Competition concerns in Captive Mining in Coal Sector

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ABBREVIATIONS

BCCL  Bharat Coking Coal ltd.
CBAADA  Coal Bearing Areas (Acquisition and Development) Act 1957
CCI  Competition Commission of India
CCL  Central Coalfields Limited
CIL  Coal India Ltd.
DGMS  Director General Mines Safety
FDI  Foreign Direct Investment
JV  Joint Venture
MCL  Mahanadi Coalfields Limited
ML  Mining Lease
MMRDA  Mines and Minerals (Regulation and Development) Act 1957
MoC  Ministry of Coal
NLC  Neyveli Lignite Corporation ltd.
PSEs  Public Sector Entities
SCCL  Singareni Collieries Company Ltd.
CHAPTER 1

EXECUTIVE SUMMARY

Even though private participation and competition in India’s coal sector have been encouraged since the early 1970s, limited progress has been observed. Issues relating to industry structure, regulation and pricing that potentially impact competition in coal, still confront India. A need was felt to identify various issues that affect competition, examine policies that are required to create a level playing field in the coal sectors, and to take remedial steps accordingly.

1.1 Need for Competition and Private Sector Participation (PSP)

There exists a huge demand-supply gap shortage in the provision of key energy inputs. This gap raises serious concerns about India’s energy security, thereby impacting overall economic growth. For coal, the availability was 382 Million Tonnes (MT) against a demand of 406 MT, resulting in a gap of 24 MT. It is worth noting that the shortage across coal sector is either met through imports/trading or remains completely unmet.

To meet the availability and investment gaps highlighted above, several countries have sought to introduce sector reforms aimed at enhancing competition, streamlining policy & regulatory impediments and securing a greater role for the private sector to finance and manage coal networks. However, the challenge confronting policy makers is to develop a competitive coal marketplace that improves national welfare, particularly that of the poor.

1.2 Measures to Encourage Competition and PSP

Recent years have witnessed some progress towards creation of an enabling environment for private participation.

In the coal sector, private participation in captive mining was initiated in 1976 with the amendment of the Coal Mines (Nationalization) Act 1973. Since then, the
government has successively liberalized captive mining for consumption by companies engaged in generation of power, production of iron & steel, and manufacturing of cement. However, coal companies are not allowed to market coal produced in excess of their needs. Allocation of coal blocks is currently carried-out through a Screening Committee comprising of representatives from various ministries. The Government has recently mooted a proposal to replace this procedure with a transparent competitive bidding mechanism. On the pricing front, while the Government initiated partial deregulation of coal prices in 1996, it has now fully deregulated prices for all grades of coal through the Colliery Control Order 2000. In 2004-05, Coal India Limited (CIL) introduced the ‘e-auction’ system with the objective to allow traders and consumers to bid for their requirements from preferred sources and introduce transparency in allocation. However, CIL withdrew this system in January 2006, and in early 2007, re-introduced a new online booking system based on first-come-first-serve basis.

It is worth noting that while coal sector legislations have some provisions that encourage competition, the Competition Act 2002 also equally applies to the coal sectors. However, there are no provisions in both sector laws and Competition Act to address the interface issues between the CCI and sector regulators.

1.3 Reasons for limited competition and private participation

The above discussion suggests that significant measures have been initiated in recent years to promote competition and to resolve the underlying policy, institutional and regulatory impediments. However, private participation and investment in coal continue to be below expectations. According to the Tenth Plan document, the major impediments to greater private investment in capacity addition are poor financial health of the SEBs, delay in land acquisition/ clearances, issues related to fuel linkages and contractual problems etc.

For the coal sector, the reasons for limited competition can broadly be attributed to structural issues, policy and regulatory issues, barriers to entry, lack of level playing field, abuse of dominant position, and institutional issues. These impediments are elaborated below:

- **Structural Issues**
In the coal sector, CIL and Singareni Collieries Company Limited (SCCL) account for over 93% of India’s E&P. Further, as CIL has undertaken coal mining over a long period and established its operations in a protected environment, it enjoys several incumbency benefits. This includes possession of all geological data, domain knowledge, business goodwill, close proximity with the Ministry of Coal, and established market/clientele.

It is worth noting that while dominance itself is not anti-competitive, it could lead to market distortions if abused by the dominant entity.

- **Policy and Regulatory Issues**

In the coal sector, despite deregulation, the pricing decision of the Public Sector Enterprises (PSEs) is still guided by the Ministry of Coal. Further, ‘Vision Coal 2025’, released by the Ministry of Coal in March 2005, is CIL centric and has limited reference to private participation.

A competitive environment also requires efficient fuel choices and appropriate inter-fuel substitution. Theoretically, in such an environment, the marginal use value of different fuels, which can be perfect/imperfect substitutes, is equal at a given place and time, and the prices of different fuels at different places do not differ by more than the cost of transporting these fuels. It is, therefore, imperative that prices of different fuels are not set in isolation as is being done in India. It is also imperative to facilitate inter-fuel substitution, especially between gas and coal for electricity generation. At present, India’s policy planning supports limited inter-fuel, substitution/linkages and this aspect not only constrains entry into the generation segment but also increases the energy supply risk.

- **Barriers to Entry**

In the coal sector, private participation in coal exploratory activity and commercial mining without the existing restriction of captive mining have been proposed in the Coal Mines (Nationalization) Amendment Bill 2000. However, lack of stakeholder consensus and frequent change in government at the centre has delayed the ratification of this important bill. This uncertainty creates entry barriers, as time-
bound formulation of policies is important, not only for fostering competition but also for reducing the cost of doing business.

- **Lack of level playing field**

The instances of non-level playing field, which is reinforced by government policy, in the coal sector are summarized below:

a. Exploration for coal is carried out by PSEs without the involvement of private sector. The geological information regarding coalmines is available with the Government. While a prospective private player has to purchase this information from the government, CIL can have the same without cost.

b. Under the Coal Bearing Areas (Acquisition and Development) Act 1957 (CBAADA), the PSEs do not have to obtain coal-mining leases for land acquired.

c. The Land Acquisition Act 1894 allows full acquisition of tenancy land for ‘public purposes’. However, the Act puts a restriction on the private companies, and allows it to acquire land only for dwelling houses or for provision of amenities directly connected with a company. This puts private players at a disadvantageous position vis-à-vis CIL.

d. The Contract Labour (Regulation and Abolition) Act 1970 prohibits the outsourcing of perennial jobs. Since all jobs in the mining sector are perennial in nature, no outsourcing is legally allowed in this sector. While public coal companies maintain in-house capacities, it becomes inherently disadvantageous and inefficient for potential private companies to maintain such in-house capabilities.

- **Abuse of Dominance**

In the coal sector, there have been some instances which indicate that CIL is probably abusing its dominant position. For instance, CIL, taking advantage of its dominant position in a supply-constrained environment, currently offers coal at ‘first come first serve’ basis through the e-booking system at a premium of 30% on the declared price. Further, core consumers in the power, cement and steel sectors have often complained
against the CIL for unilateral increase in prices, limited transparency/ justification in
price determination process, lack of complaint redressal and inadequate coordination

   o Institutional Issues

In India’s coal sector, there currently exists a separate line ministry for coal. Currently, there is no independent regulatory oversight for the coal sector but its establishment is often advocated.

Currently, there exists no formal understanding or relationship between the CCI and Coal regulator(s) on their respective jurisdiction on competition issues. To resolve this interface issue, it is suggested to introduce a collaborative approach as has been adopted in South Africa, Brazil and the United Kingdom. Accordingly, the existing legislative framework would have to be suitably amended.

For enabling effective competition in the coal sector, it is imperative to not only streamline the regulatory design and coordination mechanism but also ensure that competitive activities are appropriately monitored and timely interventions considered. To facilitate this process, all stakeholders (including policy makers, regulators, competition authority, multilateral institutions, utilities, consumer groups, academicians and media) should be adequately sensitised on competition issues. In this direction, the CCI could facilitate developing stakeholder-specific course modules on various aspects related to competition in coal.
CHAPTER 2
INTRODUCTION

India’s economic growth targets at about 8% over the next few years calls for massive increase in infrastructure services in various sectors including energy. The estimated investment requirement as indicated in various expert reports is huge, and would enjoin upon exploring alternative avenues in addition to the traditional government sources.

Traditionally, monopolies were considered to be best suited to deliver energy services as they enjoyed economies of scale and economies of scope. However, the absence of competition gave monopoly suppliers an opportunity to set prices without providing commensurate value for money, and in certain circumstances, to conduct their business with little regard to protection of consumer interests. In many cases, absence of competition led to poor quality of services, and inefficient allocation of resources, resulting in operational inefficiencies. There was also a belief in India, that only the public sector could provide coal services efficiently, and that the entry of private sector should be restricted, if not altogether prevented. As a result, government was both the service provider and policy maker in coal sector.

The inability of the state and its agencies to deliver services in an efficient and cost effective manner led to a re-look of the policies relating to the provision of coal sector in India, and it was felt that commercialization of these sectors could improve efficiencies and reduce costs. There were also certain pragmatic and non-ideology related factors facilitating this shift such as the need to attract additional investment in infrastructure from the private sector, and the need to build quality infrastructure to remain globally competitive. Technological advances also made it possible to unbundle energy services, both horizontally and vertically, and to separate the services that could be performed by several operators on a competitive basis from those that are best performed by a monopolistic service provider. It was realized that if
commercialization, private sector participation and competition were to be encouraged, there was a need for a new mechanism to balance the interests of various stakeholders, to ensure financial viability of the industry, and to reduce transaction costs associated with privatization. Even with commercialization of infrastructure services, and prospects of competition, market structure in infrastructure services tends to retain a monopolistic element in India. It was also realized that unless these incumbent monopolies were restrained, new players could not enter the market. There was, thus, a need to create a level playing field between monopolistic incumbents and new entrants. All this called for expertise, which governments did not possess. Besides, as governments and their agencies continued to be providers of infrastructure services, and as they themselves had to be regulated, there was a need for a mechanism outside government, with adequate expertise and flexibility, to regulate all players, ensure efficiencies, and protect consumer interests.

Even though many years have passed since the introduction of private participation and promise of competition in energy sectors, no substantial progress has been observed. Issues relating to industry structure, regulation, pricing, etc, that potentially affect competition in energy sub sectors still confront us. There is a need to identify various issues that affect competition, examine policies that are supposed to create a level playing field in the energy sectors, and take remedial steps accordingly.

2.1 Objective

The objective of this report is to assess the competition issues in Captive mining in coal sector. In particular, the study intends to assess the market size and structure; examine various legislative and regulatory framework governing them, and assess the extent to which the competition goals have been achieved; assess key polices and their impact on competition; examine the institutional gap between the sectoral regulatory bodies and competition authority so as bring out their interface issues; and identify and recommend measures that enhance competition in these sectors.

- In coal sector
  - Market structure, and review of impediments to the passage of the Coal Mines (Nationalization) Amendment Bill and the effectiveness of attempts being made to resolve the pending issues;
Study the ‘Vision 2025’ document to assess implications/potential impact on competition and private sector participation in the sector

In undertaking the above activities, relevant international experience was drawn up to suggest possible strategies and actions for consideration by the CCI with regard to its ‘competition advocacy’ functions in promoting competition in the various segments of the energy sector. Wherever appropriate, the recommends modification in existing or proposed laws and regulations emanating from the analysis, especially in the light of experience in other relevant jurisdictions and international best practices.

2.2 Methodology

In order to meet the aforementioned objectives, the project methodology included literature surveys, peer reviews and analysis of the findings.
CHAPTER 3
Overview

Coal is India’s predominant source of commercial energy, accounting for over 55% of its overall energy consumption. It is also the most important input for electricity generation in India, as about 75% of domestic coal production is consumed in the power sector\(^1\). In addition, other industries such as steel, cement, fertilizers, chemicals, paper and many medium and small-scale industries are also dependent on coal for their process and energy requirements. In the transport sector, though direct consumption of coal by the railways is almost negligible on account of phasing out of steam locomotives, the energy requirement for electric traction is still dependent on coal converted into electric power. However, one of the biggest constraints on usage of Indian coal is that it is generally high in ash content and low in calorific value.

In 1947, India was producing a little over 30 MT of coal. Successive five-year plans of India gave importance to increasing the coal production and implemented several legal and institutional changes in the coal sector. By the end of 1960s, coal production from a large number of big and small coalmines (largely from the then privately-owned mines) had reached around 60 MT. However, in late 1960s, prior to nationalisation, the coal industry faced a slowing of growth in demand due to low price of petroleum products. With a view to analyse the causes and to suggest a comprehensive energy policy for the country, the Fuel Policy Committee (FPC) was set up in 1970. The FPC made a comprehensive analysis of the energy sector and concluded that coal should be considered as the primary source of energy for the country and recommended the use of coal in preference to oil products on grounds of economics and energy security. Subsequently, the coal sector was nationalized in two phases, i.e. coking coalmines in 1971-72 and non-coking coal mines in 1973-74. One of the main objectives of nationalization was to augment capital investment in coal mines, primarily to meet the rising coal demand. Successive five-year plans have also reiterated the pre-eminence of coal in India’s energy supply arrangements and have

\(^1\) http://coal.nic.in accessed on 29 June 2011
set out investments to match demand and supply and maximize production of indigenous coal.

However, the objectives of nationalization and consecutive five-year plans have not been completely realized, as India continues to face acute shortage of both, coking and non-coking (thermal) coal supplies, along with continuous deterioration in quality of thermal coal supplies. The sector is also beset with challenges like existence of public sector monopolies, presence of archaic legislations concerning land acquisition, mining, rehabilitation and environment management. Further, the coal sector is grossly inefficient compared to international standards. In the absence of competition, lack of benchmarking of operations and independent oversight of its operations, CIL is riddled with excessive manpower against international standards, poor project formulation, low utilisation of workforce, machinery and capital, low productivity etc. There also exist constraints on port capacity and infrastructure, which result in high costs of handling and transportation of imported coal.

This Chapter discusses the industry structure and legal and regulatory framework along with issues related to competition in the sector, followed by issues in captive mining and coal block allocation process.
CHAPTER 4

Indian coal sector - Size and structure

The Geological Survey of India has estimated the coal resources of India at 267.21 billion tonnes as on January 1, 2009 up to the depth of 1200 metres. The extractable reserve is pegged at only 39.07 billion tonnes. Currently, the lignite reserves in the country have been estimated at around 36009 million tonnes. Coal production in India in 2009-10 was 535.23 MT, as compared to 385.02 MT in 2007-08, reflecting a growth of 8.17%.

As per the Indian Constitution, the responsibility to regulate coalmines and mineral development in India lays with both, the central and state governments. In India, Ministry of Coal is the primary body responsible for policy formulation with regard to development and exploitation of coal and lignite resources in the country. The Ministry of Coal has two PSEs: CIL and Neyveli Lignite Corporation Limited (NLC) under its administrative control. The third company in the public sector, Singareni Collieries Company Limited (SCCL) is a joint venture between the State Government of Andhra Pradesh (51%) and the Central Government (49%).

These public sector enterprises have maintained a dominant position in the coal sector during the last ten years as illustrated in Table 4.1.

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2 Ministry of Coal, Gol. Coal vision 2025.
3 Annual Report 2009-10, Ministry of Coal, Gol, New Delhi.
4 Provisional Coal Statistics 2009-10, Coal Controller’s Organization,
Table 4.1 Trend of production of raw coal and lignite by CIL and SCCL during last ten years.

**Chart I: Trend of Raw Coal Production, Despatch & Closing Stock in Last Ten Years**

**Chart II: Trend of Lignite Production, Despatch & Closing Stock in Last Ten Years**

**Source**: Provisional Coal Statistics, Coal Controller’s Organization, GoI, Ministry of Coal
CHAPTER 5

Legal and regulatory framework

During 1971-73, the private coalmines were nationalised. In October 1971, the Coking Coal Mines (Emergency Provisions) Act, 1971 mandated the Government to take over the management of coking coal mines and coke oven plants pending nationalization. This was followed by the Coking Coal Mines (Nationalization) Act, 1972, under which the coking coal mines and the coke oven plants other than those with the Tata Iron & Steel Company Limited and Indian Iron & Steel Company Limited, were nationalized on 1st May, 1972, and brought under the Bharat Coking Coal Limited (BCCL), a new central government undertaking. Another enactment, namely the Coal Mines (Taking over of Management) Act, 1973, extended the right of the GoI to take over the management of the coking and non-coking coalmines in seven States including the coking coalmines taken over in 1971. This was followed by the nationalization of all these mines on 1st May 1973 with the enactment of the Coal Mines (Nationalization) Act, 1973.

This nationalisation process was a response to the urgent need to make large capital investment in the coal mines to meet the burgeoning demand, to prevent unscientific mining and to ameliorate the working and mining conditions of labour especially in areas like slaughter mining, lack of health, housing and education facilities for workers, and violation of mine safety laws.

The Coal Mines (Nationalisation) Act 1973 was amended in 1976 to allow captive coal mining by private companies engaged in the production of iron and steel and sub-leases of isolated small pockets not amenable to economic development and not requiring rail transport. In 1993, the Act was further amended to allow captive coal mining in the private sector for power generation, washing of coal obtained from a mine and such other end uses as may be notified by the central government from time to time. Cement production was notified as a specified end-use for the purposes of...
captive coal mining in 1996. By such amendments, coal mining for captive consumption by companies engaged in generation of power, production of iron and steel, production of cement and washing of coal were allowed. These companies are not allowed to market the coal produced by them and can take up coal mining only subject to the conditions given below:

- that the Memorandum and Articles of Association of such companies permit coal mining.
- that they act only as per the Acts and Rules relating to mineral production, coal production, contract labour and environmental protection provisions.

The allocation of captive coal blocks is carried out through the Screening Committee, which has members from Ministries of Coal, Railways Power and Steel, concerned State government, Central Mine Planning and Design Institute (CMPDIL), concerned coal subsidiary of CIL and others. In recent times, there has been an attempt on the part of the government to a transparent competitive bidding mechanism. A proposal for the same is under consideration in the Ministry. Further, the Government expressed its intention to broaden the captive segment by allowing standalone private mining companies, both domestic and international, having fuel supply agreement (FSA) with the ‘approved end users’ to undertake captive mining.

As far as pricing is concerned, the **Colliery Control Order 1945** empowered the Central government to fix grade-wise and colliery-wise prices of coal. Following the recommendations of the Bureau of Industrial Costs and Prices (BICP), government decided to deregulate the prices of all grades of coking coal and A, B, & C grades of non-coking coal and this decision was implemented with effect from 22nd March 1996. Later, in line with the recommendations of the Committee on Integrated Coal Policy, the government decided to de-regulate the prices of soft coke, hard coke and D grade of non-coking coal and this decision was implemented with effect from 12th March 1997. The Government also decided to allow CIL and SCCL to fix prices of E, F and G grades of non-coking coal once in every six months by updating the cost indices as per the escalation formula contained in the 1987 report of the BICP and necessary instructions to this effect were issued to CIL and SCCL on 13th March.
1997. Finally, through the Colliery Control Order, 2000, the pricing of coal was fully deregulated.

CIL also started with trial e-auctions between December 2004 and March 2005. During 2005-06, a total of 20 MT of coal was approved to be sold through e-auction. E-auctions allowed traders and consumers to bid for their requirements from preferred sources, thus, bypassing the black market in coal and transferring the premium from those sales to the coal companies instead. However, bulk of coal was still sold to the power sector at regulated rates well below those prevailing in the auction market. While 95% of coal was being made available to the core sector at a price of about Rs. 1155 per MT, the price in the auctions was as high as Rs. 1660-1900 per MT. In a recent judgement in December 2006, the Supreme Court of India ruled that e-auctions, when held by a near monopoly such as CIL are discriminatory, against public interest and consequently unconstitutional. Lastly, while the primary target of e-auctions was the non-core sector, large core sector players would also bid, thus pushing up prices. In light of this judgement by the Court, e-auctions have been discontinued. However, CIL has now started a new concept of e-booking which is again an online booking system on first come first serve basis at 30% premium over the existing price.

Issues pertaining to deregulation and captive mining are discussed subsequently in this chapter.

5.1 Coal Mines (Nationalisation) Amendment Bill, 2000

The entry of private sector in coal exploratory activity and commercial mining without the existing restriction of captive mining has been a widely debated option for realizing efficiency gains and for augmenting domestic coal supply.

This was to be achieved by mobilising the necessary additional investment required in the sector to increase production and to introduce competition by increasing the number of players.

A process in this regard was initiated during the Eight Five-Year Plan period. The proposal of the Ministry of Coal to amend the Act to allow non-captive coal mining was approved by the Cabinet in February 1997. However, the draft Bill for the
amendment could not be introduced in the Parliament since the Ministry received a strike notice from the trade unions demanding withdrawal of the Bill.

The process was revived again in late 1990s; Coal Mines (Nationalisation) Amendment Bill was introduced in the Rajya Sabha in April 2000. After extensive and wide-ranging discussions and consultations at various levels, it was recommended that the Bill be passed. However, due to trade union’s opposition, the same was not passed.

The unions claimed that if the full budgetary support to the national coal companies (which stands discontinued since 1995/96) were restored, it would result in increased production to meet the demand. The government held several discussions with the trade unions over the years but without any effect. Lastly, in August 2002, a Memorandum of Settlement was signed between CIL and 5 central trade unions and frequent meetings were held between trade unions and Minister of coal and mines in early 2003. Frequent change of government at the Centre requiring repeated Cabinet endorsement for the Bill further delayed its approval.

5.2 PPP in State-joint venture

Pending the passage of the Coal Mines (Nationalisation) Amendment Bill in the Parliament, Government undertook steps to allow private commercial mining within the existing laws by handing over coal blocks through government company dispensation route. Under this mechanism, the Central Government hands over the blocks to State Government, which in turn hands them over to state utilities and companies. The latter can then partner with private companies to form joint ventures for commercial coal mining. Though this measure was aimed at increasing the production of coal in the short run, it has an indirect bearing on competition in the sector, as it would lead to increased number of players who would compete in the market. Discussions with the Ministry of Coal officials indicated that the Ministry considers this provision as one of the most important ways of introducing and promoting competition in this sector.

The existing structural, policy and legal framework, provides a non-level playing field to prospective private players in a number of ways. The monopoly of CIL and corresponding incumbency benefits that it enjoys, archaic and inadequate policy
framework in the sector, and public sector mindsets that actually impede competition, are discussed in the following sections.

CHAPTER 6

Structural impediments to competition

Coal mining projects, by their very nature, involve high sunk costs in planning and implementation. The existing scenario, where PSEs have established their mining operations over a long period of time in a protected environment, places the potential private players at a disadvantage in terms of cost of production, price and profit. The PSEs have been in existence for more than three decades and, hence enjoy the incumbency benefits as listed below

**Incumbency benefits to CIL**

- All the available geological data are in possession with CIL
- Monopolizing infrastructure (CIL has constructed railway lines through budgetary support etc.)
- Domain knowledge in terms of vast experience
- Established market and clientele
- ‘Business Goodwill’
- CIL enjoys close proximity with the Ministry of Coal that guides CIL’s pricing and distribution decision.

These benefits have been achieved over a period of time and any new player will have to compete with the existing players in these aspects in addition to the economic barriers of competing with a natural monopoly service provider.
CHAPTER 7

Policy impediments to competition

Inadequacy of legal provisions in terms of creating a level playing field for all players and promoting competition in India’s coal sector are discussed in the subsequent section.

At present, exploration for coal is carried out by a number of public sector enterprises without involvement of the private sector. The geological information regarding coalmines is available with the government. A prospective private player has to purchase this information from the government at a cost.

Further, the provisions for acquisition of a coal bearing land, under the Coal Bearing Areas (Acquisition and Development) Act 1957 (CBAADA) allows possession of a virgin coal bearing land by the central government for a centrally controlled public sector company only. This implies that the PSEs do not have to obtain coal-mining leases for land acquired under the Act. As there is no scope for private players to acquire land under this Act, there is clearly a lack of level playing field in the sector.

Further, full acquisition of privately owned/tenancy land for ‘public purpose’ is provided in the Land Acquisition Act 1894. However, the term ‘public purpose’ has not been defined. The Act also puts a restriction on the private companies and allows it to acquire land only for “dwelling houses for workmen employed by the company or for the provision of amenities directly connected therewith”. In contrast, there is no such restriction on PSEs in this regard.

Lastly, the ineffective separation of potentially competitive segments from monopoly structure creates another source of inequality to the potential private players. For instance, there are certain segments in the mining industry like provisions of health, education and housing for mine workers that can be outsourced. But the Contract Labour (Regulation and Abolition) Act, 1970 does not allow outsourcing of perennial
jobs and since all jobs in the mining sector are perennial in nature, no outsourcing is legally allowed in this sector.

Due to this restriction, the existing government companies avail of the in-house capacity, which adds to costs and lowers efficiencies. The potential private players in the sector, who are already starting at a relatively disadvantageous position, would aim at obtaining maximum efficiencies at lowest costs. Contracting out these non-core segments would effectively help them in achieving the same. Hence, an amendment, enabling outsourcing of certain segments is required in the above-mentioned Act. As of now, certain coal mining activity is being outsourced through an indirect route. For example, the company purchases equipments for mining activities and the equipments are such that can be used only by trained persons. Hence, workforce to operate these equipments and carry out mining exercises is indirectly involved.

Various countries have different legal framework under which private domestic and foreign companies need to undertake coal mining. Apart from Australia, which is quite liberal towards private and foreign investors, other countries have different degrees of regulation as far as private and foreign companies are concerned. The legal framework of these countries is summarised in Table 7.1

Table 7.1 Legal issues—International Experience

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<th>Country</th>
<th>Experience</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Indonesia</strong></td>
<td>Ownership over land and mineral resources belongs to the state. Mining operations are undertaken in two main forms: (i) <strong>Mining authorization</strong>: Issued to either state or private domestic companies. Foreign companies are not permitted to apply for the same and (ii) <strong>Coal Contract or Work (CcoW)</strong>: The government grants A contract to a contractor for exploration and production. While a domestic company can also apply for CcoW, foreign players can mine coal through a joint venture with domestic companies.</td>
</tr>
</tbody>
</table>
As per common law prevalent in South Africa, mineral rights are tied with surface land rights held by the individual landowner. Any company, which wants to undertake prospecting has to negotiate with the mineral rights holder and later, has the option to purchase the mineral rights. In practice, once purchased these mineral rights are held by that company indefinitely till either liquidation or further sale of the rights. These legal provisions provide hindrances to new companies, especially foreign companies, who cannot access the mineral rights acquired by the firms established over time. The Minerals Act, 1991 recognizes the common law rights of landowners and holders of mineral rights. Any applicant for a prospecting or mining authorization, other than the holder of mineral rights, has to obtain the consent of the mineral rights holder for prospecting and mining and of landowner regarding surface usage. This is however subject to obtaining the necessary prospecting permit and mining authorization from the state. Moreover, the holder of prospecting permit holder needs to submit an environmental management programme in respect of surface land concerned in prospecting that takes considerable time. There are no specific incentives for foreign investors to enter the mining industry in South Africa. However, the government does encourage their participation.

There is no discrimination between state and domestic private mining companies as far as exploration license, assessment lease and mining lease are concerned. Foreign companies need not seek approval under foreign investment policy to take up the exploration right and are exempt from examination under the Foreign Acquisition and Takeovers Act 1975. They are not even obligated to seek Australian partners in exploration activities.
The state owns all mineral resources. Registration and licensing are required for all exploration and mining ventures. State permits foreign companies, enterprises and other economic organizations, as well as individuals, to invest in the exploration for and exploitation of mineral resources in China. Exploration and extraction rights can be transferred to others including foreign parties in specific circumstances. The holder of an exploration license has the right to carry out exploration activities within the designated area and has the first and exclusive rights to obtain the right to mine the mineral in the exploration area. Foreign investment can take the form of a joint venture where foreign companies will have operational responsibility and will look after technical aspects, provide funds for exploration and development works. The Chinese partner provides mining resource property, the necessary permits, labour force, existing technical data and the relationships with the regulatory authorities.

### 7.1 Deregulation of price and distribution in monopolistic structure

Price deregulation is one of the prerequisites for introducing competition. However, in a monopoly supply environment, consumers may be exploited. With deregulation, the right of fixing the price of coal has been conferred on CIL and SCCL. However, the pricing decision is still guided by the Ministry of Coal. The benefits of price deregulation can be realised only when there are a number of players in the industry. International experience shows that different countries are at different stages of de-controlling the coal price. Indonesia and China still maintain control over price, though a process of de-control has been announced by the Chinese government in recent times. In South Africa, prices are mainly deregulated except for ESKOM power, a state owned company. In Australia, pricing is totally deregulated with companies free to decide the pricing mechanism. Table 7.1.1 shows in detail the pricing and distribution mechanism followed in some foreign countries.
## Table 7.1.1 International experience on pricing and distribution mechanism

<table>
<thead>
<tr>
<th>Country</th>
<th>Experience</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Indonesia</strong></td>
<td>A linkage system exists between state power company and state coal company. The Ministry of Finance, being a shareholder in both these companies, must agree to the price. Coal pricing has been deregulated. Except for coal supply to Eskom power stations (represents more than 90% of the country’s total generating capacity), where captive collieries have long-term contracts, export pricing and inland pricing for normal consumers are determined on competitive basis.</td>
</tr>
<tr>
<td><strong>South Africa</strong></td>
<td>Coal prices are determined in three ways - contract negotiations, tenders and spot transactions. Many major coal consumers enter into long-term contracts with coal exporters. These contracts typically provide for prices, which are set in US dollars to be reviewed annually by negotiation. Purchasing coal through tenders is also common and the proportion of coal being purchased in this way is increasing. Tenders normally involve the supply of coal to a customer during a period of up to 6 to 12 months. Spot purchases of coal are usually transactions involving a single cargo for prompt delivery. Coal prices for spot or tender sales are typically lower than for long-term contract sales.</td>
</tr>
<tr>
<td><strong>Australia</strong></td>
<td>Pricing in China is still under government control, though, a process of de-regulation is underway. In 1992, Beijing began to ease its price controls on thermal coal - coal supplied to power plants - by introducing a so-called two-tier price system. The government set a quota for each state coal mine to sell its product to power plants at government-fixed prices. Coal contract negotiations between mines and major buyers have traditionally occurred at the annual coal conference, bringing together government authorities, major coal consumers and mining companies. After filling the quota, the mine...</td>
</tr>
</tbody>
</table>
could then sell its extra products at market prices. At the end of 2004 the government scrapped this two-tier system. Under the new system, the government sets a price for thermal coal, called the state-guided price, and allow mines to sell their product 8% above or below the guided price. In January 2006, at the opening of the 10-day annual coal-ordering conference in Beijing, the government said that from this year thermal coal prices will be decided through independent negotiations between buyers and sellers.

Similarly, deregulation of distribution was expected to provide the consumers with options of sourcing coal according to their preferences and economic advantages. On the supply side, it was expected to bring careful management of coal inventory to reduce cost and focus on productivity and on minimum landed cost of energy from amongst all sources including imports. However, in practice, sale of coal in core-sector is still guided by the system of linkages and sponsorship.

Pending the enactment of the Coal Mines (Nationalisation) Amendment Bill 2000, the Government formulated a captive mining policy, within the existing legislative framework. Certain issues in this regard are discussed below.

7.2 Issues in captive mining

In spite of introduction of captive coal mining in the coal sector, private participation has not been forthcoming. Even after a decade of blocks being allotted to various parties, only in few blocks, production has actually commenced. The disinterest towards captive route is attributed to the coal block allocation procedure and to other impediments as discussed below.

7.2.1 Captive coal block allocation process

The process of allocation of captive blocks in India is decided by the Screening Committee headed by a Secretary in the Ministry of Coal on a case-to-case basis. The coal blocks being offered for private mining will not be contiguous with the present workings of national coal companies. Only virgin blocks devoid of any infrastructure facilities will be offered (Annexure 7.2). The above decision was based more on blocking the competition than to allow it.
Since this mechanism is fraught with non-transparency, the Government has attempted a switch over from inter-ministerial screening committee mechanism, to a market driven competitive bidding mechanism to introduce transparency in the process of allocation of captive blocks and allow for competition among applicant parties. Accordingly, the Ministry of Coal put up a draft bid document for proposed allotment of coal blocks for captive mining inviting comments and suggestions.

7.2.2 Other issues in captive mining

There are a number of impediments that have stalled private participation. These are listed below:

- CIL was the custodian of all coal blocks and it was also recommending the allotment of coal blocks
- Coal blocks were allotted to parties who were not serious on taking up coal mining for end usage
- Disposal of coal produced during mine development and periodic small surpluses in excess of the captive needs through sale is not permitted
- Captive blocks were not divided scientifically and the development of captive mines could not be undertaken in a commercially viable manner
- It was not possible to dovetail the mine operation with the proposed industry, which was one of the main conditions for captive mining

Further, companies that want to take-up captive mining have to go through several time-consuming processes including the following:

- Preparation of a Mining Plan by a ‘qualified person’ recognised by the central government based on geological data furnished by CMPDI
- Approval of mining plan by the empowered standing committee in Ministry of Coal
- Environment and forest clearance from the MoEF, GoI
- Clearance from Director General Mine Safety (DGMS).
- Arrangement of transportation contract with Ministry of Railways
- Mining lease from the state governments
- Land acquisition and related resettlement issues

As per the information available to the Expert Committee on Road Map for Coal Sector Reforms, major delays occur, in most cases, in obtaining environmental clearance and the necessary approvals for land and mining leases from the concerned state governments, as also the subsequent land acquisition process.

Although a number of companies have been allotted captive coal blocks, the number of players who have actually started production is much less. Table 7.2.2.1 Coal Production from Captive Blocks since 1997-98 Projection for XI th Five Year Plan. Their share however in terms of domestic production is negligible.

Table 7.2.2.1 Coal Production from Captive Blocks since 1997-98 Projection for XI th Five Year Plan
### Table 7.2.2.2

Year wise and sector-wise allotment of Captive Blocks as on 21.03.2011

<table>
<thead>
<tr>
<th>Year</th>
<th>Coal</th>
<th>Non-CO</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011</td>
<td>4</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>2012</td>
<td>3</td>
<td>2</td>
<td>5</td>
</tr>
<tr>
<td>2013</td>
<td>2</td>
<td>1</td>
<td>3</td>
</tr>
</tbody>
</table>

**Source:** Provisional Coal Statistics 2009-10, Coal Controllers Organization, Ministry of Coal, GoI
7.3 Effects on other related sectors

Distortions in the coal sector either in terms of price or distribution control gets reflected in the power, steel and cement industries. Inefficient and administrative pricing in the coal sector renders these industries non-competitive. They fail to get adequate return on their investment, thereby inhibiting additional capacity building. In addition to the pricing policy, distribution policy also has widespread and serious anti-competition implications for other coal consuming industries. Bulk of the coal movement is through railways, which introduces distortion in the distribution of coal.
and this in turn leads to inefficiency in logistics. This inefficiency can occur from two sources. First, the decision on distribution of coal on an administrative basis through linkage committee robs the consumers of choice on sourcing of coal on economic basis. Second, cross-subsidization of passenger transport by freight transport also distorts the landed cost of coal to the consumers of coal. Though, captive mining tried to address the issue of price distortion and distribution rigidity, the non transparent process of allocation of blocks, inexperience of the approved end-user companies in undertaking coal mining and only recent emphasis on this policy and many other factors, have contributed to the failure on this front.

CHAPTER 8
Impediments due to public sector attitude/mindset
As detailed earlier, the near monopoly of CIL, has given a number of incumbency benefits to it. There are pre-disposed attitudes and mindset within the existing legal and regulatory institutions like Director General of Mine Safety, Ministry of Labour, Central Pollution Control Board etc, in favour of CIL, all being government owned.

Further, delay on the passage of the Coal Mines (Nationalisation) Amendment Bill, 2000 reflects reluctance on the part of the present government to push through the legislation.

**Major barriers to competition**

<table>
<thead>
<tr>
<th>By non-consumers</th>
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</thead>
<tbody>
<tr>
<td>Existence of public sector monopoly</td>
</tr>
<tr>
<td>Absence of transparency in allocation of coal mines</td>
</tr>
<tr>
<td>Lack of independent regulator, having tariff fixing authority, in the sector</td>
</tr>
<tr>
<td>Restrictions on commercial mining</td>
</tr>
<tr>
<td>Tedious procedures for obtaining land acquisition and environmental/forest clearances</td>
</tr>
<tr>
<td>Lack of political will and excessive employee unionism</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>By Consumers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Absence of independent coal regulator</td>
</tr>
<tr>
<td>Ownership of the entire value chain is concentrated with the government</td>
</tr>
<tr>
<td>Non-transparent entry of players on competitive bid basis</td>
</tr>
</tbody>
</table>
Role of CCI

In the existing state of affairs, where Indian coal sector is predominantly public owned with few private players, the role of the CCI in terms of competition regulation measures is very limited. Certain provisions in the Competition Act, 2002, like ‘Anti-competitive agreement’ and ‘Regulation of Combinations’ are not applicable to the Indian coal sector at the moment as there are insignificant private players in domestic commercial mining segment.

The allocation process of captive mines through the screening committee plus the restriction on private units to enter into commercial mines seems to be a case of ‘Anti-Competitive Agreement’ by CIL as on one side the process is not transparent and on other it is restricting market entry to private player to the market respectively. CCI may play an important role here under Section 3 of the Competition Act 2002.

The squatting on mines by private companies of captive mining seems to be a case of ‘Anti Competitive Agreements’ by CIL as allocation of blocks to such companies limits or control production and enhance increase the cost of various other commodities dependent on coal.

Recent practices show that in some cases, CIL was probably abusing its dominant position. As mentioned earlier, it introduced sale of coal through e-auction at price premium. The same was noticed by the Supreme Court, which imposed a ban on it in January 2006. However, CIL has again started a new concept called e-booking in which coal is being offered on ‘first-come-first-served’ basis with a 30% mark-up on the declared price. This seems to be a case of ‘abuse of dominant position’ by CIL where it is imposing a discriminatory condition in sale of goods. CCI may play an important role here under Section 4 of the Competition Act 2002.

CCI can also play its advocacy role by advising the central government on competition issues, creating public awareness and imparting training on competition issues. It can persuade the government in expediting the passage of the Coal Mines (Nationalization) Amendment Bill, 2000 and making amendments at legislative and policy fronts to remove various discriminatory provisions against private players.
CHAPTER 10

Recommendations
Government needs to make a sincere effort at getting the Coal Mines (Nationalisation) Amendment Bill passed in the Parliament. The provisions of this Bill will allow for private sector participation in the commercial coal mining in India, which will increase the number of players, thereby, facilitating investment and competition in the sector.

The licenses issued for captive mining to private companies must be done in a transparent manner. The motive of the companies for acquiring the license needs to be checked thoroughly before accepting their tender. There should be a mandatory periodic check on such companies by independent monitoring body. If squatting or any other unfair scenario is found it should be dealt strictly.

It is also required to provide the private players with a level playing field, as and when they enter into the coal industry on a full scale, by amending various discriminatory provisions within the current legal and policy framework. Under MMRDA/MCR (Mines and Minerals (Regulation and Development) Act 1957/Mineral Concession Rules), there is no enforceable provision for the acquisition of surface rights. It confers the right of carrying out various activities connected with mining, but for surface rights the applicant has to negotiate with individual landowners. It is recommended that MMRDA/MCR be amended to provide surface rights to the applicant subject to the provisions of other applicable Acts, like Forest (Conservation) Acts, etc.

As far as the Coal Bearing Areas (Acquisition and Development) Act, 1957 (CBAADA) is concerned, the government has the following options

a) repeal the CBAADA altogether, or

b) retain the CBAADA while extending the provisions to the private sector by enacting specific legislation for land acquisition, where there are coal deposits, in consultation with the various state governments, or

c) retain an amended CBAADA for a limited period until significant private sector participation emerges.

An amendment to the Land Acquisition Act, 1894 be made to remove the difficulties for the private parties in getting the acquisition rights over surface land subject to
other related laws like those related to privately owned (including tenancy land), state owned forest land and state owned non-forest land (revenue land). The Colliery Control Order 2000 should be withdrawn in its entirety both at central and state level and the office of the Coal Controller should be abolished. This calls for the responsibility for collection and distribution of taxes collected under the Coal Mines (Conservation and Development) Act 1974 to be assigned to a party other than Coal Controller. Moreover any kind of restriction—both statutory and contractual—on the use of contract labour in the non-core areas within the coal sector should be abolished. Further, there is a need to bring the coal sector under independent regulatory oversight till market forces can take control to regulate the various aspects of the sector including pricing without further delay.

**Ashok Chawla Committee Report on allocation of natural resources**

- Creation of national coal market to ensure greater transparency in allocation of coal and reduce demand supply mismatch.
- Recommended a creation of a platform for commercial trading of coal by suppliers and buyers
- The captive allottees are been allowed to sell on e-auction platform. The platform will ensure lower price of coal.
- Allow independent mining firms to take part in auction for captive blocks.
- Highlighted that introduction of both captive mining and e-auctions were right steps taken in the direction of moving toward market-based allocation.
- Formation of a platform like the national coal market will facilitate a gradual evolution of established prices and term of contract.
- Operation of the platform will be owned by Coal India and register all approved users can be regulated by proposed coal regulator.
- The surplus coal mined from captive blocks can be sold to the other registered end user

**CHAPTER 11**
Conclusion

In view of the above analysis, it is clear that the effects of various anti-competitive factors identified in the coal sector on the rest of the economy are widespread. Some initiatives have already been taken to reform the sector and there is a need to further carry forward the same. It is required to clearly define the reform objectives in coal sector and make sure that all policy changes are coherent in nature and can simultaneously help in achieving the stated objectives.

- The first step is to restructure the sector by introducing more number of players so that it can reduce the dominance of any one player and can facilitate competition.

- Keep a close track on the licenses issued for captive mining periodically.

- Other major steps include bringing the coal sector under the independent regulatory oversight. It is also required to streamline processes, procedures and remove various discriminatory provisions in the existing legal framework against the private players in order to incentives and expedite captive coal production.

Annexure 1.1
Coal India Limited

Coal India Limited is the apex body in the Coal Industry and is responsible for laying down policy guidelines and coordination work of subsidiaries. It does the investment planning, manpower management, financial budgeting etc. on behalf of its following eight (8) subsidiaries.

1. Bharat Coking Coal Limited (BCCL),
2. Central Coalfields Limited (CCL),
3. Western Coalfields Limited (WCL),
4. Eastern Coalfields Limited (ECL)
5. Mahanadi Coalfields Limited (MCL)
6. Northern Coalfields Limited (NCL)
7. South Eastern Coalfields Limited (SECL)

CIL is mainly responsible for laying down corporate objectives, approving and monitoring performance of subsidiary companies in the fields of long-term planning, conservation, research and development, production, sales, finances, recruitment, training, safety, industrial relations, wages, material for all operational matters, commissioning and execution of new as well as on-going projects, manpower management, production, consumer satisfaction etc. In addition, subsidiary companies perform related functions, such as maintaining liaison with concerned State governments, acquisition of land, execution of welfare programmes, maintenance of safety standards, improvement of industrial relation etc. In addition, CIL has directly under its control the development and exploitation of the coalmines in the North-Eastern States, and the coal-marketing network spread throughout the country.

Central Mine Planning and Design Institute Limited (CMPDIL), a subsidiary of CIL is engaged in the work of exploration, project planning, detailed designing of system
and sub-systems, co-ordination and integration of applied research and development, absorption of new techniques of coal mining, beneficiation and utilisation of coal, perspective planning and demand assessment, environment related services and caters to the total planning and designing needs of new coal projects and re-organisation of existing mines for optimal production of coal. The company has its headquarters located at Ranchi and has 7 Regional Institutes located at Asansol, Dhanbad, Ranchi, Nagpur, Bilaspur, Singrauli and Bhubaneshwar to render doorstep service to the coal producing companies located in these areas. In addition, to satisfy the planning and design requirements of CIL and its subsidiary companies, CMPDIL also offers consultancy services to outside organizations.

**Neyveli Lignite Corporation (NLC)**

NLC is entrusted with the exploration and production of lignite in Tamil Nadu, Rajasthan, Gujarat and Jammu and Kashmir.

**Singareni Collieries Company Ltd (SCCL)**

SCCL is a joint undertaking of Government of Andhra Pradesh and the GoI. The equity capital is shared in the ratio of 51:49 between Government of Andhra Pradesh and the Central government respectively.
ANNEXURE 7.2
GUIDELINES FOR ALLOCATION OF COAL BLOCKS

Guidelines that have to be adopted for allocation of coal mining blocks (2007)

1. Blocks already identified for development by CIL where adequate funding is on hand or in sight should not be offered to the private sector.

2. The blocks offered to private sector should be at a reasonable distance from existing mines and projects of CIL in order to avoid operational problems.

3. The areas where CIL has invested in creating infrastructure for opening new mines should not be handed over to the private sector, except on reimbursement of costs.

4. Blocks that are explored in detail and where Geological Report with assessment of extractable reserves is available should normally be put in the offer list. Public/private sector shall bear full cost of exploration in blocks, which may be offered for captive mining.

5. For identifying blocks, the requirement of coal for about 30 years or such other period as may be decided in the Ministry, would be considered.
REFERENCES


Report (Part-I) of the Expert Committee on Road Map for Coal Sector Reforms. Ministry of Coal, GoI, New Delhi.