Report

On

Competition Advocacy

(Public Sector)

CUTS Institute for Regulation & Competition (CIRC)

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Executive Summary

Ministry of Corporate Affairs, Government of India, vide notification F.No.5/15/2005-IGC/CS dated 8th June 2011, has constituted the Committee on National Competition Policy and Related Matters (C-NCP) for:

- Framing of a National Competition Policy (NCP)
- Strategy for competition advocacy with government and private sector
- Changes required in Competition Act for fine tuning it and
- Any other matter relation to competition issues

The Committee has submitted its draft report on Competition Policy and will be submitting report on Competition Advocacy Strategy and the proposed changes in the Competition Act, 2002. In order to develop a strategy for competition advocacy with the Government and private sector, the Committee seeks to have specific inputs and undertake evidence-based advocacy.

CUTS Institute for Regulation and Competition (CIRC) is assisting IICA in this project through specific activities. A number of sectors have been identified for undertaking studies to focus on the policy/law induced competition distortions in the concerned sector, evaluate the implementation of the statutes, rules/regulations, policies and practices to identify provisions which limit competition or have the potential to limit the competition of the sector and finally recommend changes in the regulations and their implementation procedures to address the competition related issues.

Public Sector has been identified as one of such Study Sectors. In India, the operational base of the PSEs is highly diversified with their presence in all sectors of the economy viz. manufacturing, engineering, steel, heavy machinery, machine tools, mining, fertilizers, drugs, textiles, pharmaceuticals, petro-chemicals, extraction and refining of crude oil and services such as telecommunication, trading, tourism, warehousing, etc. and a range of consultancy services.

Department of Public Enterprises is the nodal agency for all CPSEs. However, the administrative control of the CPSEs is with the Administrative Ministries dealing with the sectors in which the concerned CPSE operates. Functioning of the CPSEs is regulated by the sector specific development policies and programs of the concerned ministries. CIRC has instituted sector specific studies for different sectors. The present study has, therefore, tried to capture major policy and procedural issues which concern the public sector in general and impact the competition related issues between public and private sector.

The Study has relied on the literature available on the websites of Department of Public Enterprises including the Public Enterprises Survey2010 for an overview of the performance of CPSEs, their present market share, contribution to the economy, guidelines concerning their operations etc. Websites of various infrastructure ministries were visited for a look into the policies being pursued for growth and development of the sectors concerned and to identify the issues which impact competition. Discussions were held with industry representatives, ministries, SCOPE, PSEs officials, for an appreciation of their concerns relating to competition, on the policy as well as operational front.

Post-liberalisation, the Indian industrial enterprises faced internal as well as external completion. Public Sector response to the change in industrial policy was not very encouraging initially. Its major concerns included uncertain future particularly on its role in the economy vis-a-vis private sector, support from the Govt. for its restructuring, financial support for new investments etc., grant of autonomy to public sector to face new challenges. Private sector faced competitive threats mainly from cheap imports. It goes to the credit of the enterprises, both private and public, that they have successfully responded to the changed policy regime, putting in place new strategies, results of which are reflected in high levels of GDP growth achieved in the last few years.

Study has revealed that, post liberalisation, policy initiatives of the various ministries make a statement of intent to encourage participation of both public and private sector in achieving the planned growth. However, absence of a level playing field continues to be a major area of concern for the private sector to be able to play a more effective role in the development and growth plans. Major areas of concern relate to availability of land, mineral linkages, statutory clearances, purchase preference to PSEs in some sectors.

Approach Paper to the 12th Plan has highlighted that the availability of land has become a major constraint on expansion of infrastructure, development of mineral resources, industrialisation and urbanisation. The present arrangements for acquisition of land, and also for change in land use are archaic, often unfair and non-transparent; in the recent past, disputes on land acquisition led to abandonment/shifting of two major projects. A new modern law is needed to govern the acquisition of land for industrial use, infrastructure development or urbanisation. Besides early enactment of the Land Acquisition Act, policies and practices need to be put in place to provide level playing field to the prospective investors, both in public and private sector. Besides Land Acquisition, Water Linkages, Environment Clearance, Mineral Linkages, are the major preconditions for successful implementation of large infrastructure projects.

Steel sector has seen some accelerated growth in capacity addition during the last few years and is likely to reach 100 million tonnes by 2012-13 , a substantial leap from the level of 38 million tonnes in 2004-05. MOUs have been signed for a further addition of 276 million tonnes. Land acquisition , expeditious statutory clearances, mineral linkages, hold the key to fructification of the targeted additions.

Ministry of Power has taken a very confidence inspiring initiative of ensuring linkages and statutory clearances for the setting up of the UMPPs (Ultra Mega Power Projects), being developed on a Build, Own, and Operate (BOO) basis. Power Finance Corporation has been identified as the nodal agency in this regard.

Considering the massive investments required to achieve the targeted growth of 9 % in the 12th Plan, Nodal Agencies could be set up in the Central Govt. /State Govt. to assist in land acquisition, ensure linkages etc. and statutory clearances from the concerned ministries/agencies to provide a single-window clearance for large projects before offering any site for setting up of a project on a competitive bidding basis.

Performance of electricity sector lags behind accelerating demand, especially given the massive future investment requirements and the critical role of the power sector in sustaining growth. Reforms remain incomplete. There is a need to ensure effective unbundling and complete ownership separation of competitive and monopolistic segments in the electricity value chain. The state should be neutral or at arms-length and should be distinct from the regulated utilities. The separation of ownership would ensure ‘competition neutrality’.

Govt has announced a national manufacturing policy in Nov.11 with the objective of enhancing the share of manufacturing in GDP to 25% by 2022, from the present level of 16%. Capital Goods sector has been identified as one of the attention areas with special focus on machine tools, heavy electrical equipments, heavy transport, earth moving and mining equipments. Public Sector which has a strong presence in these sectors will need to diversify and take up technology development/ acquisition programs to contribute to the growth objectives. Public Sector may be encouraged to form joint ventures to attract new technologies. Keeping in view the sensitive nature of such partnerships and the commercial interests of the parties involved, the normal routes of floating tenders/expressions of interest may have to be dispensed with. Govt./CPSEs may consider setting up of Search Committee of Directors, consisting of at least one independent Director, which should be empowered to search, select ,negotiate with the prospective partner, finalise the proposal for approval of the Board and the Ministry/Empowered Committee.

Public sector is a dominant player in the Indian economy. CPSEs are the leading companies of India with significant market-shares in sectors such as petroleum products, mining ,power generation, power transmission, nuclear energy, heavy engineering, aviation industry ,shipping and trading , and telecommunication. The share of ‘gross value addition’ in CPSEs in Gross Domestic Product (at current market price) stood at 6.30 per cent in 2009-10 against the share of 6.20 per cent in 2008-09.

Public Sector has been granted substantial autonomy but continues to feel constrained in its competiveness due to its obligation to follow a plethora of rules and regulations. Despite the delegation of powers to CPSEs, the pace of new investments is not commensurate with the need to upgrade to face competition from within and outside. This is reflected in their reserves constantly going up to Rs. 605,648 crore in 2009-10 from the earlier levels of Rs. 536,212 crore in 2008-09 and Rs. 485,540 crore in 2007-08. One reason for this phenomenon is the risk-averse nature of top management in CPSEs. Govt. may consider setting up of an Empowered Committee in each infrastructure ministry for considering projects involving financial decisions above a certain threshold, depending on the status of the CPSE. The recommendations of this Committee may be submitted directly to the Cabinet for approval. This arrangement will facilitate quick decision making and enable capacity building in CPSEs to face competition.

CPSEs are considered an instrumentality or an agency of the State under Article 12 of the Constitution. They are accountable to Parliament, Parliament Committees, Constitutional authorities, Line Ministries, CVC, CAG, Ministry of Finance, Ministry of Corporate Affairs etc. CPSEs have to comply with all legal and regulatory processes as any private corporate entity. The additional issues of oversight arise because of their being public entities. Certain elements of over governance arise because of ambiguities in the roles of various stakeholders. A new model focussing on arms length relationship between the Govt. and the CPSEs needs to be developed to address the concerns of 'over governance'.

MOU system was introduced to give greater autonomy to CPSEs. It has been expanded to cover all CPSEs and has been strengthened to lay equal emphasis on both financial and non–financial parameters to reflect on all round growth and development of CPSEs and has become a major tool for monitoring and evaluating the performance of the company/CEO. However, in terms of autonomy, MOU occupies only one end of the spectrum.

The Study has made an attempt to identify some of the major issues on the policy and operational front impacting competitiveness of both the public and private sector with the hope that these will receive due attention of the policy makers for a review and putting in place a competitive environment.

Introduction

The Indian economy is the tenth largest in the world by nominal GDP and the fourth largest by purchasing power parity (PPP). The country's per capita GDP (PPP) was \$3,339 (IMF, 129th) in 2010. India followed a path of mixed economy till 1991with a large role for public sector in infrastructure development. Economic reforms of 1991 liberalised licensing policy allowing the entry of private sector into areas hitherto reserved for public sector, removed import restrictions, brought in foreign competition , liberalised the FDI regime, propagated restructuring of public sector etc. By 2008, India had established itself as the world's second-fastest growing major economy. India's gross domestic product (GDP) growth rate significantly slowed to 6.7% in 2008–09, but subsequently recovered to 7.4% in 2009–10, and 8.5% in 2010-11. India's large service industry accounts for 57.2% of the country's GDP while the industrial and agricultural sectors contribute 28.6% and 14.6% respectively. Due to continuing high inflation and dip in some sectors, GDP during 2011-12 is expected to grow between 7.5 to 8 %.

Approach Paper to the 12th Plan aims at 9 percent growth for the Twelfth Plan compared to 8.2 percent growth in the Eleventh Plan. The paper recognises constraints posed by uncertain Global economic conditions, limited energy supplies, increase in water scarcity, shortages in infrastructure, problems of land acquisition for industrial development and infrastructure. It is recognised that collective effort alongside reforms in policies and procedures aiming at efficient deliveries at competitive costs will hold the key to the realisation of the desired growth and its reach.

Government of India has constituted the Committee on National Competition Policy and Related Matters (C-NCP) for:

- Framing of a National Competition Policy (NCP);
- Strategy for competition advocacy with government and private sector;
- Changes required in Competition Act for fine tuning it

In order to develop a strategy for competition advocacy with the Government and private sector, the Committee seeks to have specific inputs and undertake evidence-based advocacy. In this context, Public Sector has been identified as one of the sectors for a study to evaluate the implementation of policies, rules /regulations and provisions which impact competition. The present report attempts to list competition distortions and policies/practices which impact competition and recommend changes for consideration of the Govt.

Industrial Policy

3.1 Evolution of Industrial Policy

3.1.1 In 1948, immediately after Independence, Government introduced the Industrial Policy Resolution. The Industrial Policy Resolution of 1948 was followed by the Industrial Policy Resolution of 1956 which had as its objective the acceleration of the rate of economic growth and the speeding up of industrialisation as a means of achieving a socialist pattern of society. In 1956, capital was scarce and the base of entrepreneurship not strong enough. Hence, the 1956 Industrial Policy Resolution gave primacy to the role of the State to assume a predominant and direct responsibility for industrial development. The Industrial Policy statement of 1973, inter alia, identified high-priority industries where investment from large industrial houses and foreign companies would be permitted. The Industrial Policy Statement of 1977 laid emphasis on decentralisation and on the role of small-scale, tiny and cottage industries.

3.1.2. The Industrial Policy Statement of 1980 focussed attention on the need for promoting competition in the domestic market, technological upgradation and modernisation. The policy laid the foundation for an increasingly competitive export based and for encouraging foreign investment in high-technology areas. These policies created a climate for rapid industrial growth in the country.

3.1.3. The Seventh Plan recognised the need to consolidate on these strengths and to take initiatives to prepare Indian industry to respond effectively to the emerging challenges. A number of policy and procedural changes were introduced in 1985 and 1986 aimed at increasing productivity, reducing costs and improving quality. The accent was on opening the domestic market to increased competition and readying our industry to stand on its own in the face of international competition. The public sector was freed from a number of constraints and given a larger measure of autonomy. The technological and managerial modernisation of industry was pursued as the key instrument for increasing productivity and improving our competitiveness in the world. The net result of all these changes was that Indian industry grew by an impressive average annual growth rate of 8.5% in the Seventh Plan period.

3.1.4. The Industrial Policy Statement of July 1991 emphasising the need for sustained growth in productivity, enhance gainful employment , achieve optimal utilization of human resources, to attain international competitiveness, and to transform India into a major partner and player in the global arena, introduced a number of far reaching reforms .These included abolition of industrial licensing for most industries, barring a handful of industries for reasons of security and strategic concerns, social and environmental issues; Compulsory licensing was required only in respect of 18 industries. Foreign direct investment (FDI) up to 51 per cent foreign equity in high priority industries requiring large investments and advanced technology was permitted. Government provided automatic approval for technological agreements related to high priority industries and eased procedures for hiring of foreign technical expertise.

3.1.5. With emphasis on growth, technology and productivity improvement, the role and place of public sector in the Indian economy was reoriented. The priority areas for growth of public sector were defined as essential infrastructure goods and services, exploration and exploitation of mineral and oil resources, technology development and building of manufacturing capabilities in areas crucial for long term development of the economy and manufacture of equipment where strategic considerations predominate such as defence equipment. Simultaneously, it was decided to provide a much greater degree of management autonomy through the system of memoranda of understanding , induce competition by inviting private sector participation, disinvest part of Government holdings in the equity share capital of select enterprises in order to provide further market discipline to the performance of public enterprises, and undertake restructuring/revival of sick and loss making enterprises.

3.1.6. The process of reforms initiated in 1991 has continued with further liberalisation. At present, only six industries are under compulsory licensing mainly on account of environmental, safety and strategic considerations. Similarly, there are only three industries reserved for the public sector. Some of the recent initiatives taken to further liberalise the FDI regime, inter alia, include opening up of sectors such as Insurance (upto 26%); development of integrated townships (upto 100%); defence industry (upto 26%); tea plantation (upto 100% subject to compulsory divestment of 26% equity in favour of an Indian partner/Indian public within five years);

Enhancement of FDI limits in private sector banking, allowing FDI up to 100% under the automatic route for most manufacturing activities in SEZs; opening up B2B e-commerce; Internet Service Providers (ISPs) without Gateways; electronic mail and voice mail to 100% foreign investment subject to 26% divestment condition; etc.

3.1.7. Over the last two decades, GDP has shown significant growth averaging more than 8% in the last 5 years with contributions coming more or less from all the sectors. General Index of Industrial Production(IIP) has gone up from 221.5 in 2005-06 to 304.1 in 2009-10.During this period, index of Manufacturing Sector recorded growth from 234.2 to 327.3, i.e. an average annual growth of about 9%.

3.2. Steel

3.2.1. The iron and steel industry in India is organized in three categories' viz. main producers, other major producers and the secondary producers. The main producers and other major producers have integrated steel making facility with plant capacities over 0.5 mT and utilize iron ore and coal/gas for production of steel. The secondary sector is dispersed and consists of (a) Backward linkage from sponge iron producers that use iron ore and non coking coal, (b) mini blast furnaces, electric arc furnaces, induction furnaces and energy optimizing furnaces that use iron ore, sponge iron and melting scrap to produce steel,(c) Forward linkage with re-rollers that roll out semis into finished steel products for consumer use.

3.2.2. Public Sector was assigned a key role in the development and growth of steel sector till 1991.Post liberalisation in 1991, a number of private sector companies have set up substantial capacity for production of steel. The following table highlights the total as also the contribution of the private and public sector in crude steel production in the country:

Indian Crude Steel production (in million tonne)

	2005-06	2006-07	2007-08	2008-09	2009-10 *	2010-11* (Apr-Dec)
Public Sector	16.964	17.003	17.091	16.372	16.714	12.579
Private Sector	29.496	33.814	36.766	42.065	48.161	38.015
Total Production	46.460	50.817	53.857	58.437	64.875	50.594
% share of Public Sector	36.5	33.5	32	28	26	25

Source: JPC; *=Provisional

3.2.3. Ministry of Steel announced the National Steel Policy in 2005. The long-term goal of the national steel policy is that India should have a modern and efficient steel industry of world standards, catering to diversified steel demand. The focus of the policy would therefore be to achieve global competitiveness not only in terms of cost, quality and product-mix but also in terms of global benchmarks of efficiency and productivity. This will require indigenous production of over 100 million tonnes (mT) per annum by 2019-20 from the 2004-05 level of 38 mT. This implies a compounded annual growth of 7.3 percent per annum.

3.2.4. Achievements have far exceeded the targets.The total Crude Steel capacity was estimated at 73 million tonnes by the end of March,2010 which is expected to go upto 110million tonnes by 2012-2013. A level of production of 61 mT has already been achieved in 2009-10 and it is expected that the level of 100 mT will be achieved much earlier in 2012-13. 222 MoUs have been signed with various States for planned capacity of around 276 million tonne. Investment plans are in the States of Orissa, Jharkhand, Chhattisgarh, West Bengal, Karnataka, Gujarat and Maharashtra.

3.2.5. Public Sector has undertaken major capacity expansion program. The expansion and modernization programme of the Steel Authority of India Ltd. (SAIL) is underway at all its steel plants to enhance the hot metal production capacity to 26.18 million tonnes .In respect of RINL, expansion of liquid steel capacity is from 3.0 million tonne to 6.3 million tonne at an estimated cost of around Rs. 12,228 crore. As part of the Greenfield expansion / diversification programme, NMDC is setting up an

Integrated Steel Plant of 3 million tonne per annum (MTPA) capacity at Nagarnar, Chhattisgarh. The project is estimated to cost about Rs. 15,525 Crore.

3.2.6. Steel production, especially through the integrated route, requires a number of clearances from the central and state governments for investment in the steel sector. Delays at various levels not only add to project costs but also discourage fresh investments. Result Framework Document(RFD) of the Ministry of Steel aims to facilitate creation of infrastructure required for steel capacity addition by coordinating with various ministries/agencies for obtaining clearances required by the public and private sectors in areas like mineral allocation, land allocation and environmental & forest clearances.

3.2.7. An Inter-Ministerial Group (IMG) is functioning in the Ministry of Steel, under the Chairmanship of Secretary (Steel) to monitor and coordinate major steel investments in the country. Ministry of Steel is extending all possible support for providing linkage for raw materials, rail movement clearance etc. for new plants and expansion of existing ones.

3.3. Electricity

3.3.1. Electricity is a concurrent subject at Entry 38 in List III of the seventh Schedule of the Constitution of India. The Ministry of Power is primarily responsible for the development of electrical energy in the country. Section 3 (1) of the Electricity Act 2003 requires the Central Government to formulate, inter alia, the National Electricity Policy in consultation with Central Electricity Authority (CEA) and State Governments. The provision is quoted below:

"The Central Government shall, from time to time, prepare the National Electricity Policy and tariff policy, in consultation with the State Governments and the Authority for development of the power system based on optimal utilization of resources such as coal, natural gas, nuclear substances or materials, hydro and renewable sources of energy".

3.3.2. The National Electricity Policy aims at achieving the following objectives:

- Access to Electricity - Available for all households in next five years

- Availability of Power - Demand to be fully met by 2012. Energy and peaking shortages to be overcome and adequate spinning reserve to be available.
- Supply of Reliable and Quality Power of specified standards in an efficient manner and at reasonable rates.
- Per capita availability of electricity to be increased to over 1000 units by 2012.
- Minimum lifeline consumption of 1 unit/household/day as a merit good by year 2012.
- Financial Turnaround and Commercial Viability of Electricity Sector.
- Protection of consumers' interests.

3.3.3. The Government of India has an ambitious mission of 'POWER FOR ALL BY 2012'. This mission would require that our installed generation capacity should be at least 2, 00,000 MW by 2012. India's installed capacity stood at 185,000 MW in Nov.2011.Central sector had a share of 57,032 MW or 31%, State Sector had share of 83606 MW or 45% and the remaining 24%, 44818 MW was owned by the private sector.

3.3.4. Until 1991, the sector in the states was managed by vertically integrated entity called State Electricity Board (SEB) that controlled generation, transmission and distribution of electricity, under the command and control structure of the respective State Ministries of Power. The Electricity Act, 2003, marked a paradigm shift in the sector by mandating licensee-free generation, non-discriminatory open access of the transmission system and gradual implementation of open access in the distribution system which will pave way for creation of power market in India. The Act enshrined restructuring the vertically integrated segments into unbundled and independent activities. The Act further recognized the capability of competition in generation and distribution in bringing the much desired change for consumer welfare enhancement.

3.3.5. Economic Survey 2010-11 has listed the progress in electricity reforms in the following areas:

- entry by private independent power producers (IPP); corporatization of state-owned enterprises; unbundling of generation,transmission, and distribution (T&D),

- a national enabling legislation (Electricity Act 2003); independent power regulation at national level (CERC) and in States,
- bulk transmission improvements (for example Powergrid), with wholesale electricity markets emerging in inter-State trading and merchant power sales (as an alternative to long-term power purchase agreements in cost-of-supply memorandums of understanding [MOUs]with States) and spot and futures markets,
- Some, limited, private entry into distrbution (for example Orissa, Delhi,), and splitting up of some State electricity distribution companies into discoms (distribution companies); and
- Central incentives (APDRP, accelerated power development, and reform programme) to support the implementation of electricity reform in States including accelerated metering and reducing high unaccounted-for T&D losses.

3.3.6. A composite reform index (although it does not assess quality), ranks India among the top reformers worldwide---comparable to Latin America (for example Chile, Brazil), better than East Asia (for example China, Indonesia, Thailand) and a step behind the most advanced (for example France, the UK, some US states). Among States in India itself, there remain significant variations. The highest ranked include most of the larger states, i.e. Andhra Pradesh, Gujarat, Haryana, Madhya Pradesh, Maharashtra, and West Bengal (as evident in their utilization of APDRP incentives), apart from Orissa and Delhi, two States with private distribution (with mixed impacts). With expected lags and some temporary reversals, outcomes are now beginning to emerge : accelerated power generation investments and competition; switch to tariff-based awards for new power projects; more efficient fuel sourcing (offshore natural gas, imported coal); rapid development of a national grid (with four out of five regions synchronized and the fifth--southern--interconnected), with greater reliability; and increased wheeling of electricity generated with emergence of a national bulk market with open access to States and wholesale trading.

3.3.7. Nevertheless, reform remains incomplete. And performance lags behind accelerating demand, especially given the massive future investment requirements and the critical role of the power sector in sustaining growth. Sh.Ailawadi in his draft Report on Competition Advocacy has observed that the major impediment in the way of intended liberalization stems from the monopolistic and corrosive structure of state utilities which create a façade of autonomous utilities, but are largely regulated by and for the respective state governments. The common memberships of the bureaucrats heading both STUs and State Discoms have high incentive of distorting the competition. Such conflict of interest may affect competition neutrality of the state as well of the state regulatory body giving scope for influencing the STUs to favour the state owned discoms. There is a need to ensure effective unbundling and complete ownership separation of competitive and monopolistic segments in the electricity value chain. The state should be neutral or at arms-length and should be distinct from the regulated utilities and the segments should not be unbundled on papers only. The separation of ownership would ensure 'competition neutrality'.

3.4. Coal

3.4.1. The coal reserves of India have been estimated by the Geological Survey of India at 276.81 billion tonnes as on 1.4.2010. Coal deposits are chiefly located in Jharkhand, Orissa, Chhattisgarh, West Bengal, Madhya Pradesh, Andhra Pradesh and Maharashtra. The Lignite reserve in the country has been estimated at around 39.90 billion tonnes as on 31.3.2010. The major deposits of Lignite reserves are located in the state of Tamilnadu. Other states where lignite deposits have been located are Rajasthan, Gujrat, Kerala, Jammu & Kashmir and Union Territory of Puduchery. Coal Production in India was 431 MT in 2010-11, almost the same level as achieved in 2009-10.

3.4.2. The Ministry of Coal has the overall responsibility of determining policies and strategies in respect of exploration and development of coal and lignite reserves, and for deciding all related issues. These key functions are exercised through its public sector undertakings, namely Coal India Limited (CIL) and Neyveli Lignite Corporation Limited (NLC) and Singareni Collieries Company Limited (SCCL), a joint sector undertaking of Government of Andhra Pradesh and Government of India with equity capital in the ratio of 51:49.

3.4.3. Coal mining was mostly reserved for the public sector under the Coal Mines (Nationalisation) Act, 1973. Subsequently, by amendments to the Act in 1976 and 1993, exceptions to policy were introduced viz.(i) captive mining by private companies engaged in production of iron and steel and (ii) sub-lease for coal mining to private parties in isolated small pockets not amenable to economic development and not requiring rail transport, (iii) coal mining for captive consumption for generation of power, and (iv) production of cement as an end use for captive mining of coal.

3.4.4. As on 31.12.2010, 208 coal blocks with geological reserves of about 50 billion tonnes have been allocated to the Govt./private companies. Mines and Minerals (Development and Regulation) Act has been amended to provide for introduction of competitive bidding system for allocation of coal blocks for captive use. The amendment has been notified in Gazette of India (Extraordinary) on 9th September, 2010. The Amendment Act seeks to provide for grant of reconnaissance permit, prospecting licence or mining lease in respect of an area containing coal and lignite through auction by competitive bidding, on such terms and conditions as may be prescribed. This, would however, not be applicable in the following cases:-

- where such area is considered for allocation to a Government company or corporation for mining or such other specified end use;

- where such area is considered for allocation to a company or corporation that has been awarded a power project on the basis of competitive bids for tariff (including Ultra Mega Power Projects).

3.4.5. Coal remains a government monopoly in production, price and distribution. Coal India Limited, which is a government monopoly, is not even adequately regulated. This has severe repercussions on private sector investment in the sectors which are heavily dependent on coal as main resource fuel. Appointment of Coal Regulator needs to be expedited.

3.5. National Manufacturing Policy

3.5.1. Govt has announced a national manufacturing policy in Nov.11 with the objective of enhancing the share of manufacturing in GDP to 25% by 2022.The share of manufacturing in GDP has stagnated at 15-16% since 1980 while the share in comparable Asian economies is 25-34%.The policy envisages increase in manufacturing sector growth to 12-14% over the medium term to make it the engine of growth for the economy. The 2 to 4 % differential over the medium term growth rate of the overall economy will enable manufacturing to contribute at least 25% of the National GDP by 2022. With reference to Public Sector , the policy intends to put in place a suitable frame work to make PSUs competitive while ensuring functional autonomy.

3.5.2. Capital Goods sector has been identified as one of the attention areas with special focus on machine tools, heavy electrical equipments, heavy transport, earth moving and mining equipments.

3.5.3. Public Sector which has a strong presence in these sectors will need to diversify and take up technology development/ acquisition programs to contribute to the growth objectives. Public Sector may be encouraged to form joint ventures to attract new technologies.

3.5.4. Further, keeping in view the sensitive nature of such partnerships and the commercial interests of the parties involved, the normal routes of floating tenders/expressions of interest may have to be dispensed with. Govt./CPSEs may consider setting up of Search Committee of Directors, consisting of at least one independent Director, which should be empowered to search, select ,negotiate with the prospective partner, finalise the proposal for approval of the Board and the Ministry/Empowered Committee.

3.6. FDI Policy

3.6.1. Govt. of India has issued a consolidated FDI policy in Oct.,2011. The intent and objective of the policy is to attract and promote foreign direct investment in order to supplement domestic capital, technology and skills, for accelerated economic growth.FDI is now permitted through the Automatic route in Agricultural and Animal Husbandry Sectors(identified items); 100% in tea sector including tea palnations;100% through the automatic route in the mining sector;100% in Coal and lignite mining for captive consumption for power projects, cement plants and other eligible activities permitted under and subject to Coal Mines(Nationalisation Act),1973;100% in Exploration activities of Oil and Natural Gas subject to the policy of the Government on private participation in exploration of oil and the discovered fields of national oil companies;49% in Petroleum refining by the PSEs; 74% in Telecom Sector subject to Govt. approval and up to 49%automatic ; upto 26% in Defence industry subject to Govt.approval; in the Mnaufacturing Sector , FDI in MSEs will be subject to the sectoral caps, entry routes and other relevant sectoral regulations; and so on. (Exhaustive list of FDI limits and conditions can be accessed through Department of Industrial Policy and Promotion's circular no.D/o IPP F. No. 5(19)/2011-FC-I Dated 30.09.2011).

3.6.2. Keeping in view the growth objectives of the manufacturing policy announced in Nov.2011, the sectoral cap of 26 % FDI in defence may be considered to be enhanced, subject to concerns of security , dependence etc. being addressed through appropriate regulatory measures. Defence Procurement Procedure 2011 aims at expanding India's defence industrial base, encourage indigenous defence production and reduce defence imports; it would be prudent to consider enhancing FDI limit in the ventures engaged in manufacturing activity only for the Defence Sector. A higher FDI could provide a significant incentive for transfer of knowhow/technology, leading to higher levels of technological expertise, which would lead to significant spin-offs, in terms of absorption of such technologies, into related areas of civilian use and boosting indigenous production.

3.7. Infrastructural Development

3.7.1. Post-liberalisation, the Indian industrial enterprises faced internal as well as external completion. Public Sector response to the change in industrial policy was not very encouraging initially. Its major concerns included uncertain future particularly on its role in the economy vis-a-vis private sector, support from the Govt. for its restructuring, financial support for new investments etc., grant of autonomy to public sector to face new challenges. Private sector faced competitive threats mainly from cheap imports. It goes to the credit of the enterprises, both private and public, that they have successfully responded to the changed policy regime, putting in place new strategies, results of which are reflected in high levels of GDP growth achieved in the last few years.

3.7.2. Approach Paper to the 12^{th} Plan has highlighted that the availability of land has become a major constraint on expansion of infrastructure, development of mineral resources, industrialisation and urbanisation. The present arrangements for acquisition of land, and also for change in land use are archaic, often unfair and non-transparent; in the recent past, disputes on land acquisition led to abandonment/shifting of two major projects. A new modern law is needed to govern the acquisition of land for industrial use, infrastructure development or urbanisation. Besides early enactment of the Land Acquisition Act, policies and practices need to be put in place to provide level playing field to the prospective investors, both in public and private sector. Besides Land Acquisition, Water Linkages, Environment Clearance, Mineral Linkages, are the major preconditions for successful implementation of large infrastructure projects.

3.7.3. Ministry of Power has taken a very confidence inspiring initiative for the setting up of the UMPPs (Ultra Mega Power Projects), being developed on a Build, Own, and Operate (BOO) basis. Some of the key areas requiring the Ministry of Power's intervention include –

- Coordination with Central Ministries/Agencies for ensuring:
  - Coal block allotment/coal linkage
  - Environment/forest clearances
  - Water linkage
  - Required support from State Governments and their agencies
- Working out allocation of power to different States from UMPPs in consultation with the States.
- Facilitating PPA and proper payment security mechanism with State Governments/State Utilities.
- Monitoring the progress of Shell companies with respect to predetermined timelines.
- Power Finance Corporation has been identified as the nodal agency in this regard.

3.7.4. Nodal Agencies could be set up in the Central Govt. /State Govt. to assist in land acquisition, and to ensure water linkage etc. and statutory clearances from the concerned ministries/agencies to provide a single-window clearance for large projects before offering any site for setting up of a project on a competitive bidding basis as per prescribed conditions.

Public Sector

4.1. Market share of CPSEs

4.1.1. The Industrial Policy Resolution of 1956 gave the public sector a strategic role in the economy. Massive investments have been made to build a public sector which has today a commanding role in the economy. A large number of CPSEs were set up as Greenfield projects consequent to the initiatives taken during the various Five Year Plans. While there were only 5 Central Public Sector Enterprises (CPSEs) with a total investment of Rs. 29 crore on the eve of the First Five Year Plan, there were 249 CPSEs (excluding 7 Insurance Companies) as on 31st March, 2010 with a total investment of 579920 crore.

4.1.2. Today key sectors of the economy are dominated by mature public enterprises that have successfully expanded production, opened up new areas of technology and built up a reserve of technical competence in a number of areas. CPSEs are the leading companies of India with significant market-shares in sectors such as petroleum products, (e.g. ONGC, GAIL and Indian Oil Corporation), mining (e.g. Coal India Ltd. and NMDC), power generation (e.g. NTPC and NHPC), power transmission (e.g. Power Grid Corporation Ltd.), nuclear energy (e.g. Nuclear Power Corporation of India Ltd.), heavy engineering (e.g. BHEL), aviation industry (e.g. Hindustan Aeronautics Ltd. and NACIL), storage and public distribution system (e.g. Food Corporation of India and Central Warehousing Corporation), shipping and trading (e.g. Shipping Corporation of India Ltd and State Trading Corporation Ltd.) and telecommunication (e.g. BSNL and MTNL).

4.1.3. The CPSEs have complete monopoly in nuclear power generation. The other sectors / industries where they have a major share in domestic / national output are coal (81%), petroleum-crude oil (86%), telecommunication-wired lines(84.59%) , thermal power generation(41.3%) and fertilizers. In comparison to 1998-99, however, the shares of CPSEs in these (select) industries have significantly come down except power generation in which the share of CPSEs increased during 2009-10.

4.1.4. In the Steel Sector, SAIL, a Maharatna Company, is India’s largest steel producer. Together with RINL, a Navratna company, Public Sector has a share of more than 50% of hot metal production capacity in the country. Central and State Sector together hold more than 75 % of the total installed power generating capacity of 185,000 MW in the country.

4.1.5. Industry Sector accounts for 28.5% 0f GDP. Manufacturing Sector has share of 16% in GDP at present. BHEL is one of the largest capital goods manufacturing company in the Public Sector.

4.1.6. In 1991, as a part of the Economic Reforms, Industrial licensing was abolished except for a short list of industries related to security and strategic concerns, social reasons, hazardous chemicals and overriding environmental reasons, and items of elitist consumption; reservation for the small scale sector continued.

4.1.7. With economic liberalization post-1991, sectors that were exclusive preserve of the public sector enterprises were opened to the private sector. The CPSEs, therefore, are faced with competition from both the domestic private sector companies (some of which have grown very fast) and the large multinational corporations (MNCs). The market share of CPSEs in industries, such as telecom, oil refinery, coal, power, steel and transportation has declined over the years. The CPSEs continue to have complete monopoly in nuclear power generation. In hard Coal segment, the share of CPSEs in domestic output has come down from about 88% in 1998-99 to around 81% in 2009-10; in Crude Oil ,the share has come down from about 91% to 86%; Natural Gas from 89% to 75%; and in Refineries from 100% to 70%. However, Power Generation Sector has witnessed increase during this period from 38% to 41% in Thermal Segment, 21% to 38% in Hydro segment while retaining 100% in Nuclear Power Generation.

4.1.8. In the First Plan, the public sector planned to invest more than 60 percent of the total investments which increased to almost 64 percent in the Fourth Plan. After that, there has been sharp and consistent decline in the public sector's role due to changing role of the private sector in the economy. In the Eleventh Plan, the public sector is supposed to invest only less than 22 percent and the rest is to be taken care of by the private sector.

4.2. Performance of CPSEs

4.2.1. The aggregate turnover of CPSEs reached Rs.1,235,060 crore in 2009-10, a marginal decline from Rs. 1,271,529 crore in 2008-09. The decline in turnover was mainly on account of reduction in sale of refined petroleum (Rs.74,150 crore), steel (Rs.4,536 crore), fertilizer (Rs.2,516 crore) and telecom sectors (Rs.1,495 crore). Out of 217 operating CPSEs, 158 made profit and 59 incurred loss in 2009-2010. The overall aggregate profit of all CPSEs, (158 profit -59 loss making) stood at Rs. 92,593 crore during 2009-10. The aggregate loss of loss making CPSEs stood at Rs.15,842 crore in 2009-10 against Rs.14,621 crore in 2008-09. 'Reserves and Surplus' went up to Rs.605,648 crore in 2009-10 from the earlier levels of Rs.536,212 crore in 2008-09 and Rs. 485,540 crore in 2007-08. During 2009-10, the accumulated loss of loss making CPSEs increased by 5.51% to Rs. 91,988 crore in comparison to Rs.87,188 crore in the previous year. The share of 'gross value addition in CPSEs (net value addition + depreciation) in Gross Domestic Product (at current market price) stood at 6.30 per cent in 2009-10 against the share of 6.20 per cent in 2008-09,(PE Survey 2009-10).

4.2.2. Turnover of both manufacturing at Rs.777962.26 cr. and mining at Rs. 137493.83 cr. during 2009-2010 declined by 7.79% and 0.68% respectively. Electricity, at Rs.77619.20 cr., however, continued to show a robust growth in turnover (16.98%) during the year over a growth 14.84 percent in 2008-09. The services sector also continued to keep up the growth momentum at 8.35 growth in turnover. Agriculture based CPSEs, although having a much smaller share in total turnover, showed a very high growth rate of 67 percent during the year.

Sector wise Growth in Turnover of CPSEs

(2007-08 to 2009-10) (in %)

Sector	**2009-10**	**2008-09**	**2007-08**
Agriculture	67.21	37.03	35.64
Mining	-0.68	10.09	10.92
Manufacturing	-7.79	17.02	15.67
Electricity	16.98	14.84	27.86
Services	8.35	16.26	4.73
All CPSEs	**-2.87**	**15.98**	**13.62**

4.2.3. Loss making CPSEs

4.2.3.1. The loss of 59 loss making CPSEs stood at Rs. 15,842 crore in 2009-10 against Rs. 14,621 crore in 2008-09. Cash loss during the year was Rs. 10,401 crore. Govt.

provides financial support to the loss making CPSEs to mitigate their hard ship. The extent of non-plan support was Rs. 6,588 crore in 2010-2011(RE) as compared to Rs. 3,382 crore in 2009-10. Loss making PSEs suffer from a number of factors including obsolescence of technology and surplus manpower.

4.2.3.2.The CPSEs were brought under the purview of Sick Industrial Companies (Special Provision) Act, 1985 (SICA) 1992. Out of the 64 CPSEs registered with Board for Industrial and Financial Reconstruction (BIFR) as of 30.6.2010, the BIFR has already disposed off 47 cases of CPSEs either through sanctioning revival schemes (11 cases), or recommending winding up (21 cases) or declaring 'no longer sick' (2 cases) or dropping due to net worth becoming positive (5 cases) or dismissing the cases as non-maintainable (4 cases). The BIFR is yet to take any view on 17 cases of CPSEs.

4.2.3.3.The Government, subsequently, set up the Board for Reconstruction of Public Sector Enterprises (BRPSE) in December, 2004 to advise the Government, inter alia, on the measures to restructure/revive, both industrial and non-industrial CPSEs. For the purpose of making reference to BRPSE, a company is considered 'sick' if it has accumulated losses in any financial year equal to 50% or more of its average net worth during 4 years immediately preceding such financial year. The concerned administrative Ministries/ Departments are required to send proposals for revival / restructuring of CPSEs identified as 'sick' for consideration of BRPSE. The Board is expected to make its recommendations within 2 months of the date of receipt of the complete proposal from the administrative Ministry/Department. Loss making/sick CPSEs may also be considered by the Board, suo moto, if it is of the opinion that revival/restructuring is necessary for checking the incipient sickness (i.e., incurring loss for two consecutive years) in the enterprise. Upto December 2010, cases of 67 sick CPSEs have been referred to BRPSE; out of which the Board has made recommendations in respect of 62 cases.

4.2.3.4.The process of decision making on the future of a PSE is invariably long. In the mean time, the concerned loss making PSE, conscious of the impending support from the Govt., continues to operate and compete with other players in the market in order to keep its capacity and manpower utilised, often incurring further losses, even at the cost of vitiating the competitive environment. The vicious cycle continues and the govt. continues to finance the inefficient operations of such PSEs .The financial support extended to the PSEs during its loss making period is subsequently, at the time of approving its restructuring plan, converted into grant/equity or long term loans to provide a clean balance sheet .Some of the CPSEs have been restructured a number of times without the desired result.

4.2.3.5. In the present market scenario, it is essential that any restructuring effort is primarily aimed at improving the competitive ability of the concerned loss making CPSE, in the process, according highest priority to induction of new technologies. Joint Venture formation route, within the norms prescribed under the disinvestment policy needs to be explored to attract partners to transfer new technology for revival/restructuring of loss making CPSEs.

4.2.4. State Level Public Sector Enterprises (SLPEs)

4.2.4.1. The State Level Public Sector Enterprises (SLPEs) form an important part of state economies and have played a very important role in the development of different states. Besides the public utilities, the SLPEs have been set up in areas, such as, mining, public distribution /trading and marketing, warehousing, tourism, handicrafts and handloom development, forest and fisheries development, financial services and housing etc. A number of loss making manufacturing units in the private sector that were taken over to protect the interests of workers/stakeholders, in the past, also constitute as SLPEs.

4.2.4.2. As per the CAG Reports on various states, there were around 837 working SLPEs in the country as on March 31, 2007. The total (financial) investments in all these SLPEs stood at Rs. 333,441 crores (as on March 31, 2007). The main components of this investment have been 'paid up capital' (Rs. 115,658 crores) and 'long term loan' (Rs. 217,783 crores); the share of 'long term loan' being 69% of the total compared to 31% share of 'paid up capital'. Investment in SLPEs amounts to 79% of total investment in the 246 Central Public Sector Enterprises (CPSEs). The total number of people employed in these SLPEs (> 18 lakh employees), moreover, exceed the total number of employees in CPSEs (15.70 lakh employees as on March 31, 2007).

4.2.4.3. In view of the losses being incurred by the SLPEs, the State Governments have been giving grants and subsidies to SLPEs to tide over their financial problem. Subsidies/grants received by all the SLPEs amounted to Rs. 31,548 crore in 2006-07. Karnataka topped the list, with highest amount of subsidy equal to Rs. 6140 crores being given to SLPEs during 2006-07. The other states with high subsidies to

SLPEs have been Andhra Pradesh (Rs. 4975 crores), Tamil Nadu (Rs 4219 crores), Haryana (Rs. 3807 crores), Gujarat (Rs. 3383crores), Maharashtra (Rs. 2727 crores), Punjab (Rs.1505 crores) and Rajasthan (Rs. 1254 crores).

4.3. Autonomy to CPSEs

4.3.1. Memorandum of Understanding (MOU)

4.3.1.1. MOU system was first introduced in India in 1986 as a result of the recommendations of the Arjun Sengupta Committee Report (1984). The Memorandum of Understanding (MoU), as applicable to public sector enterprises, is a negotiated document between the government and the management of the enterprise specifying clearly the objectives of the agreement and the obligations of both the parties. MoU is aimed at providing greater autonomy to public sector enterprises vis-à-vis the control of the government. The main purpose of the MoU system is to ensure a level playing field to the public sector enterprises vis-à-vis the private corporate sector. The 'management' of the enterprise is, nevertheless, made accountable to the government through promise for performance or 'performance contract'. The government, nevertheless, continues to have control over these enterprises through setting targets in the beginning of the year and by 'performance evaluation' at the end of the year. Performance evaluation is done based on the comparison between the actual achievements and the annual targets agreed upon between the government and the CPSE. The targets constitute of both financial and non-financial parameters with different weights assigned to the different parameters. Financial Parameters such as Sales, Gross Margin etc. are assigned a weight of 50% and the remaining 50% weight is assigned to Non-Financial parameters such as R &D, Sustainable Development, Corporate Social Responsibility. In order to distinguish 'excellent' from 'poor', performance during the year is measured on a 5-point scale. Table below provides a summary of the performance of MoU signing CPSEs as reflected in their MoU rating during the last five years.

Summary of the performance of MoU signing CPSEs

Rating /Year	2005-06	2006-07	2007-08	2008-09	2009-10
Excellent	49	46	55	47	73
Very Good	32	37	34	34	30
Good	15	13	15	25	20
Fair	06	06	08	17	20
Poor	00	00	00	01	01
Total	102	102	112	124	144

4.3.1.2. An analysis of the results above would indicate that about 70% of the MOU signing PSEs were placed in Excellent/Very Good Category, about 15% each in Good and Fair Category, and about 0-1% in Poor Category. The evaluation would create a doubt about the efficacy of the target fixing in the MOUs.

4.3.1.3.DPE guidelines for the MOU exercise for 2012-2013 stipulate that all CPSEs (Holding as well as Subsidiaries), without exception, are required to sign MoUs; while the Apex/Holding companies will sign MoUs with their administrative Ministries/Departments, the Subsidiary companies will sign MoUs with their respective Apex/Holding companies on the same lines as MoU is signed between a CPSE and Government of India. The basic targets of Gross Sales, Turnover, Gross Margin, Net Profit, Net Worth should be projected based on

i. last five years' actuals,

ii. reference to sectoral and industrial growth,

iii. forecast of growth outlook for the ensuing year,

iv. bench marking with peer companies at the national and global level, subject to the condition that they are not less than the achievement in the year 2011-12.

4.3.1.4.The non-financial targets should be SMART (Specific, Measurable, Attainable, Results-oriented, Tangible). Targets should be included to assess the performance of the CPSE under Corporate Social Responsibility, R&D, Sustainable Development, Human Resource Management and Corporate Governance, for which at least 5% marks each are earmarked. To the extent possible, the targets for non-financial parameters should be independently verifiable, and CPSE should also specify the agency and means of their verification.

4.3.1.5. The fixing of basic target(BT) is one of the core issues. The Ashok Chandra Committee deliberated on this issue and observed that 'any such target must necessarily take into account the performance of a company in the last few years'. It further observed, 'the Committee is of the view that the most appropriate method would be to take into account the actual performance of the company in the previous five years. The best performance figure should be picked up. Simultaneously, the Standard Deviation (S.D.) for these five years should be worked out. The basic target (BT) would be sum of the figure of the best performance year plus twice the S.D. Once the BT and its location have been decided, the rest is more or less mechanical'. Ministries, however, expressed reservations on this recommendation for fixing the BT, as it was found difficult to achieve.

4.3.1.6. The Expert Panel on CPSEs headed by Sh. Roongta has suggested that the current MOU system needs basic changes to make them more effective not only for evaluation of the business performance of CPSEs but also to give direction to their businesses. The MOUs also need to be greatly related to the organization's approach towards diversification, acquisition, formation of JVs, new/strategic businesses, usage of ICT, R&D initiatives, HR development and organizational changes etc. Instead of having standard parameters applicable for all CPSEs, individual CPSE Boards may formulate MOU proposal with emphasis on the above mentioned factors. The panel has further recommended that Physical performance parameters included in MOUs should be benchmarked with industry parameters including the private sector. International Benchmarks may also be identified for specific sectors (considering international enterprises operating at comparable levels in similar economic environment). The CPSEs may be encouraged to reach / emulate these benchmarks, within a definite time frame, with specified progress to be achieved each year.

4.3.1.7. Considering that the CPSEs are today operating in a highly competitive environment, it is suggested that the non-financial parameters in the MOU may include a parameter to reflect their competiveness status vis-a-vis other private sector players, to reflect on the competitive strength of a CPSE. The parameter may be selected by the CPSE itself and should be measurable as per the MOU guidelines for non-financial parameters. Such an index will be in line with the main objective of the MOU to act as a signalling system on the intrinsic strength of the CPSE.

4.3.2. Delegations of Powers to CPSEs

4.3.2.1 Govt. had introduced a Navratna Scheme in 1997 to identify CPSEs that have comparative advantages and to support them in their drive to become global giants.The Boards of Navratna CPSEs have been delegated powers in the areas of i) capital expenditure, ii) investment in joint ventures/subsidiaries, iii) mergers and acquisitions iv) Human resource management etc. There are 16 Navratna CPSEs.

4.3.2.2.Over the years , some of the Navratna companies have grown very big; CPSEs which are at the higher end of the Navratna category and have potential to become Indian Multinational Companies . Govt. have decided that such CPSEs will now be recognized as Maharatna Companies.

4.3.2.3. A CPSE will qualify to be a Maharatna if it is already a Navaratna company , listed on the Stock Exchange, and it has achieved an annual turnover of more than Rs. 25000 crore in the last three years, an average annual profit after tax of more than Rs. 5000 crore in the last three years and an average net worth of Rs. 15000 crore. Financial powers delegated to the Boards of Maharatna CPSES include the following:-

i) To incur capital expenditure without any ceiling,

ii) To enter into technology joint ventures or strategic alliances,

iii) To make equity investment to establish financial joint ventures and wholly owned subsidiaries and undertake mergers and acquisitions in India or abroad, subject to a ceiling of 15% of the net worth of the CPSE , limited to Rs. 5000 crore in one project. The overall ceiling on such investments in all projects put together will not exceed 30% of the net worth of the CPSE.

There are 5 Maharatna CPSEs , namely, (i) Indian Oil Corporation, (ii) NTPC ltd. ,(iii) ONGC,(iv) Steel Authority of India Ltd., (v) Coal Idia Ltd.

4.3.2.4. Despite the delegation of powers to CPSEs, the pace of new investments is not commensurate with the need to upgrade to face competition from within and outside.

This is reflected in their reserves constantly going up to Rs. 605,648 crore in 2009-10 from the earlier levels of Rs. 536,212 crore in 2008-09 and Rs. 485,540 crore in 2007-08.

4.3.2.5. One reason for this phenomenon is the risk-averse nature of top management in CPSEs. Govt. may consider setting up of an Empowered Committee in each infrastructure ministry for considering projects involving financial decisions above a certain threshold, depending on the status of the CPSE. The recommendations of this Committee may be submitted directly to the Cabinet for approval. This arrangement will facilitate quick decision making and enable capacity building in CPSEs to face competition.

4.4. Board Structure in CPSEs

4.4.1. The public enterprises are categorized in four Schedules, namely, 'A', 'B', 'C' and 'D' based on various quantitative, qualitative and other factors. The pay scales of Chief Executives and of full time Functional Directors in CPSEs are determined as per the Schedule of the concerned CPSE. Proposals from various administrative Ministries/ Departments for initial categorization /upgradation of CPSEs in appropriate Schedule, personal upgradation, creation of posts in CPSEs, etc, are considered in the Department of Public Enterprises in consultation with the Public Enterprises Selection Board (PESB). During 2009-10, 2 CPSEs were initially categorized in appropriate Schedule, 3 CPSEs were upgraded to higher Schedule and one post of Chief Executive was given higher scale of pay on personal basis. As on 31.3.2010, there were 249 CPSEs in the country. Out of the 249 CPSEs, there were 60 Schedule 'A' CPSEs, 70 Schedule 'B' CPSEs, 45 Schedule 'C' CPSEs and 5 Schedule 'D' CPSEs. The rest are covered under the uncategorized category.

4.4.2. The guidelines issued by DPE in 1992 provide for induction of outside professionals on the Boards of CPSEs as part-time non-official Directors. The number of such Directors has to be at least 1/3rd of the actual strength of the Board. In the case of listed CPSEs headed by an executive Chairman, the number of non-official Directors (Independent Directors) should be at least half the strength of the Board. The guidelines also provide that the number of Government Directors on the Boards should be not more than one-sixth of the actual strength of the Board subject to a maximum of two. Apart from this, there should be some functional Directors on each

Board whose number should not exceed 50% of the actual strength of the Board.The revised guidelines provide that the number of functional Directors should not exceed 50% of the actual strength of the Board of Directors (BOD) and the number of Government nominee Directors on the BOD should not exceed two.

4.4.3. In the case of listed CPSEs with an Executive Chairman, the guidelines provide that the number of non-official Directors shall be atleast 50% of the Board Members. In the case of CPSEs with a Non-executive Chairman, at least one-third of the Board Members will have to be non-official Directors.

4.4.4.The functional Directors including the Chief Executive of the CPSEs are appointed by the concerned administrative Ministries on the recommendation of the Public Enterprises Selection Board (PESB). It has been decided that candidates from State Level Public Enterprises (SLPEs) and the private sector will also be considered as non-internal candidates besides the candidates from CPSEs for selection to the post of Functional Directors in CPSEs subject to the eligibility criteria.

4.4.5. The criteria for executives to have a minimum of two years of service remaining on date of vacancies for functional directors / CMDs, needs to be dispensed with, as in the absence of adequate succession planning in many CPSEs as of now, several competent executives don't get considered for these positions. Consequently, it is leading to lack of appropriate competencies and low motivation at the highest levels in many companies. It is recommended that this criteria be relaxed to and executives who have one year of service remaining before superannuation on the date of vacancy may be considered eligible relating to age qualification.

4.5. Accountability/Ownership of CPSEs

4.5.1. CPSEs are considered an instrumentality or an agency of the State under Article 12 of the Constitution. They are accountable to Parliament, Parliament Committees, Constitutional authorities, Line Ministries, CVC, CAG, Ministry of Finance, Ministry of Corporate Affairs etc.

4.5.2. The Expert Panel headed by Sh. Roongta has cited ''over governance'' as one of the major issues affecting the performance of Public Sector and thereby its competitiveness. As companies, the CPSEs publish their annual accounts as per the Companies Act (1956). The CPSEs in India are, moreover, subject to the scrutiny of the Comptroller & Auditor General of India (C&AG), the Central Vigilance Commission (CVC), the administrative ministry and various parliamentary committees. They have now been brought under the ambit of Right to Information Act (RTI), as well. The CPSEs, have, therefore, been complaining of "Over Governance". Compliance to summons from various quarters comes at a heavy cost of time and money. Over governance, in turn, promotes conservative, cautious and risk averse organisational culture, with procedures being paramount and outcomes becoming secondary.

4.5.3. As corporate entities, CPSEs have to comply with all legal and regulatory processes as any private corporate entity. The additional issues of oversight arise because of their being public entities. Certain elements of over governance arise because of ambiguities in the roles of various stakeholders. The issue of 'over governance', therefore, needs to be tackled by bringing in focus on performance related accountability so that CPSEs become more proactive and result oriented.

4.5.4. MOU system was introduced to give greater autonomy to CPSEs. It has been expanded to cover all CPSEs and has been strengthened to lay equal emphasis on both financial and non–financial parameters to reflect on all round growth and development of CPSEs and has become a major tool for monitoring and evaluating the performance of the company/CEO. However, in terms of autonomy, MOU occupies only one end of the spectrum.

4.5.5 OECD Guidelines on Corporate Governance of State Owned enterprises advocate that the government should not be involved in the day to day functioning of SOEs and allow them full operational autonomy to achieve their objectives. The exercise of ownership rights should be clearly identified within the state administration. This may be facilitated by setting up a co-ordinating entity or, more appropriately, by the centralisation of the ownership function. The co-ordinating or ownership entity should be held accountable to representative bodies such as the Parliament and have clearly defined relationships with relevant public bodies, including the state supreme audit institutions.

4.5.6. A new model focussing on performance related accountability and establishing arms length relationship between the Govt. and the CPSEs needs to be developed to address the concerns of 'over governance'. Govt. may consider centralisation of the ownership function in one ministry. The Owner Ministry should be accountable to the Parliament for the performance of CPSEs and have clearly defined relationships with relevant public bodies, including the audit institutions.

4.6. DPE Guidelines

4.6.1. Consequent to the opening of the economy and entry of private sector in a big way in almost all infrastructure sectors, PSEs are gradually now facing stiffer competition. Nevertheless, because of their dominant role acquired over the past years, CPSEs are considered to be in a competitively advantageous position vis-a-vis private players. Strong financial, political, and institutional support is also considered to be in the favour of CPSEs.

4.6.2. Post 1991, Government abolished bulk of the guidelines, retaining a few, governing CPSEs with a view to grant greater operational autonomy.

4.6.3. CPSEs, however, continue to feel constrained in their competitiveness due to plethora of rules and regulations, consequent delays in decision making, which inhibits capacity building to face market challenges, particularly in high /new technologies.

4.6.4 Guidelines on Procurement by CPSEs

4.6.4.1. The process of decision making in PSEs is influenced by the various guidelines and invariably gets elongated with attendant cost and time overruns impacting their competitiveness in relation to private sector which has no compulsion to follow such a statutory mandate. Govt. has delegated substantial powers to CPSEs under the scheme of Maharatna, Navratna, and Miniratna, in different functions including capital expenditure, investments, JV formation etc., in order to give a boost to their capacity building to improve their competitiveness. However, the CPSEs are still considered an extended arm of the Govt. and are required to follow rules and procedures which inhibit their flexibility to operate in a competitive environment. One of such issues relates to procurement.

4.6.4.2. Procurement procedures in PSEs are regulated by their own Purchase Manual, generally based on GFR, as well as CVC guidelines on procurement. Following these guidelines is subjected to internal audit, Committee of Directors Audit and CAG audit.

4.6.4.3. One of the CVC guidelines relating to procurement stipulates that no negotiation can be carried out even with the L1 tenderer except in certain exceptional circumstances. This limits the negotiating power of the procuring agency, PSE, both in terms of cost and time. On the other hand, private players mostly adopt negotiation route to get the best time and cost offers.

4.6.4.4. With the increasing competition between public and private sector, it is time to consider grant of operational flexibility to PSEs for meeting their procurement needs, which may inter-alia include negotiations with L1, entering into long term contracts, etc. This is to be seen in the light of the trust reposed by the Govt. in the ability of CPSEs to take independent decisions on huge investments.

4.6.5 Purchase / Price preference to PSEs

4.6.5.1 Industrial Policy Statement of July, 1991 indicated the intent of the Government to encourage competition and in that pursuit various policy and procedural reforms have been put in place. One of such reforms related to termination of Purchase Preference to CPSEs from 2008. However, while withdrawing the purchase preference clause, DPE Guidelines stipulated that the concerned ministry may independently evolve preferential purchase policies for the sectors of their concern.

4.6.5.2 There is a case for total withdrawal of purchase preference now that since the onset of liberalisation, the Indian industry has matured in terms of its capability to face completion, both internally and externally. Both public sector and private sector have responded positively to the changed policy regime which is reflected in high levels of GDP growth achieved in the last few years.

4.6.5.3 Defence Sector is one of the largest purchasers with a total out lay of Rs.164,415 crore, nearly 13% of total central govt's expenditure in 2011-12. Defence Procurement Procedure announced in January 2011 aims at expanding India's defence industrial base, encourage indigenous defence production and reduce defence imports. The thrust of the policy is to provide a level-playing field to the Defence Public Sector Undertakings (DPSUS), shipyards and private sector, as well as promote indigenization. In order to take this intent further, and provide a level playing field to the private sector, the practice of purchase preference and placing orders on nomination basis to DPSUs could be dispensed with.

4.6.5.4 Further, FDI Policy effective Oct.2011, announced by the Department of Industrial Policy and Promotion (DIPP), in relation to the Defence Sector, incorporates a condition with reference to Public Sector, which stipulates as under: (xiii) Purchase preference and price preference may be given to the Public Sector organizations as per guidelines of the Department of Public Enterprises.

4.6.5.5 This stipulation may be seen in the context of the DPE Guidelines issued in Nov.2007 as per which the Purchase preference policy was terminated w.e.f. 31.3.2008; while doing so the Govt. had also decided that the concerned ministry may independently evolve preferential purchase policies for the sectors of their concern. Clearly, the intent was grant of purchase preference at the Lowest Price bid only as per the DPE guidelines of 18th July 2005. The stipulation of price preference in the latest FDI policy needs a review to avoid any negative signals on the competitiveness concerns and giving unintended price preference to PSEs.

4.6.6. Investment of surplus funds by CPSEs

4.6.6.1. DPE guidelines of Oct.,2008 and Feb.,2009 stipulate that

(i) CPSEs shall not deploy their funds through a bidding process with any Public Sector Bank or withdraw the funds from any PSB prematurely for depositing them elsewhere.

(ii) All CPSEs are advised that surplus funds may be placed with one or more PSB , subject to internal exposure guidelines of the respective CPSEs, as this would be in the larger interest of the system and spread the resources among the PSBs.

(iii) CPSEs should not invite bids from the private sector banks also for placing their bulk deposits.

4.6.6.2. These guidelines need a review as they are not only restrictive in getting the best returns for the CPSE's surplus funds but also limit competition between banks.

4.7 Regulatory Mechanisms

4.7.1 Regulatory mechanisms have been set up in a number of sectors in the recent past (TRAI, TDSAT, CERC, IRDA, PNGRB, CPCB, SEBI, etc.). A number of sectors are waiting for setting up of similar mechanisms. Broadly, the functions of these regulatory authorities include promoting the development of the concerned sector, to protect the interest of consumers by fostering fair trade and competition, to regulate tariffs, and to adjudicate disputes, etc.

4.7.2 However, doubts have arisen recently over their effective independence and their relative power in relation to line ministries which are responsible for formulating policies and also have ownership of SOEs. One of the main factors considered responsible for such a perception is the lack of clarity on the separation of role and functions of the regulatory authority and the line ministries, (Policy formulation, implementation of policy, ownership). A clear separation is indeed a “fundamental prerequisite” for ensuring a level-playing field and for avoiding competitive distortions. Clear laws and regulations should be developed to protect the independence of the regulators, especially in relation to line ministries. Appropriate financial and human resources should thus be provided to allow regulators to function adequately with the right level of operational independence.

Recommendations

S.No.	Title of the Act and/or rules/regulations therein or policy	Ministry /Department responsible for its Enforcement	Text of the Provision (section/clause)	Checklist code from Annexure 3 of the TORs	Analysis of the Anticompetitive effect or Market Distortion	Recommendation to rectify the situation	Remarks
1.	Infrastructure development	Infrastructure Ministries	Post Liberalisation, ministries have put in place policy initiatives to encourage participation of both public and private sector in achieving the planned growth. Ministry of Power have put in place a mechanism for ensuring all clearances only for UMPP projects before inviting competitive bids.	D-2	Prospective investors have to arrange clearances, land, water, environment, coal linkages, etc., on their own for setting up the project. Obtaining clearances of various statutory authorities continues to be a long drawn process and leads to delays in setting up of the	Nodal Agencies may be set up in the Central /State Govt. to assist in land acquisition, and ensure water linkage etc. and statutory clearances from the concerned ministries/agencies to provide a single-window clearance for	Timely setting up of the infrastructure projects is considered to be the key to the realisation of the GDP growth objective of 9% in the 12th Plan.

					project, cost overruns, and eventually affects the planned benefits.	large projects, to provide level playing field to the prospective investors, both in public and private sector, before offering any site for setting up of a project on a competitive bidding basis as per prescribed conditions.	
2.	National Manufacturing Policy	Ministries in charge of CPSEs in the Capital Goods sector	Capital Goods sector has been identified as one of the attention areas with special focus on machine tools, heavy electrical equipments, heavy transport, earth moving and mining		Public Sector which has a strong presence in these sectors will need to diversify and take up technology development/	CPSEs in the capital goods sector may be encouraged to form joint ventures to attract new technologies.	Domestic production will get a boost and aid in achieving the objective of the manufacturing policy to raise the

			equipments.		acquisition programs to contribute to the growth objectives.	Further, keeping in view the sensitive nature of such partnerships and the commercial interests of the parties involved, the normal routes of floating tenders/expressions of interest may have to be dispensed with. Govt./CPSEs may consider setting up of Search Committee of Directors, consisting of at	share of the manufacturing sector to the level of 25% of the GDP by 2022.

						least one independent Director, which should be empowered to search, select, negotiate with the prospective partner, finalise the proposal for approval of the Board and the Ministry/Empowered Committee.	
3.	FDI Policy, Oct. 2011	DIPP	The intent and objective of the policy is to attract and promote foreign direct investment in order to supplement domestic capital, technology and skills, for accelerated economic growth. In the Defence Sector, only 26%	D	Transfer of technology, new technology induction, and indigenisation are not encouraged by the current provisions in the policy for Defence	Govt. may like to revisit the issue of enhancing FDI limit in the ventures engaged in manufacturing activity only for the	This will encourage indigenous defence production and reduce defence imports and at the same, the share of domestic

			FDI is permitted subject to Industrial Licence under the ID &R Act 1951.		Sector. A higher FDI could provide a significant incentive for transfer of knowhow / technology, leading to higher levels of technological expertise, which would lead to significant spin-offs, in terms of absorption of such technologies, into related areas of civilian use and boosting indigenous production.	Defence Sector subject to concerns of security , dependence etc. being addressed through appropriate regulatory measures . .	manufacturing sector in GDP will also go up.
4.	FDI Policy for Defence Sector	DIPP	Purchase preference and price preference may be given to the Public Sector organizations as per guidelines of the Department of Public Enterprises.	B-3	Price/Purchase Preference inhibit competition and discourage participation of	The stipulation of price/purchase preference in the FDI policy needs a review to avoid	Purchase/Price preference are a part of the procurement process and not related to

					private sector.	any negative signals on the competitiveness concerns and giving unintended price/purchase preference to PSEs.	investment.
5.	Allocation of coal blocks- Gazette of India (Extraordinary), 9th September, 2010	Ministry of Coal	Policy provides for grant of reconnaissance permit, prospecting licence or mining lease in respect of an area containing coal and lignite through auction by competitive bidding; this scheme would not be applicable in the cases, where such area is considered for allocation to a Government company or corporation for mining or such other specified	A-2	Provision of an exclusive clause for Govt. company /corporation limits the participation of the private sector in the auction process for allocation of coal blocks.	Exclusivity Clause may be considered for deletion to provide level playing field and encourage competition.	

			end use.				
6.	Investment of surplus funds by CPSEs	DPE	DPE guidelines of Oct.,2008 and Feb.,2009 stipulate that i)CPSEs shall not deploy their funds through a bidding process with any Public Sector Bank or withdraw the funds from any PSB prematurely for depositing them elsewhere. (ii) All CPSEs are advised that surplus funds may be placed with one or more PSB , subject to internal exposure guidelines of the respective CPSEs, as this would be in the larger interest of the system and spread the resources among the PSBs. iii) CPSEs should not invite bids from the private sector	B-3	These guidelines are restrictive in getting the best returns for the CPSE's surplus funds and also limit competition between banks.	These guidelines may be reviewed and CPSEs given freedom to invest funds in any scheduled commercial bank subject to provision of adequate safeguards to be decided by the Board of CPSE.	The guidelines restrict competition between banks.

			banks also for placing their bulk deposits.				
7.	Purchase preference policy	DPE	Purchase preference policy was terminated w.e.f. 31.3.2008. At that time, the Government also decided that the preferential purchase policies framed for the specific sectors by the concerned Ministries/ Departments within relevant Act of Parliament or otherwise do not come within the purview of this decision. The concerned ministry /Department may independently evolve/review preferential policies for the sectors of their concern, as per their requirement.	B	Continuation of purchase preference by certain sectors restricts competition and inhibits provision of a level playing field between public and private sector.	Govt. may consider total withdrawal of purchase/price preference.	Since the onset of liberalisation, the Indian industry has matured in terms of its capability to face completion, both internally and externally. Both public sector and private sector have responded positively to the changed policy regime which is reflected in high levels of GDP growth achieved in the last few years.

8.	Memorandum of Understanding (MOU)	DPE	Performance evaluation of CPSEs is done based on the comparison between the actual achievements and the annual targets agreed upon between the Government and the CPSE in the MOU. The targets constitute both financial and non-financial parameters with different weights assigned to the different parameters.	C-1	Achievement of Financial parameters, Gross Sales, Turnover, Gross Margin, Net Profit, Net Worth , reflects on the quantitative growth, and non-financial parameters cover aspects such as corporate governance, sustainable development, etc. Aspects such as technology up-gradation and competitive strength of a CPSE vis-vis other market players	Non-financial parameters in the MOU may include a parameter to assess the competiveness of CPSE vis-a-vis other private sector players and to reflect on its competitive strength. The parameter may be selected by the CPSE itself and should be measurable as per the MOU guidelines for non-financial parameters.	The measure of competitiveness will be in line with the main objective of the MOU to act as a signalling system on the intrinsic strength of the CPSE.

					are not adequately reflected in the MOU.		
9.	Investment in CPSEs (Guidelines on delegation of Powers to CPSEs)	DPE	Govt. has delegated substantial powers to the Maharatna and Navratna, CPSEs in the area of capital expenditure, investment in joint ventures/subsidiaries, equity investment to establish financial joint ventures and wholly owned subsidiaries in India or abroad and undertake mergers & acquisitions, in India or abroad, subject to some ceilings.	C-1	Despite the delegation of powers to CPSEs, the pace of new investments is not commensurate with the need to upgrade to face competition from within and outside. This is reflected in their reserves constantly going up to Rs. 605,648 crore in 2009-10 from the earlier levels of Rs. 536,212 crore in 2008-09 and Rs. 485,540 crore in 2007-08. One reason	Govt. may consider setting up of an Empowered Committee in each infrastructure ministry for considering projects involving financial decisions above a certain threshold, depending on the status of the CPSE. The recommendations of this Committee	An Empowered Committee of Secretaries was earlier functioning in the Ministry of Petroleum and Natural Gas to facilitate quick decisions on investment in large projects.

					for this phenomenon is the risk-averse nature of top management in CPSEs .	may be submitted directly to the Cabinet for approval. This arrangement will facilitate quick decision making and enable capacity building in CPSEs to face competition.	
10.	Restructuring of Loss making CPSEs	DPE	Restructuring Plans of sick CPSEs are considered by the Board for Industrial and Financial Restructuring (BIFR) under the provisions of Sick Industrial Companies Act (Special Provisions) SICA 1985. Govt. has also set up Board for Reconstruction of Public Sector		The process of decision making on the future of a CPSE is invariably long. The financial support extended to the PSEs during its loss making period is subsequently, at the	Restructuring effort should be primarily aimed at improving the competitive ability of the concerned loss making CPSE, in the process,	Technology obsolescence is one of the major factors affecting the viability of loss making CPSEs. Arranging transfer of technology through the normal

			Enterprises (BRPSE) to advise the Govt. on strengthening, modernizing, reviving and restructuring of public sector companies.		time of approving its restructuring plan, converted into grant/equity or long term loans to provide a clean balance sheet .Some of the CPSEs have been restructured a number of times without the desired result .	according highest priority to induction of new technologies. Joint Venture formation route, within the norms prescribed under the disinvestment policy needs to be explored to attract partners to transfer new technology for revival/restructuring of loss making CPSEs.	collaborative route is becoming more and more difficult.
11.	Guidelines on procurement by CPSEs	CVC	CVC guidelines relating to procurement stipulate that no negotiation can be carried out even with the L1 tenderer except	B-6	This limits the negotiating power of the procuring agency, PSE, both in	Grant operational flexibility to CPSEs, for meeting their	Public Sector is at a disadvantage with reference to private sector , in terms of

			in certain exceptional circumstances.		terms of cost and time. On the other hand, private players mostly adopt negotiation route to get the best time and cost offers.	procurement needs, which may inter-alia include negotiations with L1, entering into long term contracts, etc.	its ability to negotiate , which ultimately affects the competitiveness of public sector.
12.	Ownership of CPSEs	DPE	CPSEs are accountable to Parliament, Parliament Committees, Constitutional authorities, Line Ministries, CVC, CAG, Ministry of Finance, Ministry of Corporate Affairs etc.	C-1	The CPSEs have been raising the issue of interference in their day to day functioning and complaining about lack of clarity in their accountability to various govt. organs and over governance. This in turn leads to risk averse culture, with procedures getting precedence over	Govt. may consider centralisation of the ownership function in one ministry. The Owner Ministry should be accountable to the Parliament for the performance of CPSEs and have	The Expert Panel on CPSEs headed by Sh. Roongta has opined that the issue of 'over governance' needs to be tackled by bringing in focus on performance related accountability so that CPSEs become more proactive and result oriented.

						performance.	clearly defined relationships with relevant public bodies, including the audit institutions.	OECD guidelines on Corporate Governance recommend centralisation of ownership. Such a model exists in some countries of Asia/Europe, (France, China).

References

1. Statement Of Industrial Policy, 24th July,1991—www.siadipp.nic.in;
2. Economic Survey 2010-2011----- http://indiabudget.nic.in
3. National Steel Policy, 2005—www.steel.nic.in;
4. Result Framework Document (RFD),Ministry Of Steel—www.steel.nic.in;
5. Research Report on Electricity Sector by Sh. Ailawadi
6. National Manufacturing Policy
7. Policy for Development of Ultra Mega Power Projects(UMPP), Ministry Of Power-www.powermin.nic.in;
8. Defence Production Policy, Ministry of Defence-www.mod.nic.in;
9. Allocation of Coal Blocks, Gazette of India(Extraordinary), 9th Sepember,2010; Coal Policy , Annual Report 2010-11-www.coal.nic.in/annrep1011;
10. Defence Production Policy, Ministry of Defence-www.mod.inc.in;
11. Policy Brief on Governance of State Owned Enterprises in Asia-Recommendations for Reform-OECD2010;
12. FDI Policy, April 2011, Department of Industrial Policy and Promotion-www. siadipp.nic.in;
13. CVC Guidelines on Procurement-www.cvc.nic.in;
14. Delegation of Powers to CPSEs-www.dpe.nic.in;
15. Disinvestment Policy-www.divest.nic.in;
16. Loans and Grants to Public Enterprises-Expenditure Budget Vol.1, 2011-12