

RESEARCH STUDY OF THE ROAD TRANSPORT SECTOR IN INDIA



SUBMITTED TO:

The Ministry of Corporate Affairs, Govt. of India

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EXECUTIVE SUMMARY

Ministry of Corporate Affairs, Government of India, constituted a Committee on National Competition Policy and Related Matters (C-NCP) for the following purpose –

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

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. For the same, sector research studies reviewing distortive provisions in policies, laws, regulations, practices etc are being carried out. The studies are managed by Indian Institute for Corporate Affairs (IICA), and CUTS Institute for Regulation and Competition (CIRC) is assisting IICA through specific activities.

The current research paper focusing on road transport sector identifies and list provisions in different statutes, rules, policies and practices, which limit competition or have the potential to limit competition in a sector. Finally the paper recommends changes in the regulations and their implementation procedures to address the competition related issues. The study also has come up with few suggestions to promote and protect competition in the road transport sector.

Efforts have been taken to critically analyse the relevant laws, rules/regulations and the policies governing this sector with an aim to identify competition distorting elements contained therein. For the same both primary and secondary data has been used. Some of the major findings highlighted in the study include the need for an independent regulator in road transport sector to ensure level playing field for road passenger transport services, operating in public and private sector. Such independent Regulator should be provided with statutory authority, fixed service tenure with provision for removal on grounds of inappropriate act or incompetence. Besides, financial autonomy needs to be provided through levy of fee on service providers. Further, the independent transport regulator at state level should be entrusted with the few specific tasks such as fixing of price band for different kinds of services in an objective and transparent manner; ensuring service coverage across regions and providing mechanism for compensation for discharge of universal service obligations; ensure benchmark quality of road passenger service, promote competition etc.

The study also advocates for the reformation of State transport undertakings and curbing of cartels in transport sector by the Competition Commission of India (CCI). As part of reformation the study underlines the need for deregulation of tariffs, restructuring and commercialization of STUs, elimination of STU monopoly rights, changes in the tax regime to achieve uniformity of tax treatment of all buses operating in the inter-city markets.

All the more, based on the study and analysis of relevant legislations, it is seen that legislations tends to favour PSUs, as against private sector players. CCI needs to ensure that there is a need to do away with such legislations and create a level playing field among public and private players. Besides, given that the Competition Act empowers the CCI to take action against bid rigging or collusion, one of the key advocacy role to be played by CCI, is to impress upon Governments for an active oversight of the competitive tendering process.

Similar and more such other findings with suitable recommendations are dealt with in the below study.

The report is organized into 05 chapters. Chapter 1 covers a brief introduction to India's road transport sector, Chapter 2 provides an overview of market structure and reported competition issues of road transport sector alongwith international experiences; Chapter 3 identifies anti-competitive provisions vis-à-vis the passenger transport sector alongwith two case studies; Chapter 4 analyzes identified issues and provides an agenda for competition advocacy and Chapter 5 offers a set of conclusions and policy recommendations.

CHAPTER 1: INTRODUCTION AND OBJECTIVES OF THE REPORT

Introduction

The importance of infrastructure for sustained economic development is well recognised. Adequate and efficient infrastructure lowers transaction cost, has strong backward and forward linkages, directly impacts the quality of life and acts as a catalyst in the growth and development of an economy. Transport is a crucial component of infrastructure (Refer to Box 1). A well-developed transport network facilitates the integration and interdependence of the different sectors by aiding quick and adequate movement of people and material. Therefore, if agriculture and industry make up the “body” of the Indian economy, transport and communications constitute its “nerves”¹.

Box 1. Functions of Transport

1. Transport contributes in **growth of industries** whose product requires quick marketing. Perishable products, such as fish and green vegetables are carried to various consumers quickly even in distant markets through transport.
2. Transport helps in **increase in the demand for goods**. Through transport newer customers in newer places can be easily contacted and products can be introduced to them. Today markets have become national or international only because of transport.
3. Transport ensures **evenly distribution of commodities** into the hands of the consumers throughout the period of consumption.
4. Transport **increases competition**, which in turn, reduces prices. Prices are also reduced because of the facilities offered by transport for large-scale production. Advantages of large-scale production is possible only due to transport networks.
5. Transport **increases mobility of labour and capital**. It makes people of one place migrate to other places in search of jobs. Even capital, machineries and equipment's are imported from foreign countries through transport alone.

Source: http://shodhganga.inflibnet.ac.in/bitstream/10603/705/9/09_chapter%201.pdf

The transport system helps in expanding the market for goods and by doing so, it aids reaping the benefit of division of labour and thereby large-scale production. It is essential for the movement of raw materials, fuel, machinery etc., to the places of production. The more extensive and continuous the production in any sector, the greater will be the need for transport facilities².

India has an extensive road network and provides amenity to millions of people every day, thus road transport is one of the important ingredients for the social and economic development of the country. India has the third largest road network in the world stretching 3.32 million kilometres in length. According to World Bank, national highways in India constitute a length of close to 70,748 km, which is a mere 2 % of the road network, but carry about 40 % of the total road traffic in India³. The significance of transportation is relative to the economy and the population of a country; India being the world's second fastest growing economy and being the

¹ NCAER (April, 2007), “State policies affecting Competition: Passenger Road Transportation sector”, available at http://www.cci.gov.in/images/media/completed/2statepoliciesaffecting_20080508111218.pdf

² *Ibid*

³ http://business-standard.com/content/research_pdf/tci_110111_01.pdf

second largest populated, transportation plays a crucial role in its economic development and sustainable growth.

In the transportation sector, road transport has emerged as a dominant segment with a share of 4.8 percent in India's Gross Domestic Product (GDP) in 2008-09 (Refer to Table 1).⁴

Table - 1: Share of Different Modes of Transport in GDP						
Sector	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09
	As percentage of GDP (at factor cost and constant prices)					
Transport of which:	6.3	6.7	6.7	6.7	6.7	6.6
Railways	1.2	1.0	1.0	1.0	1.0	1.0
Road Transport	4.3	4.8	4.8	4.8	4.7	4.8
Water Transport	0.2	0.2	0.2	0.2	0.2	0.2
Air Transport	0.2	0.2	0.2	0.2	0.2	0.2

Source: Road Transport Year Book (2007-09) available at <http://morth.nic.in/showfile.asp?lid=420>

The modal growth rates have varied with road transport growing at a much higher rate compared to other competing modes like inland water, railways and air transport despite significant barriers to inter-State movement of freight and passenger by road (Table - 2).

Table - 2: Average Annual Growth (%) in Transport Sector GDP*		
Sector	2004-05/2000-01	2005-06/2000-01
Overall GDP	6.0	6.4
Transport	8.7	8.8
Railways	6.0	6.5
Other Transport:	9.3	9.3
Road	9.7	
Water	7.6	
Air	8.1	
Services **	5.1	

* GDP at factor cost in real terms (1999-2000 prices) ; ** Services incidental to Transport

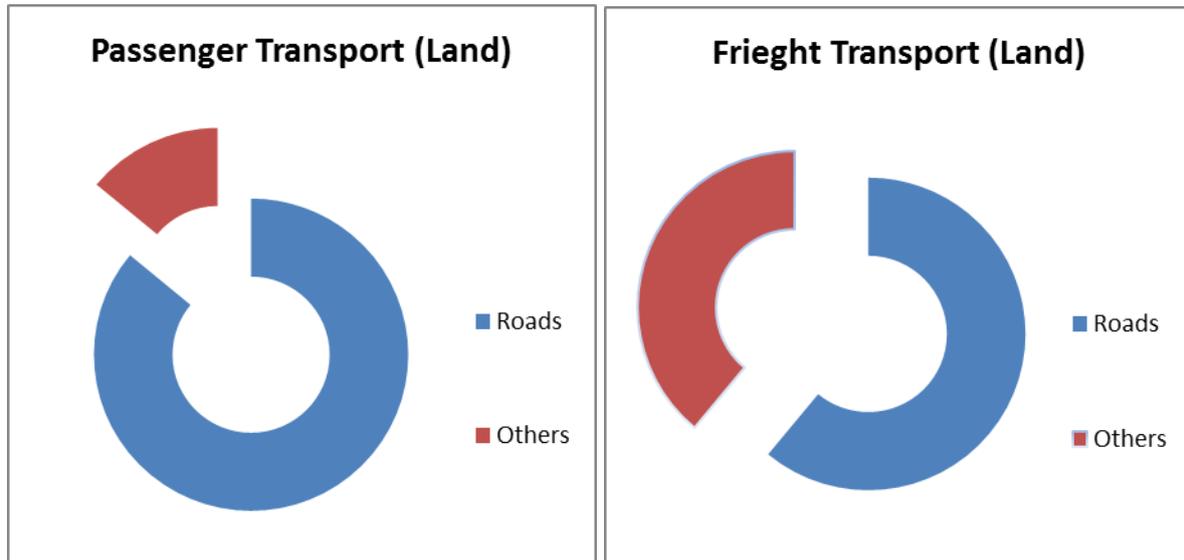
http://planningcommission.nic.in/aboutus/committee/wrkgrp11/wg11_roadtpt.pdf

Now with the current ambitious target of 9-10 percent economic growth rate, it becomes imperative for the Indian government to ensure cheap, convenient and accessible road transportation. Also, for sustaining that high level of growth would require much higher order of growth in road transport sector. Consequently, transportation by road has steadily expanded

⁴ National Road Transport Policy; See also

http://morth.nic.in/writereaddata/sublinkimages/Road_Transport_Policy27333191.pdf

over the years and for the purpose of this paper, it can be broadly classified into two groups i.e. passenger and freight transport.



Regulation in passenger road transport industry⁵

Regulation of an industry is a process prescribed by laws that control or direct decisions of firms in public interest. Ideally, in a market situation with perfect competition, the consumer is the monarch and the market mechanism ensures that the interests of the consumer and the provider of goods or services are balanced. Since markets do not function ideally, *regulation* is required to provide a substitute for perfect competition. The purpose of regulation is to prevent profiteering, exploitation, ensuring provision of adequate or universal service, and preventing self-destructive price competition. Regulation is intended to protect customers, employees and the environment from harm or damage resulting from inappropriate behaviour of firms. The genesis of independent regulatory bodies and their functioning on a professionally rational basis stems from the early experiences of natural monopolies reaping windfall profits and earning unfair economic rents that reduce human welfare.

Strategically important industries will necessarily be subject to a high degree of regulation, whether they remain in public or private sector. Passenger road transport is strategically important where competition is possible. Hence, the objective of regulation in passenger road transport would be to encourage competition. According to Davis, et al. (1975), the goals of regulation in passenger transport are:

- Protection of public interest, and
- Promotion of the best possible system of transportation.

It is necessary to see that cheaper, adequate and well-coordinated transport system is provided for economic and social development. It is also necessary to encourage vehicle manufacturers and bus operators to provide a variety of services cheaply, comfortably, safely and with least damage to the environment. In a free market economy, fares are determined on the basis of what

⁵ Y. Satyanarayana ((Vol 29, 2000), 'Reforms and regulation in passenger road transport and state transport undertakings' ASCI Journal of Management

business or passengers can bear. This normally results in low fares on high-density routes and high fares on deserted low-density routes. Poor people in both urban and rural areas normally use low-density routes. The state or local governments have a responsibility to ensure that passengers on low-density routes are not exploited by higher fares charged. At the same time, the viability of operators on unprofitable routes is not adversely affected. Route franchising and subsidies as adopted in Jamaica and U.K. are worthy of introduction in India.

Need and Objectives

Need for the Study

Demand for transportation is increasing in India at a very great pace. There has been unprecedented growth in the number of motor vehicles over the past few years. Vehicles of all shapes and sizes such as Tata Nano, SUVs, etc are competing for road space on our limited road system. In this context, serious thought ought to be given immediately to the need for having sustainable growth in the transport sector by taking into account safety, environmental and competition issues. The regulatory and legal frameworks governing the sector need to be comprehensive enough with regard to infusing competition in the sector and efficiently allocate resources so that both prices (to the consumer) and costs (to the producer) are kept low. However, to keep up with rising demand and with international best practices, policies need to be identified which facilitates competition.

Objective of the Study

As a part of its agenda to develop a strategy for competition advocacy with the government and the private sector, the Committee on National Competition policy (C-NCP), constituted by the Ministry of Corporate Affairs, seeks to have specific inputs and undertake evidence-based advocacy. To carry out evidence-based advocacy, a review of distortive provisions in policies, laws, regulations, practices etc is required. The sector research study on road transport will provide illustrative examples of those laws, regulations and policies which either exert or have the potential to exert anti-competitive effects, and thus influence the outcomes of the law/regulation/policy concerned.

The need to assess competition distortions in the legal framework and its working become crucial to enable the sector to play its rightful role in the Indian economy. It is also imperative to bring road sector regulations in conformity with the competition regime in the country as it results in other related issues, such as illegal transportation, cartelisation, corruption etc. Multiple laws and agencies governing inter-state movement of freight and passengers is also one of the major impediments in the desirable growth of this sector.

Thus, the objective of the study is to bring out specific instances of law induced competition distortions. It will also recommend changes in the regulations and their implementation procedures to address the competition related issues. The study aims to highlight an approach to promote and protect competition in the sector.

CHAPTER 2: MARKET STRUCTURE AND REPORTED COMPETITION ISSUES

Like many economic activities that are intensive in infrastructures, the transport sector is an important component of the economy impacting on development and the welfare of populations. When transport systems are efficient, they provide economic and social opportunities and benefits that result in positive multiplier effects such as better accessibility to markets, employment and additional investments. When transport systems are deficient in terms of capacity or reliability, they can have an economic cost such as reduced or missed opportunities. Transport also carries an important social and environmental importance, which cannot be neglected. Thus, from a general standpoint the economic impacts of transportation can be direct and indirect:

- **Direct impacts** related to accessibility change where transport enables larger markets and enables to save time and costs.
- **Indirect impacts** related to the economic multiplier effects where the price of commodities, goods or services drop and/or their variety increases⁶.

Mobility is one of the most fundamental and important characteristics of economic activity as it satisfies the basic need of going from one location to the other, a need shared by passengers, freight, etc and information. Reduced mobility impedes development while greater mobility is a catalyst for social and economic development. Mobility is thus a reliable indicator of development. Providing this mobility is an industry that offers services to its customers, employs people and pays wages, invests capital and generates income. The economic importance of the transportation industry can thus be assessed from a macroeconomic and microeconomic perspective⁷:

- At the **macroeconomic level** (the importance of transportation for a whole economy), transportation and the mobility it confers are linked to a level of output, employment and income within a national economy. In many developed countries, transportation accounts between 6% and 12% of the GDP⁸.
- At the **microeconomic level** (the importance of transportation for specific parts of the economy) transportation is linked to producer, consumer and production costs. The importance of specific transport activities and infrastructure can thus be assessed for each sector of the economy. Transportation accounts on average between 10% and 15% of household expenditures while it accounts around 4% of the costs of each unit of output in manufacturing, etc.⁹

Passenger Transport (Land)

In India, the British developed the railways for improving trade and to move troops to control the law and order situation arising out of the independence movement. British interests were paramount in nurturing and expanding the railway network. Road transport was used as a source

⁶ Rodrigue, J-P *et al.* (2009) *The Geography of Transport Systems*, Hofstra University, Department of Global Studies & Geography, <http://people.hofstra.edu/geotrans>

⁷ *Ibid*

⁸

http://www.tcd.ie/civileng/Staff/Brian.Caulfield/Intro%20to%20Transport/Economic%20impacts%20of%20transport_MSC.pdf

⁹ *Supra* Note 6

of revenue through taxation. After independence, the Government of India gave high priority to building roads and road transport for rural development. Since independence, though the Indian Railways improved its services and expanded its network substantially, it could not compete effectively with road transport for transporting passengers. With the enactment of the Road Transport Corporations Act (1950) and amendments to the Motor Vehicle Act (1939), the Government of India paved the way for speedy nationalization of passenger road transport, establishment of State Transport Undertakings (STUs), and empowering STUs to grant permits. Consequently, all the Indian states established STUs and started nationalizing bus operations. As a result of STU initiatives in many states, basic infrastructure such as bus depots, service centres, modern bus stations, etc were built.¹⁰

STUs created and cultivated the ever-expanding market in passenger road transport from the 1950s through the 1980s. According to the Association of State Transport Undertakings, the share of STU buses in the total number of buses in the country grew from 20% in 1950 to 50% in 1980. However, with the liberalization of economy arising out of changes in the policy environment, implemented through amendments to the Motor Vehicle Act in 1988, STUs started facing severe competition from private vehicles and private operators since the early 1990s. Changes in the Motor Vehicle Act in 1988 led to the scrapping of overriding priorities and privileges conferred upon STUs, providing an easy (and unregulated) entry to private operators (of buses, mini-buses, jeeps, three-wheelers, etc., with and without stage carriage permits) into the public transport sector. Simultaneously, changes in industrial policy resulted in serious competition in the automobile industry. Free availability of two-wheelers and cars resulted in the upper middle and middle class drifting away from public transport.¹¹

Customers were quite justified in exercising their options. Owing to increasing personal incomes, long-distance passengers aspired for luxury services in rural operations. But STUs forced these passengers to travel by uncomfortable ordinary buses. Exercising monopoly rights, STUs neither catered to changing passenger needs nor allowed others to come in and take care of their needs till the liberalization of the economy in the early 1990s. These two trends have contributed significantly to the erosion of market share, occupancy ratio and profitability of STUs. A majority of STUs registered negative growth and losses in the 1990s. To improve financial viability, STUs were compelled to withdraw operations that involved unprofitable trips, services and routes. Predictably, private operators have also not introduced services on low-density routes because these are not profitable.¹²

Therefore, in a liberalized environment, it becomes a greater responsibility of the state to protect the interests of consumers, especially those passengers who are compelled to travel in public transport, as they are too poor to afford quality transport or high taxi fares. In many post-liberalized economies, such problems were effectively tackled through a variety of measures like packaging of routes, subsidies, and tax concessions, among others, through the establishment of a regulatory mechanism, which is absent in India. Hence, there is an urgent need to address two issues in passenger road transport in India:

- First, reforms in existing STUs to improve their competitiveness in the liberalized environment while fulfilling the objectives for which they were set up in the first place.

¹⁰ Supra Note 5

¹¹ *Ibid*

¹² *Ibid*

- Second, establishment of effective *regulatory commissions*, both at the centre and in states, to take care of contractual compensation, fare management and above all, consumer interest.

This two-pronged approach will sustain a competitive environment, develop scientific methods in evolving an effective road transport system that is economically viable and protects consumer interest. It calls for political will to conceive, introduce, support and sustain the process¹³.

Freight transport (Land)

The roads goods transport industry in India has never been regulated the way it has been in many other countries. But as mentioned earlier, a regulatory framework in the form of the MV Act has been in place since 1939. This did provide for restrictions on permits but over a period of time these have been relaxed to a very large extent permitting easy entry into the industry and for movement all over the country. This is perhaps the only deregulatory move that has taken place in India as far as the trucking sector goes. The credit for this development goes to the Indian railways, which had no capacity to offer on a regular basis even with regard to bulk items. But as observed by the various Committees and pointed out by the different studies, the Motor Vehicle departments of the States have mainly focused on the collection of revenue (tax and otherwise) rather than on effective enforcement of the provisions of the MV Act.

As a result, an effective regulatory framework has, never been attempted to be put in place. This has emerged over the years as a major external impediment (in terms of a number of dimensions) to the effective growth of the trucking industry in India. This is a matter of concern especially when viewed in the context of an emerging globalised competitive economy.

Key Players

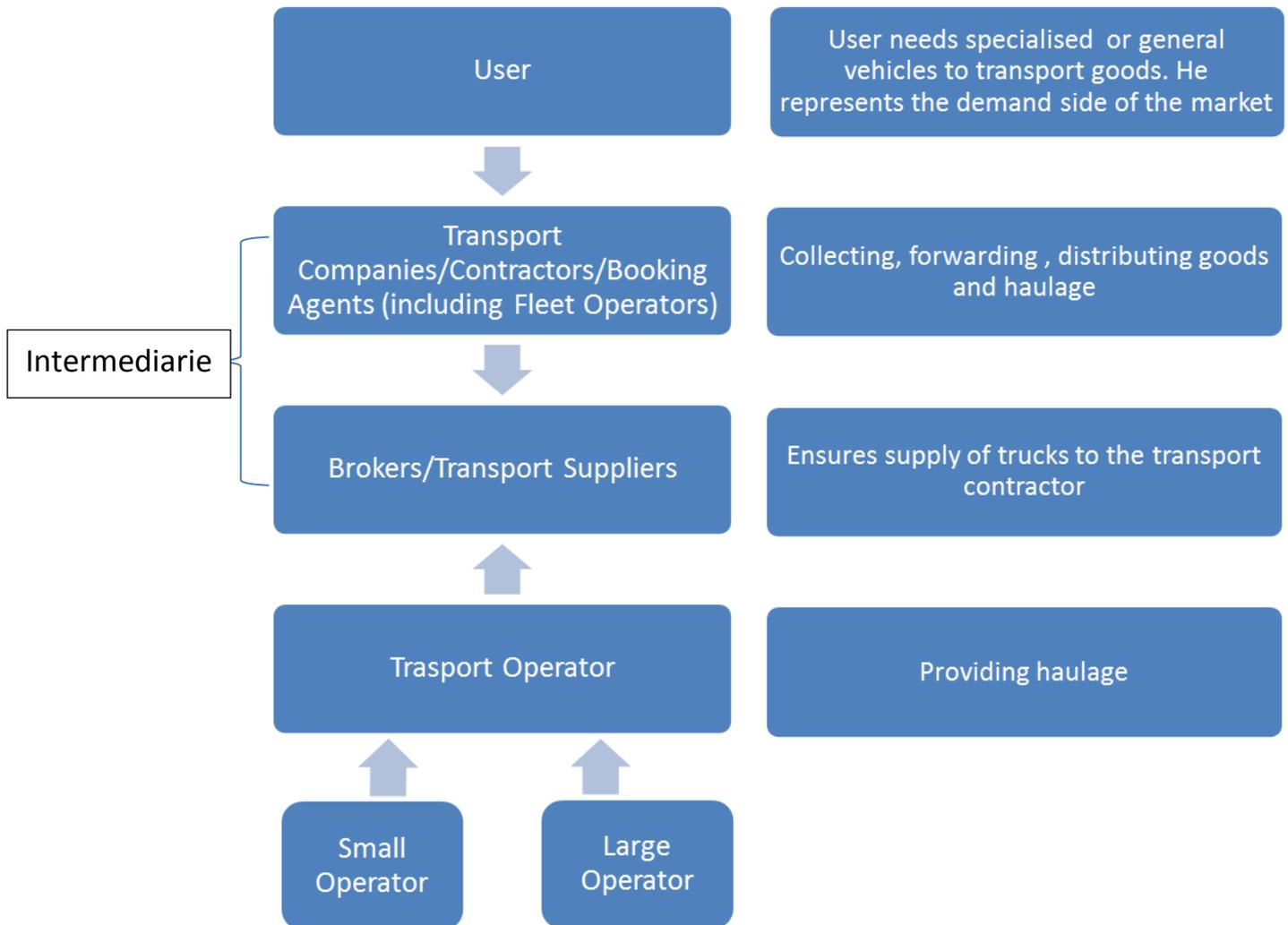
Structure of the road freight transport industry in India is highly fragmented. The industry broadly consists of players who provide the transportation services, intermediaries (transport contractors / booking agents) who offer haulage services, brokers supplying equipment, drivers for commission and the consignors constituting the ultimate demand for the services¹⁴. It is primarily composed of three key players as described below.

- **Transporters:** These are trucking companies which have the primary contact with shippers and receiving customers. They solicit freight, largely on an annual price quote basis, bill, collect, and carry the accounts receivable, are responsible for cargo loss and damage claims and perform the other customer service functions. Some, like the Transport Corporation of India (TCI), are fairly substantial enterprises with many business locations. They typically own a fleet of trucks and often warehouses and terminals as well. But they rely primarily on small truck operators for their line-haul (intercity) transportation.
- **Truck Operators:** These individuals (often called owner-operators) typically own one or a very small fleet of trucks, which usually are financed by high-leverage debt. In a few cases, these

¹³ Supra Note 5

¹⁴ The World Bank (2005), "Road Transport Service Efficiency Study", Energy & Infrastructure Operations Division, South Asia Regional Office, available at http://siteresources.worldbank.org/INTSARREGTOPTRANSPORT/PublicationsandReports/20747263/Final_version03NOV2005.pdf

operators own between 5 to 10 trucks. This category includes the single (or small truck operators owning 1-5 trucks) truck operator, who are very large in number. Entry barriers are low in the sense that: a) there are low capital requirements, b) Ease of availability of capital though at high cost, c) very little expertise required in terms of educational skills, and d) ease of obtaining driving licenses and permits.



The presence of a large number of operators has led to a fragmented industry structure. Moreover, though the entry into this market is supposedly easy, however, information regarding availability of freight is a formidable problem. There is dependence on the brokers who give them business. The trucks are not registered in one name, presumably to avoid income tax obligations and labour legislation. Small truck operators are involved only in the physical movement of goods and depend on booking agents and other fleet operators/transporters for obtaining business. Some of them are attached to major transport companies, brokers and vehicle suppliers. As a general practice, small operators do not come into direct business contact with consumers. One of the key reasons for the dominance of small operators is the type of experience in business. Most operators in this industry are in their family business - 56 per cent of truck owners surveyed have been in the business from 1 to 10 years, 30 per cent from 11 to 20 years and 15 per cent

for over 20 years. Though the exit option also seems likely in regard to these operators, it is observed it is a very difficult one since there is no alternative to this work. Therefore, there is hardly any scope for easy exit.¹⁵

- **Intermediaries**

Booking agents/Transport companies/transport contractors: Booking agents are firms or persons who accept and store goods, both parcels and bulk and arrange for their movement through operators. This agent is really the person who represents the demand i.e. negotiates with and on behalf of the users. He is responsible for collecting, forwarding or distributing goods carried by goods carriages and also for cargo loss and damage claims while performing other customer service functions. In some cases, the agents own trucks and also function as operators. In addition to these services, the agents also advance money to operators (especially small ones) to help meet their working capital requirements and by discounting bills on unloading. As regards the volume of business handled by this category of intermediaries, it is generally accepted that they have a virtual monopoly of most inter-State and long-distance movement.¹⁶

Brokers / Commission agents/ Suppliers of Vehicles: A Broker is normally expected to represent the supply side i.e. the truck operators, though in the past there have been booking brokers who have represented user interests for a commission. The broker takes a commission from the truck owners and ensures the supply of trucks to the transport company/booking agent. Given that the dependence on small operators is significant, there are issues of reliability of the operators, the movement etc. from the perspective of the User which is supposedly taken care of by the broker who normally is sought out by truck operators for loads. World Bank (2005) also observed the necessary role played by brokers in terms of ensuring a quality control on the reliability of the operator and also as a means of facilitating prompt loading by the operators. Large fleet operators depend on these brokers for moving a certain volume of traffic over and above what their own fleet would permit.¹⁷

The evidence that has emerged over quite some period of time is that the middlemen/intermediaries, which include the booking agents and the brokers, are the dominant players in the market and they in fact are the real “makers” of the market. Given this feature, the issue is: who and / or what determines the freight rates? NCAER (1979) indicated that the booking agents, besides other functions, also had a role in fixing freight rates i.e. the rate charged to the user and the rate given to operators.

Despite many remaining impediments, mainly concerning the existing infrastructure, India has achieved a highly competitive, low-cost road freight transport industry for basic services, with highway freight rates among the lowest in the world. The industry is deregulated and, as in many countries, highly fragmented with many small operators, as mentioned above. The industry’s structure, comprising transporters, truck operators, broker agents, etc, is market driven and appears to be serving the market reasonably well.¹⁸

¹⁵ Debroy, B. and Kaushik, P.D. (2001): Barriers to Inter- State Trade: the Case of Road Transport, Paper submitted to the Ministry of Law, Justice and Company Affairs, Government of India

¹⁶ S. Sriraman, Venkatesh. A and Karne. M (September, 2006), “Competition Issues in the Road Goods Transport Industry in India with special reference to The Mumbai Metropolitan Region”, submitted to The Competition Commission of India

¹⁷ Supra Note 16

¹⁸ Supra Note 16

Given the very low freight rates, one has to conclude it is an effective industry structure. It is the constant pressure of a highly competitive market that delivers to India's shippers some of the world's lowest freight rates. While the industry delivers very low freight rates, service quality is poor, with low reliability and transit times nearly double that of developed countries¹⁹.

Need for Regulation

Basically, the industry is characterized by large number of operators and users and sufficiently large number of intermediaries between these two players. The question – what are the agreements between the various players? Some are formal while most seem to be informal. These informal agreements appeared to be often highly iniquitous as a direct consequence of the intermediaries' access to information. The power the intermediaries exert over the industry is not, however, matched by the capital employed by them. This suggests that there is an imbalance here in the way the revenue is being shared by the various players in the industry. Clearly, there is need to bring the intermediaries under the purview of regulation (Thukral, 2002). Section 93 of the MV Act provides for licensing *inter alia* of any agent or canvasser engaged in the business of collecting, forwarding or distributing goods by trucks. The wording of the section seems ambiguous. Any interpretation would imply that this section does not cover brokers and booking agents. There has been mushrooming of unscrupulous brokers/booking agents. There is a need to include brokers/booking agents within the scope of this section explicitly.²⁰

Evidence of Cartelisation

Further, there are also instances of cartelisation being facilitated by truckers union around major production sites and factories, which also impairs competition in the sector. For example, in 1977, an enquiry (RTP Enquiry No. 32 of 1977) was instituted against Truck Operators Union by the MRTPC. It was held that the Constitution of the Union enabled the existing members to keep out new entrants from the market of transportation of fruits and vegetables on arbitrary grounds. It was alleged before the Commission that if any transporter attempted to enter the market and offered to transport fruits and vegetables, he was restrained to do so by force. While ordering modification of the impugned clause of the constitution of the Union, a 'cease and desist' order was passed against the Union, *inter alia*, prohibiting it from stopping any truck operator, whether member of the Union or not, from entering the fruits and the vegetable market and offering to undertake transportation services (Order No. 20th February, 1978).

Given the dominance of small operators and the user requirements in terms of reliable handling, loss protection, the role of the intermediaries is substantial and proving to be useful to both from demand and supply perspectives. However, concerns have been raised regarding cartelisation practices in local movements and bid rigging practices in the context of attempts to compete for the market by way of tenders and open bid procedures. These concerns need to be looked into and such practices removed/ curbed.

Interestingly, on the supply side, the two principal manufacturers of trucks, TATA Engineering and Locomotive Company (TELCO) and Ashok Leyland, account for more or less the entire fleet of heavy vehicles in the country. Inadequate competition among manufacturers has resulted in little or no incentive for regular technological up-gradation of the vehicles.²¹

Issues related to Taxations

¹⁹ Supra Note 14

²⁰ Towards a Functional Competition Policy for India: An Overview, edited by Pradeep S Mehta, CUTS International

²¹ Planning Commission of India, Report of the Working Group on Logistics, available at http://planningcommission.nic.in/reports/genrep/rep_logis.pdf

Taxes of various kinds and in varying rates are often imposed without consideration to their distorting aspects. States have often attempted to reduce taxes in a competitive spirit to attract trade and industry to the State concerned]. Such competition in sales tax leads to legitimate concerns and there has also been an attempt to unify and harmonize sales tax rates so as to move towards a value added tax (VAT). However, there is also the issue that in an attempt to absorb the resultant revenue loss from lowering of sales tax rates, States have sought to identify new sources for levying taxes. There has, thus, been a growing tendency to transfer tax liability to the transportation sector for quite some time²².

The tax regime is both transport-specific and commodity-specific. Vehicles are detained for checking payment of commodity-specific taxes such as sales tax, octroi and other local taxes. These checks are generally done by the respective agencies at separate points, resulting in more than one detention for this purpose. At the same time, there are specific taxes levied on the transportation sector, for instance, road tax, national and state permits, etc. Taxation of motor vehicles is a widely used instrument for raising resources. Usually, the transport carrier is detained at five different locations for collection of tax or checking the papers at the State and District level.²³

Octroi is yet another tax that affects the road transport sector. Its problems include cumbersome and vexatious administration and collection processes, regressive incidence of tax and commodities open to multiple valuation, leading to malpractices. However, octroi yields substantial revenue for local bodies at State level. It is generally based on quantity or weight (specific tax) or sometimes on the value of the commodity (ad valorem tax) entering a local area. It is assessed and collected at the point of entry by stopping the vehicle. However, the tax being mostly specific, there are many rate categories. The point of assessment and collection being the entry point of a local area, this causes arbitrariness in assessment and delays in transportation. It also encourages corruption. Most high powered Committees, like the Lakdawala Committee (1974), the Chelliah Committee (1980) and the Papola Committee (1985), have recommended abolition of octroi and its replacement by entry tax or the imposition of an additional surcharge on sales tax. An ambitious recommendation was made by the LK Jha Committee (1977), which recommended octroi's abolition without linking it with any alternative sources of revenue. Various industry associations like CII have also requested the government to substitute octroi with a suitable alternative²⁴.

According to Debroy and Kaushik (2001) what differentiates the existing system in India with that of taxation systems practiced outside India is the delay and harassment in the tax recovery system. Domestic trade taxes in India are in need of reform. The tax regime that is in place today is archaic, irrational and complex. It interferes with the free play of market forces and competition, causes economic distortions and entails high costs of compliance and administration. Under the Constitution, the basis of excise duties and sales tax, the two principal components of the domestic trade taxes, are distinctly defined – excise duty as a tax on production of goods and sales tax on consumption (sale or purchase). In practice, the two have come to overlap because of problems in administering taxes at the retail level.²⁵

²² Supra Note 15

²³ Supra Note 20

²⁴ Supra Note 22

²⁵ Supra Note 16

Considering that State governments have limited avenues for raising resources, which include sales tax, land revenue and MV tax, the takeover of the power of taxation by the Centre is expected to encounter strong opposition by States. Even if one considers only inter-State operations for purposes of uniformity, one has to appreciate that a large number of commercial vehicles registered for inter-State operations also enter intra-State operations, making it difficult to segregate the two operations. As such uniformity, in motor vehicle tax, although desirable, may not be practical in a federal system. Therefore, efforts should be made to at least bring parity of tax rates in neighboring States, so that the problem of diversion of registration of vehicles from one State to another is resolved. Rajasthan and Andhra Pradesh have already amalgamated various taxes successfully. This has helped in reducing costs of collection and has also led to saving in time for vehicle owners. More importantly, tax revenues realized have not suffered after such amalgamation. Such experiences should be replicated in other States.²⁶

INTERNATIONAL EXPERIENCE ON COMPETITION AND REGULATION IN PASSENGER TRANSPORT

Europe

The European Union (EU) coordinates regulatory policy governing transport in its 25 member states; it also has special agreements on common policy with Switzerland, Norway and other countries. Also important in setting regulatory policies is the European Conference of Ministers of Transport (ECMT), which represents the 25 EU members plus 18 others and seven associate member countries³⁰; its aim is to help develop an integrated transport system throughout an enlarged Europe and to help build a bridge between the EU and the rest of Europe. It seeks to harmonize member countries' approaches to international agreements and regulations governing freight and cross-border transport, infrastructure cost recovery, protection of the environment from transport impacts, road traffic safety, transport-related crime, security, new technologies and other matters²⁷.

United Kingdom²⁸

In UK, the conservative government of Margaret Thatcher (1979-1990) began a wave of market privatisations aimed at reducing government burden. Legislation in the early 1980s paved the way toward the privatisation of inter-city and eventually, urban bus services throughout Britain. The Thatcher Government argued that bus patronage had continued to decrease in the 1970s and 1980s, despite a substantial rise in government subsidies for these services. This policy shift away from public sector planning and operation of services to a free market system, culminated in the 1985 Transport Act, which contained 3 features:

- Controls over entry were relaxed so that public or private bus companies would offer any bus service by giving 42 days' notice.
- Publically owned bus companies were re-organized as separate for-profit corporations.
- Local authorities put supplement profitable or commercial routes by subsidizing additional services (of social concern) but these supplementary had to be secured through **competitive bidding** among the operators.

²⁶ Supra Note 15

²⁷ ADB (2005), "People's Republic of China: Policy Reform in Road Transport", CPCS Transcom

²⁸ NCAER (April, 2007), "State policies affecting Competition: Passenger Road Transportation sector"

The Transport Act created a competitive free market in the United Kingdom for the local (outside London), suburban-country and long-distance bus services. The operators were free to develop their own routes and timetables without the need to acquire an operating licence. They were required to register new routes and the only restriction in the initiation of new routes could be made on the grounds of traffic conditions. The main administrative task, through the registration system, was to closely follow the development of the services and to ensure that socially necessary, but economically nonviable, routes are also provided. After the introduction of the system, heavy competition began in the market for local and suburban passengers (mainly with the running of more buses than with the reduction of fares).

Competition in long-distance public transport sector also commenced after deregulation. This primarily took place on the popular and economically attractive routes with price competition as the device leading to a decrease in fares. Further, features included the use of innovative price formation, the introduction of rapid and express services, and an increase in the frequency of services, the utilisation of opportunities provided by the new motorway system.²⁹

As a consequence of the steps taken, quality of service, frequency of bus service was improved.

Sri Lanka

Public transport was nationalized in 1958. Due to difficulties in contributing capital and based on a suggestion made by The World Bank, in April 1978 the Government of Sri Lanka decided to end the monopoly of state owned transport undertaking and permit the private sector to enter transport activity. There was no restriction on the type of operators, their financial abilities, or the routes over which they could operate. Anyone could operate a bus anywhere. Most of the operators who entered were single vehicle owners. There was a very high turnover, resulting in instability. Most buses were small, with inadequate leg space and height, resulting in inconvenience to passengers compared to buses of the nationalized undertaking. Frequency on high-density routes increased, resulting in reduced waiting time. The service on other routes was extremely selective. Private operators did not touch low-density routes. The state undertaking continued operations on such unprofitable routes.

The enactment of National Transport Commission Act number 44 of 1991 saw the creation of a dedicated regulator for private bus transport. Even though the Act provided for specific regulatory instruments, the National Transport Commission did not develop all these regulatory measures and saw its role mostly as an issuing office for route permits. According to Kumar age and Jayaratne (2008), under this phase, the private sector fleet increased rapidly but saw declining reliability and productivity. Moreover private sector entry has fragmented the integration of the bus network because they operated only where and when it is profitable to do so. In addition, a host of regulatory lapses was also been responsible for the situation. The lack of capacity of regulators as well as emphasis on revenue orientation instead of sector development has been identified as major concerns why regulators have not fulfilled their roles justifiably. This seems to be a problem of concern in the Indian context as well. Another source of concern has been the maintenance of service on unremunerated (mostly rural) routes. The essential cause of poor service accessibility was a combination of sole reliance on the public sector to provide subsidised services and the decline of its capability to perform that function. This could be overcome by

²⁹ Supra Note 28

moving to the competitive tendering of subsidised services which would allow the private sector to supplement the public sector supply.³⁰

United States

Privately owned unsubsidized firms provided almost all US transit services in the first half of the 20th century but most approached or actually entered into bankruptcy and were taken over by public authorities in the 1950s and the 1960s. A typical form of private involvement in bus transport in the US would be managing companies or contracting services for the company owned by public authorities. This gradual and piece meal privatization through contracting out in the US contrasts sharply with the sudden and wholesale privatization that occurred, for example, in Britain.

The gradual approach has according to some experts, avoided the transitional problems experienced in Britain and has allowed public authorities to experiment with different contracting procedures that encourage new entrance and competition. Further, the presence of competition has been more important than wholesale privatization in evoking cost savings. The long-distance bus industry now faces a highly competitive transportation environment. Not only were companies engaged in price warfare over potentially profitable bus routes while abandoning marginal routes, but they also had to contest for passengers with the new low-cost deregulated airlines and for package freight with trucks.

Companies made considerable efforts to adjust to the new conditions by lowering prices, improving facilities, especially terminals, investing in new coaches, making rural connections with independent feeder lines and in establishing computer systems to assist with ticketing and routing. A disadvantage in contracting is that the services provided are designed by the public rather than the private sector. While contracting may evoke cost savings and productivity increases, it is less likely to encourage service innovations.

The basic lesson for developing countries like India emerging from the US experience is that the private sector performs best when it is asked to do a relatively well defined task and with a minimum of interference by public authorities beyond that required to prevent fraud or other abuses.³¹

CHAPTER 3: LEGISLATIVE INVENTORY OF ANTI-COMPETITIVE PROVISIONS

³⁰ Supra Note 28

³¹ S. Sriraman (2011), “Public Road Bus Transport Regulation in India”

The various laws and agencies governing inter-state movement of goods and passengers in India can be classified into the three broad categories:

Road Transport Sector	
Passenger Transport	<ul style="list-style-type: none"> (i) Motor Vehicles Act, 1988 (ii) Road Transport Corporation Act, 1950 (iii) Central Motor Vehicles Rules, 1989 (iv) State Motor Vehicles Acts
Goods Transport	<ul style="list-style-type: none"> (i) Carriage by Road Act, 2007 (ii) Carriage by Road Rules 2011 (iii) Central Sales Tax Act, 1956 (iv) Various State Sales Act/State VAT (v) Octroi and Entry Tax
Highways	<ul style="list-style-type: none"> (i) National Highways Act, 1956 (ii) National Highways Rules, 1957 (iii) National Highways Fee (Determination of Rates and Collection) Rules, 2008 (iv) National Highways Authority of India, 1988 (v) National Highways (Land and Traffic) Act, 2002 (vi) Highways Administration Rules, 2003

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 TORs	Analysis of the Anticompetitive Effect or Market Distortion	Recommendation/s to Rectify the Situation
1.	1. Section 66 (3) (n) of the Motor Vehicles Act,1988	Ministry of Road Transport & Highways, GoI	<p>Section 66 (3) The provisions of sub-section (1) shall not apply-</p> <p>(a) to any transport vehicle owned by the Central Government or a State Government and used for Government purposes unconnected with any commercial enterprise;</p> <p>(b) to any transport vehicle owned by a local authority or by a person acting under contract with a local authority and used solely for road cleaning, road watering or conservancy purposes;</p> <p>(c) to any transport vehicle used solely for police, fire brigade or ambulance purposes;</p> <p>(d) to any transport vehicle used solely for the conveyance of corpses and the mourners accompanying the corpses;</p>	B (3)	This provision can be used to protect public transport against investigations on the excuse that they are useful for some intended purposes.	Remove clause (n)

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			<p>(e) to any transport vehicle used for towing a disabled vehicle or for removing goods from a disabled vehicle to a place of safety;</p> <p>(f) to any transport vehicle used for any other public purpose as may be prescribed by the State Government in this behalf;</p> <p>(g) to any transport vehicle used by a person who manufactures or deals in motor vehicles or builds bodies for attachment to chassis, solely for such purposes and in accordance with such conditions as the Central Government may, by notification in the Official Gazette, specify in this behalf;</p> <p>(i) to any goods vehicle, the gross vehicle weight of which does not exceed 3,000 kilograms;</p> <p>(j) subject to such conditions as the Central Government may, by notification in the Official Gazette, specify, to any transport vehicle purchased in one State and proceeding to a place,</p>			

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			<p>situated in that State or in any other State, without carrying any passenger or goods;</p> <p>(k) to any transport vehicle which has been temporarily registered under section 43 while proceeding empty to any place for the purpose of registration of the vehicle;</p> <p>(m) to any transport vehicle which, owing to flood, earthquake or any other natural calamity, obstruction on road, or unforeseen circumstances, is required to be diverted through any other route, whether within or outside the State, with a view to enabling it to reach its destination;</p> <p>(n) to any transport vehicle used for such purposes as the Central or State Government may, by order, specify;</p> <p>(o) to any transport vehicle which is subject to a hire-purchase, lease or hypothecation agreement</p>			

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			<p>and which owing to the default of the owner has been taken possession of by or on behalf of the person with whom the owner has entered into such agreement, to enable such motor vehicle to reach its destination; or</p> <p>(p) to any transport vehicle while proceeding empty to any place for purpose of repair.</p>			
	2. Section 67 (1) (d) of the Motor Vehicles Act,1988	Ministry of Road Transport & Highways, GoI	<p>Section 67. Power to State Government to control road transport.</p> <p>(1) A State Government, having regard to-</p> <p>(a) the advantages offered to the public, trade and industry by the development of motor transport,</p>	B (1)	Section 67 (d) gives the state government power to intervene in the market to control competition. It is difficult for competition to become uneconomic, especially if this is not defined and is used to the discretion of the government.	<p>The power vested with the State government to control road transport in this case clearly impinge upon the autonomy of market players (e.g. in setting prices) and set out some geographical restrictions.</p> <p>Further, as already mentioned in the</p>

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			<p>(b) the desirability of co-ordinating road and rail transport,</p> <p>(c) the desirability of preventing the deterioration of the road system and</p> <p>(d) the desirability of preventing uneconomic competition among holders of permits.</p> <p>may, from time to time, by notification in the Official Gazette, issue directions both to the State Transport Authority and Regional Transport Authority-</p>		<p>Further, the power vested with the State Government to control road transport in this case clearly impinges upon the autonomy of the market players (e.g. in setting prices).</p>	<p>proviso to the provision, the Government might have good reasons for doing so. In that case, a cost .vs. benefits analysis ought to be undertaken and the results made transparent.</p>

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			<p>(i) regarding the fixing of fares and freights (including the maximum and minimum in respect thereof) for stage carriages, contract carriages and goods carriages:</p> <p>(ii) regarding the prohibition or restriction, subject to such conditions as may be specified in the directions, of the conveying of long distance goods traffic generally, or of specified classes of goods by goods carriages;</p> <p>(iii) regarding any other matter which may appear to the State Government necessary or expedient for giving effect to any agreement entered into with the Central Government or any other State Government or the Government of any other country relating to the regulation of motor transport generally, and in particular to its coordination with other means of transport and</p>			

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			<p>the conveying of long distance goods traffic:</p> <p>Provided that no such notification in respect of the matter: referred to in clause (ii) or clause (iii) shall be issued unless a draft of the proposed directions is published in the Official Gazette specifying therein a date being not less than one month after such publication, on or after which the draft will be taken into consideration and any objection or suggestion which may be received has, in consultation with the State Transport Authority, been considered after giving the representatives of the interests affected an opportunity of being heard.</p> <p>(2) Any direction under sub-section (1) regarding</p>			

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			the fixing of fares and freights for stage carriages, contract carriages and goods carriages may provide that such fares or freights shall be inclusive of the tax payable by the passengers or the consignors of the goods, as the case may be, to the operators of the stage carriages, contract carriages or goods carriages under any law for the time being in force relating to tax on passengers and goods.			
	3. Section 71(3) of the Motor Vehicles Act,1988	Ministry of Road Transport & Highways , GoI	Section 71 (3) (a) The State Government shall, if so directed by the Central Government having regard to the number of vehicles, road conditions and other relevant matters, by notification in the Official Gazette, direct a State Transport Authority and a Regional Transport Authority to limit the number of stage carriage; generally or of any specified type, as may be fixed and specified in the notification, operating on city routes in towns with a population of not less that five lakhs.	B3, D2	It indicates clear preferential treatment of the government towards its own undertaking.	Exceptions from general competitive rules (and hence preferential treatment) could be provided on the basis of historical reasons, for example to scheduled castes and scheduled tribes. Similar examples

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			<p>(b) Where the number of stage carriages are fixed under clause (a), the Government of the State shall reserve in the State certain percentage of stage carriage permits for the scheduled castes and the scheduled tribes in the same ratio as in the case of appointments made by direct recruitment to public services in the State.</p> <p>(c) Where the number of stage carriages are fixed under clause (a), the Regional Transport Authority shall reserve such number of permits for the scheduled castes and the scheduled tribes as may be fixed by the State Government under sub-clause (b).</p> <p>(d) After reserving such number of permits as is referred to in clause (c), the Regional Transport Authority shall in considering an application have regard to the following matters, namely:-</p> <p>(i) financial stability of the applicant;</p>			<p>could be found in the case of South Africa. However, economic viability and efficiency should be considered while giving out such preferential treatment. On the other hand, preferences as those given to State transport undertaking (no reason quoted) need to be removed.</p>

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			<p>(ii) satisfactory performance as a stage carriage operator including payment of tax if the applicant is or has been an operator of stage carriage service; and</p> <p>(iii) such other matters as may be prescribed by the State Government:</p> <p>Provided that, other conditions being equal, preference shall be given to applications for permits from-</p> <p>(i) State transport undertakings;</p> <p>(ii) co-operative societies registered or deemed to have been registered under any enactment for the time being in force;</p> <p>(iii) ex-servicemen; or</p> <p>(iv) any other class or category of persons, as the State Government may, for reasons to be</p>			

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			<p>recorded in writing, consider necessary.</p> <p>Explanation.-For the purposes of this section "company" means any body corporate, and includes a firm or other association of individuals; and "director", in relation to a firm, means a partner in the firm.</p>			
	4. Proviso to Section 74 (3) of the Motor Vehicles Act,1988	Ministry of Road Transport & Highways, GoI	<p>Section (3) (a) The State Government shall, if so directed by the Central Government, having regard to the number of vehicles, road conditions and other relevant matters, by notification in the Official Gazette, direct a State Transport Authority and a Regional Transport Authority to limit the number of contract carriages generally or of any specified type, as may be fixed and specified in the notification, operating on city routes in towns with a population of not less than five lakhs.</p> <p>(b) Where the number of contract carriages are</p>	B3, D2 A3	It shows the clear preferential treatment of the government towards its own undertaking.	This competition-distorting provision needs to be removed, i.e. not necessarily setting the number of contract carriage by administrative order and not giving preferential treatment to State entities over private

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			<p>fixed under clause (a), the Regional Transport Authority shall, in considering an application for the grant of permit in respect of any such contract carriage, have regard to the following matters, namely:-</p> <p>(i) financial stability of the applicant;</p> <p>(ii) satisfactory performance as a contract carriage operator including payment of tax if the applicant is or has been an operator of contract carriages; and</p> <p>(iii) such other matters as may be prescribed by the State Government:</p> <p>Provided that, other conditions being equal, preference shall be given to applications for permits from-</p> <p>(i) the India Tourism Development Corporation;</p>			companies.

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			(ii) State Tourism Development Corporations; (iii) State Tourism Departments; (iv) State Transport Undertakings; (v) co-operative societies registered or deemed to have been registered under any enactment for the time being in force; (vi) ex-servicemen.			
	5. Section 67(1) read with Section 79(2)(iv) of the Motor Vehicles Act, 1988	Ministry of Road Transport & Highways, GoI	Section 67 (1) A State Government, having regard to- (a) the advantages offered to the public, trade and industry by the development of motor transport,	B1, A6	Fixing fares is an undue intervention of the Government into the operations of enterprises.	As already mentioned above, if the government has to intervene into the decision of enterprises in such matters as fares, sound explanations have to be provided in a transparent manner and

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			<p>(b) the desirability of co-ordinating road and rail transport,</p> <p>(c) the desirability of preventing the deterioration of the road system and</p> <p>(d) the desirability of preventing uneconomic competition among holders of permits.</p> <p>may, from time to time, by notification in the Official Gazette, issue directions both to the State Transport Authority and Regional Transport Authority-</p>	D1	<p>The conditions attached to a permit that might be granted by the RTA appear very cumbersome.</p>	<p>this should be clearly stipulated by the law as well.</p> <p>The conditions attached to a permit should be eased so that they do not constitute burden on the business.</p>

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			<p>(i) regarding the fixing of fares and freights (including the maximum and minimum in respect thereof) for stage carriages, contract carriages and goods carriages:</p> <p>¹[***]</p> <p>(ii) regarding the prohibition or restriction, subject to such conditions as may be specified in the directions, of the conveying of long distance goods traffic generally, or of specified classes of goods by goods carriages;</p>			

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			<p>(iii) regarding any other matter which may appear to the State Government necessary or expedient for giving effect to any agreement entered into with the Central Government or any other State Government or the Government of any other country relating to the regulation of motor transport generally, and in particular to its coordination with other means of transport and the conveying of long distance goods traffic:</p> <p>Provided that no such notification in respect of the matter: referred to in clause (ii) or clause (iii) shall be issued unless a draft of the proposed directions is published in the Official Gazette specifying therein a date being not less than one month after such publication, on or after which the draft will be taken into consideration and any objection or suggestion which may be received</p>			

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			<p>has, in consultation with the State Transport Authority, been considered after giving the representatives of the interests affected an opportunity of being heard.</p> <p>Section 79(2) The Regional Transport Authority, if it decides to grant a goods carriage permit, may grant the permit and may, subject to any rules that may be made under this Act, attach to the permit any one or more of the following conditions, namely:-</p> <p>(i) that the vehicle shall be used only in a</p>			

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			<p>specified area, or on a specified route or routes;</p> <p>(ii) that the gross vehicle weight of any vehicle used shall not exceed a specified maximum;</p> <p>(iii) that goods of a specified nature shall not be carried;</p> <p>(iv) that goods shall be carried at specified rates;</p> <p>(v) that specified arrangement shall be made for the housing, maintenance and repair of the vehicle and the storage and safe custody of the</p>			

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			<p>goods carried;</p> <p>(vi) that the holder of the permit shall furnish to the Regional Transport Authority such periodical returns, statistics and other information as the State Government may, from time to time, prescribe;</p> <p>(vii) that the Regional Transport Authority may, after giving notice of not less than one month,-</p> <p>(a) vary the conditions of the permit;</p>			

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			<p>(b) attach to the permit further conditions;</p> <p>(viii) that the conditions of the permit shall not be departed from, save with the approval of the Regional Transport Authority;</p> <p>(ix) any other conditions which may be prescribed</p>			
	6. Section 93 of the Motor Vehicles	Ministry of Road	Section 93(1) No person shall engage himself-		As the report says that	There is a need to cover their activities under

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	Act,1988	Transport & Highways, GoI	<p>(i) as an agent or a canvasser, in the sale of tickets for travel by public service vehicles or in otherwise soliciting customers for such vehicles, or</p> <p>(ii) as an agent in the business of collecting, forwarding or distributing goods carried by goods carriages, unless he has obtained a licence from such authority and subject to such conditions as may be prescribed by the State Government.</p> <p>(2) The conditions referred to in sub-section (1) may include all or any of the following matters, namely:-</p>		brokers and booking agents are not distinctly covered in the Act.	<p>regulation in order to avoid any possible anti-competitive agreements among them.</p> <p>Towards the late nineties, the Asian Institute of Transport Development, New Delhi undertook a comprehensive study of trucking operations in India (AITD, 1999) at the instance of the Ministry of Surface Transport, Government of India. The study emphasised the need for</p>

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			<p>(a) the period for which a licence may be granted or renewed;</p> <p>(b) the fee payable for the issue or renewal of the licence;</p> <p>(c) the deposit of security-</p> <p>(i) of a sum not exceeding rupees fifty thousand in the case of an agent in the business of collecting, forwarding or distributing goods carried by goods carriages,</p>			<p>regulation of intermediaries through a process of registration. A modification of Section 93 of the MV Act would, accordingly, be required to define brokers and booking agents and mandate their registration.</p>

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			<p>(ii) of a sum not exceeding rupees five thousand in the case of any other agent or canvasser,</p> <p>and the circumstances under which the security may be forfeited;</p> <p>(d) the provision by the agent of insurance of goods in transit;</p> <p>(e) the authority by which and the circumstances under which the licence may be suspended or revoked;</p>			

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			<p>(f) such other conditions as may be prescribed by the State Government.</p> <p>(3) It shall be a condition of every licence that no agent or canvasser to whom the licence is granted shall advertise in any newspaper, book, list, classified directory or other publication unless there is contained in such advertisement appearing in such newspaper, book, list, classified directory or other publication the licence number, the date of expiry of licence and the particulars of the authority which granted the licence</p>			
	7. Section 99 of the Motor	Ministry of Road	Section 99 (1) Where any State Government is of opinion that for the purpose of providing an	B3, D2	Public interest cannot be cited to discriminate	

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 TORs	Analysis of the Anticompetitive Effect or Market Distortion	Recommendation/s to Rectify the Situation
	Vehicles Act,1988	Transport & Highways, GoI	<p>efficient, adequate, economical and properly coordinated road transport service, it is necessary in the public interest that road transport services in general or any particular class of such service in relation to any area or route or portion thereof should be run and operated by the State transport undertaking, whether to the exclusion, complete or partial, of other persons or otherwise, the State Government may formulate a proposal regarding a scheme giving particulars of the nature of the services proposed to be rendered, the area or route proposed to be covered and other relevant particulars respecting thereto and shall publish such proposal in the Official Gazette of the State formulating such proposal and in not less than one newspaper in the regional language circulating in the area or route proposed to be covered by such scheme and also in such other manner as the State Government formulating such proposal deem fit.</p> <p>(2) Notwithstanding anything contained in subsection (1), when a proposal is published under</p>		between public and private players especially in the case of providing efficient, adequate and economical services to the consumers.	

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 TORs	Analysis of the Anticompetitive Effect or Market Distortion	Recommendation/s to Rectify the Situation
			that sub-section, then from the date of publication of such proposal, no permit shall be granted to any person, except a temporary permit during the pendency of the proposal and such temporary permit shall be valid only for a period of one year from the date of its issue or till the date of final publication of the scheme under section 100, whichever is earlier.			
	8. Section 104 of the Motor Vehicles Act,1988	Ministry of Road Transport & Highways, GoI	Section 104. Where a scheme has been published under sub-section (3) of section 100 in respect of any notified area or notified route, the State Transport Authority or the Regional Transport Authority, as the case may be, shall not grant any permit except in accordance with the provisions of the scheme: Provided that where no application for a permit	A2, B3	Clear preferential treatment being given to STU over other competitors from the private sector.	Competitive bidding procedures should be implemented or at least a more transparent and fairer procurement policies.

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 TORs	Analysis of the Anticompetitive Effect or Market Distortion	Recommendation/s to Rectify the Situation
			has been made by the State Transport Undertaking in respect of any notified area or notified route in pursuance of an approved scheme, the State Transport Authority or the Regional Transport Authority, as the case may be, may grant temporary permits to any person in respect of such notified area or notified route subject to the condition that such permit shall cease to be effective on the issue of a permit to the State transport undertaking in respect of that area or route.			
	9. Section 193 of the MV Act, 1988		Clause 193 lays down that persons acting as Goods Booking Agents or Travel Agents without a proper license are punishable.			There should be a provision on offences committed by Goods Booking Agents or Travel Agents with respect to the

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 TORs	Analysis of the Anticompetitive Effect or Market Distortion	Recommendation/s to Rectify the Situation
						Competition Act, for example regarding cartel activities (price-fixing, market division), etc.

Case Study of Private Bus Operators in Nathdwara, Rajasthan

As per the legislative mandate of Section 68 C of the Motor Vehicles Act 1939 (that corresponds to Section 99 of the Motor Vehicles Act, 1988) a state transport undertaking may prepare a scheme ousting private bus operators in relation to any area or route and ply their own buses. However, the grounds to apply this provision rest on the ground of public interest, i.e. to provide efficient, adequate, economical and properly coordinated road transport services. Although, prima-facie this provision seems anti-competitive especially when new sectors are being opened up for private players; due to public interest considerations, the judiciary has justified such provisions. But, there are provisions in the Motor Vehicles Act, 1988 which invariably and clearly dampen competition in the market.

For example, Section 104 of the Motor Vehicles Act, this provides for the restriction on grant of permits in respect of a notified area or route. The proviso to Section 104, in utter violation of competition, mandates that temporary permits to private parties in respect of notified area or route can be provided only if the State Transport Undertaking has not applied to ply their vehicles on that particular route. And in case the State Transport Undertaking applies for permit on such routes, the existing permits to private parties will stand cancelled. Thus, merely on the basis of application a route can be reserved for the State Transport Undertaking even if they are not plying any vehicle on the route.

Such provisions (Section 99 and proviso to Section 104) raise many questions such as: Why is there a negative presumption against private bus operators that they cannot provide efficient, adequate, economical and properly coordinated road transport services? Assuming but not conceding that the government on the ground of public interest can exercise monopoly over some routes, can a route be reserved just on the basis of application by the State Transport Undertaking even if they are not operating any vehicle in reality? Is the imperative of public interest behind aforementioned provisions being served?

One case study done by CUTS in Rajasthan can explain the situation well. The Rajasthan State Road Transport Corporation (RSRTC) issued a notification in 1985 under Section 68-C of the Motor Vehicles Act, 1939, to the effect that various routes in the state would be serviced by RSRTC buses to the exclusion of private players. Among the routes included in the notification was the Nathdwara-Choti Sadri, although later on RSRTC failed to ply it, citing shortage of buses. However, when a private player applied for a license to operate the route in 2000, the application was turned down, on the grounds that it is reserved for RSRTC. This saw the area going without an active operator, resulting in the mushrooming of illegal transportation, characterised by poorly-serviced trucks and vehicles where commuters are bundled in discomfort, in complete disregard to safety, resulting in accidents³².

The Nathdwara case is just one of the numerous examples where transport operators abuse their dominant position, which, in this case, is policy-sanctioned dominance. The abuse of dominance became evident when RSRTC temporarily started plying the route when the private player complained, only to stop when the temperature had cooled after getting a favourable judgement. In addition, RSRTC was also seen plying buses only on a part of the route that it considered economically viable rather than the whole route, despite jealously protecting it using its policy protection. This is clearly an abuse of a dominant position, where CCI has every right to try and correct.

³² Mehta. P (2011), "Highway robbery by state transport companies", Financial Express

This situation is also not without international comparison, as cases where publicly-run bus companies end up being abusive have been reported elsewhere. In early June, 2011, Sweden's Competition Authority was reported to have launched proceedings against government-owned bus company Skelleftebuss, which is alleged to be abusing its dominance in the transport market by trying to push small and medium-sized enterprises out of business.

In 2008, it was reported that private bus operators in Ireland, Circleline and Mortons Coaches had lodged a multi-million euro law suit against a state-owned bus company, Dublin Bus, alleging anti-competitive practices on bus routes from Lucan and Celbridge to Dublin city centre. Dublin Bus was accused of engaging in predatory practices on the route, using its dominant position arising from advantages of being government-owned, by engaging in practices that had effectively forced private companies to cease operations on two lucrative routes. In Portland in the US, a regulatory body, the Private for Hire Transportation Review Board, was at one time being accused of being influenced by private players to ensure not only that a price-fixing regime is maintained, but also that the number of players in the market is restricted. The Board enforced regulations prohibiting new entrants in the industry by refusing new permits which could have increased competition.

The public sector is not the only abuser of competition in the bus services market, as the market has fallen prey to cartelisation by private players over several years. Normally, the trend among most bus operators is to charge uniform prices, a pattern which is usually attributed to competition, given that there are usually many operators, when in many instances this would be a reflection of cartelisation. This has also seen the number of bus operators being brought to book by competition authorities increasing over the years. In early June, 2011, media reports indicated that Chile's National Economic Prosecutor had launched two proceedings at the country's Competition Tribunal against five bus companies, which had colluded to fix prices, allocate markets, and block new entrants across the country. The first case resulted in fines being recommended against four companies—Pullman Bus, Tur Bus, Romani and Cometa—for colluding to engage in behaviour designed to block rival Buses Línea Azul from entering the market. In 2010, press reports also indicated that the competition authority of Serbia had taken action against five bus operators fixing ticket prices on the regular routes between Serbia and Germany. The Competition Commission of Singapore had also taken a decision in November 2009, against 16 coach operators and their trade association for fixing the price of bus services from Singapore to Malaysia and Southern Thailand. The Danish competition authority is also reported to have fined the Danish coach drivers association and its management for encouraging an unjustified price increase.³³

These examples highlight that competition matters are closely knitted with consumer welfare. Poor commuters on the Nathdwara-Choti Sadri route wait for hours to board small jeeps and other such vehicles which are invariably overloaded. Nathdwara, being a famous pilgrimage site is thronged by people coming from every part of the country. A proper and efficient transport service thus may have contributed to the growth of adjoining areas. Apathy by the RSRTC, short sightedness of the administration and the legislative provisions in the Motor Vehicles Act has resulted in other related problems.

In the absence of State buses, illegal transportation is mushrooming on various routes, which is resulting in huge revenue loss to the state governments everywhere (this needs to be assessed). RSRTC is incurring losses from last 14 years and faces cash liquidity problems. The accumulated losses in the year 2009-2010 were 686.56 crore. Such whopping losses also justify the need to

³³ Supra Note 32

have an alternative. When it has become too cumbersome to operate, private players should also be allowed to operate their services.

A lesson here can be drawn from the deregulation of the Airline sector after the liberalisation era in 1991. This industry has witnessed tremendous growth and air travellers have benefited hugely by competition among the players. This success story includes cheaper air fares and better quality of services. The justification for having state run bus services is that private operators often do not adhere to safety norms, overcharge consumers, and the quality of service is also poor etc. However, these problems can be tackled by having an effective regulatory system as in the airline sector. Thus, what is really important is to check the regulatory deficit in the road transportation sector rather than ousting private players and thus stifling competition³⁴.

³⁴ CUTS (2011), “Anti-competitive Provisions in the Motor Vehicles Act, 1988 Case Study of Private Bus Operators in Nathdwara”, Policy Options Note, available at http://www.cuts-ccier.org/pdf/Anticompetitive_Provisions_in_the_Motor_Vehicles_2011.pdf

CHAPTER 4: ANALYSIS OF ISSUES AND AGENDA FOR COMPETITION POLICY

It is conventional wisdom that a competition agency must do more than simply enforce its country's competition law. Competition may be lessened significantly by various public policies and institutional arrangements as well. Thus, the mandate of the competition office extends beyond merely enforcing the competition law. It must also participate more broadly in the formulation of its country's economic policies/legislations, which may adversely affect competition in the market, business conduct, and economic performance. It must assume the role of competition advocate, acting proactively to bring about government policies/legislations that lower barriers to entry, promote deregulation and trade liberalization, and otherwise minimize unnecessary government intervention in the marketplace³⁵.

Thus, based on the study and analysis of various legislations, given below are key advocacy issues to be taken up by the Competition Commission of India (CCI).

Need for Road Transport Regulator

To ensure level playing field for road passenger transport services, operating in public and private sector, there is a need for an independent regulator in road transport sector. Such independent Regulator should be provided with statutory authority, fixed service tenure with provision for removal on grounds of inappropriate act or incompetence. Besides, financial autonomy needs to be provided through levy of fee on service providers. However, the CCI should ensure that overlaps with the regulator should be avoided. The government while constituting the regulator should avoid empowering the regulator to deal with anti-competitive cases, as they are best dealt by CCI. Promotion of competition is what the Regulator should be empowered with but not protection of Competition, which is to be dealt by CCI.

Further, the independent transport regulator at state level should be entrusted with the following task:

- fix price band for different kinds of services in an objective and transparent manner;
- Ensure service coverage across regions (including rural, remote and hilly areas) and provide mechanism for compensation for discharge of universal service obligations (provision of service on non-remunerative routes and remote rural sector);
- benchmark quality of road passenger service;
- impartially address various operational issues like access to terminals and other common infrastructure facilities to all operators and;
- promote competition.

Creation of a seamless national market

While there is a general declaration in the Indian Constitution that trade and commerce should be free, the Centre and the States have the power to regulate. While mandating free trade within the country, the Indian Constitution, nevertheless provides that restrictions can be imposed by Parliament on internal trade as may be required in "the public interest". Complaints from the transport sector, relates to the issues of taxation (both Centre and State), regulation by States on the movement of goods, frequent stoppages and delays under administrative rules and inspection

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The World Bank, OECD: *A Framework for the Design and Implementation of Competition Law and Policy*, Chapter 6, at 93, 1998.

agencies. Barrier free movement of passenger and freight by road across the country is vital for promoting efficient economic development and growth. In India, Road freight carriers are stopped at State borders, checked for payment of taxes/levies on the goods carried and for compliance of various provisions of Motor Vehicle Rules. Multiple and sequential checks conducted by various agencies result in manifold detentions. Detention of vehicles causes lower speed, loss of time, high fuel consumption and idling of vehicles, leading to under-utilization of transport capacity and adversely affecting their operational viability. As a result of excessive taxation and delays, transportation and transaction costs increase, which further increase the final cost of the product, distorting competition in the domestic market. The economic cost of such delay is estimated at a minimum of Rs. 3,200 Crore and a maximum of Rs. 4,300 Crores for the year 2004³⁶.

With an economy dominated by roads and road transport, it is increasingly important that truckers have much the same right as the railways to travel interstate with a minimum of delays. Legal and administrative reforms in this area are needed for India to function effectively as a single market. At the national level, “Some States like Gujarat have taken up the matter seriously and have initiated measures to have Computerised Inter-State Check posts. Through the use of computers and other electronic devices at 10 remote inter-State border check posts in Gujarat, a team of savy public officials have reduced corruption and significantly increased the State’s tax revenue by automating the highway toll and fine collection system. The system was a good investment. Within one year a system had paid for itself, illustrating how strategic investments, properly planned can lead to long-term benefits” (ADB, 2003). This new system could be used by the sales tax department of the State, which would monitor the movement of goods in the State, as well as transshipments.³⁷

As a measure of Competition advocacy, the CCI needs to emphasise on the importance of elimination of regulatory and physical barriers, which can pave the way for a seamless national market for the benefit of the market players and consumers. CCI should engage with respective State Governments and encourage them to carry out competition related audit of rules/regulations that create such barriers and ensure the same are removed. CCI could engage with relevant Government institutions and also propose the following steps to ensure seamless national markets:

- Adopt concept of “Green Channel”. Freight with single destination accounts for a large proportion of consignment and is likely to go up with containerization. Such cargo by road could be accorded “Green Channel” treatment provided papers are prepared in advance and sent to the check post. Initially high value freight and sensitive commodities could be covered under “Green Channel”.
- Adopt “single Window clearance System”. It could be applicable for all authorized charges/clearances both at origin and at Check Posts.

Reformation of State Transport Undertakings

Given that the mandate of CCI, is to also ensure facilitation of competition in the various sectors in the economy, CCI could advocate for reform in the Inter-City Bus services. As part of reforms, the sector should include deregulation of tariffs, restructuring and commercialization of STUs, elimination of STU monopoly rights, changes in the tax regime to achieve uniformity of tax treatment of all buses operating in the inter-city markets. The appropriate public policy for

³⁶ National Road Transport Policy, available at

http://morth.nic.in/writereaddata/sublinkimages/Road_Transport_Policy27333191.pdf

³⁷ Supra Note 16

the inter-city bus services sector would be to remove quantitative regulations restricting entry into the inter-city bus transport markets, and to allow market forces to determine both tariffs and the types of services offered³⁸.

Curbing cartels in transport sector in India³⁹

There are services provided at the local-level and used by businesses that are anticompetitive in nature. For instance, in the transportation of goods via trucks, most of the trucks plying on Indian roads are under single ownership and there are few large-fleet operators. Although there appears to be competition, given the large number of truck owners, the fact is that about 5000 cargo operators handle the entire cargo in the entire country. These cargo operators cartelise and decide the freight and there is no competition at their level. There are also instances of cartelised operation of truckers' union around major production sites and factories. Truck operators' cartel result in higher transport costs, since trucks bringing in goods charge two-way fare, as they are made to return empty, while transportation costs on out-going goods are about 40 percent more.

Given below are few examples, of cartelisation formed by truck operators across India:

- In case of Baddi, Himachal Pradesh, the Baddi Nalagarh Truck Operator Cooperative Transport Society, had monopolised the movement of goods from the state. Controlled by the local MLA, the truck union charged 30 percent higher on the Baddi-Delhi route and 15-20 percent on the Baddi-Mumbai route. Trucks coming in with supplies went back empty, because they were not allowed to pick up freight, which only added to the cost.
- In the case of Orissa, the Angul Truck-owners Association, a Government registered body operating at the National Aluminium Co. Ltd.'s factory charged as much as 200 percent more for transportation of ingots under the obliging eyes of the authorities. Such official cartels are known to still exist in other parts of Orissa also like in Sukinda Mines, Paradeep Port and Balasore.
- In Punjab's Derabassi, truck unions had drafted their own tariffs, increasing costs of production for local units, thus rendering them uncompetitive. A cartel of around 500 truck operators was troubling the area, since Derabassi's inception as an industrial town in 1987. In Sirhind, near Mandi Gobindgarh, such unions stalled industrial growth, resulting in industry to flourish in nearby Khanna and Amloh.
- Similarly in Makrana in Rajasthan the cartel of truck operators' union had killed the marble business. The Union was charging tariffs almost 35-40 percent higher than the prevailing market rates. This led to an increase in transportation costs of marble from Makrana and the usual harassment of dealing with a monopolist union. The harassment grew to such proportions that several marble-sawing plants had to move to Kishangarh on the Jaipur-Ajmer National Highway No. 8.
- Similar situation existed in Bikaner, Rajasthan where the truck operators' union were creating problems in the smooth movement of minerals from the area. Due to obstruction in the supply, the ceramic tile industry, which uses these minerals as raw material were facing hardships, and even closure.⁴⁰

³⁸ The World Bank (2005), "Report on Road Transport Service Efficiency", available at http://siteresources.worldbank.org/INTSARREGTOPTRANSPORT/PublicationsandReports/20747263/Final_version03NOV2005.pdf

³⁹ Supra Note 20

⁴⁰ Supra Note 20

Preference to PSUs

From the study and analysis of relevant legislations, it is seen that legislations tends to favour PSUs, as against private sector players. CCI needs to advocate ensuring that there is a need to do away with such legislations and ensure creating a level playing field among public and private players.

Ensure process of competitive tendering

It is necessary that the Central and State Governments enhance the efficiency and competitiveness of competitive tendering by paying more attention to the tendering process. Given that the Competition Act, empowers the CCI to take action against bid rigging or collusion, one of the key advocacy role to be played by CCI, is to impress upon Governments for an active oversight of the competitive tendering process. For example, cities in Sweden, Finland, France and Germany have improved the environmental, social and economic standards in urban public transport through the competitive tendering process or through preparations for competitive tendering.⁴¹

National Permit Scheme

While, the cargo movement by road requires long distance trunk route operations, in order to facilitate interstate movement, the Government has provisioned for a Scheme through which a transport vehicle/ goods carriage/ truck can avail of the facility of acquiring a National Permit.

A new system of National Permit for truckers has been introduced with effect from 1st May 2010. Under the existing system, a transporter is required to pay Rs 20,000 annually per truck which allows it access to the home State and three neighbouring States (could operate in a maximum of four contiguous states, including his home state). For each additional State, the transporter has to pay Rs 5,000. So if a truck plies between Punjab and Tamil Nadu — which could be one of the longest trunk routes, passing through six States — the total permit fee would amount to Rs 30,000 a year. In the new system, however, a National Permit is issued against the payment of Rs 15,000 per truck a year. This would result in a benefit of Rs 15,000 annually or Rs 1,250 a month for each truck. The revenue from the National Permit collected centrally (by State Road Transport Undertaking --a non-government organisation acting as a collection agent) would be distributed among the States. The distribution would be based on the fees that individual States have collected in the preceding three years when the previous permit regime was in place.

However, if a State had collected less than Rs 1 crore during the last financial year, it will receive Rs 1 crore from the fees collected in the new regime. For other individual States, the average of fees collected in last three years will be divided by the country's average to arrive at the percentage share of each State in the collective fees. The fees will be deposited by the taxpayers in the State Bank of India in the beginning, but in due course of time, other public sector banks (viz. Union Bank of India and Punjab National Bank) and some private banks (HDFC Bank and ICICI Bank) will also be brought into the fold. The National Informatics Centre will develop a system to enable Web-based replies to SMS queries relating to fee payment. Procedurally, once the truck owner applies for a National Permit at the Regional Transport Office (RTO), he will have to pay Rs 15,000 as annual fee at SBI and will get a receipt. Subsequently, the bank will also send another receipt online to the concerned RTO office.

⁴¹ H.Mark and M. Michael (2003) Better Public Transport for Europe through Competitive Tendering - A Good Practice Guide, ICLEI - Local Governments for Sustainability

After verification, the applicant will receive an SMS stating the position of his application and when the permit will be issued. However, it is important to point out some of the anomalies that would still persist. Second, for ensuring seamless travel, integrated check posts need to be set up. It would take care of different kinds of taxes to be levied only at the entry point of the State concerned. Third, the intrastate permits and counter signature reciprocal agreement permits should be abolished. There should be only National Permits for all inter-state operations. This will remove the time consuming process of issuing counter-signature permits.⁴²

CHAPTER 5: CONCLUSION AND WAY FORWARD

In the recent years, the road transport sector is witnessing a strong and vigorous growth despite it facing momentous barriers to inter-state freight and passenger movement. This is particular to this segment when compared to inland waterways, air and railways that doesn't have much checks and barriers enroute. Also the global competition is putting in the pressure to have an efficient transport that is free from all impediments that affects the efficiency of passenger and freight road transport.

Currently, passenger road transport is gaining importance in India and other developing countries. Realizing the importance of passenger road transport as an important infrastructure area, STUs were established by various state governments in India and the other developing countries during the 1950s and has been in the public sector till 1980. However, with economic liberalization, the sector was reformed drastically and even privatised in almost all countries, particularly during seventies and eighties period. .

Reason for such reformation built up in India largely due to perceived inefficiency, higher costs of operation (especially manpower costs), and increased losses year after year. Most state governments today are not in a position to give subsidies or investment support to STUs. Hence, to take care of the increased demand for passenger road transport, private buses in large numbers have already entered the market reducing the overall market share of STUs.

In this context, it is imperative to strengthen STUs through effective strategic options and relevant advocacy measures needs to be adopted to ensure creation of competition within this sector. Most importantly, it is vital to create a central regulatory authority to take care of issues like vehicle design, pollution control, etc., and a regulatory authority in each state to take care of issues related to fares, quality of services, safety, environmental concerns, etc., and to see that the passengers are protected from exploitation. Otherwise an unregulated market may result in duplication of schedules and overlap of timings, resulting in excess capacity; increased pressure to engage in dangerous practices such as overloading or over-speeding of buses causing accidents and reducing reliability.⁴³

Stringent regulatory measures are required in effective traffic and transportation planning, parking regulations, road pricing during peak hours (as in Singapore), prohibiting private vehicles in central business districts (as in Zurich and many other developed cities), etc. In the Indian

⁴² Purohit M and Purohit V, "Road users taxes in India- Issues in Tax Policy and Governance, Foundations for Public Economics and Policy Research, available at http://planningcommission.nic.in/reports/sereport/ser/ser_ruti.pdf

⁴³ Y. Satyanarayana (2000), "Reforms and regulation in passenger road transport and state transport undertakings", *ASCI Journal of Management*

context, the urgent need is for a National Transport Commission which besides reviewing India's transports priorities and policies within an integrated framework on a continual basis, could also monitor economic regulation and thereby promote competition.

In particular, following are some of the recommendations put forth:

- Need for an independent regulator in road transport sector which is entrusted with statutory authority, financial autonomy, fixed service tenure with provision for removal on grounds of inappropriate act or incompetence. Besides, CCI should ensure that there are no overlaps with the regulator. For instance, in Sri Lanka, National Transport Commission Act number 44 of 1991 saw the creation of a dedicated regulator for private bus transport. Even though the Act provided for specific regulatory instruments, the National Transport Commission did not develop all these regulatory measures and saw its role mostly as an issuing office for route permits. A host of regulatory lapses was also been responsible for the situation. The lack of capacity of regulators as well as emphasis on revenue orientation instead of sector development has been identified as major concerns why regulators have not fulfilled their roles justifiably.
- As a measure of Competition advocacy, the CCI needs to emphasise on the importance of elimination of regulatory and physical barriers, which can pave the way for a seamless national market for the benefit of the market players and consumers. CCI should engage with respective State Governments and encourage them to carry out competition related audit of rules/regulations that create such barriers and ensure the same are removed.
- CCI could engage with relevant Government institutions and also propose the following steps to ensure seamless national markets:
 - ~ Adopt concept of “Green Channel”. Freight with single destination accounts for a large proportion of consignment and is likely to go up with containerization. Such cargo by road could be accorded “Green Channel” treatment provided papers are prepared in advance and sent to the check post. Initially high value freight and sensitive commodities could be covered under “Green Channel”.
 - ~ Adopt “single Window clearance System”. It could be applicable for all authorized charges/clearances both at origin and at Check Posts.
- CCI could advocate for reform in the Inter-City Bus services. As part of reforms, the sector should include deregulation of tariffs, restructuring and commercialisation of STUs, elimination of STU monopoly rights, changes in the tax regime to achieve uniformity of tax treatment of all buses operating in the inter-city markets. For instance, the publicly owned London Buses Ltd (monopoly operator) prior to London Transport Act 1984, had been facing high operating and subsidy cost despite increasing real fares. Finally the 1984 Act provided for London Buses Ltd. to be divided into 11 separate operating units, ultimately to be privatized; and for services to be progressively subject to competitive tendering on a “gross cost” basis. London Regional Transport became the “public customer”, defining the routes, setting fares, paying operators for the service provided and collecting all revenue, and maintaining intermodal ticket availability and coordination. By 1996 London Buses Ltd was totally privatized. 50 percent of the service contracts were competitively tendered. In ten years operating costs had fallen by 40 percent, and subsidy by 75 percent in real terms. Intermodal integration had been strengthened and despite real fare increases of 30 percent patronage remained approximately constant.

- Curbing cartels in the transport sector is also an opportunity that can work to the advantage of the competition authority. This is one of the best ways for the authority to endear itself to the general public as the decisions concerned will yield immediate results.
- CCI needs to advocate and ensure that legislations that tend to favour PSUs as against private sector players are done away with. Efforts should be taken to create a level playing field among public and private players.
- Given that the Competition Act, empowers the CCI to take action against bid rigging or collusion, one of the key advocacy role to be played by CCI, is to impress upon Governments for an active oversight of the competitive tendering process. For instance, the Swedish Competition Authority has attached great importance to this advocacy work. Through some bid-rigging cartel cases and questionnaires sent to public procurers we learnt that they lacked knowledge about bid-rigging cartels and how to detect them. We have therefore produced a checklist which is based on a checklist elaborated by the Competition Committee of the OECD. The printed pamphlet version also includes a list of points on how public procurers can avoid encouraging cartels and what to do if they have suspicions about bids in a tender process. In addition to publish the material on our website, we also sent this checklist and the pamphlet to about 3000 public procurers around Sweden.

Such efforts would not only lead to provision of secure transport, availability of wider choice and lower prices to the common man, but also help the country to achieve a much needed sustained double digit growth in the coming decades.

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