Public Procurement Group

Report on Railway Sector
For
Committee on National Competition Policy (C-NCP)

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Introduction

1. Basic guidelines in Terms of Reference require the study to focus on the policy / law induced competition distortions in the Railway sector. The study will evaluate the implementation of the statutes, rules/regulations, policies and practices to identify provisions which limit the competition of the sector, and finally recommend changes in the regulations and their implementation procedures to address the competition related issues. Para 5 of TOR defines the objective, scope and structure of the study.

1.1 Para 6 of TOR relates to specific sectoral issues which require a review of current Railway Policy concerning railway transport infrastructure; specific mention has been made of catering services, private freight terminal and any kind of discrimination/ undue advantage between the private players and CONCOR by Indian Railways.

1.2 Another specific issue mentioned is the New R3i Policy – (attracting private participation in rail connectivity projects to generate additional rail transport capacity) from the competition policy perspective.

1.3 The study further is expected to cover the Railway Procurement policy and practices concerning competition aspects (oligopolistic completion, collusive behavior of market players)

1.4 The study should include suggested changes/ reforms in the laws, rules / regulations, polices and practices that can help and promote the comprehensive developed of the sector.

Part One: Railway Transport Sector

2. Defining Competition in the Context of Railways

2.1 Rail and Road are the two most important modes of surface transport. In Indian context. Inland water transport and even coastal shipping have very small share in the total transport. The presence of inland water transport is insignificant; and coastal shipping, even with substantial potential, has been mostly a feeder or a part of the bimodal transportation in combination with Railways in transportation of coal and POL-products. But the role of coastal shipping has been limited. Pipelines is another alternative mode in the movement of crude and POL products, and coal and iron are as slurry.

2.2 At macro level, Railways cannot compete with road in transport market. This is precisely the reason for Indian Railways continuously losing their share in the total surface transport over the years. In the deade after independence, rail mode occupied a dominant position in the Indian transport sector with 78% share in freight and 60% share in passenger services (1950-51). Since then there has been a phenomenal growth in total surface transport owing to a number of factors of which the most important are economic development, growth in population with increased mobility of people; expansion of network of roads and technology in road transport. In

1970-71 the share of Railways in freight movement was 70% and in passenger 39%. In 2004-05 it came down to 36% and 12% respectively.

2.3 The progressive erosion of Indian Railways' share over more than half a century has not been seriously examined and has been, at best, a superficial study of the decline reaching the misplaced conclusion that Indian Railways were unable to carry greater quantum of traffic due to lack of efficiency and a comfortable, laid back approach of an age old monopoly in the domain of surface transport.

2.4 But monopoly syndrome, lack of efficiency and complacency of approach, amount to only partial truth. The ground reality is entirely different. Historically, 50 years ago the road network in the country was rudimentary and woefully inadequate for the micro-level transportation of even essential goods, which included food grains, pulses, salt and spices, not to speak of soap, textiles and other consumer goods required in small towns and villages of the vast landmass which is India.

2.4.1. Indian Railways took that social responsibility not entirely for altruistic reasons; it was also inspired by business imitative. There was limited full trainload traffic; and wagon load and smalls was mainly the system of carriage of freight traffic. Right upto the end of 60s, shunting and van goods trains continued to operate on the entire network of Indian Railways. These trains carried wagon load and smalls traffic to roadside stations and picked up the outgoing traffic and empty wagons. These trains had one or two crew rest vans with kitchen and cook in which spare crew, guard, commercial

clerks and labour for loading and unloading, travelled and rested on pre-defined sections. Inward packages were unloaded, inward wagons placed and outward packages were loaded, outward wagons and empties picked up. There was an elaborate system of preparing Road Vans, sealed Vans, Two station sealed Vans and Junction sealed Vans for carriage, delivery and clearance of smalls or lessthan wagon load traffic.

2.4.2 At the end of the defined operating section of about 200 kms, there were flat marshalling yards, goods and repacking sheds and other facilities. Even a single package for and from a roadside station could be booked and delivered at the destination. Even for industries like cement, fertilizers, paper etc, wagon load was order of the day.

2.4.3 Towards the end of 50s. certain changes were taking place which made Indian Railways to rethink their classical mode of carriage of freight traffic. Industrial development was taking place in the planned economy. Major industries like steel plants, fertilizers plants, power houses and cement plants were being set up. By the beginning of the decade of sixties several of them had become operational. Three new steel plants in Public sector had come up at Bhilai, Rourkela and Durgapur and fourth at Bokaro was being planned. Steel plants required washed coking coal for which major washeries were set up in coalfields. Iron ore , limestone ,dolomite and mangnese ore were also the raw materials to be carried to steel plants in large quantities from mines which were coming up in the mineral rich regions.

2.4.4. There was a quantum jump in traffic. Traffic in full train loads started moving on long distances and the capacity of Railways started coming under

a great strain. New type of wagons to move in train loads; diesel and electric traction; and capacity expansion by doubling and modern signaling technology, were the strategies to expand capacity and carry the increasing quantums of traffic.

2.4.5. Without going into detail, it can be said that the first casualty was the smalls traffic. Railways were not able to run shunting and Van goods trains and by mid-sixties huge delays in transit started taking place. By the end of sixties on all busy sections van goods train started disappearing, although no declared changes in policy took place. Break-bulk and smalls traffic also started to shift to road since, even though slow, road network had started expanding.

2.4.6. By the end of seventies, railways. were not able to carry even wagon loads or less than rake load traffic. Shunting trains, and pilots which served private railway sidings, became extremely inefficient. They were still on steam traction; slowly the wagon load traffic also started eroding. Railways, however, refused to see the writing on the wall. IR planned and constructed hump marshalling yards all over the country, to consolidate the wagon load traffic into long distance train loads; break up and remarshal trains for further formation. The wagon load traffic continued to flourish for a few more years. In fact, Nimpura marshalling yard at kharagpur, was commissioned as late as in 1968 followed by Bokaro in mid-seventies. Mughalsarai downyard was expanded, remodelled and mechanised in early 80s.

2.5 The year 1980 can be considered as a watershed in the history of Indian Railways. IR made it bold to declare that Railways was a mode of transport

suited to carry bulk and large quantum traffic in trainloads. By this time about 60 % of total freight had already started moving as trainload from origin to destination. Industries like cement and fertilizers resisted, but were made to fall in line by the customary arbitrariness of a monopoly. Industry and other major customers gave in and the share of rake load in freight traffic went an increasing. Today it stands at more than 96% of total traffic moved by Indian Railways.

2.5.1 Railways all the world over are carriers of long distance bulk and high quantum traffic moving in full train loads from origin to destination. Rail infrastructure- wagons, engines, tracks and terminals - is also designed to suit the operation of this mode of transport in the segment which remains its monopoly because no other mode of transport is capable of providing that kind of service. Today, for example, a major thermal power plant requires 25000 tonnes or more of coal daily to achieve its target production. Powerhouses in Northern , Western and Southern regions of the country get their coal over a lead of 1000 km to 1500 km in trainloads carrying3500 to 4000 tonnes. IR carried in 2009-10, 271.45 million tonnes of coal for power houses alone, not to speak of other major industries with coal as fuel or raw material. In the year 2009-2010. IR moved 396 million tonnes of total coal from coalfields and pors to its major customers.

2.5.2 Railways are therefore, not in competition with Road in sharing the available traffic to be carried by the surface transport modes. There are no rules and regulations in existence which can force a customer to carry its goods by rail. All freight traffic which could be carried by road due to its inherent advantages of convenience, flexibility, adaptability and door- to -door

service, has already shifted to road. Commodities and goods which by their nature and quantum, cannot be consolidated in train load, move by road only. Rail and road by their nature, to a great extent are complementary services.

2.5.3 There are several factors which have contributed to the fall of rail share in surface transport in both passenger and freight. The first is the de-marketing or refusal by Railways to carry less than rake load freight traffic. This is so because in freight Rail by its very nature is a long distance big quantum carrier. Fragmented traffic not only requires marshalling regrouping etc. with necessary infrastructure of marshalling yards, but also has the inherent disability of transit delay. In case of passenger traffic, even the long distance traffic has shifted to road due to its flexibility and other inherent advantages. Over the last two decades, industrialization, development of the service sector and rapid urbanization has caused phenomenal growth in short distance passenger traffic. Except for metropolises, in the absence of suburban rail network, the commuter traffic has also taken recourse to road. Road network has also expanded and short distance travel in expanded megacities, industrial clusters and new urban centers has increased manifold. Here there is no competition. It is the availability and customer's modal preference which are deciding factors. In fact, rail travel is still substantially cheaper than road. This is one reason that long distance trains with reserved accommodation are constantly invaded by daily commuters in the suburbia of megacities and industrial centers.

2.5 In the context of Railways, the term competition has to be approached from a positive perspective. This perhaps, calls for an explanation. Railways are an

extremely energy efficient mode when compared to road. Rail transport is comparatively economical and less polluting. Railways are a cleaner mode of transport. Increasing consumption of petroleum products in the transport sector also has energy security implications. Today75 % of crude oil is imported as brought by TERI study. It is likely to go up to 93 % in 2030. Efforts need to be made to decrease the dependence of transport sector on petroleum products.

2.6.1 Indian Railways should therefore, produce services and create incentives for attracting more passenger and freight traffic. In other words, Railways in the medium and long reg segments should enter in a healthy competition with road from the perspective of policy planning, as a part of an integrated structure in which various modes complement each other. Railways are required to take positive steps to achieve this objective

2.6.2 Railways can take the following steps.

i. expand the network
ii. Increase passenger services on the existing and expanded network
iii. Win back, break bulk, small quntam and less than wagon load traffic by new strategies of transport by consolidation of long distance traffic in train loads by containers and end to end trains on defined Origen Destination (OD) flows.
iv. Run more short distance and suburban services to cater to the commuter traffic.

2.6.2 Introduction of more passenger services is easier said than done. The capacity on the main corridors of Indian Railways is intensively utilized. The Golden Quadrilateral and its two diognals are saturated. There are no dedicated lines and all the sectors have omnibus traffic which include local passenger trains, commuter services, long distance express trains and freight traffic of all description. Services cannot be increased without expansion of the network.

2.6.2.1 Expansion of capacity by constructing a third and a fourth line, and planning new lines are capital intensive projects with long gestation periods. Railways do have plans, but they take their own time. The most important are dedicated fright corridors on the western and eastern routes. This is an ambitious plan of public- private participation.

2.6.2.2 Ministry of Railways (Railway Board) has formulated a New R3i policy- infrastructure for industry initiative- which seeks to attract private sector participation in rail connectivity projects.

2.7 Railways can win back less than wagon load and break bulk traffic by private participation to aggregate and consolidate into a trainload at the originating point, and disaggregate and deliver at the destination point. Containerisation of traffic has been a revolutionary step in this direction..Starting initially as a monopoly under Railways by container corporation of India , the container traffic was thrown open to private operators . Still Indian Railways give preferential treatment to CONCOR in many respects denying level playing field to all the operators.

2.7.1 What is important to highlight here is the fact that greater freedom to operate and level playing field to everybody in business, will, in the final analysis, bring. In this way Railways carry additional traffic and offload Road of substantial long-distance traffic.

2.7.2 The other important area thrown opened by IR for private participation is the setting up of private freight terminals on private land. In fact, Railways today are extermely short of terminals, and encouraging private participation in setting up and operation of freight terminals is a positive step. Unfortunately, the good intentions are inhibited by ristrictive rules and their interpretation. Here also there is discrimination between Railways' own terminals and those to be set up by private entities.

2.7.3 The case of catering services is different. In railway catering, private participation has been permitted and encouraged for a long time. An attempt at restructuring by setting up Indian Railways catering and tourism cooperation by dismantling the online departmental structure resulted in marked deterioration in quality and service. A new policy in catering has been adopted in 2010..

2.8 This study will focus on private participation in container traffic, setting up of private freights terminals, and railway catering. The existing rules /regulations and policy matters, will be critically examined and suggestions formulated to remove the inhibiting factors, provide level playing field and encourage private participation.

2.8.1 The R3i policy as it stands today will also be examined with a view to evaluate its impact on railway infrastructure.

2.9 RT3i Policy

The New R3i Policy aims at attracting Private sector participation in rail connectivity projects to create additional rail transport capacity in order to meet the growing demand of the economy poised to grow at a rate of 8 % and more with significant potential for freight traffic.

2.9.1 It is limited to new line projects which are 20 kms or more in length. It has four modules.

a) Cost sharing freight rebate model
b) Full contribution- apportioned earning model
c) The SPV model
d) The private line model

The private line model should have minimum 14 % of FIRR.

2.9.2 Except the private line model, the land will be owned by railways although the land will be acquired by railways at the cost of the private entity.

2.9.3. Share in revenue at various rates will be granted as decided by railways for different models.

2.9.4 The scheme provides overwhelming and dominant right to railways in all matters. This makes the scheme less attractive.

2.10. Rail project are capital intensive. They have long gestation periods, and the breakeven takes almost ten years and more before the project starts earning surplus revenues. Railways consider the policy a liberal step but the investors may not find it very attractive. Only these who have a port or a major industry to connect with the Indian Railways network may respond.

3.Container Train Operation

Case of Discrimination and undue advantage to container corporation of India (CONCOR)

3.1 In Para 6.4 of TOR, this study is required to examine if there is a case of any discrimination/undue advantage between the private players and the CONCOR (Container Corporation of India) by Indian Railways. In this section the policy and rules which are discriminatory, have been identified. It bears repetition that the policy of IR. which seeks to discourage private operators by denying them the level playing field, is a self defeating exercise of Railways. Containerisation aggregates the small quantum -wagon load and less than wagon load traffic to be transported in a train load and thus helps to increase Railways, freight traffic.

3.2 Under the model which was adopted by IR to permit private players to enter the field of container train operation, the following are the important elements of the policy:-

3.2.1 In order to enter the domain of container traffic, the applicants have to pay a registration fee while applying. This fees was fixed at 10 crores for a is specific chosen corridor and 50 crores for all India operation. (Para 10 of the

Ministry of Railways (Railway Board) Notification of 26th September 2006, hereafter referred to as Notification)

3.2.2 All the entrants including CONCOR, are required to sign a Model Concession Agreement (MCA) with Indian Railways.

3.2.3 Operating permission would be granted for 20 years which can be further extended to another 10 years to transport export-import (EXIM) and domestic traffic.

3.2.4 The private operator will have to make his own arrangement for a rail-linked inland container depot.

3.2.5 The private operators also have to procure flat wagons for transporting containers, whereas Railways would provide locomotives.

3.2.6 Final freight tariffs for the containerized traffic will be left to the individual operators.

3.2.7 Players can exit operation by transferring the permission to another individual operator.

3.2.8 The primary earnings to the Railways would be through haulage charges which the parties would have to pay on per-container basis.

3.3 It was expected that opening the segment of container train operation to private players, will increase the share of rail in total container traffic operation. 15 operators have entered the field but out of them only 7 to 8 have started operation. This has not made any significant impact on train-based container traffic which has stood between 25 and 30 percent of the total container movement in the country. It is obvious that the strategy of the railways is flawed or discriminatory which inhibits the growth of rail borne container traffic towards the target of 50%. A number of issues have

been identified which have been limiting the scope of operation of private sector in this field.

3.4 The first discouraging factor was, and continues to be fixing a heavy entry fee for registration- 10 crores for one corridor and increasing to 50 crores to enable a private player to qualify for the complete Railway network. If the container train operator (CTO) is required to pay the fee the logical grounds for which are imaginary, he would think twice before becoming one. The obvious purpose was to protect container corporation of India (CONCOR) market which is an entity under the Ministry of Railways and in which IR hold 63% equity. Assuming that (CONCOR) is also required to pay the fee, it is only a matter of financial adjustment . Fixing the entry fee is an Entry Barrier.

3.4.1. The most important factor is land. Para 12.(3) of the Notification prescribes that land and other related facilities required for railway operation shall have to be provided by the operator at his own cost. The prospective CTOs have not been able to start their operation, at least 8 out of the 15 entrants, primarily due to lack of terminal facilities and rail-linked ICDs. The Ministry of Railways in its policy, has laid down that the operators should build their own ICDs. The stakeholders have expressed concern that cost of procuring land to build ICD, have become a major entry barrier for these private players. According to a general estimate, it takes roughly about 300 crores to set up and start operation in the container cargo business, since at current real estate prices, land constitutes the majors proportion of this sum.

3.4.2. Private operators have requested Railways to help in acquisition of land on the same terms as it is given to CONCOR. Railways have given some vague assurance in the matter for future; but as of now, CONCOR has the monopoly of ICDs. It owns 60 ICDs of which several are at the most important locations-on OD flows of EXIM traffic. CONCOR remains in an invincible position.

3.4.3. The association of container train operators has requested Railways to allow them to develop ICDs on railway land in the same way as CONCOR on nominal Lease charges. The response from the Railways has been that, even if it was permitted, it would be treated as a terminal of Railways for common use. In other words the CTO who built it will not have an exclusive right to its use, the preferred privilege permitted by Railways to CONCOR.

3.4.4. Para 12.(3) provides that if railway land is available, on the application of the operator the same shall be provided on the normal terms and conditions laid downly Ministry of Railways for licensing of Railway Lands. This is apparently being followed in violation.

3.4.5. Container train operators insist on level playing field. They say that if exclusivity has to be eschewed, then the ICD of CONCOR should also be made available for common use. It is extremely relevant to point out that except for the majors ICDs of CONCOR which deal with most of the EXIM traffic, more than 80 % of its ICDS are underutilized. That is not acceptable to Railways. This is a clear case of discrimination and anti-competitive measure. It is a stark denial of level playing field.

3.4.6 Private operators are permitted graciously by Railways to utilize C class goods shed for dealing with containers with markeshift infrastructure since

the facilities required and equipment to be permanently installed to deal with containers is not permitted.

3.4.7 Railways have since permitted construction of ICD by entities, who are not CTOs (Container Train operators) . But this has to be done through another scheme which is known as. Private freight terminal (PFT) scheme. But a PFT has to be on private land. This scheme also has several restrictive anti-competition rules which will be discussed separately in another chapter.

3.4.8. The uses of the existing ICDs of CONCOR by private operators, deserves to be underlined. If CONCOR ICDs have spare capacity, they should be made available to private operators. Duplication of the facility which is highly capital intensive is not desirable. At present, if the new container operators want to use CONCOR'S ICDs for running trains, they have to pay access charges. The access charges fixed by CONCOR, are extremely high, almost 'prohibitive'. This is a clear case of discrimination.

3.5 Pricing and discounts by CONCOR is an extremely important factor in fixing the freight tariffs by the private operators. The whole pricing mechanism is vitiated by CONCOR 95% marketshare which puts it in dominant position. CONCOR has the enormous infrastructure base; the private players find building infrastructure capital intensive, which includes ICDs and procurement of wagons and equipments. Therefore, even where private operators are able to win traffic, CONCOR is in a position to undercut prices (which it does) due to its wider scale of operation. In order to capture higher volumes, deter competition and gain market share, CONCOR has been increasing discounts on the high traffic routes of

National Capital Region (NCR) to JNPT/MundraPort/ PipvavPort. In an uneven playing field the pricing policy of CONCOR is almost 'predatory'. Private players have no choice but to follows CONCOR'S lead in setting prices.

3.6 The payment mechanism of haulage charges to Railways is also discriminatory. In the existing system, CONCOR pays haulage charges to Railways in advance on fortnightly basis or raise a credit of 15 days. New CTOs have to pay the haulage charges on per train basis. It involves a long process of weighing containers in the presence of Railway, goods clerk and pay the required amount by demand drafts (DD).causing delay and disadvantage to the operators. To provide level playing field Indian Railways should consider adopting the same process as permitted to CONCOR.

3.7. A very disturbing feature of the policy is a recent directive of railway board which has imposed commodity restriction. According to this order certain selected commodities cannot be moved by containers. Some operators have filed their representation to the Competition Commission of India, alleging that this directive violates Regulation 10 of the commission (General Regulation) 2009. The study team has come across the case filed by Kribhco Infrastructure Ltd.

3.7.1 The representation points out the contraventions of the provisions of the competition Act 2002. It specifically mentions violation of sector 4(1) by Abuse of Dominant Position by Ministry of Railways. It says:-

i. Ministry of Railways and CONCOR have undermined competition by exclusionary non-price conduct/discrimination (in violation of section 4(2) a (i), 4(2) (b)(i), and 4(2) (c) of the Act) by prohibiting transportation of commodities by container train operators (CTOs) such as ores, minerals, coal, and Coke, to ensure that such commodities are transported only by the Indian Railway's, own freight services and not by CTOs.

ii. Exclusionary price discrimination, exploitative pricing (unfairly high prices) and exclusionary pricing (margin squeezing) in violation of section 4 (2) (a) (ii) and 4 (2) (c) of the Act, thus putting CTOs to competitive disadvantage.

iii. This has been done by arbitrarily increasing haulage charges to the extent of 62.7% since the launch of the policy in 2006, which makes it commercially unviable for CTOs such as Kribhco infrastructure Ltd to run their business.

iv. Railways have imposed increased haulage charges on nine commodities on the basis of container class rate (in the range of 40-86 % of the previous year) without any rational basis or co-relative increase in unit costs. Thecarriage of these commodities by CTDs, as a result has become unviable. It is a complete departure from the basic principle that a container or a Box. should be subjected to the same rate irrespective of the commodity it carries.

v. Railways have also increased stabling charges by more than 50% from the previous year.

3.7.2 The representation has also mentioned the case of discrimination in providing Railway land which has been discussed earlier. It has listed other discriminatory practices such as delaying examination of CTOs train at terminals; giving no fixed timelines, failing to carry out timely maintenance and providing spares in accordance with the concession agreement.

3.7.3. Since the case is with the Competition Commissions of India, it is not necessary to give all the details of the representation. Suffice if to say that the policy and practices adopted by Ministry of Railways (Railway Board) in the matter of private participation in the field of container traffic are highly discriminatory, abusive of its dominant position in rail freight market, clearly bringing the fact in bold relief that Railways do not like the entry of private operators in this field, and it is doing its best to discourage them from getting a foothold. If level playing field is not provided, then it is certain that the private CTOs will continue to operate on the margins. In fact some of them would either not enter or will languish for sometime and then fade out from the scene.

4.PRIVATE FREIGHT TERMINAL

4.1 Ministry of Railways formulated its policy on Private Freight Terminal (PFT) and issued Freight Marketing circular no. 14 of 2010 bearing No. 2008/TC (FM)/14/2 of 31.05.2010 addressed to General Managers of all Railways. The scheme was intended to come into force with immediate effect. The objective of the policy is as follows:-

(i) Enable rapid development of network of freight handling terminals with the participation of private sector.

(ii) Enhance the presence and share of railways in the overall transportation chain.

(iii) Divert high rated finished traffic so far prominently moving by road to rail

and attain increased rail freight volumes by offering integrated, efficient and cost effective logistics and warehousing solution to users.

4.2The scheme sought to supplement the in-house programme of MOR by opening the area of terminal development with participation of major logistics service providers to create world class logistics facilities. From the experience so far, the response to the scheme has been lukewarm. In fact no major logistics service providers have come forward with a concrete proposal.

4.2.1 In fact the scheme is restrictive from its very nature because it gives limited scope to prospective investors in terminals which would have space, facilities and equipment to offer integrated, efficient and cost-effective logistics and warehousing solutions. The first of the restrictive aspects is excluding outward coal, coke and iron ore from the traffic permitted to be booked from a PFT. Coal and Iron ore on Zonal Railways where coal fields and iron ore mines exist, offer good scope to PFT owners to bring additional traffic. Railways are reluctant to give up the monopoly on coal which is their main revenue earning traffic.

4.2.2. More than a year after the scheme was announced, Railway Board relented to allow loading of non-programmed coal by letter no.

2008/IC(FM)/14/2, for core and non-core sector. The quantum of non-programmed coal is extremely limited and does not really work as an incentive to prospective investors. New coal mines are coming up in several coal fields, particularly south eastern coalfields limited (SECL) and Mahanadi Coal Ltd. (MCL) where the existing coal sidings are not adequate. If PFT is permitted all coal, it will increase Railways' revenue earning traffic. The fear of Railways that throwing open this traffic to PFTs will divert it to them is not correct. It would continue to remain a part of rail borne traffic.

4.2.3 The case of Iron ore falls in a different category. Following some irregularities in the iron ore sector, Railways became extra cautions and issued instructions that iron ore can be loaded from sidings which are exclusively dedicated to this commodity. This restrictive order has created immense hardship to small consumers like sponge iron plants and smaller steel mills with low shaft and induction furnaces. This has also resulted reportedly in large quantities of iron ore moving by road over long distances. The system deserves rethinking and suitable liberalization. For example, iron ore fines from sponge iron plants which is a residual ore or bye product, has market for blending with export ore at ports. This does not move by rail since private sidings, some of which become PFT in future, are not permitted to book this traffic.

4.3 Private sidings and terminals set up on private land on IR. Network can also apply for becoming a brown field PFT(Para 3.7). Such singings and terminals, where third party cargo has already been permitted (on co-user basis or otherwise), shall also have to apply for becoming a

Brownfield PFT (3.8). Faced with lack of response for new Greenfield PFT, the zonal Railways and divisional offices started forcing the private sidings where third party cargo was permitted along with co-users, to accept the Brownfield PFT scheme by interpreting the expression "shall have to apply" to mean "will have to apply". Discussions with the concerned officers in Railway Board by siding holders, proved this interpretation wrong. The expression was intended to mean that such sidings and terminals, if they intended to adopt the PFT scheme, will have to apply and will be governed by this policy.

4.3.1. Surprisingly the Railway Board's letter which relaxed booking of non-programmed coal, also modified para 3.8 of the scheme to say that sidings and terminals where third party cargo was permitted (as co-user or otherwise) "will have to apply", and settled the issue. This is a glaring example of a monopoly to use its dominant position to convert a voluntary scheme into an arbitrary order. In implementation of this revised order, the sidings are being threatened that the permission granted to co-users to deal with traffic at the siding, will be cancelled unless they fall inline and opt for the PFT scheme.

4.3.2. The PFT scheme and its interpretation and forceful effort in the field, raises several questions. It also points in the direction of apparent contradictions related to existing rules pertaining to sanction, building and operation of private sidings.

4.3.2.1 Traditionally, the subject of private sidings was being dealt with by the Engineering Directorate. In September 2000, the Nodal Directorate was changed to Traffic (Commercial) Directorate under the scheme of liberalization of siding rules. The subject however, has two nodal

officers, Executive Director Civil Engineering (G) and Executive Director (Freight Marketing) Railway Board. A revised standard form of agreement for private sidings was issued from the engineering directorate as late as in July 2005.Several other circulars/letters with directives of different kinds have been issued by Traffic (Commercial) Directorate.

4.3.2.2 It is a matter of no concern for the siding holders and customers as to who issues the directives, as long as the authority is the Ministry of Railways. But at present there are several issues which need to be resolved. The leasing of land or licensing on short term basis is being taken as one and the same thing. As a result even licensing for connectivity of sanctioned sidings is getting delayed.

4.3.2.3 With regard to PFT, an apparent contradiction is the issue of co-users. Existing siding rules permit co-user of a siding if Railways accept it on the basis of no-objection certificate (NOC) by the siding owner. The PFT scheme does not supercede or scrap the provision of the siding rules. In fact the PFT scheme itself, at several places, prescribes that the rules applicable to private sidings should be followed. By implication laying down that sidings with co-users 'will have to' opt for and follow the PFT scheme, is arbitrary and affects the private sidings. Curiously, the traffic, whether it moves from a private siding or a PFT, continues to remain rail borne traffic.

4.4 There are a couple of minor irritants which deserve to be mentioned one is about development of facilities which have been prescribed and have been made mandatory. Without developing facilities given in Para 4

and its sub-para, the PFT, will not be sanctioned. While this may be accepted for a Green field PFT, for an existing siding to become a Brownfield PFT, its performance and capacity to deal with a certain number of trains should be the criterion rather than the pre-formulated plan. Para 4.1 lays down that the PFT should work an all days including Sundays and round the clock. Para 4.2 directs that it should work according to Engine –on-load' system.

4.5 Revenue sharing is another issue which is a disincentive. Revenue here has been defined as the terminal charge livable at railway goods sheds or Rs. 10, whichever is higher. Private sidings as per extant instructions, are exempted from this charge.

4.5.1 The concept for imposing terminal charge, even at railway goods sheds and sidings is arbitrary. Its rational basis has not been explained. Two end terminal charges is a part of the total freight. This additional terminal charge therefore requires to be explained and its statutory basis revealed.

4.6 While evaluating the PFT scheme, it cannot be said that it is anti competition. The scheme, in the era of liberalization, is a step in the right direction. It is a project of public private participation. It was proposed in Railway Budget more than four years ago. At that time there was great enthusiasm and Private Freight Terminals were contemplated to be set up even on Railway land. But years later when

in 2010, it became a reality, it was a watered down version of the original concept. Like most of infrastructural projects of Indian Railways, it was also flawed by the monopoly syndrome of a government business. That perhaps, is the reason that it has not been able to attract private players. Forcing existing railway sidings to become PFT is no marketing strategy.

4.6.1 Railways have acres and acres of land all over the country. Major marshalling yards and loco sheds and workshops have been closed. They are located at strategic points in the midst of regions and areas of industrial development with great potential for rail traffic. Railways will be well-advised to put this land to productive use. ICDs for containers and PFTs for containers and other traffic deserve a place in the scheme of usage of railway land.

5. Catering Business of Indian Railways.

5.1 It is difficult to identify anti-competition rules in Railways' catering business. It requires a comprehensive study with a historical perspective from the time when it was first taken over on some of the Railways for departmental management. Since then the policy to look after the catering business has been undergoing changes and expansion. It is also debatable whether catering on Railways should be considered a business or a service. The dichotomy persists. Meanwhile Railways have been trying all kinds of permutations and combinations to make business out of a service which has to be provided to passengers with different menus-regional, ethnic,

national, Chinese, and continental to tickle their taste buds and give them the satisfaction of a well-fed journey.

5.2 The job is stupendous. Even with departmental control, the input of private operators is unavoidable. Over the years there has been a phenomenal growth of mobile catering through the pantry cars. According to feedback of passengers, who are users of the service, the railway catering has never been satisfactory.

5.3 According to a cabinet decision, the new catering policy was formulated in 2005. But Indian Railway Catering and Tourism Corporation (IRCTC) had taken over some business earlier and was at the helm of affairs. The network of departmental on line control and supervision was being dismantled at a fast pace and services were being auctioned out to the highest bidders who were out to become a monopoly by outbidding the competitors in an environment of complete freedom, particularly in mobile catering. The catering policy of 2005 was only an attempt to transfer the total business to IRCTC. But something seems to have gone wrong. IRCTC could control computerization of ticketing and other aspects of the business of tourism, but catering on trains and stations spread over the length and breadth of this vast sub-continent was another cup of tea. The online business of catering could not be managed in real time by centralized control.

5.4 The Catering policy of 2010 is a reversal to the old time tested system of departmental catering. New policy leaves the cream of food plazas, food courts etc. to remain under the control of IRCTC. With contractors who have reputed names in the business as franchisees, this segment of business is perhaps doing well.

5.5 Private operators have always had the dominant presence in Railway catering. Under the new system when mobile and stationary catering other than food plazas etc, is being reverted to departmental management and supervision – to Zonal Railways and Divisions, the private operators will continue to dominate the scene.Without them it is difficult to manage the service.

5.6. The 2010 Catering policy lays down in detail the role of Railway Board, Zonal Railways and IRCTC, Quality Assurance Programme; scale of catering services through static units, base kitchens; infrastructure at static units and even disposal of garbage. It contains detailed policy guidelines and directives pertaining to mobile catering units; catering by train side vending, automatic vending machines (AVMS); milk and milk products stalls, menu and tariff; allotment procedure and contract management; tenure of contracts for major units and general minor units etc; renewal; fixation of license fee, ceiling limits of catering licenses; and mechanism for monitoring of catering services. There are many other items. Nothing seems to be left out. But, in the final analysis, it is the revival of old system with some modifications and refinements.

5.7. It is too early to comment on the new policy. But prime facie, in the policy document, there are no rules and instructions which can be considered anticompetitive. The private participation in catering has always dominated. It will continue with a new vigour.

Conclusions and Recommendations

1. Infrastructure

1.1 Railway Infrastructure is not being built at the cost of competition

1.2 Railways do not compete with Road. They cannot, since this mode is suited to carry high quantum trainloads over long distance. This is precisely the reason that Railway's share in total surface transport has come down from 78 % in freight and 60 % in passenger in 1950-51 to about 30 % in freight and 15 % in passenger traffic.

1.3 The existing capacity of Railways is over stretched in usage. The golden Quadrilateral and its two diagonals of about 30,000 carry more than 70 % of rail traffic.

1.4 The need of the day is to expand the net work and upgrade its technology.

1.5 It is also extremely important to increase Rail- Road coordination and integration of service to increase Railways share in total transport. This will offload roads, reduce pollution and secure fuel economy.

2. Expansion of Rail network and connectivity and R3i Policy.

2.1 Expansion of capacity by constructing a third and fourth line on existing corridors; and planning new lines are capital intensive projects with long gestation periods. Today a big ongoing project is Dedicated Freight Corridors on the western and Eastern routes. This is an ambitious plan.

2.2 Ministry of Railways (Railway Board) has formulated a New R3i Policy- infrastructure for industry initiative- which seeks to attract private sector participation in rail connectivity projects.

2.3 It has four models :-

i. Cost sharing freight rebate model
ii. Full contribution- apportioned earning model
iii. The SPV model
iv. The Private line model

2.4 Railways consider the policy a liberal step but investors may not find it very attractive because :-

2.4.1 Railways propose to own the land except the private line model, although land will be acquired at the cost of the private entity.

2.4.2 Share in revenue will be decided and granted by Railways

2.4.3 It provides overwhelming and dominating right to Railways in all matters.

2.4.4 The projects are capital intensive, lumpy with long gestation periods.

3. Container Train Operation

3.1 Railways permitted private container Train operators to enter the field by Gazette Notification of 26th September 2006 calling it GSR593 (E) in exercise of the powers conferred by section of the powers conferred by section 198 of Railways Act 1989

3.2 The policy laid down is anticompetitive. It discriminates in favor of Container Corporation of India (CONCOR) There are several aspects of discrimination.

3.2.1 Private operator has to pay entry fee of 10 to 50 crores depending on level of operation. (Para 10 Registration Fee)

3.2.2 Private operator has to provide his own container depot on Private land. (Inland Container Depot-ICD) whereas CONOR has ICDs on Railway land on nominal lease. (Para 13.(3) of the Notification.)

3.2.3 This para provides also for Railway land if available. But Railways discourage and do not entertain applications.

3.2.4 Private operators have to procure own flat wagons for container trains. (Para 12.(4) of the Notification

3.2.5 Private operators have to invest own capital while Railways have provided equity to CONCOR. Here there is no public private participation.

3.3 The policy is flawed and discriminatory . Land is a major entry barrier.

3.3.1 Railways do not allow ICD for Private operators on Railway Land.
3.3.2 All ICDS are not permitted common use.

3.3.3 Pricing is discriminatory.

3.3.4 There is commodity restriction.

Recommendations

3.4 Railways should exempt private players from entry fee. It has no logical basis.

3.4.1 Railways should permit private ICD built on Railway land available on par with CONCOR. Railway should also acquire land for private operators.

3.4.2 Even leasing land on private terms may be considered as given in para 12.(3)

3.4.3 All ICDS should be permitted shared/common use.

3.4.4 There should be no commodity restrictions.

3.4.5 The pricing policy should not be discriminatory.

Private Freight Terminal

4. Ministry of Railways formulated its Private Freight Terminal (PFT) policy and issued Freight Marketing Circular no. 14 of 2010 bearing No. 2008/TC (FM)/14/2 of 31.05.2010. The scheme was intended to come into force with immediate effect. It was to open the area of terminal development with participation of major logistics service providers to create world class logistics facilities.

4.1 The scheme had a very poor response and due to its restrictive nature, practically, except one or two small sidings, no PFT has even been proposed.

4.2 There are several restrictive factors.

4.2.1 There is commodity restriction particularly coal and iron are. These restrictions should be removed (Para 3.1)

4.2.2 All sidings with co-users will have to become Brownfield PFT lest the co-user permission is denied. This should be made optional as in existing siding Rules which are still effective (Para 3.8)

4.2.3 The minimum facilities for dealing have been prescribed. This is restrictive. As long as a PFT is able to deal with the prescribed quantum of traffic, the straight jacket of a given layout should not be created (Para 4.4)

4.2.4 PFT with ICD or without should be permitted on Railway land on usual terms and conditions.

4.2.5 There should be no revenue sharing of the earnings of PFT since all freight including terminal charge comes to Railways.

5. Catering Business

It is difficult to identify anti-competition rules in Railways catering business. The job is stupendous. Even with departmental control, the input of private operators is unavoidable. It has been historically so

5.1 Mobile catering through pantry cars has phenomenally grown over the years. It cannot be managed without private participation.

5.2 According to a cabinet decision a new catering policy was formulated in 2005. The Indian Railway catering and Tourism Corporation (IRCTC) took over the business.

5.2.1 The business could not be managed properly due to dismantling of the network of departmental online control and supervision. The policy of auction to highest bidders affected the service. The online business of catering could not be managed in real time by centralized control.

5.2.2 The catering policy of 2005 is being revised by catering policy of 2010 in a kind of reversal to old time tested system of private and departmental business under Railways supervision. Private operators have always had a dominate presence in Railway catering. Without them it is difficult to manage the service.

5.2.3 The 2010 catering policy lays down in detail the role of Railway Board, Zonal Railway, IRCTC and private operators. Everything has been covered. Nothing seems to be left out.

5.2.4 It is too early to comment on the new policy. But primafacie, in the policy document, there are no rules and instructions which can be considered anti-competitive.