COMPETITION CONCERNS IN THE INDIAN RAIL SECTOR

Internship Project Report

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Mehal Jain
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OVERVIEW OF THE INDIAN TRANSPORT SECTOR

- INDIAN RAILWAYS: THE JOURNEY FROM 1853
OVERVIEW OF THE INDIAN TRANSPORT SECTOR

Transport is the lifeline of any developing economy. The growth and development of any nation truly rests on the growth of its transport sector. Transport provides access to opportunities, supports economic activities, and facilitates social interactions.

India’s transport sector is large and diverse and caters to the needs of about 1.03 billion people (Government of India, 2001).

Transport sector in India can be classified under three broad categories depending upon the lead distances, namely urban and sub-urban; regional and national; and international transport. The transport system in the country comprises of a number of distinct modes and services including roads, railways, air, inland water transport, coastal shipping, and pipelines.

The transport sector’s contribution to India’s GDP was 6.6% in 2006-07. Out of which, share of railways stands at 1.2% for the period. Transport by other means (road, air and water) constitute 5.4% of the GDP.

Road sector has emerged as the most dominant sector amongst all the modes.

The share of roads, railways and air in passenger transport in India in 2006-07 stood at 86.7%, 12.9% and 0.4% respectively. In freight transport, the share of roads, railways, maritime and air stands at 61.2%, 38.6%, 0.2% and 0.02% respectively in 2006-07.


- Indian Railways (IR): The Journey from 1853

IR started its journey with a 53 km ride between Mumbai and Thane on April 16, 1853. Back then during the British Raj, IR was controlled primarily by private players. The Indian Railways Act, 1890 was the umbrella legislation by which the role of the government had been restricted to coordination, regulation and apportionment of claims between railway administrations.

Post-independence, the Indian Railways Act, 1890 was repealed and replaced by the Railways Act, 1989 which permits both government and non-government railways in freight as well as passenger transport. But, by virtue of the Industrial Policy Resolutions of 1948, 1956 and 1991, the Indian Railway industry has remained the monopoly of the Central Government.

The Ministry of Railways (MoR) is a ministry in the Government of India (GoI). The ministry is headed by the Minister of Railways, a cabinet-level minister. There are two Ministers of State for Railways. The Railway Board, which is the apex body of the IR reports to the Minister of Railways. The Railway Board comprises one Chairman, five members and a Financial Commissioner who is the representative of
the Ministry of Finance. It also includes a Director-General (Railway Health Services) and a Director-General (Railway Protection Force). At present, there are 17 zonal railways (e.g. East-central railway, North-eastern railway etc), 6 production units (e.g. Chittaranjan Locomotive Works, Diesel Locomotive Works etc) and 15 public sector undertakings (e.g. Container Corporation of India, IRCTC etc) - all under the MoR.

Initially, the participation of the private sector was restricted to activities like design, construction, financing and maintenance of infrastructure, manufacturing of railway-related components etc. In 2006, the GoI permitted private sector to run container trains. However, in the rail passenger transport sector, the participation of the private sector is still confined to non-core activities like catering, provision of yatri niwas and budget hotels, e-ticketing, establishment of food plazas, construction and financing of high speed corridors, world class railways stations etc. As far as Foreign Direct Investment (FDI) is concerned, it is permitted only in the railway-related component industry.

The Report of the Expert Group for the Modernization of Indian Railways (dated 25th February, 2012) provides that IR is the third largest railway network in the world with 7,083 railway stations, 1, 31,205 railway bridges, 9000 locomotives, 51,030 passenger coaches, 2,19,931 freight cars and 63,974 route kilometres. Today IR operates 19,000 trains each day, comprising 12,000 passenger trains and 7,000 freight trains. It transports 2.65 million tonnes of freight traffic and 23 million passengers every day and 7.2 billion passengers per year. It currently has 1.36 million employees and an annual revenue base of Rs.1, 06,000 crores as projected on March 31, 2012. Indian Railways is also home to great talent and excellent organization focused on operation, efficiency and safety.

But the report also observes a severe and chronic under-investment in railway infrastructure. The resultant disproportionate diversion of freight and passenger traffic to roads while causing substantial loss in revenue to the IR imposes a heavy burden on the country.

This has created a need to leverage new opportunities with a bold outlook. The most important step would be to liberalise the rail transport industry further.
COMPETITION LAW ISSUES IN THE INDIAN RAIL SECTOR

- RAILWAYS ACT, 1989: IMPACT ON COMPETITION
COMPETITION LAW ISSUES IN THE INDIAN RAIL SECTOR

The railways are one of the few sectors in India in which the government still has a monopoly. A few private railways do exist, left over from the days of the British Raj, usually small sections on private estates, etc. There are also some railway lines owned and operated by companies, plantations, mines, ports, etc. for their own use. For instance, the Mumbai Port Trust runs a BG railway of its own, the Tatas operate funicular railways at Bhira and at Bhivpuri Road, the Kutch Railway Company (a joint venture of the Gujarat state government and private parties) is involved to build a Gandhidham–Palanpur railway line.\(^1\) These railway lines are used to carry freight and not for passenger traffic.

With liberalisation, the demand for value-added transport services increased and it was realised that the railways face capacity constraints in high-density corridors and suffer from monopoly-induced inefficiencies and a maintenance backlog. Another problem area identified was that the freight rates subsidise passenger transport. This has led to a shift in freight traffic from rail to road transport over the years. There has also been a shift in passenger traffic from the railways to airlines, especially to no-frill private airlines.

To reduce inefficiencies, the railways took various measures in the 1990s and in early 2000 to re-balance tariffs and involve the private sector in non-core activities. In 2005–06, the Ministry of Railways formulated an integrated modernisation plan for 2005–2006 to 2009–2010, to upgrade operations (both passenger and freight services) to global standards. Private players were allowed to participate through the Public-Private Partnership (PPP) route in operating container trains on designated routes and developing rail-side warehouses, logistics parks, catering, budget hotels etc. Non-core activities such as product manufacturing have been opened up for Foreign Direct Investment (FDI) and corporate management practices have been introduced. After the adoption of these measures, the Indian Railways started recording impressive rates of growth. The government has already signed agreements with companies from countries such as Japan, Russia, Germany and France for high-speed passenger corridors, and manufacturing and consultancy services. The Indian Railways is also setting up two Greenfield electric and diesel locomotive factories in joint ventures with foreign manufacturers\(^2\).

Although private participation in the sector is increasing, Indian Railways is unlikely to be privatised in the near future.

\(^1\) [http://www.irfca.org/faq/faq-nonir.html](http://www.irfca.org/faq/faq-nonir.html)

\(^2\) [http://www.ebtc.eu/pdf/Tariff_Barsriers_in_the_Transport_and_Logistics_Sector_India.pdf](http://www.ebtc.eu/pdf/Tariff_Barsriers_in_the_Transport_and_Logistics_Sector_India.pdf)
Competition law issues primarily stem from the government monopoly in the rail sector and also from the discriminatory treatment accorded to the private players in the few ventures they are allowed to participate in. The same can be analysed by studying the sector under 3 heads:-

I. Rail Freight Transport Industry
II. Rail Passenger Transport Industry
III. Procurement in Indian Railways

- Railways Act, 1989: Impact on Competition

Railways were introduced in India during the British Raj in 1853 and were then governed by the Indian Railways Act, 1890. Under this legislation, the rail transport sector was primarily under the control of private players while the government had the role of a coordinator and regulator and for the distribution of revenue between the railway companies. Post-independence in the year 1951, railways were nationalised and made part of the Government of India. Subsequently, the Indian Railways Act, 1890 was repealed and replaced by the Railways Act, 1989.

The railways act, 1989 does not reserve the rail transport sector, freight or passenger, solely for the public sector. It speaks of both government railways as well as non-government railways. Section 2(25) of the said act defines non-government railways as “a railway other than a Government railway”. Section 2(32) further provides that “railway administration” in connection to non-government railways means “the person who is the owner or lessee of the railway or the person working the railway under an agreement.”

Besides, the other provisions of the act with regard to the railway administration, that is, power to construct all necessary works like tramways, roads, water-pipes, etc (section 11), power of temporary entry upon land to remove obstruction, to repair, to prevent accident, etc (section 14), duty to ensure protection of government property (section 12), obligation to pay amount of any loss or damage caused in exercise of any rights (section 15), obligation to make and maintain works for the accommodation of owners and occupiers of land adjoining the railways (section 16), requirement of complying with certain formalities (section 22) and obtaining sanction of the central government for opening railway for public carriage of passengers (section 21), etc are applicable equally to both government and non-government railways. Also, responsibilities of railway administration as carrier of goods under Chapter XI of the Act and liability of railway administration for death and injury to passengers due to accidents under Chapter XIII are also alike for both.

It is the Industrial Policy Resolution of 1991, as amended from time to time, which principally reserves railway transportation for the public sector. Train operation can only be done by the public sector, while all other activities of design, construction, financing, and maintenance can be undertaken through private participation through award of concessions by Government of India.
In 2006, while the rail freight transport sector was opened to the private sector, in the passenger transport sector, the participation of the private sector is limited to non-core activities like catering, budget hotels, food plazas, e-ticketing etc. The Report of the Expert Group on Modernization of Railways (2012) also suggests the PPP route for the development of world class railway stations, high speed passenger corridors, etc. But it appears the Railways is unwilling to allow the private sector to run trains for public carriage of passengers. FDI is disallowed in passenger and freight transportation, and pushing and towing services. The railway-related components industry is opened to 100 per cent FDI.

The only provisions of the Railways Act, 1989 which are likely to bear upon competition in the rail transport sector are:-

1. **Need for sanction of the central government for opening up of railways for public carriage of passengers (section 21):** This provision has created a rigid barrier to the entry of private players in the market for passenger rail transport.

2. **Power of the Central Government to fix rates for carriage of passenger and goods, to fix any other charges incidental to such carriage (eg. Wharfage, demurrage) and to fix different rates for carriage of different classes of goods (section 30):** This confers power on the Central Government to fix and raise the haulage charges payable by the private Container Train Operators which, in turn, places them on an unequal footing with the Container Corporation of India in the rail freight transport sector.

3. **Power of the Central Government to classify commodities for fixation of rates for their carriage and to alter such rates and other charges (section 31):** In exercise of this provision, the Central Government had arbitrarily increased the haulage charge payable by the private container train operators 4 times since January, 2006 uptil 2010 with a total increase of 62.7% on a yearly basis.

4. **Power of the Central Government to appoint the chairperson and staff of the Railway Rates Tribunal (section 33):** This might pose a problem in a matter involving the administration of a government railway. In my opinion, the chairperson and staff should be appointed by the Chief Justice of India.

5. **Lack of jurisdiction of the Railway Rates Tribunal in respect of classification of commodities, fixation of rates for carriage of goods and passengers and other incidental**
charges (including wharfage and demurrage) (section 37): As a consequence, the exercise of power of the Central Government under section 30 is free from any judicial scrutiny and may be exercised arbitrarily.

6. Power of the Central Government to give special facilities for or preference to the carriage of goods consigned to or by the Central Government or any state government or any other goods or class of goods (section 71)

7. Levy of penalty on non-government railways for contravention of any provisions of this act or the rules, regulations and orders made or directions and notifications issued thereunder (section 169): Since there is no such provision in respect of government railways, it gives them greater freedom of operation.

8. Power of Central Government to declare if any tax is payable by any railway in aid of funds of any local authority (section 184), and if any tax is payable to any local authority for advertisement made on any part of the railway (section 185): There is a possibility of misuse of this power by the government to the prejudice of private container train operators and increase their already heavy financial burden.

9. Power of Central Government to exempt any railway from all or any of the provisions of the act (section 196): There is a possibility of the Central Government using this provision to relieve any government railway from any obligation or responsibility or any charge payable under this act, thereby giving it an edge over private container train operators.
RAIL FREIGHT TRANSPORTATION IN INDIA
RAIL FREIGHT TRANSPORTATION IN INDIA

With the entry of private players in the Indian rail freight transport scene between 2005 and 2010 through the PPP route, competition law issues in the rail cargo transport sector stem not from government monopoly but the restrictive nature of the policies, notifications and instructions issued by the Ministry of Railways (MoR) from time-to-time for the regulation of the private sector in the market segments where its participation is permitted:

I. Notification on Container Train Operators (CTOs): In January 2006, the Ministry of Railways (MoR) allowed the private players to obtain licences for running container trains on the Indian Railways (IR) network. Until then, the Container Corporation of India (CONCOR), a subsidiary of IR, had the monopoly in the container operation segment in India since its inception in 1989.

The Ministry of Railways (Railway Board) Notification of 26th September, 20063 (hereinafter referred to as Notification) provides for all applicants to sign a Model Concession Agreement (MCA)4 with Indian Railways. The notable features of the MCA are as follows:

- Interested companies can take route-specific or all-India permission by making a one-time payment of Rs 10-50 crore depending upon the extent/scope of service.
- Operating permission would be granted for 20 years, which can be further extended to another 10 years to transport export-import (EXIM) and domestic traffic.
- The private operator will have to make their own arrangements for a rail-linked Inland Container Depot (ICD) by leasing it from ICD owners or by creating their own.
- The private operators also have to procure flat wagons for transporting containers, whereas Railways would provide locomotives.
- Final freight tariffs for the containerised traffic will be left to the individual operator.
- Players can exit operations by transferring the permission to another eligible operator.

It was expected that opening the segment of container train operation to private players, will increase the share of rail in total container traffic operation to a target 50 per cent from the current 25-30 per cent.

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However, of the 15 operators who entered the field, only 7 to 8 have started operation. This maybe imputed to the following competition-suppressing features of the policy:

(i) The registration fee, at Rs. 10 crore for one corridor and Rs. 50 crore for the complete Railway network, compels a potential private investor to think twice before becoming a CTO. The purpose is to ensure the continuance of CONCOR’s undisputed monarchy in the container operation segment.

(ii) The cost of acquiring land, terminal facilities and ICDs required to set-up and start operation in the container cargo business has to be borne by the investor.

Private operators have requested Railways to help in acquisition of land on the same terms as it is given to CONCOR and to allow them to develop ICDs on railway land in the same way as CONCOR on nominal Lease charges. The IR has not been of any assistance in this regard.

(iii) Haulage is a charge that IR levies on CTOs for using its tracks, locos, and signalling infrastructure. It accounts for a major portion of the operating costs of the CTOs. This charge has been increased to the extent of 62.7 percent since January, 2006. Although this charge is also levied on CONCOR, it is only a matter of financial adjustment and no heat is actually felt by CONCOR.

(iv) The policy did not originally provide CTOs any transit time guarantee or fixed time tabled schedules for container trains. Thus, CTOs were having difficulties in ensuring timely delivery to their customers, and managing their own logistics, and consequently losing business to roadways. However, CONCOR, taking unfair advantage of its relationship with Railways, has been able to ensure the timely delivery of its containers. In December 2009, MoR announced an Assured Transit Time (ATT) service on limited routes at an additional 10% of the haulage charge. But there are concerns about the implementation modalities and premium being kept at 10%. CTOs are of the view that IR should offer discounts on the charges in case of non-compliance rather than just reimbursement of premium.

5 TEERI 2008
(v) By virtue of the fact that IR holds 63% equity in CONCOR and that its management comprises of officers on deputation from IR, CONCOR has an edge over the other CTOs with regard to payment of haulage and procurement of land. While CONCOR may pay its haulage charges in advance, on a fortnightly basis or even raise a credit of 15 days, new container operators have to pay haulage charges on a per train basis. Also, most of CONCOR’s terminals are situated on leased railway-land, which owing to old lease agreement, is at a very nominal cost compared to current real estate prices. The new entrants in the sector have to pay a much higher price if they are to procure land.

(vi) Taking advantage of its 95% market share and wide scale of operations, CONCOR attempts to eliminate existing competitors by reducing prices of the final services in the segments where it feels competition pressure and offering discounts on heavy traffic routes. This practice has elements of predatory pricing which is prohibited under Section 4 of the Competition Act, 2002.

It compensates the loss so incurred by increasing prices in those market segments where competition is comparatively less, which is a glaring example of abuse of dominant position in the market of transportation of goods over the rail network.

(vii) The new CTOs which do not have sufficient infrastructure base find it difficult to compete with CONCOR which owns the maximum number of ICDs, terminals, rakes and wagons. Although they are permitted to use CONCOR’s ICDs and terminals, the access charges payable for this purpose are very high.

(viii) Another restrictive factor is a recent directive issued by the MoR, prohibiting CTOs from transporting ores, mineral, coal and coke, which allegedly forecloses about 65% of the freight traffic to the CTOs. With reference to this directive, in the matter of Arshiya Rail Infrastructure Limited and KIRIBCHCO Infrastructure Limited v. Ministry of Railways (MoR) and Container Corporation of India Limited, abuse of dominance by the MoR and CONCOR in the container trains operation business was alleged.

II. Policy on Private Freight Terminal (PFT)

The MoR had introduced its policy on PFT on 31st May, 2010. The main objectives of this policy are to attract private investment for development of network for freight terminals, to align the rail goods
transport with the supply chain, and to provide quality and pocket-friendly logistics to end users and a
lucrative business proposition to the investor who gets rail access to handle third party cargo.

The salient features of the policy on PFT are: 6

1) Terminals to come up only on private land.
2) Appropriate rail infrastructure and equipment to be provided to conform to EOL function.
3) Investor to handle all traffic except outward coal, coke and iron ore.
4) Application fee of Rs. 1 crore and security deposit of Rs. 1 crore to ensure timely commissioning of
PFT.
5) Investor may provide value added logistics related services and charge for the same.
6) Period of agreement for 20 years extendable by one period of 10 years.
7) Revenue sharing to be 50 per cent of terminal charge or Rs. 10 per ton, whichever is higher.

Although the policy was intended to be with immediate effect, so far no major logistics service providers
have come forward with a concrete proposal. This is because the scheme, in its character and substance, is
restrictive.

Anti-competitive elements in the scheme for PFT 7

➢ The scheme does not permit outward coal, coke and iron ore to be handled from a PFT. The MoR
is unwilling to part with its hold on coal which yields the maximum revenue. Although the
handling of un-programmed coal was later allowed, this move was of no great consequence as the
amount of such coal is very little.

➢ As per the instructions issued by IR under the policy, iron ore can only be loaded from sidings
which are especially meant for the same. This restrictive order has created immense hardship to
small consumers like sponge iron plants and smaller steel mills with low shaft and induction
furnaces.

➢ The Railway Board has, by replacing the words Œwill have to applyÓ for the words Œshall have to
applyÓ in para 3.8 of the scheme, made it obligatory for all private sidings and terminals on the IR
Network where third party cargo was permitted (as co-user or otherwise) to apply to adopt the
PFT scheme, lest such permission be cancelled. This conversion of a voluntary scheme into an
arbitrary order shows abuse of dominance by the IR.

6 pib.nic.in/newsite/erelease.aspx?relid=62416
7 Report on Railway Sector for Committee on National Competition Policy (C-NCP)
Dated: 6
By: Public Procurement Group
IDA House, R.K. Puram Sector-IV, New Delhi-110022
The scheme provides that without developing the facilities mentioned therein the PFT shall not be sanctioned. This irks prospective investors as for an existing siding, its performance and capacity to deal with a certain number of trains should be the criterion rather than the pre-formulated plan.

Revenue sharing at 50% of terminal charge or Rs. 10 per ton, whichever is higher, is another discouragement.

In addition to the two end terminal charges, the concept for imposing terminal charge at railway goods sheds and sidings is arbitrary.

III. PPP model for DEDICATED FREIGHT CORRIDORS

Owing to high congestion on busy traffic routes and in an initiative to increase the average speed of Indian freight movements, Indian Railways decided to take up the task of constructing Dedicated Freight Corridors (DFCs) connecting Mumbai-Delhi and Howrah-Delhi routes.

The PPP model for the construction of DFCs
- Special Purpose Vehicle (SPV), jointly owned by the Indian Railways and the users of bulk freight services, will be responsible for planning, construction and maintenance of infrastructure.

The Ministry of Railways would be the administrative Ministry for the SPV.

- SPV would own and maintain the tracks and other infrastructure and also will be responsible for movement of trains on its system and operation of the DFCs.

- The SPV would neither own/lease any rolling stock nor would be involved in freight business other than haulage of freight trains. The Indian Railways and other qualified operators would run goods trains on the tracks of the corridors and would be given non-discriminatory access for this purpose.

However, no mechanism has been devised to ensure that all operators on the DFC are provided level playing field and non-discriminatory access. The fact that Indian Railways has a major stake in the SPV and the SPV is under the Ministry of Railways raises concern with reference to level playing field and non-discriminatory access to the players when DFC will be operational. But one cannot conclusively comment on the future dynamics of DFCs and the level of competition can only be assessed once DFCs is fully operational.8

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Besides, the first major contract worth Rs 3,300 crore for the Dedicated Freight Corridor (DFC) project, involving construction of a 343-km-long double track line between Kanpur and Khurja in the eastern corridor, has been recently awarded to Tata-Aldesa joint venture. It won the bid from among 10 other bidders through an international competitive bidding process.\(^9\)

Thus, the assumption of anti-competitive elements with regard to the DFCs can be ruled out for the time being.

IV. RailwayInfrastructure for Industry Initiative (R3i) Policy

With a view to attracting private sector participation in rail connectivity and transport capacity enhancement projects, the MoR has come up with a new RailwayInfrastructure for Industry Initiative (R3i) Policy dated 20th July, 2010. The main object of the policy is to raise the share of the IR in freight traffic movement in India.

The policy allows for four models viz., (a) Cost sharing-freight rebate model, (b) Full contribution- Apportioned earning Model, (c) the SPV model and, (d) the Private Line Model.\(^10\)

The policy can be said to be a competition-killer on the following grounds:-

1. Only those new line proposals which are 20 kms or more in length (excluding the length of siding which may take off from this line) shall be eligible under this policy. This excludes private investors solely on the basis of size who may otherwise be competent players.
2. Wherever land has to be acquired, the same shall be done by IR at party\'s cost but the ownership of the land shall vest with railways. This takes away the incentive for private investment.
3. Ownership of the new line project will remain with railways from the beginning.
4. The investor is allowed a concession period which varies with each line model to recover the contributions made by him towards the project. During this period, the Railways levy a fee on the gross apportioned earning of the investor from the line project. The private players do not appreciate the Railways eating into the revenue which they are entitled to.
5. The project is highly capital-intensive and all contribution by the investor has to be made in advance. This discourages the private sector which, unlike the public sector, is not plush with liquid funds.


6. The policy gives authority to the Railways on various issues like right to provide connectivity to other parties from the said line, the right to decide which of the 4 models provided under the policy would be applicable, etc. There is possibility of abuse of dominance.

7. Under this policy, either a concession period or a freight rebate for a pre-determined duration is granted to the investor to enable him to recover merely the advance contribution made by him towards the line project, thereby curtailing the central motive with which the private sector undertakes business ventures, i.e., profit-making.
RAIL PASSENGER TRANSPORTATION IN INDIA
RAIL PASSENGER TRANSPORTATION IN INDIA

With the Government of India, through the Ministry of Railways, retaining the exclusive right to ply passenger trains, the passengers are devoid of any intra-modal choices at competitive rates. Thus, the prevailing policy refusing private participation in rail passenger transport defeats the objective with which the Competition Act, 2002 was introduced.

As the only player in the market of rail passenger transport, the IR does not have the incentive to better its services and offer quality travelling experience to the public. The passengers have no option but to bear subserviently the problems of delays, unhygienic environment and unclean toilets, lack of proper pantry facilities, unauthorized vendors, faulty AVTM machines, thefts and pick-pocketing, poor service at enquiry counters, etc.

With the liberalisation of the air transport industry in the 1990s and the coming up of numerous low-cost carriers, a large chunk of the passenger traffic shifted from railway to air transport. Luxury buses and private vehicles also posed a threat to the IR. Thus, in the closing years of the 20th century, IR was compelled to evolve a Turn-around Strategy11 to overcome inter-modal competition.

The key components of this strategy were:-

1. Fares for premium classes were reduced.
2. The length of the popular trains on densely trafficked routes was increased.
3. Speed of the trains was upgraded.
4. Participation of private operators in passenger related non-core areas such as parcel and catering was encouraged.
5. Information Technology was used to make ticketing and reservation easily accessible.
6. An airline-style upgradation for passengers in the lower classes to higher classes was introduced.

Although these measures did produce positive results, a glance at these reforms shows that despite tough competition from other modes of transport, IR is unwilling to allow the private sector to run passenger trains.

Even from the Report of the Expert Group for Modernization of Indian Railways12, it is evident that the Government of India is not likely to liberalise the rail passenger transport sector and permit private entry anytime soon. Although the report recommends the PPP route for the development of High-Speed Passenger Corridors, modernization of existing bridges and tracks to be fit for passenger speeds, establishment of world class railway stations, etc, it does not even mention private passenger trains.

12 Report dated 25th February, 2012; Expert Group constituted by MoR through notification dated 21-09-2011
In the rail passenger transport industry, the participation of the private sector is limited to non-core activities such as catering, budget hotels, etc:-

1. Indian Railway Catering and Tourism Corporation (IRCTC) has launched Rail Reservation through mobile phones of Hutch, Reliance and Idea Cellular.
2. IRCTC had launched packaged drinking water under the brand-name "Rail Neer" in collaboration with Ion Exchange Ltd., a private sector company.
3. IRCTC has tied up with McDonalds, Subway, Amul, Haldiram etc to open food plazas at major stations.
4. IRCTC had taken up the project for launch of Integrated Train Enquiry System- Rail Sampark 139 on PPP basis.
5. There have also been establishment of Yatri Niwas and other budget-hotels on a PPP basis.

IR and IRCTC have hugely benefited from PPP in food plazas. It is hard to find out any anti-competitive rules in the railway’s catering business. Both the Catering Policy of 2005 and the Catering Policy of 2010 by which the former was replaced have ensured the continued dominance of private operators in Railway Catering.\(^\text{13}\)

PUBLIC PROCUREMENT IN INDIAN RAILWAYS
PUBLIC PROCUREMENT IN INDIAN RAILWAYS

Public procurement is the purchase of goods or services by various ministries, governmental departments and state-owned enterprises.

The railways-related component industry produces and supplies various kinds of products, such as locomotives lights, signals, slack adjusters, track fittings, round shaft chisels, and braking systems. The maintenance and repair of rail transport equipment and supporting services, and railway-related components, warehousing and freight corridors are also activities of this industry. This industry is not solely the monopoly of the public sector but the private sector and foreign investors, by way of Foreign Direct Investment (FDI), are also welcome to participate.

In India, public procurement is carried out through the tender system, open tender system being the general rule and limited and single tender systems being resorted to in special circumstances. The object of the tender system is to select the best-quality goods and services, at the lowest prices which represent the current market rates, from a pool of producers, sellers, distributors, traders and service providers, whether belonging to the public sector or private sector or being foreign investors, who quote bids independently and competitively, in a level playing field.

Competition law issues in procurement by the IR arise on account of:

1. Cartelization and bid-rigging
2. Regulatory framework

Cartelization and bid-rigging

Section 2(c) of the Competition Act, 2002 defines "cartel" as including "an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services."

Generally, when there are a limited number of players in any relevant market and they have little fear of others joining in due to technical barriers, regulatory barriers, high cost of entry, etc., they form cartels to manipulate the prices of goods and services, and consequently, the government ends up paying a higher rate in public procurement. This is called bid-rigging or collusive bidding.

According to the Explanation appended to sub-section 3 of section 3 of the said act, bid-rigging means "any agreement, between enterprises or persons engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding."
There are various ways in which the manipulations are done:

- The cartel decides who shall win the bid, other bidders quote bids that are higher or unacceptable on non-price issues.
- The cartel decides on the quantity distribution amongst its members and each quote for his allotted quantity.
- Another variation is each quoting for his preferred location only or quoting lowest rate for that location.

Cartelization, resulting in bid-rigging or collusive bidding, takes away the essence of the tender system by determining in advance the outcome of the bid.

The Competitions Act 2002 recognises cartel formation as an anti-competitive activity and deals with such agreements under section 3. Accordingly the instances of cartel formation need to be brought before CCI which has been empowered to take appropriate action.

Recently, an internal investigation by the Railway Ministry revealed how a procurement cartel runs the show in the Railways. Till 2005 railways was using foam for seats. There were enough vendors to keep rates competitive. Foam seats were available for Rs 18,000 per coach. In 2006, the research and development wing of Railways, RDSO conducted trials for a proprietary product called RECRON. It then approved two vendors. According to the railway probe report these two vendors acted as cartel and quoted a steep rate of Rs 50,000, which was 200% more than the market rate. The report says the Railway Board approved the hiked rate even without inviting tenders. It took the Railways and the RDSO three years to find two more suppliers. Rates then fell marginally by 22%.  

To deal with cartelisation in the procurement procedure, **Railway Board issued instructions (5th August 2002) to include the following conditions in all tender documents:**

- Wherever all or most of the approved firms quote equal rates and cartel formation is suspected, Railways reserve the right to place order on one or more firms with the exclusion of the rest, without assigning any reasons there for.
- Firms are expected to quote for a quantity not less than 50 per cent of tendered quantity.

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14 Report on Railway Sector for Committee on National Competition Policy (C-NCP)  
Dated: 6th February, 2012  
By: Public Procurement Group  
IDA House, R.K. Puram Sector-IV, New Delhi-110022

Offers for quantity less than 50 per cent of tendered quantity will be considered unresponsive and liable to be rejected in case cartel formation is suspected. Railways, however, reserve the right to order on one or more firms any quantity.

- The firms that quote in cartel may be warned that their names are likely to be deleted from list of approved sources.

Regulatory framework

Procurement by IR is governed by the following:

II. Indian Railways Code for the Stores Department, 1990
III. Indian Railways Code for the Accounts Department, 1997
IV. Indian Railways Code for the Finance Department, 1998
V. RDSO (Research Design and Standards Organisation) Vendor Approval Guidelines
VI. DGS & D (Director-General of Supplies and Disposal) Manual (Effective from 1st October 1999)

The above regulations and guidelines contain some provisions which are anti-competitive in nature:

Indian Railways Code for the Stores Department, 1990

- Rule 304 (A) of the Indian Railways Code for the Stores Department, 1990 provides for price preference to the products of small scale industries. At present, 409 items are reserved for exclusive purchase from KVIC, Women’s Development Corporations and Small-scale sector units.
- Rule 304 (B) provides for preference to products of Public Sector Undertakings. This directly limits the ability of suppliers to compete. Eg. IR procures rails from SAIL.
- Rule 302 provides preference to indigenous goods over imported goods. This reduces incentive on the part of domestic producers to develop and come at par with international standards as they are assured of sale.
- Rule 328 permits Limited Tender System, which restricts the number of competitive bidders and encourages cartel formation, to be adopted
  a. for procurement of Safety items,
  b. in procurement during an emergency,
  c. where there exists an approved list of vendors, and
  d. where it is deemed advantageous and the estimated value of order does not exceed Rs. 10 lakh.
Rule 330 permits Single Tender System, which reduces the number of suppliers to only one, to be adopted
  a. in procurement during emergency,
  b. where it is deemed advantageous and the estimated amount of order does not exceed Rs. 3 lakh (in case of Non-Proprietary articles),
  c. where it is deemed advantageous and the estimated amount of order does not exceed Rs. 5 lakh (in case of Proprietary articles), and
  d. in case of articles in the process of indigenous development.


- Rule 137: This rule requires specifications to be laid down in respect of each item of public buying as to the quantity, quality, type, design, etc.
  
  Such strict specifications of technology, process, design, feature, etc may result in the required commodity confirming to the produce of any particular firm. Moreover, these specifications restrict scientific and technological development to the prejudice of the consumers as it is mandatory to comply with the laid down standards, however superfluous, non-essential and obsolete they maybe.

- Rule 141: This rule requires the Central Purchase Organisation (e.g. DGS&D) to conclude rate contracts with the registered suppliers, for goods and items of standard types, which are identified as common user items and are needed on recurring basis by various Central Government Ministries or Departments.
  
  It is likely that the vendors do not appreciate the price of their goods being determined by the buyer as the cost of manufacture and their profit expectations are best known to them.
  
  This might restrict the supplier base available.

- Rule 142: With a view to establishing reliable sources for procurement of goods commonly required for government use, this rule requires the Central Purchase Organisation (e.g. DGS&D) to prepare and maintain item-wise lists of eligible suppliers. Such approved suppliers will be known as "Registered Suppliers". Such registered suppliers shall be prima facie eligible for consideration for procurement of goods through Limited Tender Enquiry.

Based upon this directive, the Ministry of Railways has issued instructions for registration of vendors. The criteria for registration is decided mainly by the Research Design and Standards Organisation
(RSDO). It is also decided by railway’s production units (CLW, DLW etc) for requirements of items for their own production and also by CORE for items required in electrification.

A new entrant satisfying qualification criteria is first given a trial order. On satisfactorily performance, it is registered as a part II vendor where it is eligible for the small orders not exceeding 20% of requirement. With time, it gets upgraded to part I vendor, where there is no quantity restriction.

This system of vendor registration is alleged to be anti-competitive on the following grounds:

   a. The concerned authority places a cap on the number of approved vendors for every item while, in reality, there are many more qualified suppliers of such items. This practice is, thus, restrictive and stifles competition.

   b. Due to the vendor registration system, the industry is reluctant to invest in expensive machinery and tooling as there is no surety of getting the order. This further suffocates competition.

   c. The existence of the restricted number of approved suppliers has facilitated cartel formation and the Railways in the process buy at higher rates manipulated by vendors.

   d. In the event of overcapacity where there is no cartel, the suppliers tend to undercut one another making the rates unworkable. They then indulge in unethical practices in collusion with the government staff to compromise on quality or indulge in reuse etc.

   e. All approval functions are controlled by RDSO (or the production units and CORE). Thus, manipulation of the system for vested interest is not ruled out.\(^\text{16}\)

\^[16]\hspace{1cm} Rule 144: By virtue of this rule, it is mandatory for IR to make exclusive purchase of the items reserved by the Central Government (hand-spun and hand-woven items, handloom textile items, etc) from KVIC, the notified handloom units of ACASH (Association of Corporations and/or Apex Societies of Handlooms) and registered Small Scale Industrial Units in accordance with the Central Government's instructions in this behalf.

\^[16] Rule 150: This rule requires Advertised Tender Enquiry to be utilized only in procurement of goods of estimated value of Rs. 25 lakh and above. With Limited and Single Tender Enquiries being an option for procuring goods of value less than Rs. 25 lakh, there is a palpable risk of cartel formation and collusive-bidding.

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Rule 151: This rule permits procurement of goods by Limited Tender Enquiry in the following cases:

a. Where the estimated value of the goods is less than Rs. 25 lakh,

b. Where the estimated value of the goods is Rs. 25 lakh or more, but

- the concerned Ministry or Department certifies that the demand is urgent and the additional expenditure which would be incurred on Advertised Tender Enquiry is not justified in terms of the urgency,
- it is deemed to be in public interest, or
- the sources of supply are definitely known and possibility of fresh source(s) beyond those being tapped, is remote.

The provisions of this rule are capable of being exercised arbitrarily with an adverse effect on competition.

Rule 154: Under this rule, procurement by Single Tender Enquiry may be resorted to in the following circumstances:

(i) It is in the knowledge of the user department that only a particular firm is the manufacturer of the required goods,

(ii) In a case of emergency, the required goods are necessarily to be purchased from a particular source,

(iii) For standardisation of machinery or spare parts to be compatible to the existing sets of equipment.

Single Tender Enquiry entirely beats the purpose of the tender system which is to acquire the best goods at the best price from a pool of competitive bidders in a level playing field. Also, the provisions of this rule are capable of being exercised arbitrarily with an adverse effect on competition.

Rule 179: This rule requires the Ministry or Department to prepare a list of likely and potential contractors on the basis of formal or informal enquiries from other Ministries or Departments and Organisations involved in similar activities, scrutiny of Yellow pages and trade journals, if available, web site etc. This has the same effect on competition in outsourcing of services as vendor registration under rule 142 in case of procurement of goods.
RDSO Vendor Approval Process Guidelines

RDSO Vendor Approval Process is a lengthy and time-consuming procedure requiring compliance with item/equipment specifications, application for registration, application processing and sample type testing. Upon registration, there is classification of vendors into grades on the basis of performance and experience. There is also provision for down-gradation and delisting of approved vendors.

These guidelines limit the number of qualified suppliers in the relevant market, thereby increasing the risk of cartelization and bid-rigging.

Also, such stringent specifications of technology, process, design, feature, etc may result in the required commodity confirming to the produce of any particular firm.

Moreover, these specifications restrict scientific and technological development to the prejudice of the consumers as it is mandatory to comply with the laid down standards, however superfluous, non-essential and obsolete they maybe.

DGS & D (Director-General of Supplies and Disposal) Manual (Effective from 1st October 1999)

- Chapter 5 of the DGS&D Purchase Manual details the process of registration of firms for supply of stores. Such Rules limit the number and range of suppliers. Besides, certain relevant details like calendar for invitation of applications along with list of items or group of items for which registration is being processed and the model time frame for conclusion of the registration process etc. are missing. Unless the process is made more transparent, wide publicity is given and reasonable time frame is made public, it will act as a barrier to entry for new entrants thereby stifling competition.

- Chapter 13 deals with rate contracts. Procurement of goods by operating Rate Contract is considered anticompetitive as it limits the range of suppliers and choice of common user items by the indenters. Moreover, possibility of certain items under rate contract being available at a lower rate outside the rate contract is not ruled out in which case procurer will suffer financial loss since he is bound by the terms of the rate contract. Besides, since rate contract can only be concluded on firms registered with DGS&D, it not only acts as a barrier to entry, it also creates conditions conducive to cartel formation.17

17 http://sps.iitd.ac.in/PDF/SGP.pdf
CASE STUDIES
CASE STUDIES

**Jindal Steel & Power Ltd. v. Steel Authority of India Ltd. and Anr.,**

[Case No. 11 /2009, Order Passed On 20-11-2011]

**Brief Facts**

Jindal Steel & Power Ltd. ("Informant") filed a complaint before the CCI alleging that Steel Authority of India Ltd. ("SAIL") had entered into a memorandum of understanding ("MOU") for exclusive supply of rails to the Indian Railways ("IR"). The informant also accused SAIL and IR of abuse of dominant position in the relevant market. In the present instance, the other suppliers of rails in the industry did not get a chance to put forth their bids as no tender was floated by IR.

**Observations of Director-General (D.G.)**

a) The relevant product market for SAIL and IR is that of long rails compliant to Research Design & Standards Organization ("RDSO") specifications. The relevant geographic market is the entire territory of India.

b) Both SAIL and IR being commercial ventures of the Government of India and not performing any sovereign functions are "enterprises" as defined in section 2(h) of the Competition Act, 2002.

c) Both SAIL, with its market share of 96%, and IR, being the largest provider of rail transport services in India and consuming 96-97% of the long rails sold occupy "dominant position" (as defined in section 2(t) of the Competition Act, 2002) in the relevant market.

d) There is abuse of dominant position by SAIL and IR as the MoU signed between them is anti-competitive in nature- it is in the nature of an exclusive supply agreement as defined in the explanation appended to sub-section 4 of section 3 of the Competition Act, 2002, and restricts IR from purchasing long rails from any other manufacturer.

e) Besides, IR is also guilty of limiting scientific and technological development, amounting to abuse of dominant position under section 4(2)(b)(ii) of the Competition Act, 2002, in the manufacture of long rail by making it mandatory to comply with the specifications of RDSO despite the fact that the informant was using a better technology.

Decision of CCI
Although the CCI accepted the findings of the Director-General with regard to IR and SAIL being "enterprises" under section 2(h) of the competition act, 2002 and also as to the "relevant product market" and "relevant geographical market", it was held that the MOU between IR and SAIL is not anti-competitive and nor is there any abuse of dominance on their part.

Author’s Comments:-
Although from the findings of the D.G. as enumerated above there appears to be a case against IR and SAIL, the decision of the CCI is justified on the following grounds cited by the CCI in its order 19:

1. A basic principle of market functioning is that 'buyers' choice' cannot be said to adversely affect competition.
2. The MoU between SAIL and IR was signed in February, 2003 when SAIL was the sole supplier of RDSO compliant rails.
3. The economic rationale of buyer’s choice for IR to sign the MoU:-
   a) SAIL had successfully substituted domestic production for imported long rails, thereby relieving the Government of India of a heavy expenditure on importing rails.
   b) Long rails produced by SAIL comply with the RDSO specifications. SAIL has modified its production techniques and improved its produce over the years to come at par with international standards.
   c) Long rails produced by SAIL have been tried and tested over so many years; they have an established goodwill. On the other hand, JSPL’s rails are still at the stage of field-test. In the absence of a report of its performance in private sidings, it would have been a gamble to purchase long rails from it.
   d) SAIL assures stability of supply.
4. The rationale for SAIL signing the MoU.
   a) It was at the behest of the MoR that SAIL had taken a plunge in the manufacturing of rails for IR.
   b) For SAIL, this had meant a shift from the more lucrative structural market to the less lucrative rails market.
   c) It also involved additional investment for the shift with further investments to upgrade the quality of rails.
   d) 'National interest', rather than profit motive, was the guiding principle for the shift.

19 http://www.indiankanoon.org/doc/64217260/
5. Taking into consideration SAIL’s market share of 96% and the wide scale of its operations, it can be easily concluded that its profitability would not have been affected even in the absence of the MoU. This rules out any intention on the part of SAIL to curb competition in the relevant market.

6. In view of the growing private sidings accompanied with the emergence of private ports, it would be wrong to allege that the market of rails is limited by the MoU.

7. By virtue of the fact that in the MoU review in 2010 IR had expressly admitted to a preference towards SAIL till JSPL achieved the desired comfort level in terms of consistent supply, reasonable prices and quality, there is little substance in JSPL’s allegation that it was deprived of due process in the review.

8. A very valid reason was cited by IR for continuance of the existing MoU-
   a) Need to ensure safety of the SAIL’s investment which is important having regard to the size of production of SAIL as compared to that of JSPL and the limited size of the market for rails, and
   b) The fact that SAIL had successfully fulfilled all IR’s current demands.

9. The fact that IR used JSPL rails on private sidings as a part of the necessary stress testing process shows that the IR is open to the procurement of long rails from other suppliers.

10. The present pricing formula has transformed from a purely administrated pricing formula in 1999 to incorporate market related pricing benchmarks by giving 50% weightage to steel prices in the input cost of rails negating the allegation of JSPL that SAIL faces no competitive constraints in its pricing policy.
**Allegations by ARIL and KRIBHCO (Informants)**

It has been averred by the informants that CONCOR and MoR (Opposite parties) are 'enterprise' and together constitute a 'group' under the provisions of the Act. Further, the latter does not perform sovereign functions with regard to railway services. The particular allegations are:

a. **Exclusionary non-price conduct in violation of sections 4(2)(a)(i), 4(2)(b)(i) and 4(2)(c) of the Competition Act, 2002**

   By prohibiting the movement of coal, coke, ores and minerals by CTOs, 60-65% of relevant market has been foreclosed.

b. **Exclusionary price discrimination / exploitative pricing and exclusionary pricing in violation of sections 4(2)(a)(ii) and 4(2)(c)**

   By increasing haulage charges, imposing increased haulage charges on nine notified commodities on the basis of a container class rate and increasing stabling charges, the CTOs have been put to major cost disadvantage vis-à-vis movement of notified commodities in wagons.

c. **Unfair trade conditions in violation of sections 4(2)(a)(i) and 40(c)**

   IR has given land to CONCOR at favourable terms. Further, by denying access to its rail terminals, CONCOR has denied an essential infrastructural facility to the CTOs.

d. **Leveraging dominance in one market to protect another market in violation of section 4(2) (e) of the Act**

   By leveraging their dominance in rail services including tracks, terminals etc, IR and CONCOR are able to protect their rail freight services to the detriment of the CTOs, as evident from the following:

   - Prohibition on specific commodities from operation by CTOs.
   - Provision of land owned by MoR on favourable terms and conditions to CONCOR.
   - Denying access to terminals and sidings owned by CONCOR
   - Restricting competition in the derivative market of maintenance services.

e. **Imposition of supplementary obligation in violation of sec 4(2)(d)**

   MoR has monopolized the aftermarket for maintenance of the concessionaire's container trains by insisting that such maintenance of private railway rakes can only be sourced from MoR on payment basis.

f. **Contravention of sec 3(4)**

   - By forcing the private CTOs to agree to the maintenance clause to get permission for running container trains on the IR network, MoR has resorted to tie-in arrangement.
Findings of the Director-General (DG)

DG observed that the relevant market is 'transportation of goods/freight (either through wagons or containers) on the Rail Network (as defined in the concession agreement)'. Also, taking into account the combined market share of IR and CONCOR of 99% in the relevant market, their size and economic resources, countervailing buying power, size and importance of competitors etc, DG inferred that the railway entity occupy a dominant position in the relevant market.

On the basis of the above assumption, the DG has concurred with each allegation of the informants and concluded that the conduct of MOR through Railway Board in the relevant market has been in violation of section 4 (2)(a)(i), 4 (2)(a)(ii), 4 (2) (b) (i), 4 (2) (b) (ii) ,4 (2)(c), 4 (2) (d) and 4(2) (e) of the Act. MOR through Railway Board is also found to engage in anti-competitive practice in violation of Section 3(1) read with 3 (4) of the Act. Further CONCOR is found to have violated provisions of section 4 (2)(a)(i), 4 (2)(a)(ii), 4 (2)(b)(i), 4(2)(b)(i) and 4 (2)(c) of the Act in the relevant market

Order of CCI

The CCI does not find MoR and IR as dominant in the relevant market and accordingly finds no abuse of dominance with regard to the allegation pertaining to any violation of Sec 4(2)(a)(i), 4(2)(a)(ii), 4(2)(b)(i), 4(2)(c), 4(2)(d), 4(2)(e). Further no evidence of violation of Sec 3(4) is established. CONCOR is also not dominant in this market and the allegation cannot be upheld.

Author’s comments:

In my opinion, the decision of CCI is justified on the following grounds cited by the CCI in its order:

1. CCI has inferred that the relevant market in this case is ‘the transportation of containers within the boundaries of this country’ and not ‘transportation of goods/freight (either through wagons or containers) on the Rail Network (as defined in the concession agreement)’ as concluded by the DG. Consequently, it is rail and road which are substitutable for container train operations and not containers and wagons as observed by DG.

2. Also, CCI concluded from the following data that IR and CONCOR do not occupy a dominant position in the relevant market and thus, there is no question of abuse of dominance:
   - As per RITES Report (2005), despite the rise in average annual growth rate of container traffic from 12% to 24% between 1995 and 2005, share of railway has remained low.
   - CAG Report no. 8 of 2010-11 notes that railway’s share in the total transport sector has come down from 53% in 1972-1977 to 37% in 1997-2002.
   - Also, after the origin of CONCOR in 1988, IR is no longer a competitor in the relevant market.

3. Bases on the above conclusions, as regards the first allegation, CCI remarked that rail infrastructure has been opened only to container trains whereas coke, coal, minerals and ore constitute wagon freight. Thus, there is no violation of sections 4(2)(a)(i), 4(2)(b)(i) and 4(2)(c) .
4. With regard to the second allegation, it was observed that comparison of rates must be between haulage charges of containers on rail network vis-à-vis roads and not between containers and wagons. Besides, haulage charge is a tariff matter and beyond the jurisdiction of CCI.

5. As regards the third allegation, it was observed that in case of scarce natural resources, it is obvious that any company that is a pioneer will enjoy substantial cost benefits with passage of time. Thus, IR has not unlevelled the playing field by granting land to CONCOR at favourable prices. Also, there are no technical, legal or even economic reasons as to why other CTOs should not create their own terminals or similar facilities.

6. With regard to the fourth allegation, the CCI opines that leveraging does not arise in the market of transportation services for container freight. The issue of leveraging can be examined if and when a competitor tries to protect a market that is being threatened, which is not a case here.

7. In reference to the fifth allegation, the CCI observes that even if maintenance is a different market, on the ground of safety, it is entirely the responsibility of the railways. Besides, as evident from the MCA, the IR is open to any other player undertaking this task in the future.

8. In respect of the sixth allegation, CCI reiterated the above concerns of safety and lack of any other qualified player to carry out the maintenance of rolling stock.
SUGGESTIONS AND RECOMMENDATIONS:
WHAT THE CCI CAN DO
SUGGESTIONS AND RECOMMENDATIONS: WHAT THE CCI CAN DO

The CCI may raise the following issues before the concerned authorities and advocate a policy revisit in the sectors of freight transport, passenger transport and procurement respectively:

1. Rail freight transport sector

   A. CTOs:
      ➢ In the light of the heavy investment that prospective private CTOs are required to make, they should be relieved of the hefty registration fees for utilizing the existing IR network.
      ➢ Prohibition on CTOs from transporting ores, mineral, coal and coke, which allegedly forecloses about 65% of the freight traffic to the CTOs, should be revoked as prior to 2006, CONCOR was carrying these commodities

   B. Policy on PFT
      ➢ The compulsion for all private sidings and terminals on the IR Network where third party cargo was permitted (as co-user or otherwise) to adopt the PFT scheme must be relaxed. This is an arbitrary order showing abuse of dominance by IR.
      ➢ There should be no terminal charge at railway goods sheds and sidings as there are two end terminal charges already.

   C. R3i policy
      ➢ The concession period or freight rebate, as the case maybe, granted to the private investor must enable him to not only recover the advance contribution made by him but also permit a decent profit margin.
      ➢ There must be no fee on the gross apportioned earning of the investors during the concession period as the ownership of the line project anyways vests with the IR.

2. Rail passenger transport sector

   ➢ The Central Government must grant sanction to non-government railways for public carriage of passengers. The success of liberalisation in civil aviation maybe replicated. Healthy competition among private players and between public and private sector will make available quality services at varied prices to the consumers who are increasingly moving towards air and road transport.
3. Public procurement in IR

- Expansion and effective implementation of e-procurement, introduced in Northern Railways in 2005, will greatly help in checking cartelization and bid-rigging.
- The use of limited and single tender systems should be strictly regulated. The open-ended provisions of the GFR, 2005 and the Indian Railways Code for Stores Department, 1990 which leave the adoption of limited and single tender systems in procurement to the discretion of IR must be modified.
CONCLUSION
CONCLUSION

At present, the rail passenger transport sector in India is a public sector monopoly. There are no non-government railways for public carriage of passengers. Private participation is limited to manufacturing of railway-related components and collaborating with the public sector for funding and construction of necessary infrastructure facilities like High Speed Passenger Train Corridors, world class railway stations etc, besides non-core activities like catering, e-ticketing, provision of budget hotel facilities, establishment of food plazas, etc. While PPP in catering, e-ticketing, etc have been beneficial for both the IR as well as private investors, the PPP model for financing and construction of infrastructure, as proposed by the Report of the Expert Group for Modernization of Railways (dated 25th February, 2012), has raised competition concerns.

As discussed earlier, the private sector was permitted to run container trains for freight transportation in 2006. But the lack of a level playing field with CONCOR continues to be the plight of the prospective private investors. To add to this are the anti-competitive features of the policy on PFT and the R3i policy.

As far as public procurement is concerned, although both participation of the private sector and FDI to the extent of 100% is permitted in the railway-related components industry, unlawful behaviour of trade (cartel formation and bid-rigging) and the existing regulatory framework providing for vendor registration, preference to products of PSUs, KVIC, small-scale industries etc stifle competition.

In a nutshell, competition law concerns in the railway industry of India stem partly from government monopoly in passenger transport and partly from discriminatory policies to the prejudice of the private players in the markets where their entry is permitted.