxes extra" from October 02, 2006.

MIMS investigation shows that the companies added much more than the tax component to their revised MRP, thereby causing price hike. It found that many drug manufacturers have hiked the retail prices of their popular brands over and above the sum payable as local taxes.

(BS, 14.04.07)

Tip of the Iceberg

One of the biggest challenges that India faces, despite robust economic growth, is tackling its fast-growing labour force, according to a new report, "Global Employment Trends 2006", released by the International Labour Office.

Cautioning that unemployment is only the tip of the iceberg, the report says even though working poverty has been dramatically reduced in the region - especially in India – at 87.2 percent, the working poor rates at the US$2 a day level are still very high.

The report calls upon governments to focus on education and training, along with ensuring social protection and utilising the true potential of youth. *(FE, 24.01.07)*

Development Index

Kerala ranks first and Bihar brings up the rear in the first attempt by the government to prepare a Composite Education Development Index to track the progress of states towards providing universal elementary education (UEE).

The report has been prepared by the National University of Educational Planning and Administration (NUEPA).

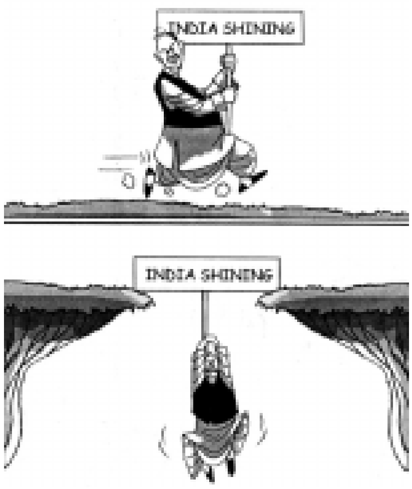
NUEPA ranked the states on the basis of their performance at the primary and upper primary levels *vis-à-vis* access, infrastructure, teachers and outcomes.

The worst performers are Bihar, Jharkhand, Arunachal Pradesh, West Bengal, Uttar Pradesh and Assam.

Among the top rankers are Kerala, Delhi, Tamil Nadu, Pondicherry, Chandigarh, Karnataka, Himachal Pradesh, Andhra Pradesh, Mizoram and Lakshadweep. *(TH, 03.02.07)*

Is 'Bharat' Shining more than 'India'?

The Planning Commission's latest poverty estimates show a sharper reduction in rural poverty rates compared to that in urban areas in the post-reform era. Moreover, the rural poor population has actually shrunk in absolute terms by over 2.3 crore between 1993-94 and 2004-05, while rising by almost 45 lakh in urban India.



Business Standard

But this seemingly incredible story of 'Bharat' faring better than 'India' does not stop there. The Plan panel's state-level poverty estimates – derived from the National Sample Survey Organisation's (NSSO) household consumer expenditure data as per the 'mixed recall period' method – go a step further.

In 2004-05 (July-June), there were at least four states – Maharashtra, Andhra Pradesh, Karnataka and Tamil Nadu – where the number of urban poor exceeded the corresponding rural population BPL. In other words, it is 'Bharat' that is shining more than 'India', with urban squalor posing greater problems than rural distress in these states. *(BL, 24.03.07)*

Money for Market Reforms

India needs to reform its financial market to expand the sources and availability of credit to meet the rising demand from the private sector, according to global rating agency Moody's Investors Service.

The domestic banking system was still the major credit provider, both to the government and to the private sector.

However, local banks would be unable to meet future demand fully, at least without considerable changes to the banking system, a joint report by Moody's and its Indian associate ICRA Ltd said.

A consequence of India's accelerating economic development was its rising demand for credit. Indian companies were expanding domestically and abroad, and a large and growing middle class was showing greater willingness to utilise credit to purchase retail goods, the report revealed. *(BS, 10.01.07)*

• BITS & BYTES

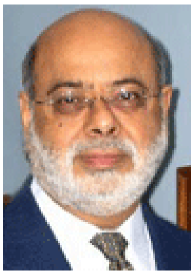
Facing a Sharp Shortfall

According to a joint study by FICCI and Ernst & Young, the quality of healthcare in India is expected to deteriorate further with the sector facing a shortfall of 45,000 doctors by 2012 and 3,50,000 nurses for primary and secondary care by 2015. *(ET, 14.01.07)*

FDI Recipient

Increased investments in traditional manufacturing sector helped India surpass South Korea to become Asia's fourth largest FDI recipient in 2006, an UN Conference on Trade and Development (UNCTAD) report said.The report also sounded a word of caution by warning slow economic growth this year due to high commodity prices and other factors. *(BS, 11.01.07)*

"Mergers per se not Anti-competition"



R Shyam Khemani
Advisor, Competition Policy, World Bank and International Finance Corporation (IFC) shares his thoughts on India's competition authority and the competition law.

M&As & Competition Authority

In general, mergers are not anti-competition. Mergers between two firms in unrelated markets are summarily dismissed. In some instances vertical mergers are likely to be investigated, but only if there is a high level of concentration, upstream or downstream. Horizontal mergers in the same market could create barriers to competition, if they lead to sufficient concentration. Such mergers could be restructured so that competition aspect is not compromised. Ideally, any competition investigation should be complaint-driven, from business or consumers. The job of the competition authority is not to second guess the market but to ensure that there is competition.

Competition Regime in India

The proposed regime has the hallmark of international best practices that are tailored to the local needs. The amendments mooted provide checks and balances that further strengthen the provisions. The major challenge is getting the amendment through and the competition commission adequately staffed.

Competition Authority and Sectoral Regulators

In most countries the view is that sectoral regulators could also look at the competition aspect, but with reference to the wider competition law. The telecom regulator, for instance, could say that in respect of such and such competition law a particular thing is anti-competition. It should not come up with its own view. Else, there would be jurisdiction shopping or business could face multiple regulation and scrutiny.

Dealing with Cartels

Cartels are difficult to detect. Besides, gathering evidence is not easy. Though the Competition Act is equipped to deal with cartels, supporting regulations, guidelines and the competition policy environment may have to be strengthened to investigate cartels. The investigation should be based on complaints and not just because prices are moving. Some countries now equate cartels to highway robbery and have made these a criminal offence.

About Penalties

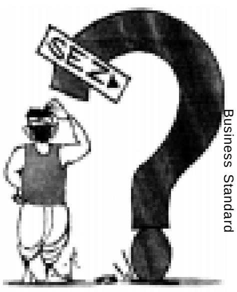
The basic idea is that penalties and fines have to be significant to discourage anti-competition behaviour. Business knows that probability of detection is low. If the profitability from what would be considered anti-competition is high and the penalty is likely to be low there is huge incentive for firms to violate competition law.

So the fines have to be high, more than the profits. That said, most firms are worried about their reputation and the fall out on business if they got caught up in an anti-competition investigation.

(Abridged from an article that appeared in the Economic Times, March 23, 2007)

No need to Build SEZs

The government and policy agents have tipped SEZs to be an important driver of growth and exports for the economy.



But Jagdish Bhagwati, professor of economics and law at Columbia University, and a poster boy for globalisation and free trade, feels otherwise.

"Give the current progress in reforms undertaken in earnest since 1991, there is no need to establish SEZs," said Bhagwati.

It made sense to have SEZs in the pre-reform era when policies of the country as a whole could not be tweaked.

That period warranted the setting aside of certain exclusive economic zones with low trade barriers and other favourable policies to enhance growth". *(ET, 19.10.06)*

Improving Quality

The National Knowledge Commission (NKC) has called for "re-branding" vocational education and training (VET).

To change the attitude towards VET, the NKC has suggested that a robust regulatory and accreditation framework be put in place to regulate entry of new institutions and accredit all institutions.

Favouring an independent regulatory agency for VET, the Commission has suggested that this entity be given the power to licence accreditation agencies and prescribe standards for certification.

The NKC has also called for increased public and private investments in VET. *(TH, 22.01.07)*

Subsidy Holds Competition

The subsidy that the government pays to the state-owned oil marketing companies for selling petroleum products below market prices is not encouraging competition in the sector says S K Sarkar, The Energy Research Institute (TERI).

He said the government controlled prices of petrol and diesel was denying private sector companies a level playing field in the petroleum retail segment and that needed to be rectified.

Another cause of concern, according to Sarkar, is the absence of an independent regulator for the exploration and production segment. *(BS, 15.03.07)*

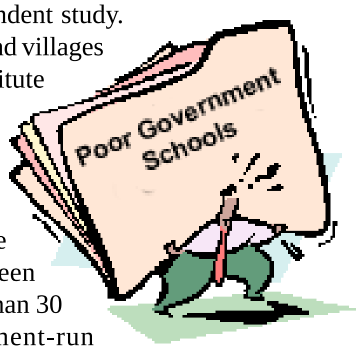
TAKE A LOOK

Poor Turn to Private Schools

The crisis in the Indian educational system is prompting poor families to pull children out of free government schools and enroll them in the private sector at an unprecedented pace, according to an independent study.

The crisis in the Indian educational system is prompting poor families to pull children out of free government schools and enrol them in the private sector at an unprecedented pace, according to an independent study.

The emergence in slums and villages of private schools that charge near-destitute families between US$1-3 a month for basic primary education is regarded as an indictment of the state's ability to provide a traditionally core service.



The shift to the private sector, where teachers are more accountable, has been dramatic. Eight states now have more than 30 percent of children in non-government-run schools and a further 10 states with between 15-30 percent in private education.

Pratham, the non-government organisation that produced the 2006 Annual Status of Education Report (ASER), said the findings should prompt close questioning of whether India could expect a "demographic dividend" from a poorly educated workforce.

While enrollment in primary education is high, with 95 percent of 7-10 year olds and 91 percent of 11-14 year olds in school - the proportion that can read a simple passage of text or do elementary arithmetic is significantly lower.

The ASER recorded a big shift towards private education in 2006, with five states registering an increase of more than five percentage points in the proportion of children receiving non-government schooling.

Teacher absenteeism is rampant in government schools. A 2004 study by Harvard University's Michael Kremer found 25 per cent of teachers were absent from school, during unannounced visits by researchers, and only about half were teaching.

Absence rates varied from 15 percent in Maharashtra to 42 percent in Jharkhand, with higher rates concentrated in the poorer states. Pratham found that significantly more boys than girls were being pulled out of state education for private tuition.

Montek Singh Ahluwalia, Deputy Chairman of India's Planning Commission, who released the study, said it would be a "very important input into policy formation" ahead of the government's next five-year plan.

The report will fuel concerns about growing skills shortages in India at a time when recruiters in the information technology industry and several other industries are finding raw graduate numbers a misleading measure of employable talent.

Abridged from an article that appeared in the Financial Times, January 07, 2007

Economic Survey 2006 - 2007

Introduction

The Economic Survey is an annual commentary on the state of Indian economy, which is put together by the Union Finance Ministry. The survey is thus the Finance Ministry's version of economic developments during the course of the year.

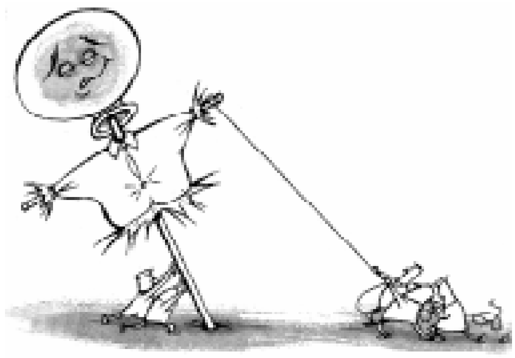
What the Survey has to say on Infrastructure?

- An investment of Rs 14,50,000 crore (US$354bn) would be required in the infrastructure sector during the Eleventh Five Year Plan.
- Investments requirements by FY2012 estimated by the Committee on Infrastructure, headed by the Prime Minister, in some of the key sectors are: Rs 2,20,000 crore for modernisation and upgradation of highways; Rs 40,000 crore for civil aviation; Rs 50,000 crore for ports; and Rs 3,00,000 crore (of which 40 percent is expected to come from the private sector through PPP) for the Railways.
- The Tenth Plan capacity addition target of 41,110MW was scaled down to 36,956MW at the time of the Mid-Term Appraisal. The likely achievement is expected to be around 23,250MW, which is 57 percent of the original target and 63 percent of the target in the Mid-Term Appraisal.
- India's telecom sector has been one of the biggest success stories of market oriented reforms, and India is now amongst the fastest growing telecom markets in the world. Tele-density has also increased from 12.7 percent in March 2006 to 16.8 percent in December 2006.
- By the end of FY2012, a total of 650 million telephone connections (including 66 million wired and 584 million wireless connections) are expected to be achieved. Concurrently, there is also a vision of providing 200 million rural telephone connections, which translates into a rural tele-density of 25 percent.

Compiled from several newspaper sources

Contract Farming: Way Out of the Farm Crisis

– Dr S B Goilkar



The Financial Express

Contract farming is essentially a means of allocating the distribution of risk between processor and grower. The latter assumes the risks of marketing the final produce. The development of contract farming will succeed of both parties share the risk and rewards. Identifying the nature of the crop, its marketability and then evolving the technology to be used for production and processing are critical determinants of contract farming. Crops easily incorporated into contract farming are those that yield high revenues per hectare and where the technological model gives significant improvements in yields.

Contract farming could be an option for better agricultural productivity, processing and marketing of agricultural produce. It could a powerful means for introduction of new crops, new farm technologies, especially when marketing and production uncertainties predominate. However, the effectiveness of contracts depends upon the offer of a fair price and adequate risk coverage. Other factors helping adherence to contracts include exclusiveness, provision of proprietary planting materials or inputs, and a strong, self-regulatory social systems among growers.

Contract farming in general helps to reduce market risk associated with crop cultivation and is thus a possible instrument of credit deepening. The presence of a third party could lead to outsourcing some preliminaries of credit disbursal and help to reduce the cost. The buyers' commitment to purchase substantially reduces the risk of default to the lender. Therefore, credit institutions would be interested in using contract farming as a means of improving credit disbursal and meeting the mandatory targets for priority sector lending.

Contract farming is not a new concept in India. ITC introduced cultivation of *Virginia tobacco* in coastal Andhra Pradesh in the 1920s incorporating most elements of a fair contract farming system and met with good farmer response.

Some Innovative Efforts

Apart from the organised contract farming, most of which turned out to be positive, some independent experiments made by Indian farmers proved successful. There is always something a farmer can do in the spirit of fighting back against all odds like droughts, floods, low output, insects etc. Some innovative efforts show that they succeeded in turning their farm activities into profits.

Suresh Martin Chauhan, a farmer of Haryana, cultivated his 60 acres land like a corporation, providing employment to a number of farm workers. His land is located about 170 km away from Delhi. Chauhan, a graduate from the London School of Economics, transformed his land into a profitable activity. Low productivity due to perpetual water shortage made Chauhan devise changes in crop cycles. He started to grow less water intensive cash crops such as cotton, peas, beans and lentils, mustard and millets. He converted more agriculture land to cultivate wheat, discontinuing paddy, which absorbs more water.

Another example of successful farming is the story of Ganesh Jadhav, a farmer from Vidarbha district of Maharashtra, who has grown the castor crop in his three acres of rain-fed land by shifting from cotton. Vidarbha is noted for suicides by indebted farmers, but Jadhav managed to escape the clutches of the local moneylenders by turning to contract farming. He has already seen more than a 60 percent jump in his annual income to Rs 25,000. He supplies the castor crop to Gujarat based Jayant Oil Mills, which accounts for 38 percent of the worlds' castor oil production. He also grows inter-crops like *tur* (a pulse) and soyabean, which he found remunerative. If he had stuck to cotton, he would have hardly earned Rs 15,000 in the whole year, but by shifting to other patterns, he hopes to earn much more than what the cotton crop gives.

Like Jadhav, a growing number of farmers in the region have turned to contract farming and half of them managed to pull themselves out of poverty and indebtedness.

Conclusion

Indian agriculture is predominantly small in nature and relies upon the vagaries of the monsoon. It is characterised by low yields, low productivity and poor realisations. Agriculture could be made viable by applying innovative methods like contract farming and collective farming, which adopts consolidated farming for better productivity. It also provides wide scope for private investments in development of technology and irrigation system to increase farm yields. Apart from this new experiments undertaken by some farmer s at various places in the country could be considered as model farming. These farmers should be encouraged at the grassroots level through policies. Land is a limited resource, which cannot be increased. But the available resources could be best used for higher returns, by taking a new look at contract farming and innovative experiments could lead the way.

The author is Senior Economist, Maharashtra Economic Development Council (MEDC). The write-up is an abridged version of an article that appeared in the MEDC Monthly Economic Digest, January 2007

Reforms: Putting the Horse Before the Cart

– R Vaidyanathan

The Hindu Business Line

Sequencing is important, but it may be better to have reforms, regardless of their order than not have anything at all.

The reform process that started around 1992 has some interesting characteristics that have not been adequately focused upon. Encompassing a vast canvas, the sequencing of reforms has often been interesting – the stage getting set post-facto instead of the other way around. Or, what might be called the 'cars first, roads later' principle. This is quite the norm for the Indian economy. Thus, modern cars are made in India but run on roads that are pathetic, even in the metros.

Such is also the case with private airlines. The government is ready to provide anyone the licence to fly in India, but has done little *vis-à-vis* the infrastructure in terms of runways or handling facilities. The idea seems to be that the infrastructure will get developed, pushed by the demand for improved facilities. The approach is to encourage the tail to wag the dog. But this approach creates its own dynamics. One is that the softer aspects of reforms get taken up first, while the hard decisions get postponed. Also, in this approach alternative assets are created even when existing ones are not fully used. This creation of alternatives that change or reduce the importance of existing institutions/enterprises happens in two ways.

Public or Private Sector as Catalyst

One is the creation of a public sector alternative to the private sector operators that are inadequate or persist with outdated technology. Two examples come to mind. One, the creation of the National Stock Exchange (NSE) and two, setting up of public sector car company Maruti. In both cases, the private entities were forced to change and compete and the overall environment improved vastly. For the reverse – i.e., encouraging private assets to change public institutions – illustrations abound – airlines, telecom, oil, insurance, mutual funds and so on. Here, the assumption is that once private industry comes in, the competition will improve the functioning of the public sector. This works up to a point but beyond that there is only resort to poaching of capable and experienced people from the public sector.

Second, this method forces the involved or affected groups to either find alternatives or just accept the changes. For instance, technology and connectivity that created stock market trading screens across the country rendered thousands of sub-brokers, arbitrageurs, odd-lot and floor dealers redundant without creating any alternative avenues for them.

Why, even the regional stock exchanges were rendered redundant and with that many of their members lost their main activity. Of course, in this case the affected group was better off and could cope. But the same may not be the case with other sectors where the people involved may be relatively aged or are not very well educated. One criticism of the reforms process is that it has not been a systematic and well-thought-out plan with set milestones. But such a criticism pre-supposes that identical approaches are possible in all situations. The real reforms story may be a saga of improvisations and adjustments based on feedback in a system like ours.

Regulatory issues

One of the important aspects of the reforms process is regulatory issues and creating a suitable regulatory framework for a large number of activities and enterprises. The Indian mindset is still of the administrator himself being the regulator. But there must be a separation of regulation and administration.

The Employees Provident Fund Organisation (EPFO) is a classic case of the fund manager being the regulator too. In recent times, the RBI has been moving away from being a mere administrator of banks by withdrawing its officials from bank boards to focus on regulation. The Railways is also both an operator and a regulator as also the National Highways Authority of India (NHAI). The Airports Authority of India (AAI) is both a regulator and operator; the Director-General Civil Aviation regulating only safety and technical aspects.

Hence, reforms can be categorised into: one, where the public sector provides the push to change private entities. Two, where new private companies offer challenges to public sector units. Three, where the reform is initiated from the latter end; this also includes reforms through processes such as SEZs, wherein the affected party is large and alternative livelihood issues are not adequately addressed. Four, where reforms are attempted with the operator and the regulator as a single entity.

As in categorising of efficient markets in financial literature, the efficiency of the reforms can be gauged by the time gap in attaining the new equilibrium. One can try to measure the time it takes to have improved or new airports after the permission granted to new airlines. The shorter the time taken for a system to stabilise, the higher the marks for that piece of reform. The government perhaps thinks that putting the cart before the horse may be better than not doing anything at all. It may be correct, for it is important that there is a horse as otherwise where would the cart alone take the nation? Particularly on the potholed roads. Nowhere.

The author is a Professor of Finance and Control at IIM-Bangalore. The article appeared in the Business Line, March 22, 2007.

Be Transparent in Corruption

How to make a system accountable? Give legal sanction to payouts in mega projects and make it official

– Sanjay Anandaram

According to a 2005 Corruption Perception report by Transparency International (TI), the international corruption watch-dog, India is the 88th most corrupt country in the world kept and in the company of other notable worthies such as the nations – Gabon, Mali, Moldova, Iran, Bosnia & Herzegovina and Tanzania.

This by itself is not surprising. After all, we see and experience corruption every day. What is perhaps surprising is that despite pervasive and ruthless corruption, India is making progress. Surely, we can do without this recognition from TI especially when India is incredible and shining. How much more progress and international attention could India have achieved with reduced corruption? There are many estimates and studies on this issue but the crucial question of how to achieve an environment of reduced corruption still remains unanswered.

What if every project was budgeted at say, 150 percent of its estimated cost with the additional 50 percent being paid out tax-free to the project implementers, no questions asked? All they have to do is implement the project on time, on budget – at 100 percent of cost, and as per quality standards.

Corruption grows when there's sufficient incentive to do so such as the possibility of making large sums of money with low inputs and insufficient disincentives to remain corrupt such as getting caught and being punished. In villages, towns and cities across the country where the government spends hundreds of thousands of crores in social projects, corruption eats away a very significant amount of the outlay. Upto 90 percent by some estimates! In addition, projects are horribly delayed, cost over-runs are endemic, quality of work is suspect at best and the social impact, debatable. These issues contribute rather dramatically to the overall cost – financial and social of a project.

Reducing bureaucracy – increasing liberalisation, privatisation and competition, and enhancing transparency via access to information such as Right to Information (RTI) are very significant steps that will increasingly reduce corruption. However, how does one create incentives or disincentives for reducing corruption so that the impact can be felt positively and quickly?

Expecting the justice system to become efficient anytime soon or that people will suddenly become morally upright is utopian. There is no incentive for the government employee to perform since there's no reward or real disincentive mechanism. Rather than adopting righteous indignation at corruption let us embrace it and co-opt it to address the problem.

Here's an innovative possibility. What if every project was budgeted at say, 150 percent of its estimated cost with the additional 50 percent being paid out tax-free to the project implementers, no questions asked? All they have to do is implement the project on time, on budget – at 100 percent of cost, and as per quality standards. An independent constitutional authority like the Comptroller and Auditor General of India (CAG) or Central Vigilance Commission (CVC) or the state level *Lokayukta* should have the authority to monitor and review the performance of the project against the budgeted numbers.

All the information relating to actual project details, additional "incentive" payouts, recipients of the "incentive scheme" should be made public under the RTI. There could even be a sliding scale of payouts with reduced "incentive" payouts for delays, quality problems and so on. There could be additional bonus payouts for projects executed ahead of time, on budget and with quality! Instead of project officials taking their cash payments surreptitiously in constant fear of the hidden camera and in wondering how to deal with the hot money, this scheme could provide a transparent and accountable system. Real estate (SEZs), infrastructure, and social welfare projects are the areas where an estimated US$1tr will be spent over the next decade or so with infrastructure alone expected to take up US$500bn. These are also the sectors where corruption is the highest. By creating innovative, transparent and official incentive mechanisms, we can look at reducing leakages. In addition, by recognising payouts as incentives or bonuses for performance, we do away with the notion of bribes and corruption. India's "corruption perception" will therefore reduce making India an even more attractive investment destination for overseas investors!

Why cannot we make "corruption" official?

What do you think?

The author has close to two decades of experience as an entrepreneur, corporate executive, advisor and mentor.

The article appeared in the Financial Express, February 09, 2007.

Plan Panel Mulls More Freedom to Regulators

– KG Narendranath

The Planning Commission's working group on competition policy has recommended separation of "policymaking" from "regulation". Also, the regulator should refrain from, or cease to be a player and *vice versa*.

This principle of separation, if it goes as input into the 11th Plan document, would mean principally two things: first, regulators would be more autonomous than they are now. The government will have to resist its impulses to alter regulatory policies. Second, the practice of regulator itself being a player in the industry/sector concerned will have to end. No regulator can be free and unbiased if it has a business interest in the sector it regulates.

If the principle of separation mooted by the working group is endorsed at the Cabinet level, it could seriously limit the government's interventionist role in economic regulations. This, the group believes, would not only ensure that competition is not endangered but also pave the way for fair play that sectoral regulators prescribe and try to enforce.

Significantly, the working group underscored the importance of "a loosening of controls". The idea is to graduate from control to regulation, or free play of market forces. Regulation should be market-oriented, not control-oriented, the group emphasised.

The group, whose recommendations are yet to be vetted by a screening committee in the Planning Commission, specifically flayed the practice of many ministries continuing to have overarching controls on regulators. Why should the TRAI be sort of an advisory body and virtually reporting to the department of telecommunications, the group wondered. It said the ministries, which are presiding over decontrolled sectors should "right-size" themselves.

If the principle of separation mooted by the working group is endorsed at the Cabinet level, it could seriously limit the government's interventionist role in economic regulations. This, the group believes, would not only ensure that competition is not endangered but also pave the way for fair play that sectoral regulators prescribe and try to enforce.

The group also proposed what is called "competitive neutrality" to ensure that public sector undertakings do not get precedence in the allocation of resources for businesses over the private sector. This proposal, if implemented, could impact policies such as spectrum allocation in the telecom sector and reservation of goods for manufacture by the public sector as well as guaranteed government procurement from PSUs.

The group, sources say, did make a mention of the present spectrum allocation policy and called it anti-competitive. Spectrum should be disbursed through a competitive bidding process. The working group also mooted essential facilities doctrine for not-easily-duplicable industrial infrastructure like oil/gas pipelines and electricity transmission networks.

Such facilities even if built by an extant monopoly will have to be open to its competitors at remunerative rates. The group, headed by CCI member Vinod Dhall, also endorsed the principle of common carriers to ensure that control over such natural monopolies and network industries by the incumbent do not throttle competition.

The group's opinions were likely to be considered by the steering committee in the committee shortly, sources said. It may be noted that the CCI is set to get necessary powers to take action against violators of anti-competitive practices like formation of cartels and abuse of dominant positions, once a set of amendments to the Competition Act are passed by the Parliament.

The Commission has already made it clear that it would like to have a synergetic relationship with sectoral regulators. The idea is to leverage the respective strengths of the sector regulator and the commission to minimise costs. The working group, in this context, has spelt out the areas that could be kept outside the regulation of both the sectoral regulator and the commission as well those that demand interplay between regulation and competition and sectoral regulators and the competition commission.

The article appeared in the Economic Times, March 24, 2007

The Essential Facilities Doctrine

– Sunil Barthwal

Recently, newspapers reported that the government was mulling over the granting of licences to providers of natural gas to homes. The issue under debate was the provision of exclusive rights for fixed tenure to incentivise the laying of pipelines. While some entrepreneurs preferred to separate the provision of pipelines from supply of gas, others argued that investment in pipelines would only come if exclusivity was granted.

Another story which appeared in newspapers in the recent past is the sharing of towers by cellular phone operators. According to reports, the concerned minister had to intervene, asking service providers to get together in order to finalise a scheme for sharing the towers.

Competition law in mature markets assures all players fair access to must-have utilities

It goes without saying that pipelines are essential for the supply of natural gas to homes, and that telecom operators need to either instal more towers or share the existing towers to improve and widen service coverage. Can these issues be addressed under India's competition law?

Business competition is usually defined as a process of rivalry with the objective of garnering higher market share or more profit. The outcome of a competitive process is expected to result in lower prices, higher output, better quality and innovation. Sometimes, the competitive process faces obstacles when a market player does not have access to certain facilities without which it cannot compete effectively. These are known as 'essential facilities'. For example, a new airline cannot compete unless it has access to existing runways and parking facilities. It is obvious that essential facilities pose problems in infrastructure or network industries.

The doctrine of essential facilities evolved in the US in the beginning of the 20th century, not long after the enactment of the Sherman Act. Certain railroad companies owned both the railroad terminal as well as the only bridge link to the terminal. A new player, intending to provide competition to the existing players, was denied access to both the bridge as well as railroad terminal. The existing players argued that the new player needed to build similar facilities and incur the relevant cost to be able to compete. The US Supreme Court [US vs Terminal Railroad Association of St. Louis, 1912, 224 US 383] held this as a case of monopolisation, and directed the existing players to provide access to essential facilities – namely, the bridge and the railroad terminal – to enable the new player to compete effectively. One should not misconstrue this as a ruling that every investment made by an entrepreneur would be subjected to third party access. Such misgivings would kill the incentive to make investments in the first place.

Essentially, the essential facility doctrine is only invoked in certain circumstances, such as the existence of technical feasibility to provide access, possibility of replicating the facility in a reasonable period of time, distinct possibility of lack of effective competition if such access is denied and possibility of providing access on reasonable terms. Sometimes, the competitive process faces obstacles when a market player does not have access to certain facilities without which it cannot compete effectively. These are known as 'essential facilities'

The conditions precedent for the invocation of this doctrine were reiterated in 1978 in a famous football case [Hetch vs Pro Football Inc, 1978, 436 US 956]. A rival football club was denied access to the stadium owned by the incumbent. It was held by the Court that it was not possible to construct another stadium in a reasonable timeframe and denying such access would be against the Sherman Act (the doctrine has been recently diluted in the Verizon vs Trinko case).

This doctrine is recognised in the European Union as well. While deciding the case involving access to a seaport [B&I vs Sealink, 1992, 5 CMLR255], the court held that while providing access to essential facilities, the owner has to play under fair rules. In this particular case, the owner of the seaport was providing access to a third party which had smaller vessels. The timings of access to the facility were so determined that the movement of larger vessels of the owner would not permit convenient loading and unloading of the competitor's smaller vessels. The third party took the matter to the competition agency, and invoked the essential facility doctrine successfully.

This doctrine has been widely recognised in Australia as well. The Hilmer Committee Report of 1994 suggested that it be incorporated into the law itself. Consequently, the Trade Practices Act of 1974 now incorporates this doctrine as one of its essential features. On disputes over whether the facility is an essential one or not, the National Competition Council intervenes. Once a facility has been declared essential, third party access on fair terms is guaranteed.

In India's Competition Act of 2002, one of the abuses of one's dominant position is to indulge in any practice or practices that result in denial of market access in any manner (as the proposed Competition Amendment Bill of 2006 puts it). The intention of the law-makers seems to be an implicit recognition of the doctrine of essential facilities. Recently, the report of the Working Group on Competition Policy, constituted by the Planning Commission, has also recommended a recognition of the essential facilities doctrine in no uncertain terms.

Coming back to the newspaper stories, gas pipelines as well as communication towers can both be possibly regarded as essential facilities. In that case, third party access must be allowed, provided it is technically feasible.

Sunil Barthwal is Director, Competition Commission of India. The article appeared in the Financial Express, March 23, 2007.

Putting Sound Competition and Regulatory Policies in Place

Dr Supachai Panitchpakdi, Secretary General, UNCTAD, inaugurated the high profile opening session of an International Research Symposium with his insightful and erudite speech. The Research Symposium, "Political Economy Constraints in Regulatory Regimes in Developing Countries" was organised by CUTS on March 22-24, 2007 in New Delhi.

"Developing countries need to create effective institutional mechanisms for successful implementation of competition and regulatory policies. While market friendly reforms have become common buzzword the process has failed to stop market failures. To address these failures, a sound competition and regulatory policy needs to be put in place along with efficient enforcement mechanisms". These were the insightful thoughts that emerged out of the two-and-a-half day research symposium organised as part of a research programme entitled "Competition, Regulation and Development Research Forum (CDRF), to stimulate research and deliberations on competition and regulatory implementation issues in developing countries.

The first step, as pointed out by distinguished experts, is to design a sound and robust competition and regulatory policy that goes beyond being 'business friendly' to being 'stakeholder friendly'. In principle, it should explicitly recognise and incorporate consumer interests and unambiguously include advocacy as a tool for promoting awareness among consumers.

However, mere adoption of competition and regulatory policies is not enough. It is equally important to put appropriate institutional mechanisms in place for effective enforcement and review. If competition law and policy is to yield all the envisaged benefits, political will and consensus for reform is necessary. In addition, the importance of creating a competition culture and the simultaneous involvement of consumers in the entire process to successfully leverage the advantages of market based competition needs to be realised.

It was emphasised that when economic vested interests dominate political power they also limit growth dynamics and curtail economic opportunities for poverty reduction in developing countries. Competition policy should be judged explicitly against its contribution to tackling 'the tyranny of vested interests' for poverty reduction outcomes. The problem with market is that consumer are disorganised while producers/sellers are organised, who influence the policy makers. Hence, competition benefits are often directed to well connected and entrenched. The tyranny of vested interests, therefore, needs to be articulated, and should be used to overcome the political economy constraints. The policy makers must differentiate clearly between the public interest and vested interest.

In order to make the regulatory regimes of developing countries more effective, technical assistance could serve as an essential instrument. However, blindly adopting developed countries' model is neither desirable nor optimal for developing countries. There are no 'recipes for success' and that each technical assistance programme has to be designed keeping in mind the unique issues and challenges faced by developing countries. Technical assistance will be more effective when designed to the recipient needs and not to donor expertise or donor standards. In the larger context, an effective competition regime requires supportive institutions such as an independent judiciary, political will, effective enforcement and active consumer participation.

Dr Supachai Panitchpakdi addressing the Inaugural Session of the Symposium

In the concluding session Bimal Jalan, MP and former Governor of RBI underscored an important distinction between regulation and control and hoped that the former does not degenerate into the latter. He also advised creation of a set of universally accepted standards for regulators across different sectors. It was concluded that competition and regulatory policies should drive the governments in developing countries, so that they could be more capable, more accountable and more responsible to deliver growth and welfare in a fair manner to citizen. In any regulatory system, it is necessary to figure out in whose interests the regulator is working.

The cross cutting themes that emerged in the symposium were as follows:

- Political will is a necessary condition for establishing good competition regimes.
- Consumer advocacy and empowerment is crucial since it will provide countervailing force to existing producer interests.
- It is important to create a competition culture.
- Developing countries context is different from that of developed ones and therefore customisation is necessary.

Based on the deliberations held during an International Research Symposium entitled "Political Economy Constraints in Regulatory Regimes in Developing Countries". For more on the above and for a live webcast of the whole conference, please visit: www.circ.in

REGULETTER

The flagship newsletter of CUTS CCIER, in its cover story elucidates the happenings at the research symposium entitled, ‘Political Economy Constraints in Regulatory Regimes in Developing Countries’, which began with a high profile opening session adorned with some fine and erudite speeches from Dr Supachai Panitchpakdi, Secretary General, UNCTAD; Dr C Rangarajan, Chairman, Economic Advisory Council to the Prime Minister of India; Dr Frederic Jenny, Judge, French Supreme Court and Pradeep S Mehta from CUTS.

Regular sections focusing on news, views and policies related to corporate restructuring, regulations of utilities and finances, corporate governance etc., of different countries in particular the developing nations are covered. Besides, annual roundup of competition laws, M&As, corporate issues etc., is another highlight of the edition.

The theme for this Special Edition is “Competition Law & its Benefits” that discusses country experience of Swaziland covering various benefits of the competition law.

(For more, please visit: www.cuts-international.org/reguletter-index.htm)


ReguLetter

Putting Sound Competition and Regulatory Policies in Place


circular

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CIRCULAR

‘CIRCular’ a quarterly newsletter of CUTS Institute for Regulation and Competition (CIRC), in its cover story carries the proceedings of the research symposium entitled, ‘Political Economy Constraints in Regulatory Regimes in Developing Countries’, jointly organised by CIRC and CUTS C-CIER.

The special attraction is the article by S K Sarkar, which throws light on the importance of the public private partnership (PPP) in the infrastructure sector, and in which the author argues that for understanding any PPP options, there is requirement of an in depth knowledge of the complex issues involved. The author stressed the practical need to have regular courses with academic rigour on a substantial basis so that a cadre of PPP professionals can be developed to undertake activities in remote urban or rural areas.

The section ‘News & views’ carries glimpses of the events and activities of CIRC during the period.

(For more, please visit: www.circ.in/publication.htm)

We want to hear from you...

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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 off to grade the newsletter on the following parameters on a scale of one to ten (ten being the best). Try to be honest and please suggest ways for improvement.

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

Eagerly waiting to hear from you!

SOURCES

ET: The Economic Times, **BS:** Business Standard, **TH:** The Hindu, **BL:** Business Line, **FE:** The Financial Express, **HT:** Hindustan Times, **FT:** The Financial Times

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.